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## ENVIRONMENTAL AND RETAIL ALERT

### *Plastic Bags Recycling Regulation*

In our Alert of April 9, 2010, we informed that Act 38 - which directs businesses to establish a plastic bag recycling program - was signed into law by Governor Luis G. Fortuño on March 26, 2010. Act 38 requires commercial establishments to establish a recycling program that provides an opportunity for customers to return to the store plastic carryout bags.

Under Act 38, a plastic bag is defined as a type of flexible packaging made of plastic, used to contain and transport goods, provided by a commercial establishment to a consumer at the point of sale. Commercial establishment is any establishment, store or similar place which conducts any type of business or commercial transactions of sale or transfer of retail goods.

On November 2, 2010, the Solid Waste Authority ("SWA") promulgated several amendments to the Solid Waste Recycling, Reuse, and Reduction Regulation, Regulation No. 6825 of June 15, 2004 ("Regulation 6825"), to implement the provisions of Act 38. Regulation 6825 now requires commercial establishments to place, in a conspicuous place readily accessible to customers and properly identified, containers or recycling bins where customers can leave the plastic bags.

Under the amended Regulation 6825, the commercial establishment is responsible for coordinating the delivery of plastic bags to a recycling center. The recycling center shall issue to the commercial establishment a certificate to that effect and these certificates must be kept for at least 3 years.

In addition, commercial establishments are required to make reusable bags available to customers within the store for purchase and/or allow customers to use their own reusable bags. Commercial establishments with 11 employees or more are currently required to prepare and implement a recycling plan to recycle paper, ferrous metals, non-ferrous metals (like aluminum), glass, plastic, cardboard, cooking oil, used tires, batteries, electronic equipment, used motor oil, wooden pallets, etc. The SWA has a form for the recycling plan to facilitate the adoption of the plan.

The Regulation 6825 amendments require commercial establishments to revise their recycling plan to include provisions for the recycling of plastic bags. Also, commercial establishments are required to prepare and submit to SWA - with copy to the Municipality where the store is located - quarterly reports indicating the amount of recyclable materials collected by category, including plastic bags. In addition, the commercial establishments must file an annual report indicating, among other things, how the recycling plan was implemented and the measures that were taken to reduce the generation of solid waste. The SWA also has a form for the annual report.

Failure to comply with these requirements can result in penalties up to \$25,000 per violation for the first violation. The amount of the penalties can be increased to \$50,000 per violation for recurrent violations.

If you have any questions or comments, or wish additional information regarding the matters discussed herein, please contact any of the attorneys listed below.

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