



Comments to the New York City Department of Health and Mental Hygiene Re: Comment on: Article 81 – Food Preparation and Food Establishments

Submitted: July 16, 2012

The Center for Food Safety (CFS) is a national non-profit organization working to protect human health and the environment by curbing the use of harmful food production technologies. CFS works to protect our food, our farms, and our environment and promote public health.

Thank you for the opportunity to submit these comments in support of the New York City's proposal to set a maximum size on sugary drinks sold in food service establishments. We wish to make three main points: 1) the proposal is sound public policy; 2) this isn't about "choice" or other distracting rhetoric from the soda lobby; and 3) the soda lobby is showing its true colors by acting like Big Tobacco.

The proposal is sound public policy

Beverage sizes are out of control thanks to the combined efforts of the soft drink industry, fast food chains, movie theaters, and other purveyors of sugary drinks. At the same time, New Yorkers are suffering from diet-related chronic diseases. An impressive body of scientific evidence points to sugary drinks as a leading culprit in this public health epidemic. As a result, the New York City health department is well within its legal and policy purview to protect its citizens.

Considering that the health department is responsible for regulating all potential dangers at New York City food service establishments, this proposal is a logical extension of that authority. Sugar is similar to other sorts of contaminants controlled by the health department that can cause people harm. Moreover, the science is clear that people respond to smaller portion sizes by consuming less.

One of the most important tenets of public health is making the healthy choice the easy choice, which also means making the "default" choice as healthy as possible. This proposal is a first step to changing the environment to make reasonable sizes the norm. And at 16 ounces, the proposal is more than reasonable, especially considering that the original Coke size was 6.5 ounces.

This isn't about "choice" or other distracting rhetoric from soda lobby

The soda industry, because it does not have science (or even common sense) on its side, is resorting to methods of distraction such as claiming that this proposal is an affront to consumer choice, as if it is actually concerned about consumers. Of course, this proposal doesn't take anybody's choice away. New Yorkers who wish to consume more than 16 ounces are free to purchase more.

But let's take a closer look at the concept of choice. *It is the soda industry that has taken away the choice of reasonable portion sizes.* Nobody demanded larger beverages. Cups got larger and larger over the years because the soda industry (again, in coordination with food service establishments) realized it has a



gold mine on its hands because with the cost of production is so cheap, industry can make a lot of money by pushing larger portion sizes, public health consequences be damned. This proposal is simply saying: enough is enough.

When the beverage industry and its cohorts use the word “choice,” it’s really code for threatened profit margins -- which are estimated to be as high as 90 percent for soft drinks sold through food service, as opposed to packaged beverages, which have additional costs associated with them such as bottling and distribution.

Without this common sense limit, it’s not as if consumers will be free to choose. Instead, the soda companies will regulate exactly what portion sizes we get.

Big Soda is acting like Big Tobacco

While it’s no surprise the soda lobby would fight any hindrance to sales, particularly disturbing is how their response is so similar to the underhanded tactics deployed for decades by the tobacco industry.

Big Tobacco wrote the book on distorting science as a way of confusing the American public and detracting from policy solutions. On a new website called, “Let’s Clear It Up,” the soda industry deploys this classic tactic of disinformation.

Among the “facts” the soda lobby wants us to know is that “drinking fluids is absolutely essential” and “we all need to ensure our bodies are properly hydrated.” But with 410 calories and 113 grams of sugar, a 42-ounce Coke probably isn’t the best form of hydration. The soda lobby also fails to mention how the caffeine in many soft drinks acts as a diuretic, meaning it can cause dehydration.

The tobacco industry lost any shred of credibility when it got caught telling outright lies, such as denying the scientific connection between cigarette smoking and lung cancer. Similarly, the beverage lobby claims that “soda isn’t driving obesity according to the facts,” conveniently ignoring numerous studies showing a clear connection between soft drink consumption and obesity.

Another tried and true tactic of the tobacco industry is inventing “grassroots” smokers’ organizations, a strategy known as Astro-turfing (as in fake grass). It’s a great way for companies that don’t want their fingerprints on a controversial campaign to hide behind a front group. Such groups tend to garner public sympathy and support.

Enter “New Yorkers for Beverage Choices,” a self-described “a coalition of citizens, businesses, and community organizations who believe that consumers have the right to purchase beverages in whatever size they choose.”

But as the New York Times recently exposed, this is a classic Astro-turfing campaign led by the American Beverage Association. The Washington-based lobbying group has retained powerful



political consultants, including those behind the effective “Harry and Louise” anti-healthcare ad campaign from the 1990s.

Who made this list of alleged New Yorkers so concerned with their choices? For starters, other lobbying groups outside of New York, such as the Grocery Manufacturers Association, the International Franchise Association, the National Association of Concessionaires, the National Association of Theatre Owners, the National Restaurant Association and, of course, Coca-Cola and Pepsi-Cola.

Other listed supports of choice include restaurant chains like Chick-Fil-A, Denny’s, and Darden Restaurants (owner of Olive Garden and Red Lobster, among others). Not quite the sort of grassroots activism members you hope for in a campaign about personal choice.

Additional Big Tobacco-style tactics we’ve been seeing from the soda lobby in response to New York’s proposal include:

- Shooting the messenger and name-calling, by depicting Mayor Bloomberg as a “nanny” in full-page ads taken out by the industry front group, Center for Consumer Freedom, which not coincidentally, began with funding from Philip Morris and is run by notorious tobacco lobbyist Rick Berman;
- Claiming to take the side of small businesses because they know the public and the press have more sympathy for the little guy than multinational corporations such as Coca-Cola and PepsiCo;
- Claiming to care about the economic plight of poor people, never mind the fact that the soda industry targets these same populations with advertising designed to get them hooked for life on their unhealthy products;
- Threatening litigation to scare the City into backing down.

Ultimately, the tobacco industry lost all credibility with the American public (along with most policymakers) by engaging in such deceitful tactics. It seems now the soda lobby (along with their compatriots in the food service establishment) is heading down the same devious and doomed path.

In conclusion, the soda industry is running scared because they know the jig is up; that the public health crisis their products have helped create means that industry cannot keep enjoying the same unfettered regulatory environment. This common sense proposal will catch on as other cities take New York’s lead. This is an idea whose time has come. Enough is enough.

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