

REV. 2/6/06

Leg 2B

SI-3(B)(1)

BOARD OF LEGISLATORS --- COUNTY OF WESTCHESTER

Your Committee is aware that the United State Environmental Protection Agency has classified Westchester's air as failing to meet ambient air quality standards for ozone and particulate matter.

Your Committee is in receipt of a Report from its Healthy Air Task Force further documenting that Westchester's air is unhealthful and outlining various measures that Westchester should adopt to improve its air quality.

The Healthy Air Task Force urged Westchester County government to adopt an act requiring that all diesel-powered **onroad vehicles and all diesel-powered nonroad vehicles** owned, leased and/or operated by or on behalf of Westchester County be powered by ultra low sulfur diesel fuel and utilize the best available technology, to reduce the emission of pollutants. Nonroad vehicles include backhoes, bulldozers, excavation machines, generators and cranes.

Your Committee is aware that diesel emissions, due in large part to their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of Westchester County. Public health organizations, including the National Institute of Occupational Safety and Health, the World Health Organization, the United States Environmental Protection Agency (EPA), the California Environmental Protection Agency and the United States Department of Health and Human Services' National Toxicology Program, have associated diesel exhaust or diesel particulates with an increased risk of cancer, decreased lung function, aggravated asthma, respiratory symptoms and premature death.

Your Committee is aware diesel exhaust also contains nitrogen oxides which, in the presence of heat and sunlight, combine with volatile organic compounds in the air,

such as hydrocarbons, to form ground-level ozone (smog). Your Committee is aware diesel exhaust emitted by nonroad vehicles also contains these hydrocarbons.

Nonroad equipment powered by diesel fuel is the single largest mobile source of diesel particulate matter. Recognizing the harmful effects of nonroad-vehicle diesel emission, the EPA has promulgated a comprehensive rule to require advanced emission controls for new nonroad diesel engines and to decrease the allowable fuel sulfur levels by 99 percent. The EPA estimates that when all older nonroad engines have been replaced, exhaust emissions from nonroad engines will be reduced by over 90 percent and 12,000 premature deaths, one million lost work days, 15,000 heart attacks and 6,000 children's asthma-related emergency room visits will be prevented. But the lag in effective date and long life spans of heavy-duty diesel engines means that the federal rule's impact will not be fully realized for twenty years.

Your Committee finds that the air in Westchester can be made cleaner now by the use of emission-control technologies and ultra low sulfur diesel fuel. Your Committee finds that use of ultra low sulfur diesel for onroad and nonroad vehicles operating in Westchester County would reduce particulates released into the air by these vehicles and significantly improve our air quality.

Your Committee believes that reducing particulate matter and nitrogen oxide emissions by using cleaner fuels and installing emission-control technologies on onroad and nonroad equipment may help to stem the tide of the asthma epidemic in Westchester County. In Westchester, an estimated 48,000 people have asthma -- 25 percent of them children. More cases are reported each year, especially among the very young, minorities and the poor.

Your Committee intends that diesel particulate filters (DPFs) (or technologies with similar emissions benefits) be used to the maximum extent possible as part of

emissions-reduction systems, since DPFs currently achieve best performance in reducing harmful PM_{2.5} emissions. This is especially important to help the county achieve compliance with federal PM_{2.5} standards and to attract the best PM_{2.5}- and NOx-reducing technologies into the Westchester market.

Your Committee finds that it is in the best interest of the health of our County's residents, workers and schoolchildren for the County and all of its agents to use ultra low sulfur diesel fuel and the best available technology for reducing the emission of pollutants in its diesel-powered onroad and nonroad vehicles in all areas of the entire County. Your Committee believes that the County should contract for construction and other services only with contractors who use ultra low sulfur diesel fuel and the best available technology. The County should choose to allocate its purchasing dollars to protect the health of its residents and, thereby, potentially save millions of dollars in avoided health care costs.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). If this Honorable Board adopts the aforementioned Act, your Committee believes this would constitute an action under Article 8 of the Environmental Conservation Law, which requires this Honorable Board to comply with the requirements of SEQRA. As this project is classified as a "Type II" action under SEQRA, your Committee has been provided with an Environmental Assessment Form prepared by the Department of Planning to assist this Board in determining that this action will have no adverse impact on the Environment.

Your Committee recommends the adoption of the attached Act.

Dated:
White Plains, New York

COMMITTEE ON LEGISLATION:

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COMMITTEE ON THE ENVIRONMENT & ENERGY:

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20 to 1/14

ACT NO. - 2006

An ACT requiring that all diesel-powered onroad and nonroad vehicles owned, leased and/or operated by or on behalf of Westchester County be powered by ultra low sulfur diesel fuel and utilize the best available technology to reduce the emission of pollutants.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Declaration Of Legislative Findings And Intent.

In 2004 the United States Environmental Protection Agency classified Westchester County as a nonattainment area for ozone and fine particulate matter (PM_{2.5}).

The Board of Legislators finds that there is credible evidence that diesel emissions, with their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of Westchester County, including an increased risk of cancer, decreased lung function, aggravated asthma, respiratory symptoms and premature death and that there is an asthma epidemic in Westchester - County.

The Board finds that the utilization of emission-control technologies and ultra low sulfur diesel fuel in diesel-powered onroad and nonroad vehicles can significantly reduce these harmful emissions of particulate matter and nitrogen oxides.

The Board finds that nonroad equipment powered by diesel fuel is the single largest mobile source of diesel particulate matter.

The Board finds that requiring the use of cleaner fuels and emission control technologies for onroad and nonroad equipment can aid in reducing the incidence of these diseases, assist in the county's achieving compliance with federal PM_{2.5} standards and attract the best PM_{2.5}- and NOx-reducing technologies into the Westchester market.

Section 2. Chapter 873 Article XIII Section 873.1329 is amended as follows:

[Sec. 873.1329] Sec. 873.1330 Air Quality; severability.

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

Section 3. Chapter 873 Article XIII is amended by adding a new section as follows:

Section 873.1329 Air Quality: Onroad and nonroad vehicles; Emission standards.

1. Definitions.

Whenever used in this section, the following terms shall have the meaning indicated:

a. "Best Available Technology" (BAT) means a system for reducing the emission of pollutants which is based on technology verified by the United States Environmental Protection Agency or the California Air Resources Board or which has been identified pursuant to New York City's Department of Environmental Protection (under Local Law 77 §24-163.3d.(1)) that:

i. reduces diesel particulate matter emissions by at least 85 percent, as compared to a similar engine operating on traditional diesel fuel without emission control technology, or reduces engine emissions to 0.01 grams diesel particulate matter per brake horsepower per hour or less; and

ii. achieves the greatest reduction in emissions of nitrogen oxides at a reasonable cost and in no case produces a net increase in nitrogen oxides in excess of 10%.

b. "Contractor" means any person (as defined in Section 873-1301(27), who enters into an agreement or contract with WestchesterCounty valued at more that \$150,000 (such sum to increase \$5,000 on the first day of January each year following the enactment of this section until it reaches a maximum of \$250,000) to perform County work or any person who enters into an agreement or contract with such person to perform County work.

c. "County work" means to provide labor, services, material and/or equipment which traditionally has been provided by the government of the County of Westchester through county employees or contractors except it does not include labor, services, materials and/or equipment provided by (1) a common carrier, (2) a shipping company (including overnight delivery companies) or (3) a manufacturer or delivery company which does not deliver materials or equipment to Westchester County government on a regular and frequent basis.

d. "Nonroad diesel engine" means an internal combustion engine (including the fuel system) operating on diesel fuel not used in a motor vehicle or a vehicle used solely for competition or not subject to standards promulgated under United States Code Title 42 sections 7411 or 7521, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

e. "Nonroad diesel vehicle" means a vehicle that is powered by a diesel engine fifty horsepower or greater, including but not limited to excavators, backhoes, cranes,

compressors, bulldozers and similar equipment, but not including a vehicle used solely for competition.

f. "Onroad diesel vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel.

g. "Owned, leased and/or operated by or on behalf of Westchester County" includes all diesel-powered vehicles owned by Westchester County or a contractor, which are used by Westchester County or a contractor to do County work.

h. "Reasonable cost " means that the cost to purchase and install the system with technologies to reduce both Particulate Matter and Nitrogen Oxides does not exceed the cost of the system without Nitrogen Oxide control by more than thirty percent.

i. "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

j. "Westchester County" means all departments, agencies, bureaus, boards, commissions, sewer and water and other districts, the Westchester Community College, the Westchester County Airport and all other entities whose expenses are shown in the Operating Budget of Westchester County and/or are paid in whole or in part from Westchester County funds.

2. Requirements: ultra low sulfur diesel fuel and best available technology

a. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County when used to perform County work as defined herein shall be powered by ultra low sulfur diesel fuel beginning as soon as practicable but in no event later than September 1, 2006.

b. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County equipped with an model year 2003 or older engine when used to perform county work as defined herein shall utilize the best available technology in accordance with the following schedule:

i. 35% of all such motor vehicles in each department or agency by September 1, 2007;

ii. 65% of all such motor vehicles in each department or agency by September 1, 2008;

iii. 100% of all such motor vehicles in each department or agency by September 1, 2009.

c. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County when used to perform county work as defined herein having a gross vehicle weight rating of more than 14,000 pounds shall utilize the best available technology or be equipped with an engine certified to the applicable 2007 United States environmental protection agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent, in accordance with the following schedule:

- i. 35% of all such motor vehicles in each department or agency by September 1, 2007;
- ii. 65% of all such motor vehicles in each department or agency by September 1, 2008;
- iii. 100% of all such motor vehicles in each department or agency by September 1, 2009.

3. Agreements and contracts.

Westchester County shall specify in all of its solicitations, bids and requests for proposals to perform County work issued after the effective date hereof and in all contracts pursuant thereto that all contractors in the performance of each such contract shall comply with the provisions of Paragraph 2 of this section.

4. Determination of fuel non-availability.

If sufficient quantities of ultra low sulfur diesel fuel are not available to meet the needs of Westchester County or a contractor to fulfill the requirements of this section, the Commissioner may issue a written determination permitting the use of diesel fuel with a sulfur content of no more than thirty parts per million to fulfill the requirements of this section provided that Westchester County or the contractor to the extent practicable shall use whatever quantity of ultra low sulfur diesel fuel is available. Such determination shall be made on a case by case basis upon written application of Westchester County or a contractor which determination shall expire sixty days thereafter and may be renewed in writing for additional periods of sixty days .

5. Determination of best available technology.

a. On or before September 1, 2006, the Westchester County Commissioner of Health, or such other Commissioner as the County Executive may designate in writing to the Clerk of the Board of Legislators, shall, in consultation with the Commissioners of Public Works and Transportation, determine the best available technology as defined herein for reducing the emission of pollutants for each type of diesel-powered onroad and nonroad vehicle to which this section applies and the strategy to be used with respect to each type of vehicle to which this section applies.

b. The Commissioner shall publish a list, delivered in writing to the Clerk of the Board of Legislators, containing such determinations, which the Commissioner shall revise, as needed, on a regular basis, but in no event less often than once every twelve months.

c. Neither Westchester County nor any contractor shall be required to replace best available technology or other authorized technology utilized for each diesel-powered motor vehicle in accordance with this section for three years from having first utilized such technology for said vehicle.

d. For new engines to be delivered after the effective date of this act, BAT may be installed by the Original Equipment Manufacturer (OEM) and need not be shown

on the EPA or CARB. verified retrofit list, provided that the technology otherwise complies with the definition of BAT as defined herein

6. Applicability.

This act shall not apply:

- a. where federal or state funding precludes the requirements of this act;
- b. where such applicability would interfere with the purchase, lease or operation of emergency response vehicles operated by the Department of Emergency Management or the Department of Public Safety;
- c. to purchases that are determined to be emergency procurements as by the Commissioner of Health or accelerated procurements compliant with the County Procurement Policy as adopted by the Board of Legislators as Act No. 23 of 1992;
- d. to any agreement or contract entered into prior to the effective date hereof;
- e. to a diesel-powered nonroad vehicle where
 - i. the commissioner certifies that the best available technology for reducing the emission of pollutants as required herein is unavailable for such vehicle, in which case such agency or contractor shall use whatever technology available and appropriate for such vehicle that the commissioner approves for reducing the emission of pollutants; or
 - ii. the vehicle is used for fewer than five calendar days per contract; or
 - iii. the commissioner issues a written waiver based upon a finding that the use of the best available technology for reducing the emission of may present a hazard or threat to the safety of the operator, other workers or members of the public.

7. Reporting.

a. On or before April 1, 2007, and every succeeding April 1, all Westchester County departments, agencies, bureaus, boards, commissions, districts and other entities to which this act applies shall report to the Clerk of the Board of Legislators on the use of ultra low sulfur diesel fuel in onroad and nonroad diesel vehicles and the use of the best available technology for reducing the emission of pollutants and such other authorized technology in accordance with this act for the immediately preceding fiscal year. This report shall include, but not be limited to

- (i) the total number of onroad and nonroad diesel vehicles it owned, leased and/or operated;
- (ii) the number of such onroad and nonroad diesel vehicles that were powered by ultra low sulfur diesel fuel;
- (iii) the number of such onroad and nonroad diesel vehicles that utilized the best available technology or retrofit technology, including an itemization by vehicle model and the type of technology used for each vehicle;

(iv) the number of onroad and nonroad diesel vehicles that utilized other authorized technology in accordance with this act, including an itemization by vehicle model and the type of technology used for each vehicle;

(v) all findings, determinations and renewals of such findings and determinations which it issued or which were issued relative to said entity pursuant to this act, which shall include, but not be limited to the quantity of diesel fuel needed to power each onroad and nonroad diesel vehicles owned by, operated by or on behalf of or leased by the entity or used to fulfill the requirements of a public work contract for such entity;

(vi) specific information concerning the availability of ultra low sulfur diesel fuel or low sulfur diesel fuel where it is used;

(vii) detailed information concerning the entity's and its or contractor's efforts to obtain ultra low sulfur diesel fuel and low sulfur diesel fuel, and

(viii) all findings, determinations and waivers, and renewals thereof issued including all specific information submitted by an entity or contractor upon which such are based authorizing alternative technology, if any, utilized instead of the best available technology for reducing the emission of pollutants.

b. Notwithstanding the foregoing, whenever a determination pursuant to subdivision 4 above is in effect, information regarding alternative fuel shall be reported wherever information regarding ultra low sulfur diesel fuel is required to be reported.

8. Contractor violations.

The Commissioner is authorized to enforce the provisions of this section.

a. Any contractor who violates any provision of this section shall be liable for a civil penalty not to exceed ten thousand dollars plus twice the amount of money saved by such contractor for failure to comply with this section.

b. Any contractor who makes a false claim may be liable for a civil penalty not to exceed twenty thousand dollars, in addition to twice the amount of money saved by such contractor as a result of having made such false claim.

9. Miscellaneous.

Nothing in this section shall be construed to limit Westchester County's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification as a vendor, or otherwise deny a person or entity public entity business.

Section 4. Severability

If any section, subsection, sentence, clause, phrase or other portion of this act is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such

unconstitutionality or invalidity shall not affect the validity of the remaining portions of this act, which remaining portions shall continue in full force and effect.

Section 5. Effective date.

This act shall take effect immediately.

SEQR STATUS SHEET

PROJECT: Diesel Vehicles Legislation

DEPARTMENT: Board of Legislators

Description

The County of Westchester proposes to amend the Sanitary Code (Chapter 873, Article XII) by adding a new section (§873.1329) which would require that all diesel-powered vehicles owned, leased and/or operated by or on behalf of the County be powered by ultra-low sulfur diesel fuel and utilize the best available technology to reduce the emission of pollutants.

The proposed legislation would apply to all on-road and non-road vehicles being utilized by the County or by a private contractor performing work (valued above a certain cost) for the County. Non-road vehicles include construction equipment that is powered by a diesel engine of fifty horsepower or greater.

The proposed law provides a phased set of requirements to allow for the gradual replacement or conversion of diesel-powered vehicles and equipment. The law also provides for temporary waivers in the event that the required fuel or technology becomes unavailable.

The Commissioner of Health, or other Commissioner as may be designated by the County Executive, will be responsible for publishing a list of what is considered the best available technology at the time and revising the list on a regular basis (at minimum yearly). The Commissioner of Health will also be authorized to administer civil penalties to contractors who violate the provisions of this section.

All County departments, bureaus, boards, commissions, districts or other applicable county agencies will be required to submit annual reports demonstrating compliance with the proposed legislation.

The proposed law will help reduce air pollution and serve to protect public health. The proposed law will also assist the County in achieving compliance with National Ambient Air Quality Standards, particularly for ozone and fine particulate matter.

SEQR Status

Type II. Since the proposed law essentially regulates the types of equipment that may be used by the County, or in connection with County work, for the express benefit of protecting air quality, this may be classified as a Type II action, pursuant to sections: 617.5(c)(20), "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;" 617.5(c)(25), "purchase or sale of furnishings, equipment or supplies..." and 617.5(c)(27), "adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list."