Lawsuit in California targets plastics pollution from Coca-Cola, Pepsi and other companies

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Escalating a campaign to make corporations responsible for the waste they produce, an environmental group filed suit Wednesday against some of the world's biggest food, beverage and consumer goods companies in a California court, arguing they should be held responsible for plastic packaging that is fouling the state's oceans, rivers and streams.

The Earth Island Institute asked for unspecified damages and an order for Coca-Cola, Pepsi, Nestle U.S., Procter & Gamble and six other companies to clean up plastic waste that the group says has created a global pollution crisis.

The suit, filed in San Mateo County Superior Court, is believed to be the first of its kind. It follows a rising public outcry about plastics pollution—particularly in the world's oceans—and initiatives by state and federal lawmakers to force companies to take ownership of the material they use to package their products.

The California Legislature is reviewing measures that would impose so-called extended producer responsibility—requiring food and drink producers to devise plans to capture empty containers.

And Sen. Tom Udall, D-N.M., and Rep. Alan Lowenthal, D-Calif., this month introduced the Break Free From Plastic Pollution Act. It would create a nationwide beverage container redemption program, ban some single-use plastic products and force the use of recycled material in the making of plastic bottles and containers.

"This is the first of what I believe will be a wave of lawsuits seeking to hold the plastics industry accountable for the unprecedented mess in our oceans," said Josh Floum, Earth Island Institute's board president. "These plastics peddlers knew that our nation's disposal and recycling capabilities would be overrun, and their products would end up polluting our waterways."

The environmental group filed the suit around the close of business Wednesday. The Plastics Industry Association, a trade group, did not immediately respond to a request for comment.

Floum, a corporate and antitrust attorney, said that the lawsuit might initially be greeted as "heretical" but that its logic will soon become evident. "Like with Big Tobacco, we know Big Plastic is poisoning our environment," he said. "It's in the bodies of animals. It's in our own bodies. It's all over the ocean and it's clogging our rivers. And it's the plastics peddlers who are responsible for this mess."

Plastics makers previously have argued that the marketplace, not government regulators, should decide the worthiness of their products. The have said they are willing to explore plastics alternatives but also emphasize that improvements in recycling and waste management could solve the pollution crisis. Environmentalists reject that notion, saying that only about 10% of plastic containers are reprocessed into new products.

The new lawsuit could face a hurdle over whether a California court is the proper venue for the dispute. California law provides for "public nuisance" claims, but oil companies facing lawsuits over their contribution to climate change have argued, somewhat successfully, that claims involving national and international companies should be heard in federal court.

The litigation levies an array of allegations against the companies, including public nuisance, breach of express warranty, defective product liability, negligence and failure to warn of the harms caused by single-use plastic packaging.

It suggests the list of defendants was drawn, at least in part, from an audit conducted last summer in 51 countries by one of Earth Island's

partner organizations. The study found that among the top 10 creators of plastic pollution were Coca-Cola, Pepsi, Procter & Gamble, Mondelez International and Colgate-Palmolive. The suit names those companies, along with Nestle U.S., Crystal Geyser Water, Clorox, Mars and Danone North America.

The lawsuit describes Nestle as the world's largest food and beverage company and Pepsi as the second largest. The action claims that the defendant companies collectively produce about 15% of all single-use plastic packaging.

Berkeley-based Earth Island Institute was founded by the late David Brower, the first executive director of the Sierra Club. The group helps incubate and fund other environmental organizations. In its lawsuit, it cites the widespread damage to the marine environment caused by an estimated 150 million metric tons of plastic.

The pollution stretches from near-shore locations such as Monterey Bay, which now has a greater concentration of pollution than the Great Pacific Garbage Patch, to the depths of the Mariana Trench, the Pacific Ocean canyon that includes the deepest point on Earth.

At the current pace, it is estimated that plastic will outweigh fish in the ocean by 2050. The synthetic material has been blamed for killing sea mammals and seabirds and contaminating the world's freshwater supplies, to the point that it's estimated the average person ingests about 5 grams of plastic a week—roughly the equivalent of a credit card.

The environmental group charged that the companies have implied that recycling can solve the pollution problem, when they knew that recycling systems are inadequate to handle the deluge of plastic waste.

"The products that we are targeting in our lawsuit are contained in plastic

packaging that we often use for just a few minutes," Earth Island general counsel Sumona Majumdar said in a statement. "And yet this packaging pollutes our bodies from one generation to the next, and our planet for centuries."

The environmental group said it was suing on its own behalf and to benefit several projects it sponsors: the Plastic Pollution Coalition, Break Free From Plastic United States, the International Marine Mammal Project, Shark Stewards and 1000 Fountains.

The lawsuit was filed by the firm of Cotchett, Pitre & McCarthy, the same lawyers who in 2015 sued the federal government, accusing it of allowing climate change and thereby violating the life, liberty and property rights of young people.

A federal district judge was prepared to let the climate lawsuit by the group Our Children's Trust go ahead. But in January a divided appellate court ruled that, while action was clearly needed, it was up to the political branches of the government, not the courts, to tackle global warming.

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