

At IAS Part <sup>52</sup> of the Supreme Court of the State of New York, County of New York, at the Courthouse thereof, located at 80 Centre Street, New York, NY, on the ~~29th~~ <sup>30th</sup> day of April, 2015.

PRESENT: Hon. HON. MARGARET A. CHAN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of,

RESTAURANT ACTION ALLIANCE NYC,  
CECILIO ALBAYERO, JOSE CASTILLO,  
MAXIMILIANO GONZALES, ANDRES  
JAVIER-MORALES, ARISMENDY JEREZ,  
TONY JUELA, RUPERTO MOROCHO, ASTRID  
PORTILLO, SERGIO SANCHEZ, LUCINO  
RAMOS, ESMERALDA VALENCIA, PLASTICS  
RECYCLING INC., DART CONTAINER  
CORPORATION, PACTIV LLC, GENPAK LLC,  
COMMODORE PLASTICS LLC, and  
REYNOLDS CONSUMER PRODUCTS LLC,

Petitioners,

For Judgment Pursuant to CPLR Article 78

– against –

THE CITY OF NEW YORK; KATHRYN  
GARCIA, in her official capacity as Commissioner  
of the New York City Department of Sanitation; the  
NEW YORK CITY DEPARTMENT OF  
SANITATION, a charter-mandated agency; and  
BILL DE BLASIO, in his official capacity as  
Mayor of the City of New York,

Respondents.

Index No. 100734 / 2015

ORDER TO SHOW CAUSE

Upon the annexed Verified Petition of Restaurant Action Alliance NYC, Cecilio Albayero, Jose Castillo, Maximiliano Gonzales, Andres Javier-Morales, Arismendy Jerez, Tony Juela, Ruperto Morocho, Astrid Portillo, Lucino Ramos, Sergio Sanchez, Esmeralda Valencia, Plastics Recycling, Inc., Dart Container Corporation, Pactiv LLC, Genpak LLC, Commodore Plastics LLC, and Reynolds Consumer Products LLC, verified on April 28, 2015 (the "Verified Petition"); the Affirmation of Randy M. Mastro, dated April 28, 2015 (the "Mastro Affirmation"), and the exhibits thereto; the Affidavit of Brandon Shaw, dated April 28, 2015, and the exhibits thereto; the Affidavit of Cecilio Albayero, dated April 27, 2015; the Affidavit of Jose Castillo, dated April 24, 2015; the Affidavit of Maximiliano Gonzales, dated April 23, 2015; the Affidavit of Andres Javier-Morales, dated April 23, 2015; the Affidavit of Arismendy Jerez, dated April 23, 2015; the Affidavit of Tony Juela, dated April 27, 2015; the Affidavit of Ruperto Morocho, dated April 24, 2015; the Affidavit of Astrid Portillo, dated April 23, 2015; the Affidavit of Lucino Ramos, dated April 27, 2015; the Affidavit of Sergio Sanchez, dated April 24, 2015; the Affidavit of Esmeralda Valencia, dated April 23, 2015; the Affidavit of Eric Wulf, dated April 27, 2015; the Affidavit of George Braddon, dated April 24, 2015; the Affidavit of James Reilly, dated April 24, 2015; the Affidavit of Jeff Wilkison, dated April 27, 2015; the Affidavit of Tae Hwang, dated April 27, 2015; the Affidavit of Richard Master, dated April 23, 2015; the Affidavit of Robin Cantor, dated April 27, 2015, and the exhibits thereto; the Affidavit of Mike Centers, dated April 27, 2015; the Affidavit of Robert Jackson, dated April 27, 2015; the Affidavit of Gary Frederick, dated April 27, 2015; and Petitioners' Memorandum of Law in Support of Its Application by Order to Show Cause for Expedited Discovery, dated April 28, 2015, it is hereby:

ORDERED that the City of New York, Sanitation Commissioner Kathryn Garcia, the New York City Department of Sanitation, and Mayor Bill de Blasio (collectively, "Respondents") show cause before this Court, at IAS Part 52 of the Supreme Court of the State of New York, County of New York, located at the New York County Courthouse, 80 Centre Street, Room 189, New York, New York, 10007, on the 20<sup>th</sup> day of May, at ~~11:30~~ 9:30 o'clock A.m., why an order should not be issued, pursuant to this Court's inherent powers and CPLR 3101, granting expedited discovery in this action and requiring Respondents to produce all documents responsive to the requests attached as Appendix B to Petitioners' Verified Petition within two weeks after the date of the requested order; and it is further

ORDERED that Respondents New York City Department of Sanitation and Mayor Bill de Blasio show cause before this Court at the same time and place why an order should not be issued, pursuant to CPLR 7801 *et seq.*, compelling those Respondents to produce all documents responsive to the Freedom of Information Law requests attached hereto; and it is further

ORDERED that Respondents show cause before this Court at the same time and place why an order should not be issued granting Petitioners' leave to file a brief no longer than 66 pages in support of their Verified Petition; and it is further

ORDERED that Respondents show cause before this Court on the 20<sup>th</sup> day of May, 2015 at 9:30 o'clock A.m., at the same place, why an order should not be issued, pursuant to CPLR 7801 *et seq.*:

1. Declaring that the Sanitation Commissioner's "Determination on the Recyclability of Expanded Polystyrene" was in violation of lawful procedure, affected by errors of law, arbitrary and capricious, and/or an abuse of discretion;
2. Declaring that the Commissioner misapplied Local Law 142 and misinterpreted "recyclable," as that term is used in the statute;

3. Declaring that expanded polystyrene single service articles "can be recycled" in a manner that is "safe for employees," "economically feasible," and "environmentally effective" under Local Law 142;
4. Ordering Respondents DSNY and Commissioner Kathryn Garcia to adopt and implement rules designating expanded polystyrene single service articles and other polystyrene as recyclable materials in the City of New York, as mandated under Local Law 142;
5. Ordering Respondents DSNY and Mayor Bill de Blasio to immediately produce documents previously requested by Petitioner Dart's counsel pursuant to the New York State Freedom of Information Law;
6. Granting Petitioners expedited discovery, as requested with this Article 78 petition and subsequently in connection with this litigation;
7. Issuing a temporary restraining order and a preliminary injunction, as necessary, to enjoin Respondents from implementing any ban on expanded polystyrene single-service articles during the pendency of this litigation;
8. Holding an evidentiary hearing to resolve any material factual disputes;
9. Ordering Respondents to pay Petitioners their costs, fees, and disbursements incurred in connection with this action, including but not limited to their costs, fees, and disbursement in connection with Petitioner Dart's counsel's requests, appeals, and Article 78 petition for relief under the New York State Freedom of Information Law; and
10. Granting any such other and further relief as this Court deems just and proper;

and it is further

ORDERED that Petitioners shall serve upon Respondents a copy of this Order, and the papers upon which it is based, by hand delivery on or before the 1<sup>st</sup> day of May, 2015; and it is further

ORDERED that Respondents shall serve upon counsel for Petitioners, Randy M. Mastro, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, 47th Floor, New York, New York, 10166, any answering and responsive papers to Petitioners' Application by Order to Show Cause by <sup>certified</sup> ~~hand~~ <sub>mail</sub> delivery on or before the 18<sup>th</sup> day of May, 2015; and it is further

(for the expedited discovery demands)

A briefing schedule as to the Article 78 shall be discussed on May 20th.

~~ORDERED that Petitioners shall serve upon counsel for Respondents any reply papers by hand delivery on or before the 30<sup>th</sup> day of June, 2015; and it is further~~

ORDERED that a hearing and oral argument are directed on Petitioners' Application by Order to Show Cause on the 20<sup>th</sup> day of May, 2015, at ~~11:00~~<sup>9:30</sup> o'clock A.m., or as soon thereafter as counsel may be heard.

Oral Argument  
Directed

JSC

**HON. MARGARET A. CHAN**

ENTER:



J.S.C.

**HON. MARGARET A. CHAN**