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www.dart.biz

500 HOGSBACK ROAD • MASON, MICHIGAN 48854 • (800) 248-5960

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Contact: Sarah Gould (914) 589-4487

Dart Container, Restaurant Action Alliance NYC, and Restaurant Owners File Lawsuit Against Mayor de Blasio and DSNY Over Illegal Foam Ban

Mayor de Blasio, Commissioner Kathryn Garcia Put Politics Before Facts

(New York, NY) – Dart Container Corporation joined with the Restaurant Action Alliance NYC, members of the recycling industry, and the City’s restaurant owners today in filing a lawsuit seeking to overturn the City’s irrational ban on foam foodservice items. Mayor Bill de Blasio, the New York City Department of Sanitation, and DSNY Commissioner Kathryn Garcia are named as respondents in the petition, which was filed against the Commissioner’s erroneous determination that foam cannot be recycled. The determination flagrantly violated Local Law 142 as well as sound environmental and economic policy and plain common sense.

The suit, which was filed in New York Supreme Court, called the decision to ban foam “arbitrary and capricious,” and asked the Court to reverse the Commissioner’s determination that foam is not recyclable and order DSNY to implement rules to recycle foam.

“We put together a plan that even the City’s recycler supported that would have removed all polystyrene foam, and not just foodservice articles, from the City’s waste stream. Our plan represented sound environmental policy, but they opted for a politically-expedient ban,” said Michael Westerfield, Dart’s Director of Recycling. “The City Council set forth very specific criteria for the DSNY to evaluate, and we met or exceeded every one. What we didn’t know is that City Hall had a hidden agenda that would not be swayed by facts or common sense. We are taking a stand today to protect the thousands of businesses that will suffer if this ban is allowed to stand, as well as manufacturers and recyclers who oppose this ban.”

Based on the evidence presented to the Department of Sanitation over the last year, the Commissioner is statutorily required to recycle EPS, not ban it. Outlined specifically in the complaint are a multitude of incontrovertible facts:

- a) **The Commissioner’s determination was rendered “without a sound basis in reason and generally without regard to the facts.”** The Commissioner’s findings regarding economic feasibility and environmental effectiveness are rife with factual errors, false assumptions, material omissions and misrepresentations. The determination was made even after a top aide to the Commissioner let it be known that the Commissioner’s research confirmed foam can be recycled curbside and sorted at the City’s sorting facilities.

- b) **Market demand for recycled EPS is so “robust” that a single buyer, Plastics Recycling Inc. (PRI), readily committed to purchase all of New York City’s recyclable polystyrene (both solid and foam), with a right of first refusal over other buyers. PRI further assured the Commissioner that it already has “enough demand to handle a 100% recycling rate for a city five times the size of NYC.”** PRI even provided the Commissioner with a list of buyers. In short, the economic feasibility of this recycling plan is beyond dispute. Despite those facts, the Commissioner continues to repeat the false premise that there are “no economic markets in existence” that would purchase and recycle the City’s EPS.
- c) **Since 2013, the City has collected solid polystyrene for recycling, but has sent all 25,000 tons of it to landfills. Dart and PRI committed to recycling not just the City’s foam foodservice items, but all foam polystyrene (e.g. meat trays, egg cartons, ice chests, and protective packaging foam often used for TVs and other electronics) plus solid polystyrene.** In April, 2013, Mayor Bloomberg announced that the City would begin collecting solid polystyrene products as part of the City’s commingled recycled program. However, there were no plans to actually recycle the solid polystyrene. Mayor de Blasio has continued the practice of sending tens of thousands of tons of solid polystyrene into landfills.
- d) **The final determination was not made by the Sanitation Commissioner following an objective review, as local law required.** Rather, it was imposed on the Department of Sanitation by City Hall to further the political agenda of Mayor de Blasio, who vowed to ban foam during his mayoral run. By declaring his intention to “ban Styrofoam in city government, then try to get it out of our society writ large,” the Mayor flouted Local Law 142’s directive that the Commissioner alone make this recycling determination.
- e) **In late 2014, at the Commissioner’s behest, Dart, PRI and the City’s recycling contractor struck a deal in principle to recycle all of New York City’s polystyrene. At an October, 2014 meeting, the Commissioner expressed a desire to move forward with the proposed recycling plan.** Yet, in January 2015, at the Mayor’s direction, the Commissioner issued a sham determination, banning foam foodservice products and relegating the rest of the City’s polystyrene to landfills. It was the Mayor’s Office that instructed the Commissioner to issue a negative determination.

“At the end of the day, this ban will only cost me more money and hurt my business and my family,” said Astrid Portillo, owner of Mi Pequeno El Salvador. “Commissioner Garcia ignored the facts and our pleas for fairness before, but she will not be able to ignore us this time. Despite his slick slogans, the Mayor has forgotten we are part of OneNYC, too.”

As stated in the complaint, the Coalition, Dart Container and other named petitioners in the suit have asked for the Court to lift the ban on foam and require the Department of Sanitation to recycle it.

For more information, please contact Sarah Gould at (914) 589-4487. To view the Coalition’s Executive Summary of the legal challenge, click [here](#).

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