



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

February 5, 2024

The Honorable Judy Aron  
Chair, House Environment and Agriculture Committee  
Legislative Office Building, Room 301  
Concord, NH 03301

**RE: HB 1376-FN, AN ACT relative to prohibiting certain packaging from carrying the recycling logo.**

Dear Chair Aron and Members of the Committee:

Thank you for the opportunity to testify on HB 1376. This bill would prohibit the manufacture and distribution of plastic containers and plastic bottles which display a recycling label unless the actual recycling rate for such containers and bottles meets a specified threshold. While the New Hampshire Department of Environmental Services (NHDES) supports increased recycling of plastics, we oppose this bill because implementation would be problematic from a resource standpoint.

This bill would place new responsibilities on NHDES to regulate plastic containers distributed in the consumer marketplace. Because NHDES does not have expertise in regulating the marketplace or assessing recyclability of specific consumer products or product categories, and because there are myriad of consumer products that would be subject to the provisions of this bill (likely to be thousands of products), NHDES assumes it would need to hire a consulting firm to assist in gathering and analyzing data necessary for NHDES to implement the provisions of this bill. NHDES assumes that the consulting firm would be retained to conduct a market analysis to determine: (1) what plastic products currently exist in the New Hampshire marketplace that are subject to this bill, (2) recycling rates for each such product or product category, and (3) whether any products exist in the marketplace that are out of compliance with the provisions of this bill. Further, because items available in the consumer marketplace are constantly changing, NHDES assumes this market analysis would need to be repeated at periodic intervals to assure that NHDES' administration of this bill stays current with the marketplace.

Additionally, implementation of this bill would necessitate additional staff at NHDES to coordinate rulemaking, develop a product database, assess compliance (including retail audits, complaint response, etc.), and conduct enforcement. Additional resources for the New Hampshire Department of Justice (NHDOJ) would also likely be needed for enforcement of this proposed law and the rules it would require.

While the bill's intent is to promote recycling and aid in consumer awareness of what is/is not recyclable, it is not clear that the effort required would be the best use of limited State resources.

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Additionally, the language of the bill is very broad in identifying which entities would be responsible for complying with the labeling requirements. The definitions do not specify who would be considered a person that manufactures or distributes the products targeted by this policy; potentially responsible parties could include the company that actually fabricates the product, the product brand, the wholesaler/distributor, the retailer, or all of these simultaneously. In the absence of greater clarity around who would be subject to enforcement under this bill, enforcement would be exceedingly complicated and potentially unsuccessful.

Lastly, the bill's effective date of January 1, 2025 would not afford NHDES adequate time to conduct necessary preparations before the prohibition would be enacted. A new position would need to be created and filled two years prior to the implementation of the prohibition to facilitate contracting with a consulting firm, conduct a baseline market analysis, develop rules, and undertake other crucial preliminary activities. The process for procurement and contracting with a consulting firm is several months long, and conducting a market analysis would require a year. The rulemaking process in and of itself can take at least 6-12 months and would need to be informed by the findings of the market analysis.

Thank you again for the opportunity to comment on HB 1376. Should you have questions or need additional information, please feel free to contact either Michael Nork, Solid Waste Management Bureau ([michael.a.nork@des.nh.gov](mailto:michael.a.nork@des.nh.gov), 271-2906) or Michael Wimsatt, Waste Management Division Director ([michael.wimsatt@des.nh.gov](mailto:michael.wimsatt@des.nh.gov), 271-1997).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert R. Scott  
Commissioner

ec: Sponsors of HB 1376-FN: Representative Caplan and Senator Watters