

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: Proposed Regulation Amendments to 7 DE Admin. Code 1301 -
Delaware's Regulations Governing Solid Waste New Section 14, *Plastic Carryout Bag Ban and At Store Recycling Program* and existing Section 3, *Definitions*

DATE: November 7, 2020

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, October 21, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform by the Department of Natural Resources and Environmental Control (“DNREC,” “Department”) to receive comment on the proposed amendments (“Amendments”) to 7 DE Admin. Code 1301, *Delaware's Regulations Governing Solid Waste* (“DRGSW”). More specifically, the Department proposes to: (1) create new Section 14, *Plastic Carryout Bag Ban and At Store Recycling Program*, within the existing regulations; and (2) revise existing Section 3, *Definitions*, to formally define certain terms referred to in the proposed new Section 14.

The Department is proposing this regulatory promulgation in order for the DRGSW to reflect recent changes to State law, and to provide further guidance to stores affected by the same for compliance assistance purposes. Additionally, the adoption of the proposed Amendments will further enable the cleanup of Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain.

In June 2019, the General Assembly passed House Bill 130, which amends 7 *Del.C.* §6099A by expanding the existing at-store recycling program regarding the use of

plastic carryout bags. Delaware stores subject to this program will be limited from providing plastic carryout bags to customers at the point of sale, thereby encouraging a shift to reusable bags. Subsequently, House Bill 130 was signed into law by Governor Carney on July 29, 2019.

The Department's Division of Waste and Hazardous Substance, Compliance and Permitting Section, proposes to modify the DRGSW to ensure: (1) plastic carryout bags, as defined by 7 Del.C. §6099A, are banned; (2) at-store collection of plastic carryout bags and film are implemented, maintained, and consistent with 7 Del.C. Ch. 60 Subchapter IX, *Recycling and Waste Reduction*; (3) plastic bags and film enter the marketplace and are not disposed of; and (4) stores collect and report data to support the intent of 7 Del.C. §6099A.

It should be noted that certain terms associated with the aforementioned new State law were of such importance (i.e., compliance, enforcement) that the Department has formally defined the same in the proposed Amendments. Specifically, the term "store" has been defined as follows:

...an entity in Delaware, with a business license issued by the Delaware Department of Finance, Division of Revenue, whose business activity includes the category "Retailer" and operates a physical location within Delaware consisting of a single location that has at least 7,000 square feet of retail space or three (3) or more locations each having at least 3,000 square feet of retail space. Stores that carry multiple business activity licenses are bound by this regulation; stores that carry a single business activity license of "Retailer - Restaurant" are exempt from these regulations.

Additionally, the term "plastic carryout bag" has been defined in the proposed Amendments as "...a plastic carryout bag provided by a store to a customer at the point of sale made from plastic and not specifically designed and manufactured to be reusable."

In compliance with 7 *Del.C.* §6099A, effective January 1, 2021, a store shall not provide any bags made from plastic not specifically designed and manufactured to be reusable at the point of sale and shall provide reusable plastic bags that meet the requirements as established in 7 *Del.C.* §6099A(a)(4). A store may make available for purchase or distribution at the point of sale, a reusable grocery bag that also meets the requirements of the aforementioned section. In addition, a store may make paper bags available for no cost or may charge any price at their discretion. A store may only continue the use of plastic carryout bags for the purposes identified in 7 *Del.C.* §6099A(e)(3).

To ensure compliance of 7 *Del.C.* Ch. 60, Subchapter IX, *Recycling and Waste Reduction*, the Department also proposes to reinforce the “At-Store Recycling Program” (“ASRP”). The goal of the ASRP is to connect the manufacturers who need the material to the marketplace that can provide the material. Stores that continue to distribute any plastic carryout bags, whether or not exempt, shall be required to have an ASRP. Stores that have adopted practices which eliminate the need for plastic carry out bags, as outlined in the Amendment, do not need to participate in an ASRP as of March 31, 2021.

To further necessitate ASRP compliance, the Department requires stores to annually report the measurement of plastic bags and film collected at the store’s collection bin, and to maintain these records for three (3) years. Stores shall also make the records available to DNREC, upon request, to demonstrate compliance of this Amendment.

The Department has the statutory basis and legal authority to act with regard to proposed regulatory promulgation, pursuant to 7 *Del.C.* §§6010(a) and 6305(a). The Department published its initial proposed regulation Amendments in the October 1, 2020 *Delaware Register of Regulations*. It should be noted that subsequent to that publication, the Department identified a clerical error contained in the definition of “plastic carryout bag.” The identified error was corrected, as set forth in the *revised* proposed

Amendments, and then properly vetted by the Department at the time of the virtual hearing.

The virtual public hearing regarding this matter was held on October 21, 2020. There were nine (9) members of the public in attendance, with one (1) public comment provided live at the virtual hearing. Pursuant to Delaware law, the hearing record (“Record”) remained open for fifteen (15) days subsequent to the public hearing for receipt of public comment. The Record formally closed with regard to public comment on November 5, 2020 with twenty-nine (29) written comments having been received by the Department in this matter. Subsequently, the Department’s Division of Waste and Hazardous Substances expert staff provided a Technical Response Memorandum (“TRM”) in response to the comments received by the Department. The comments received by the Department, along with the Department’s response to the same, will be addressed in greater detail below.

As set forth above, all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents: (1) a verbatim transcript of the virtual public hearing held on October 21, 2020; (2) eleven (11) documents introduced by the responsible Department staff at the time of the aforementioned public and marked by this Hearing Officer accordingly as “Department Exhibits “1-11”; and (3) the TRM prepared by the Department’s Division of Waste and Hazardous Substances expert staff. The Department’s staff primarily responsible for the drafting and overall promulgation of the proposed Amendments, Adam Schlachter, Environmental Program Manager, Division of Waste and Hazardous Substances, Compliance and Permitting Section, developed the Record with the relevant documents in the Department’s files.

As noted above, at the request of this Hearing Officer, a TRM was provided by the Department's expert staff in the Division of Waste and Hazardous Substances. The Department received twenty-nine (29) written comments from the public concerning the *revised* proposed Amendments. Approximately half of the comments submitted were in support of the promulgations, and the other half of comments addressed various concerns related to the Single-Use Plastic Bag ban and the recycling program in general.

With regard to the comments voicing concerns about this proposed promulgation, many addressed the potential cost passed through to the consumer for reusable plastic bags. Others raised health concerns due to COVID-19 pandemic, and the spread of germs through reusable bags. Due to such concerns, requests were made for the Department to delay the effective date, as set forth in 7 *Del.C.* §6099A, for a period of 6 months or more, again, due to global impacts COVID-19. Other commenters, who were in support of banning Single-Use Plastic Bags, suggested that the Department impose fees for plastic bags and apply more stringent requirements.

In its response to the public comments received in this matter, the Department's TRM notes that the intent of the proposed promulgation is to provide clarity and guidance to the regulated community, and to enforce the regulatory language as established under 7 *Del.C.* §6099A. Many of the concerns noted above rest at the legislative level (i.e. effective date, cost associated, and material used in reusable plastic bags), and, as a result, cannot be changed by any regulatory amendments promulgated by the Department.

The Department reviewed current studies (*National Institute of Health, June 2020*) regarding reusable bags as vectors for disease/infection as it relates to the concerns of the COVID-19 and the spread of germs through reusable bags and in-store recycling containers. Those studies concluded that the transmission of germs, etc., cannot be directly applied to COVID-19, and that, reusable bags, if cleaned/sanitized, do not pose a transferability risk. As the importance to reduce the spread of COVID-19 is a concern, DNREC has developed best practices for the stores affected by the recent change to

Delaware law. These best practices include, but are not limited to, encouraging customers to reuse their bags, minimizing employee touch points, and following current CDC guidelines for disinfecting to help manage the potential spread of any disease vectors, including COVID-19.

I find that the Department's TRM offers a detailed review of the *revised* proposed Amendment, identifies the concerns voiced in the public comments received in this matter, and responds to the same in a balanced manner, accurately reflecting the information contained in the Record. Accordingly, the Department's *revised* proposed Amendments and the Department's TRM are attached hereto as Appendix "A" and "B," respectively, and are expressly incorporated herein by reference.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the Record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the *revised* proposed amendments to 7 DE Admin. Code 1301. I further find that the *revised* proposed Amendments will enable the Department to reflect recent changes to Delaware law in the existing DRGSW, provide further regulated guidance to stores affected by the same for compliance assistance purposes, enhance the Department's cleanup of Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* 6010(a) and 6305(a);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments, as well as the *revised* proposed Amendments, and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 21, 2020, and during the 15 days subsequent to the hearing (through November 5, 2020), before making any final decision;
4. Promulgation of the *revised* proposed amendments to 7 DE Admin. Code 1301, as set forth herein, will enable the Department to reflect recent changes to Delaware law in the existing DRGSW, provide further regulated guidance to stores affected by the same for compliance assistance purposes, enhance the Department's cleanup of Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife, humans, and the ecosystems food chain;
5. The Department has reviewed the *revised* proposed Amendments in light of the *Regulatory Flexibility Act*, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's proposed regulatory Amendments, as initially published in the October 1, 2020 *Delaware Register of Regulations*, and then subsequently *revised*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the

applicable laws and regulation. Consequently, they should be approved as final regulatory Amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the *revised* proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



Theresa L. Newman
Public Hearing Officer

**TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DELAWARE ADMINISTRATIVE CODE**

1300 Waste Management Section

1301 Regulations Governing Solid Waste

(Break in continuity of sections)

3.0 Definitions

(Break in continuity within section)

“Marketplace” means a person or persons that utilize the majority, if not all, of the recyclable materials it receives to produce a marketable product. Incinerators, landfills, and other methods of disposal are disqualified as an acceptable marketplace.

(Break in continuity within section)

“Paper bag” means a bag provided at check-out made of paper that meets all of the following requirements:

- a. is one hundred percent (100%) recyclable and contains a minimum of forty percent (40%) postconsumer recycled material;
- b. is accepted for recycling;
- c. has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of postconsumer recycled material used;
- d. displays the word "Recyclable" and "Reusable" in a highly visible manner on the outside of the bag; and
- e. does not contain plastic lining or plastic handles.

(Break in continuity within section)

“Plastic carryout bag” means a plastic [carryout] bag provided by a store to a customer at the point of sale made from plastic [~~which meets the recycled content plastic requirements, is not compostable or biodegradable,~~]and not specifically designed and manufactured to be reusable.

(Break in continuity within section)

“Retail space” means total space within a store, leased or owned, for the purposes of promoting, selling, or distributing goods and services to consumers.

“Reusable bag” means a fabric or plastic carryout bag which meets all of the following requirements:

- a. Is either a bag made of cloth or other fabric that has handles or is a durable plastic bag with handles that is at least 2.25 mils thick;
- b. Is designed and manufactured to be used for at least 125 uses;
- c. Has a volume capacity of at least 4 gallons (equivalent to 15 liters or 924 cubic inches);
- d. Is machine washable or made from a material that can be cleaned and disinfected;
- e. Has a tag or label attached to or printed on the bag with content information. Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration;
- f. Complies with 16 C.F.R. § 260.12 related to recyclable claims if the reusable bag producer makes a claim that the reusable grocery bag is recyclable; and

g. A reusable bag made from plastic film shall also meet the following requirements: it shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses and be at least 2.25 mils thick, in addition to those specified in 7 Del.C. Ch. 60 Subchapter IX, Recycling and Waste Reduction.

(Break in continuity within section)

“Store” means an entity in Delaware, with a business license issued by the Delaware Department of Finance, Division of Revenue, whose business activity includes the category “Retailer” and operates a physical location within Delaware consisting of a single location that has at least 7,000 square feet of retail space or three (3) or more locations each having at least 3,000 square feet of retail space. Stores that carry multiple business activity licenses are bound by this regulation; stores that carry a single business activity license of “Retailer – Restaurant” are exempt from these regulations.

(Break in continuity of sections)

14.0 Plastic Carryout Bag Ban and At Store Recycling Program

14.1 The purposes of these regulations are to ensure the following:

14.1.1 Plastic carryout bags, as defined by 7 Del.C. §6099A, are banned;

14.1.2 At-store collection of plastic carryout bags and film are implemented, maintained, and consistent with 7 Del.C. Ch. 60 Subchapter IX, Recycling and Waste Reduction;

14.1.3 Plastic bags and film enter the marketplace and are not disposed; and

14.1.4 Stores collect and report data to support the intent of 7 Del.C. §6099A.

14.2 Applicability

These regulations apply to:

14.2.1 All stores in the State of Delaware.

14.2.2 All manufacturers of plastic bags sold to a store in Delaware.

14.3 General Provisions

14.3.1 Stores shall:

14.3.1.1 Establish an at-store recycling program pursuant to 7 Del.C. Ch. 60 Subchapter IX, Recycling and Waste Reduction, that permits a customer of the store to return clean and dry plastic bags and film to the store.

14.3.1.2 Place a plastic bag and film collection bin at each store that is visible upon entering the store and that is easily accessible to the customer, clearly marked with the following language: “Please recycle plastic bags and film here,” and that the collection bin is available for the purpose of collecting and recycling plastic carryout bags and film.

14.3.1.3 Provide clear information on what types of plastic bags or film that can be recycled within that location’s at-store plastic bag recycling program.

14.3.1.4 Not commingle source-separated plastic bags and film with other solid waste.

14.3.1.5 Ensure the plastic bags and film enter the marketplace.

14.3.1.6 Adopting practices to eliminate the need for plastic carry out bags as outlined in 7 Del.C. §6099A, allows stores to remove an at store recycling program and can cease the collection as of March 31, 2021; and

14.3.1.7 Document the measurement of the plastic bag and film collected at the location's at-store plastic bag recycling program; perform an annual review and create an annual report summarizing the measurement documentation; and maintain the records related to the annual review and report and measurement documentation for three years; stores that supply this data as part of the Universal Recycling program reporting do not need to submit a separate report.

14.3.2 A retail establishment that does not meet the definition of a store and that provides plastic carryout bags to customers at the point of sale may adopt a similar at-store recycling program, as specified in 7 Del.C. Ch. 60 Subchapter IX, Recycling and Waste Reduction.

14.3.3 Manufacturers of plastic carryout bags shall:

14.3.3.1 Assist stores and ensure that all reusable bags sold within the state meet the requirements outlined in 7 Del.C. Ch. 60 Subchapter IX, Recycling and Waste Reduction.

14.3.3.2 Ensure that plastic bags classified as reusable contain a label that includes the following language, "This plastic bag is reusable and should be returned to stores for recycling and not recycled curbside."

14.3.3.3 Provide stores with recycling opportunities for reusable plastic bags and film to help increase diversion of this material where such programs exist and support store education efforts to educate consumers about plastic bag and film recycling programs.

(Break in continuity of sections)

TECHNICAL RESPONSE MEMORANDUM

To: Theresa Newman, Hearing Officer

Through: Jason W. Sunde, Program Administrator

From: Adam Schlachter, Program Manager II

Re: Department's responses to comments received on the proposed amendments to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* (Docket #2020-R-WH-0025)

You presided over a virtual public hearing on October 21, 2020 beginning at 6:00 PM. The subject of the public hearing was the proposed amendments to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste*.

There was one verbal comment provided by Ms. Emily Knearl, representing the Delaware Nature Society and the transcript is outlined below:

MS. KNEARL: All right. Thank you so much. My name is Emily Knearl. I'm from the Delaware Nature Society. One of the things I would like to say for the record is that, if I'm doing my math correctly, witnesses are outweighing you guys -- you guys are outweighing us two to one. And I'm recognizing there are potentially four DNREC staffers that are part of this hearing for only one to two, maybe three witnesses. That doesn't mean this isn't important. And on behalf of Delaware Nature Society and our 13,000 constituents, thank you for tonight, and thank you for working late. I am going to say some things for the record that will sound repetitive, but Delaware Nature Society wanted to get it into the record. We have been around since the mid sixties, and we do advocacy conservation and education that is about protecting and honoring the natural world. A few things about plastic bags that it never hurts to reiterate: Again, some of this, for some of you, this will be repetitive. Almost 2,000 plastic bags were collected in Delaware's coastal beaches in a national cleanup a couple years ago. Estimates are that less than 10 percent of plastic carryout bags are recycled and that these bags, as you guys know, or many of you know, is often very difficult to recycle. Single-use plastic bags, in a word, poison our water, our wildlife, and our waterways. What we also wanted to make sure that we expressed today is that it is very important that COVID not be seen as a reason not to proceed with the regulations or the timeline laid out by the State Legislature. I know DNREC's hands are tied, but we also wanted to get on record as saying that there has been a lot of inaccurate information about COVID and single-use plastics, including by some in the plastic industry that are not consistent with the science. In an article in June of this year, the National Institute of Health published an article questioning several of the plastic industry's conclusions, including studies that have been used to justify using more single-use plastic bags when, in fact, the data that the plastic industry has been using and that has been cited is for entirely different diseases that have transmission vectors that are fundamentally different from COVID. 19. So we

think it's very important that it be known and well known that COVID is not going to be transmitted through plastic, single-use plastic bags -- Single-use plastic bags are not going to prevent the transmission of COVID. Sorry. Let me restate that. And reusable backs are not a vector. They have not been proven a vector. And that's very important. A couple pieces specific related to the regulations themselves: The regulations talk about resin. And one of the most important factors to any plastic film bag recycling program is that there is an assurance that there will be a recycling market for the plastic film, itself. Recycling programs rely heavily on the market demand for products made from recyclable materials, whether there be more film bags or other products. While the regulations are designed to increase the amount of plastic film going into recycling programs, it's not necessarily creating an incentive for businesses or manufacturers to purchase or produce products made from recycled plastic resin content. Delaware Nature Society is asking tonight that the regulations be very aggressive in this piece, and the ask is that 25 percent recycled resin content be required for reusable plastic bags by 2022. I recognize that is pretty aggressive. Related to -- am I out of time?"

Department Response:

We appreciate that Delaware Nature Society supports the Department's efforts to promulgate these regulations.

Below are written comments, that have also came in during the public comment period regarding these regulations with the Departments response following, similar to the above.

Comment 1

The legislation should focus on those not properly disposing of their plastic bags as opposed to retail stores facing potential fines for the bad acts of others. The sale of reusable bags also passes costs onto the customers. If large retail stores are already required to have onsite receptacles the legislation should focus on incentivizing customers to use those and other recycling bins to properly dispose of the plastic bags. Additionally, smaller retail stores and restaurants should be required to have these receptacles.

Department Response

Thank you for your comment. Plastic bags are a litter issue throughout Delaware and remain one of the more significant contaminants to the Universal Recycling program since they are not able to be accepted curbside. The At Store Plastic Bag recycling program pre-dates the Universal Recycling program and remains the sole way that Delawareans can recycle this material. Under this legislation, the State has not imposed a fee on bags that Stores distribute, but they are allowed to implement one if they choose. Additionally, the 'cost' of bags has always been built into the groceries that customers purchase, whether they are traditional plastic carryout bags or paper bags. Currently, traditional 'reusable' or more durable bags are available at an additional cost but this has always been customer choice and this law does not change that. The law does allow certain municipalities in the State to reduce the square footage requirement to include smaller square footage retailers. This has not yet happened. The

restaurant exemption was put in place by the General Assembly when the law was first promulgated and remains intact.

Comment 2

Agree with the plastic bag ban. I have been using reusable bags for shopping, for nearly 3 years now. I have a bag in the back seat of my car that has about 12 in there. I carry several inside the store with me to use. I fold them up and reuse them next trip to the store. It is just a matter of getting people used to using a reusable bag. We need to focus on what is best for Delaware, the US and the world, rather than what is easier and more convenient for us at the moment. Thank you

Department Response

Thank you for your comment in support of the regulations.

Comment 3

Ban face masks instead. A disposable face mask takes much longer to break down than a plastic bag. And another problem is this will have more people using reusable grocery bags that are a major health concern in today's environment. It's like carrying around a major germ bank into public places. Just the idea of banning plastic bags puts the governments idiocy on full display.

Department Response

Thanks for your comment. The regulations outlined by the Virtual Public Hearing and this technical response memo address the Carryout Plastic Bag Ban and At Store Recycling Program. DNREC staff has reviewed the current studies regarding reusable bags as vectors for disease/infection. In addition, those studies have been reviewed by the National Institutes of Health during June 2020, and concluded that the studies cannot be directly applied to COVID 19 in terms of transmission. In addition, all three (3) of the studies concluded that as long as customers cleaned their bags, either in the laundry or with disinfecting wipes, there was no risk of transmission. In addition, DNREC has developed a "best practices" document which helps stores allow customers to use reusable bags while maintaining safety for employees and customers.

Comment 4

I am voicing my concurrence with the law, passed in 2019, to ban single use plastic bags. I believe this law is good for the environment.

Department Response

Thank you for your comment in support of the regulations.

Comment 5

1. I use the bags that you are now banning for other purposes such a trash can liner. Now I will have to buy a thicker more environmentally unfriendly bag to replace these bags. 2. I have read the law and am now preparing for it to take forever to get through the checkout line while store employees figure out what they can and cannot put into these bags. 3. There should be no distinction between people on TANF, etc or people that just simply forgotten their bags or do not have enough bags with them. I am sure the cost will be passed onto the consumer regardless. 4.

Using welfare dollars to pay for reusable bags when stores have always offered free bags is unconscionable. 5. It takes more energy to process a paper bag than a plastic bag, so to me, this is not really about the environment. 6. Please keep me informed when the final regulation is complete.

Department Response

This response is addressed with numbers corresponding to the above: (1) This law allows the industry to replace plastic carryout bags with a thicker ‘film’ plastic reusable bag. This bag will be able to be used for all of the uses current bags can, but with the added advantage of being mandated to be reusable prior to those uses. Additionally, not all stores are impacted by the law so traditional plastic carryout bags will still be available, though not as widespread as they currently are. (2) There should be no difference in the amount of time for checkout at a supermarket as the reusable bags stores adopt will replace the current plastic carryout bag. There will be no limit to what can and cannot go into the bags available at checkout. (3) The State has not implemented a fee on bags at any level. If a Store chooses to put a charge in place, they are encouraged to provide those bags for free, but there is nothing in this law that directs them to implement a fee. (4) The cost of bags has always been built into the cost of products sold by stores. This law does not implement an additional fee, just requires that the stores use a reusable plastic bag or paper bag instead of a plastic carryout bag. (5) Paper bag manufacturing has become more efficient and clean, but by their nature, paper bags do require more resources than plastic film bags.

Comment 6

I have traveled in many South American countries and even there they have recognized the harmful, dirty, wastefulness of using single use plastic bags at grocery stores, etc. I am also an avid waterman and have seen firsthand this type of trash all over the beach and in the sea and have found myself to be ashamed and disgusted at my country for allowing this to happen. We need to do something about this, and this ban would send a message to all surrounding states that this type of behavior is not allowed here in DE and all other states should follow our lead.

Department Response

Thank you for your comment in support of the regulations.

Comment 7

As a property owner in Sussex County, I wholeheartedly support the plastic bag ban and any efforts to improve reduction of waste and recycling. I further encourage municipalities to adopt composting of waste.

Department Response

Thank you for your comment in support of the regulations.

Comment 8

There are more unsolved issues more important than plastic bags. A plastic bag does not take shots at me when I go into Wilmington. Try fixing crime first! I have never been assaulted by a plastic bag.. keep on ducking.

Department Response

Thanks for your comment. The regulations outlined by the Virtual Public Hearing and this technical response memo address the Carryout Plastic Bag Ban and At Store Recycling Program.

Comment 9

Hi there,

I'm sorry I missed the public hearing, but want to express strong support for the plastic bag ban. Thank you!

Department Response

Thank you for your comment in support of the regulations.

Comment 10

I support the ban. If we don't start taking small steps to save the environment, none of the other issues will matter. Plastic is already being found in the bodies of animals (including people) around the world; it's already in the food chain.

Department Response

Thank you for your comment in support of the regulations.

Comment 11

Delaware would be making a huge mistake if it bans plastic bags. Plastic bags are the most sanitary product for transporting purchases from stores to homes. Re-usable bags are dangerous carriers of germs and bacteria. As I travel around the state, I see no evidence of plastic bags lining the streets and the waterways. What reason(s) could DNREC have for outlawing a product that has so many benefits? Is logging and paper production now a big business in Delaware? Or is there something else going on?

Department Response

Thank you for your comments. DNREC staff has reviewed the current studies regarding reusable bags as vectors for disease/infection. In addition, those studies have been reviewed by the National Institutes of Health during June 2020, and concluded that the studies cannot be directly applied to COVID 19 in terms of transmission. In addition, all three (3) of the studies concluded that as long as customers cleaned their bags, either in the laundry or with disinfecting wipes, there was no risk of transmission. Plastic bags continue to be an item that is found during community cleanups throughout Delaware as well as DNREC's Coastal Cleanup activities. Plastic bags, in the environment can break down into micro-particles (micro-plastics) which are both bioaccumulative in certain organisms as well as harmful. Paper bags, in most instances, carry a significant amount of recycled content fiber which helps to support curbside and drop-off recycling initiatives.

Comment 12

As a Delaware resident and environmental science teacher, I am highly in favor of banning single use plastic bags. There are plenty of more sustainable options for Delawareans and it is time to remove this harmful option!

Department Response:

Thank you for your comment in support of the regulations.

Comment 13

Plastic bags are our life line to shopping, as a senior citizen I depend on to plastic bags to get my stuff home, always taking it back to Walmart for recycling. Would be nice to have bin at the recycling place to put them in.

Department Response:

Thank you for your comment in support of the regulations. Stores, including Walmart, will continue to have containers for the recycling of bags. The new reusable bags, if they are made from film, are all accepted for recycling in these programs.

Comment 14

I am opposed to this.

Department Response:

Thank you for your comment.

Comment 15

Sorry to have missed the original virtual meeting but would like to weigh in on the subject of the plastic bag ban. I am against it, especially now with the pandemic requiring we each do the utmost to maintain virus containment with our food supply. Paper bags have more porous and rough surfaces and the germ buckets that are reusable carriers should be banned until the pandemic is over. Don't know why we ever got into this game to begin with. I clean up a one mile stretch of rural road every two weeks and for every 100 beer cans, soda bottles, fast food wrappers, etc., I might come across one plastic bag that has been discarded -like as not to have blown out of a garbage truck making collections.

Department Response:

Thank you for your comments. DNREC staff has reviewed the current studies regarding reusable bags as vectors for disease/infection. In addition, those studies have been reviewed by the National Institutes of Health during June 2020, and concluded that the studies cannot be directly applied to COVID 19 in terms of transmission. In addition, all three (3) of the studies concluded that as long as customers cleaned their bags, either in the laundry or with disinfecting wipes, there was no risk of transmission. The law does not mandate that paper bags replace plastic bags, only that the majority of plastic carryout bags be swapped with reusable bags. It is up to each retailer how they plan to comply with the law. Plastic bags and film to remain a litter issue in our rivers and on our coasts.

Comment 16

First of all, I totally agree with the proposal, I just disagree with the timing. Please consider postponing the plastic bag ban until later, maybe next summer or so due to the Coronavirus. I am 71 and have not been going into stores and have been taking advantage of the curbside pickup at my local grocery store. I am very grateful for this service so I do not have to go into the store and possibly be exposed to the virus. Different store employees each week shop from my e-mail list, bag it, and bring it out to my car's trunk. I am not in contact with them and can put the bags in recycling carts outside the store afterwards. If the Ban goes into effect on Jan. 1st I will need to provide reusable bags that multiple people will eventually handle, which is what I'd like to avoid. I guess the alternative is paper bags which the store will have to pass the increased cost to the customers. I totally agree that those bags need to be banned to help our environment, I just wish we could put that practice start date to later as I feel they help limit the spread of the Coronavirus. Thanks for considering this timing issue.

Department Response:

Thank you for your comments. We have tried to answer all of your concerns. The timing of implementation was set by the Delaware Legislature and written into the law. DNREC does not have the authority to change this unless directed by the Legislature or the Governor. Stores had 18 months from when the law was passed to act on compliance. In terms of the bags being used, the definition of a reusable bag includes a thicker film plastic bag option, similar to the bags we are used to. DNREC does not anticipate that stores offering curbside pickup or contactless grocery picking to reuse bags from consumers and the law only requires that the bags they provide be reusable. In terms of the costs associated with bags, whether the current plastic carryout bags or paper ones, these costs have always been built into the price of groceries that consumers purchase.

Comment 17

I wholeheartedly support the ban of single use point-of-sale plastic bags. While the proposal includes requirements for the collection of such bags by the retailer, the current reality is that there is no market or viable process for actually recycling these bags, or any significant plastic recycling taking place. Therefore the best approach to reducing plastic pollution is to eliminate, when possible, the source. Banning single use plastic bags accomplishes this. Plastic bags are also the number one impediment to current recycling efforts since they jam the sorting and transfer equipment, greatly reducing the efficiency of the recycling process. I reject the argument that reusable bags are unsanitary or spread disease. There is no more danger in taking a reusable bag into a store than that posed by unsterilized shoes, clothing, purses or backpacks. Reusable tote bags can be easily be washed and disinfected. European countries have lived without single-use point-of-sale plastic bags for decades now with no detriment to their economies. To those few who do reuse the bags for wastebasket liners or pet waste, there are suitable lightweight bags available in the marketplace at very low cost. The infinitesimal percentage of bags reused in this manner does not justify the flood of these noxious bags currently fouling our environment.

Department Response:

Thank you for your comments. DNREC has looked at the recycling opportunities around film and plastic bags and there are several regional companies currently utilizing the material generated by Delaware's stores. In addition to the regional opportunities, there is a recycling facility located in Delaware that started operation in 2019 focused on recycling plastic bags. It is DNREC's hope that this local opportunity continues to expand to accommodate the production of the new reusable film bags which, under the law, could replace the single use bags. Additionally, the regulations encourage the bag manufacturing community to partner with recyclers and stores to help increase the stability and access to recycling opportunities for this material.

Comment 18

Good afternoon I just wanted to comment that single use plastic bags are poisoning our environment, choking sea animals, and they don't degrade in landfills - they will still be around hundreds of years from now. I understand the reasoning behind the in-store recycle bins for the bags, and I have used them. I now have my own reusable shopping bags. Realistically, not enough people bring back their bags for recycling, they just get thrown out into the trash when they are done unloading their purchases, even if they will be going back to the store for more items (Walmart for example, I have only ever seen a few people bringing their bags back, so the rest go into the dump??) I think the single use plastic bags should be banned altogether - why can we not go back to paper bags? Why do restaurants get a pass on single use bags? They should follow the same guidelines as everyone else, especially now that take out is more prevalent. Just my two cents. Thank you.

Department Response:

Thank you for your comments. DNREC has been working to encourage residents to bring back bags to the Stores since this is the available recycling opportunity for them. Unfortunately, given the mechanical nature of our single stream recycling processing equipment, we cannot take plastic bags in the curbside/drop-off Universal Recycling program. The regulations encourage stores and manufacturers to work together to make sure that strong collection programs remain for this material coming from these recycling opportunities. The original legislation passed in 2009 around plastic bags in Delaware contained the restaurant exemption and that has stayed consistent in all subsequent changes for the law based on the Legislature's direction.

Comment 19

Since most stores do not currently allow their employees to touch a patron's reusable bag due to COVID, I recommend delaying this regulation until the following year when hopefully we will have better treatments available as well as a vaccine.

Department Response:

Thank you for your comment. DNREC staff has reviewed the current studies regarding reusable bags as vectors for disease/infection. In addition, those studies have been reviewed by the National Institutes of Health during June 2020, and concluded that the studies cannot be directly applied to COVID 19 in terms of transmission. In addition, all three (3) of the

studies concluded that as long as customers cleaned their bags, either in the laundry or with disinfecting wipes, there was no risk of transmission. DNREC has developed a “Best Practices” document which will be distributed to stores to help them keep customer and employee safety in the forefront. In terms of the implementation, this law was passed in 2019 and gave the stores 18 months to comply. DNREC does not have the ability to change that date as it was written into the law. The Legislature or the Governor would have to make a decision to delay the implementation date.

Comment 20

1. Now is not the time. Plastic bags offer a sanitary way to carry goods 2. Plastic bags are not single use for some of us. Every one of mine get reused at least once as trash bags or cat litter bags. Without the plastic bags I will need to purchase bags that are usually heavier weight and use more plastic not less 3. Recycling is better than a ban. These bags are clean and typically a single type of plastic. Ideal for recycling. So do that!

Department Response:

Thank you for your comment. The reusable bags the replace the current plastic carryout bags can still be used for all of the same uses. Additionally, not all stores in Delaware will be impacted by the Plastic Carryout Ban and At Store Recycling Program. Because of this, there will still be some amount of plastic carryout bags still distributed throughout the State, just less of them. The goal of this law is to encourage reusable bags to be distributed throughout the State. In addition, any store that is impacted by this law must provide an At Store Recycling program for plastic bags and film as part of the implementation.

Comment 21

The proposed Plastic Bag Ban is an incredible opportunity for our state to put itself on the right side of history. Our country is facing a small timeline to fix immeasurable harm to our environment. A plastic bag ban, throughout the state, could be a policy that encourages more regulations of this kind. I encourage DNREC to implement this policy. The youth of this nation needs strong environmental policies implemented for any hope of a relationship with the environment. This is a good start headed in a GREAT direction.

Department Response:

Thank you for your comments on the proposed regulations.

Comment 22

Please adopt a plan to stop using plastic bags. Recycling would be good but stopping their use would be better. Thank you.

Department Response:

Thank you for your comments on the proposed regulations.

Comment 23

Public comment for proposed revisions to 7 DE Admin. Code 1301 Section 14 “Plastic Carryout Bag Ban and At Store Recycling Program.”

There are multiple case studies here in the states and internationally that have shown plastic bag fees as low as 5 cents are effective at reducing plastic bag use. Studies show that bag fees serve as a psychological instrument rather than an economic one. A small fee evokes a strong emotional response, in changing human behavior, which will serve to more efficiently cut plastic waste. There should be a mandatory bag fee implemented into the policy.

Here are two studies that highlight this psychological effect.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6399129/>
https://scaan.net/docs/ScAAN_Bags_report.pdf

I agree with the Delaware Nature society that regulations need to be more aggressive. I want to see a policy that includes that 25% of recycled resin content be required for reusable plastic bags by 2022 (there needs to be an incentive by manufacturers to produce products made from recycled plastic resin content) I saw that there was a remark made in the October meeting that Wilmington can make changes to the law within its city by an act of the Wilmington City? Can you please expand on what that means? Does that mean they can add stricter provisions or add more exemptions? Are there manufacturers who are partnering (recycling) markets to close the “loop and support this program by manufacturing bags from recycled content resin provided by the film and bag recycling program? How does the DNREC enforce the policy? Do they have reps visiting stores to ensure regulations are followed randomly throughout the year? Thank you for added clarifications for • “store”, “Marketplace”, “paper bag”, “Retail Space”, “Reusable bag”, “store” definition.

Department Response:

Thank you for your comments on the proposed regulations. During this time the Legislature did not include any type of fee with the update to the law. In terms of the law, there is a provision where cities with populations above 50,000 residents in population could make the square footage requirements more restrictive (e.g. 500-1,000 sq. feet) which would be more restrictive than the State. As indicated during the workshop and hearing, the City Council has not taken this action. DNREC is currently aware of several companies are producing bags that contain recycled content. Some of this comes from recycled bags and other sources offilm. DNREC will conduct inspections throughout the year to ensure compliance with this law. Each store will have a minimum of a single inspection and additional inspections will occur if non-compliance issues are identified.

Comment 24

I support the spirit of the Delaware Plastic Bag ban, but the regulations need to be strengthened with small fees for paper bags. There also need to be fees for single-use plastic bags in instances when they are exempt regulations. A small fee of five cents or less per bag would be adequate. This will promote the use of reusable bags which are less detrimental to the environment than either single use paper or plastic bags. Here are pathways to two studies related to this concern:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6399129/>
https://scaan.net/docs/ScAAN_Bags_report.pdf

As for the sale of reusable plastic bags, as per the stance of the Delaware Nature Society, a minimum of 25% recycled resin should be required in these types of bags. Further, reusable bags sold by stores falling under these regulations should not only be washable but should be durable enough to ensure that each bag can be used enough times to generate an environmental return on investment. Here is the pathway for a study examining this issue:

<https://www2.mst.dk/Udgiv/publications/2018/02/978-87-93614-73-4.pdf>

Further, there was a remark during the October meeting that indicated that Wilmington (and logically other cities) can make changes to the law/regulations within the city limits. This needs clarification. I would recommend that any local-government level changes are only allowable when rules are made stricter than those of the State of Delaware. Finally, while fines for noncompliance are clearly stated in the laws and regulations, there also needs to be a clear outline of what the process will be used for ensuring ongoing compliance.

Department Response:

Thank you for your comments on the proposed regulations. The regulatory process does not allow the addition of a fee to this program. A modification of 7 Del.C. §6099A would need to happen for the State to implement a fee. The current definition of reusable bag in the regulations requires that the bags be “machine washable or made from a material that can be cleaned or disinfected.” Further, the bag must be designed to be reused at least 125 times. The standards which helped to establish guidance, takes life cycle analysis into account, which established the target the regulations asked for. Based on the variety of materials that comply for the manufacture of reusable bags, DNREC will continue to look at this for future regulatory guidance. Based on the population limit of 50,000 residents built into the current law, the only City in Delaware that can impose stricter square footage requirements is Wilmington. At this point the City Council has not taken any action. Currently no other municipality in Delaware can take action to impose additional requirements under this law. DNREC’s Compliance and Permitting Section (CAPS) will perform annual inspections on the identified regulated community, which is in line with other programs within the Department. In cases where non-compliance is identified, DNREC will continue to work with the location until compliance is achieved. CAPS can do inspections at any time so if there is a concern, this will happen as instances are identified.

Comment 25

I am writing to express my agreement with the proposed policy to ban plastic bag use for shopping in Delaware. I have been shopping with reusable bags for at least 5 years. I am accustomed to it and find that with practice, it is simple. I often don't use bags because the item's in a box or plastic container. I also bring reusable bags along when I travel. In my opinion, this not a difficult change for society to undertake. Single use items need to be targeted. The sooner plastic bags are banned, the sooner consumers will adjust and learn a new way. My example can be followed easily.

Department Response:

Thank you for your comments on the proposed regulations.

Comment 26

Thank you for the opportunity to comment on the regulations affecting plastic bags. The Delaware Food Industry Council and the Delaware Association of Chain Drug Stores on behalf of all of their membership respectfully request a stay of the At Store Recycling Program until 30 days after the end of the state of emergency authorized by Governor John Carney during the Covid 19 pandemic. Our first priority is asking for a stay of the current At Store Recycling Program. It is a problem to have used plastic bags coming back into the store. Specifically we believe there is a health risk to bring used single use plastic bags back into establishments that sell food. Supermarkets, convenience stores and pharmacies are considered critical infrastructure. It is a health risk to expose these employees to unnecessary dangers during a global pandemic. Studies still confirm and support that the virus lives on surfaces for up to three hours. Our employees have to handle the used single use bags that are, more often than not, dirty and often mixed with used single use medical gloves and other trash. We recognize the purpose of the program and completely support the program and its value for residents. Please understand we fully support bringing the program back once the pandemic threat is over. We fully support the at store recycling program under normal circumstances. We also support that the at store recycling program allows single use plastic bags to stay out of the landfill. However, as COVID 19 continues to plague our world and we try to make the work environment as safe as possible for both our associates and customers we feel that bringing used plastic bags and film back to a food establishment during a global pandemic, that is still not under control, far outweighs any plastic bags that end up in the landfill for the next coming months. We are asking that the At Store Recycling Program be stayed until 30 days after the Governor's Executive Order ends. Second, DFIC supports a uniform statewide solution to phase out single use plastic and paper bags and encourages the use of reusable bags in Delaware. DFIC members recognize the importance of promoting sustainable, sensible, and sound environmental policy, and this is why our members have taken a progressive approach to this disposable bag issue. However, again during this time of the pandemic we would ask that the Single Use Plastic Bag ban not go into effect until 6 months after the Executive Order ends. Our priority in the new legislative session is to ban paper bags. Right now there is too much retailers are already responsible for conveying to customers; 6 foot distance, wear a mask, wash hands, one way aisles, etc. We feel adding the plastic bag ban right now will be lost with other mandated signage. We need a comprehensive push to educate our customers and move to reusable bags. If we phase out plastic bags in January and paper bags are not yet phased out customers will gravitate to paper and we know the market can not bear the increased demand and that the price of paper bags has increased dramatically due to mill shut downs during Covid. We feel it is imperative to push this date back and time both plastic and paper bag bans and instead educate customers to move to reusable bags. During the pandemic most retailers have created policies that customers that bring reusable bags must bag their own groceries. This is for the protection of their workers. Not knowing the cleanliness of the reusable bag. Shut downs in manufacturing plants during COVID there have been a lot of delays and staffing issues that have caused product to be delayed in production and shipping. Along with state bans on plastic the demand for paper has increased too, which in turn has caused a shortage in paper and difficulty getting the bags. Lead times have gone from a normal 6-8 weeks to 18-20 weeks. Our suppliers are having to source paper from multiple manufacturers. One supplier shows that due to COVID and paper supply lead time is now 28 weeks. You can see in the news reports that people continue to purchase in bulk paper towels and toilet paper leading to widespread shortages. Likewise we see huge shortages in the used paper

markets with closed schools since the spring across the country we are seeing paper mills struggling to keep up with demand. Paper bag costs have increased upwards of 15% and the time to get the product can be up to 20 weeks for delivery. This is an issue other states are also addressing and in the state of Pennsylvania for example they have instituted a mandate on bag bans until July 2021. Aside of shortages in paper bags and increased cost of paper bags and health risks associated with bringing used single use plastic bags into food establishments we want to educate our customers about the ban. Right now that messaging will be lost as we are dealing with masks and social distancing and supply chain issues for various products on our shelves that are in short supply. We would want the messaging about the ban to come directly from the state and be uniform for all retailers to use. This is an education process that needs to happen in advance of the ban going into effect. To date we have not seen any draft language or signage about the education for customers. We believe that would be best created in partnership with industry as we are the natural distribution channel. We are more than willing to engage with DNREC to help create this collateral and messaging. We did this with DNREC and Division of Finance when single stream recycling passed in 2009 and we spent close to 3 months developing the collateral with the state so that all the messaging was consistent and implemented at the same time. We would like to suggest replicating this process with DNREC and the industry. I am also including the specific sections starting on page 62 from the study commissioned in PA about reusable plastic bags and single use plastic bags during Covid-19.

Here are some excerpts from the study: Sanitary Concerns As discussed elsewhere in this report, during the first several months of 2020, the United States, and many other countries, battled a pandemic caused by a novel coronavirus. The resulting disease caused by this virus, COVID-19, has devastated many communities and caused fundamental shifts in social practices. Pennsylvania was not immune from these effects. On March 23, 2020, the Governor mandated a state-wide “stay-at-home” order. Non-life sustaining businesses and schools were ordered to close. Obviously, grocery stores are a life sustaining business and remained open during the pandemic. While grocery stores remained open, new customer shopping practices were implemented by many larger grocery retailers.¹⁰⁶ One specific practice that was frequently mandated was a restriction on customers using their own reusable grocery bags (RGB) for ¹⁰⁵ Some of the unintended consequences are economical in nature and are thus outside the scope of this study. ¹⁰⁶ See <https://www.pennlive.com/coronavirus/2020/03/grocery-stores-in-central-pa-continue-to-operate-with-adjusted-hours-limits-on-some-products.html> LEGISLATIVE BUDGET AND FINANCE COMMITTEE A Study in Response to Act 2019-20: Non-Economic Impacts of Single-Use Page 63 purchases, and instead requiring customers to use single-use plastic bags provided by the store.¹⁰⁷ The reason for this restriction was due to fear that RGBs might serve as a transmission pathway for the coronavirus. Retailers had a reasonable basis for placing restrictions on RGBs. According to research that was published in the Journal of Environmental Health, while the grocery store is an important public access to a wide variety of food that is vital for healthy families, it is also a location where food, the public, and pathogens can meet.¹⁰⁸ To examine this perception further, researchers from the Loma Linda University School of Public Health conducted a test to determine if a hypothesized norovirus¹⁰⁹ transmission pathway could be established through RGBs. Obviously testing grocery store shoppers by exposing them to a real norovirus was neither plausible nor ethical, so the researchers used a similar surrogate viral structure known as a MS2 bacteriophage surrogate (MS2). The MS2 allowed the researchers to model the survival,

morphology, and transport characteristics of norovirus exposure without the infection risk or the necessary mammalian cell culture facilities.¹¹⁰ The research methodology, while complex in its structure, represented a likely case scenario for most shoppers who use RGBs. Researchers first selected several grocery stores and with the permission of the store's management tested various control surfaces within the store. Researchers then recruited volunteers to participate in the study as they showed up to conduct their routine grocery shopping. The volunteers were instructed to shop for their typical items, but then were also given a standard list of items to collect. The standard list of items ensured uniformity in the items selected and travel throughout the store. Before shoppers entered the store to purchase items, they were instructed to use an RGB that had been previously purchased by the researchers, sterilized, and then sprayed with the MS2 surrogate. The results were stunning. Transmission pathways were categorized into two categories, as presented in Exhibit 18.¹⁰⁷ Other retailers permitted patrons to use RGBs but required the patron to pack their own RGBs and discouraged employees from handling the bags.¹⁰⁸ Sinclair, Ryan. "The Spread of a Norovirus Surrogate via Reusable Grocery Bags in a Grocery Supermarket," *Journal of Environmental Health*, June 2018.¹⁰⁹ Noroviruses are a group of related viruses that are highly contagious. Norovirus infections occurs from an infected person, contaminated food, or water, or by touching contaminated surfaces. Infection with these viruses affects the stomach and intestines and causes an illness called gastroenteritis (inflammation of the stomach and intestines). See National Foundation for Infection Diseases at www.nfid.org/infectious-diseases.¹¹⁰ Sinclair, Ryan. "The Spread of a Norovirus Surrogate via Reusable Grocery Bags in a Grocery Supermarket," *Journal of Environmental Health*, June 2018. Recently, many retailers have restricted customers from using reusable grocery bags or have required customers to pack their own bags, if using such containers. LEGISLATIVE BUDGET AND FINANCE COMMITTEE A Study in Response to Act 2019-20: Non-Economic Impacts of Single-Use Page 64 Exhibit 18 Surrogate Virus Contamination from Reusable Grocery Bags Note: CL = clerk; Cu = customer; RGB = reusable grocery bag Source: Developed by LBFC staff from the *Journal of Environmental Health*, *The Spread of a Norovirus Surrogate via Reusable Grocery Bags in a Supermarket*, June 2018. As shown in the above exhibit, transmission of the surrogate virus was widespread from the RGB and throughout the store. The transmission began with the seeded RGB, which once touched by the shopper's hands was then transferred through various surfaces and products in the grocery store. As other customers and staff touched the infected surfaces/products, the contamination ultimately ended up in the facial membranes of customers and/or staff.¹¹¹ In the case of COVID-19, researchers indicate that this pathway is an infection possibility; however,¹¹¹ This study did not consider possible mitigation efforts. For example, if a customer used hand sanitizer while in the store. LEGISLATIVE BUDGET AND FINANCE COMMITTEE A Study in Response to Act 2019-20: Non-Economic Impacts of Single-Use Page 65 according to the United States Center for Disease Control (CDC) the primary means of infection is through respiratory droplets from person-to-person.¹¹² While this study documented the transmission possibilities of the surrogate virus, it also documented the potential viral load, or the amount of contamination that was spread from the RGB to various surfaces and products. According to the researchers, the lowest mean concentration of virus detected on a surface was sufficient to "represent a virus transmission risk for most individuals encountering any of the surfaces touched by the RGB directly or indirectly through at least one other contact."¹¹³ Obviously, there are some caveats that need to be drawn from this study and the current pandemic confronting Pennsylvania. First, the researchers were studying a surrogate norovirus and not a coronavirus. The distinction between these two viruses is

lengthy and more appropriate for a microbiology/virology discussion. According to the National Foundation for Infectious Diseases, coronaviruses are: 114 ...a large group of viruses that cause diseases in animals and humans. They often circulate among camels, cats, and bats, and can sometimes evolve and infect people. In animals, coronaviruses can cause diarrhea in cows and pigs, and upper respiratory disease in chickens. In humans, the viruses can cause mild respiratory infections, like the common cold, but can lead to serious illnesses, like pneumonia. Coronaviruses are named for the crown-like spikes on their surface. Human coronaviruses were first identified in the mid-1960s. Most people get infected with human strains of coronaviruses at some point in their lives. These illnesses usually last for a short amount of time, and symptoms may include fever, cough, headache, runny nose, and sore throat. Human coronaviruses can cause other more serious illnesses, such as pneumonia or bronchitis. This is more common in individuals with heart and lung disease, those with weakened immune systems, infants, and older adults. Consequently, a coronavirus is not a norovirus, and the surrogate virus used by the researchers, while genetically similar to a norovirus is not one that causes illness in humans. Moreover, even within the category of coronavirus, the virus which causes COVID-19 is novel, meaning it is a newly evolved virus, which has not been previously seen. Researchers are 112 See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> 113 Sinclair, Ryan. "The Spread of a Norovirus Surrogate via Reusable Grocery Bags in a Grocery Supermarket," *Journal of Environmental Health*, June 2018. 114 See <https://www.nfid.org/infectiousdiseases/coronaviruses/> LEGISLATIVE BUDGET AND FINANCE COMMITTEE A Study in Response to Act 2019-20: Non-Economic Impacts of Single-Use Page 66 actively researching the transmission of this novel virus, but much remains to be learned, and what is known, is evolving. Another factor to consider is that the study assumes the RGB is already contaminated with the virus, which may (or may not) be the case. For example, wiping the RGB with a disinfecting wipe or washing the bag may eliminate some of the contamination. Similarly, a shopper who uses a hand sanitizer while in the store would also reduce the potential transmission. A clerk who wipes their station periodically with disinfectant would also limit transmission. These are all common-sense strategies that should be used by all shoppers using RGBs.

Department Response:

Thank you for your comments on the proposed regulations. From the perspective of recycling of plastic bags, most of the stores are using a box to collect these in. As part of a "best practices" piece that DNREC is developing, we recommend lining these containers with a larger plastic bag. This way, as employees remove them all they need to do is remove the 'bag of bags', tie it up, and bring it to the storeroom to be consolidated with other film and plastic bags. This helps to reduce the employee contact interactions. In terms of reusable bags, there is significant flexibility in how stores comply with the program. Based on the limited nature of paper bag, there are other types of bags (e.g. film plastic bags, etc.) which comply, are available and meet the intent of the law. If retailers intend to push legislation to eliminate paper bags for use in Delaware, it would seem that focusing on an available compliant bags now, will help to support these efforts in the future. There are several different manufacturer and 3rd party recycling opportunities available to stores in Delaware. Each retailer has the opportunity to choose the market they want to collect and recycle their film and bags. The law dictates that manufacturers should work with customers to provide education around this

program. This law was signed into effect in 2019. DNREC stands ready to help with education. DNREC staff has reviewed the current studies regarding reusable bags as vectors for disease/infection. In addition, those studies have been reviewed by the National Institutes of Health during June 2020, and they concluded that the studies cannot be directly applied to COVID 19 in terms of transmission. In addition, all three (3) of the studies determined that as long as customers cleaned their bags, either in the laundry or with disinfecting wipes, there was no risk of transmission. Again, as part of DNREC's "best practices" it is recommended that customers bag their own groceries using their reusable bags so that store employees don't touch them. Additionally if they are bagged in a cart or at the end of the checkout line, as they should be doing, these surfaces wiped down with a disinfecting cloth as per CDC's current guidance, will maintain safety for other customers and employees.

Comment 27

To Whom It May Concern:

Delaware Nature Society (DelNature) appreciates the opportunity to comment on the Department of Natural Resources and Environmental Control's (DNREC) draft, "At-Store Recycling Program Regulations." DelNature was an avid advocate for House Bill 130, Delaware's Plastic Bag Ban, and continues to advocate for general waste reduction in Delaware. We also appreciate the hard work of the DNREC regulatory team to create such impactful regulations.

It is estimated that less than ten percent (10%) of plastic bags are currently recycled or reused across the country, resulting in more than 3,500,000 tons of plastic bags thrown away or discarded annually. Although the Plastic Bag Ban (HB130) was a step in the right direction, it will require the design and successful enforcement of regulations if we are going to increase the percentage of bags recycled and reused.

Increasing Recycled Resin Content in Plastic Bags to 25%

One of the most important factors to any plastic film recycling program is the insurance that there will be a recycling market for the plastic film itself. Recycling programs rely heavily on the market demand for products made from the recyclable materials, whether that be more film bags or other products. While these regulations are designed to increase the amount of plastic film going into recycling programs, it is not creating an incentive for businesses and manufacturers to purchase and/or produce products made from recycled plastic resin content.

Ultimately, this could result in an influx of plastic bags entering the recycling market, but nowhere for that recycled content to go. By intentionally including a requirement for recycled resin content for the re-useable plastic bags, there is an opportunity to close the feedback loop.

DelNature asks that the regulations include a 25% recycled resin content for re-usable plastic bags.

Reducing Paper Bags and Increasing Recycled Content to 50%

The Plastic Bag Ban (HB130) may lead to an increased reliance on paper bags by consumers. While there is a benefit to using paper bags because they are often reused and easy to recycle, it

is critical to acknowledge that they also have a negative environmental impact. Paper bag production requires trees to be cut down and harmful chemicals used to process that wood – methods that lead to air and water pollution and an increase in greenhouse gas emissions. The ‘At-Store Recycling Program Regulations’ already include the stipulation that paper bags are made from at least 40% post-consumer recycled content, but **DelNature asks that the requirements are increased to 50% post-consumer recycled content.**

Community Education and COVID

We also suggest that there be an aggressive community education campaign, so the public is aware. We are concerned about a large backlash (particularly in a time of COVID) without significant work on awareness. DelNature would be happy to partner on this work. Finally, we must ensure that medically accurate information drives this conversation and not allow the plastics industry to use medically inaccurate information or scare tactics using COVID to halt the ban. Thank you again for the opportunity to comment.

Department Response:

Thank you for your comments on the proposed regulations. In terms of supporting closed loop recycling programs the requirement for recycled content helps to ensure that supply and demand are consistent and sustainable. DNREC will look at how best to encourage the inclusion of recycled content guidance in the regulations. In order to help customers and stores to understand how this program interacts with COVID 19 (and other potential diseases) DNREC has developed a “best practices” guidance document. This document outlines how residents (customers) should handle their bags, reusable or otherwise, for their own protection. It also outlines how store employees should change their current practices and adopt new practices for safety.

Comment 28

Hi More questions. but to begin: I've been a plant chemist, a business owner, employer, and even do adopt-a-highway for a local club. I understand legislators write often vague laws on topics they are not experts, and rely on department staff to try to fill in details. I understand environmentalists and their supports expect to see some sort of government action too. Most people like clean water and air. My experiences that most of the trash along side my 500' lake front property wash food packaging trash (glass and plastic bottles #1), smoking trash, boat and car parts, personal hygiene trash, clothing and lastly plastic bags. The story of 2000 bags over a mile stretch of beach doesn't match my 1 bag for 100'. So my questions are: Why just plastic bags? Why exemption for food service group? Why are employers targeted and not employees? If you said I could fire a litterer without the claims of retaliation and harassment, then happy to comply. Where did these 25% cost benefit come from? Most waste streams are very difficult to get quality products for less than double the cost of new ingredient stream. Do you look into illegal dumping as the source of these bags? My farm had this problem, and even after I added cameras. I do go to the beach and like to walk my dog. How are you handling the dog waste (plastic bags on posts) issue with the ban?

Department Response:

Thank you for your comments on the proposed regulations. At this time, the Legislature decided to modify the existing law, 7 Del.C. §6099A to ban plastic carryout bags and replace them with reusable bags, as defined. No other items were presented in the final readings of the law before this modification was approved. The original language of the this law, which included the restaurant exemption, was passed in 2009, and this remained consistent with the update passed in 2019 by the Legislature. DNREC is unsure what is being asked by the question, “Why are employers targeted and not employees?” Similarly, there is nothing in the proposed regulations that discusses a 25% cost benefit, so DNREC is unsure what is being asked by this question. DNREC’s Environmental Crimes Unit has the staff and capacity to look into illegal dumping claims. These should be called into the hotline and they will be investigated and dealt with accordingly. This law does not completely ban plastic bags, but replaces single use carryout bags with reusable bags. Those stores unaffected by the Law will continue to distribute bags in addition to those bags which have been exempted. Dog waste should be collected with either bags the owner acquires through their shopping practices or with pet waste bags that can be purchased, and then placed into the trash.

Comment 29

I am a part time resident of Ocean City MD and I reside in The Capri Me and my parents go to Harris Teeter in Fenwick Island because we like the variety of food they have This plastic bag ban is not necessary and for me being in NY full time this is already hard enough I was not able to go into Delaware this year because of the Pandemic Now as I try to return to the first state I will not be able to get a plastic ban while shopping Please reconsider this ban because a lot of low income and disabled peoples life's will be made difficult

Department Response:

Thanks for your comments. The Plastic Carryout Bag Ban will be replacing thinner bags with reusable bags. The law will not completely eliminate bags, but encourage affected stores to replace their current ‘thin’ bags with thicker, more durable bags either made from plastic or another material. Store customers within Delaware will still receive a bag at checkout when they shop for groceries.

Conclusion:

CAPS is confident that the regulations being proposed during this public hearing address all of the comments provided by this process. As indicated, the public will still be receiving bags from retailers after January 1, however, those bags will now need to meet the statutory definition of ‘reusable’ which is outlined in 7 Del. C. §6099A. Whether this bag is a paper bag, a thicker plastic bag or a traditional ‘reusable’ bag that is currently offered, as long as it’s compliant, customers will be able to receive it.

Additionally, the reuseability of bags is driven by the customer and not the store. The customers will determine when they bring in a reusable bag and what type of reusable bag they opt to use. The bag that stores will be required to provide under this law and the regulations, must comply with the definition. The law does not intend the customer to return bags to the store for them to hand out again as part of their point of sale/bagging procedures. The intent is that the customer

goes home with a bag that is more durable than current bags since today's plastic carryout bag can rip or get holes meaning they cannot be used more than one.

There is no direct scientific evidence that reusable bags increase the spread of diseases and specifically COVID 19. DNREC has reviewed the studies and the diseases outlined act differently than COVID 19 or the coronavirus family. In all three studies, the conclusions were the same which is that reusable bags, **if cleaned/sanitized**, do not pose a transferability risk. If they are not cleaned/sanitized, that is when the risk appears. DNREC has provided best practices for the Stores to help them encourage customers to reuse their bags. These best practices are designed to minimize employee touch points as well as following current CDC guidelines for disinfecting to help manage the potential spread of any disease vector including COVID 19.

Additionally, there is a misconception about the cost of bags. In all supermarket businesses today, the cost of bags is built into the price of the goods purchased by customers whether these are single use bags, paper bags or some other bag provided to customers without a separate charge. Under this law, this practice will continue. The exception is that law does allow Stores to charge a fee for bags if they wish; however, it is not something that the State is directing them to do. Unfortunately, the cost of management of these bags as litter or issues within the environment is not included in the costs currently borne by consumers, but is an external cost paid in addition via other methods. The intent of the law to reduce the external cost of litter and other issues that plastic bags cause is being managed through their reduction and overall reusability so that consumers have a better option while maintaining convenience.

Finally, with regard to changing the date of implementation due to COVID 19, that is not a decision that DNREC has control over. When the Legislature passed the law in June 2019, it became effective July 1, 2019 and gave the impacted stores 18 months to position themselves for compliance. We understand that COVID 19 has had an impact on certain supply chains which impact the stores; however, only the Legislature or a Governor's Executive Order can alter the implementation date of the law.

At this point, DNREC will make the correction that was identified during the Public Hearing which was in the "plastic carryout bag" definition. Other than that change, DNREC feels that the regulations should move forward so that fair and equitable compliance can be executed to support the Legislature's intent.