

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends passage of "A Local Law adding a new Article XXVI to Chapter 863 of the Laws of Westchester County establishing regulations for lawn fertilizer application and sale within the County of Westchester."

Your Committee is advised that the New York City water supply watershed is a critical drinking water source for approximately eight million New York City consumers and approximately one million upstate consumers. Over eighty-five percent (85%) of Westchester County's residents consume water from the New York City water supply system. As such, every effort must be made to protect these vital resources.

Your Committee is further advised that eutrophication is one of the foremost water quality problems in the New York City water supply watershed. While eutrophication is the natural aging process of lakes or streams brought on by nutrient enrichment, this process, however, can be greatly accelerated by human activities that increase the rate at which nutrients and organic substances enter aquatic ecosystems from their surrounding watersheds. These nutrients overstimulate the growth of algae, often called an algal bloom, creating conditions that interfere with the health and diversity of indigenous fish, plant, and animal populations and with the recreational use of rivers, lakes and wetlands. This enhanced plant growth as a result of eutrophication reduces dissolved oxygen in the water, essential to most organisms living in the water, when dead plant material decomposes, disrupting the normal functioning of the ecosystem and causing plant, fish and other organisms to die. The result is a severely impaired waterbody

with unpleasant taste and odor, discoloration, release of toxins and increased turbidity. Most noticeably, an unsightly mat of algal scum on the surface usually develops, making swimming, boating and fishing undesirable. Consequently, eutrophication restricts water use for fisheries, recreation, industry, and drinking due to the increased growth of undesirable algae and aquatic weeds and the oxygen shortages caused by their death and decomposition.

In addition to causing oxygen shortages in aquatic environments, excess algae also block light from penetrating into the water. This reduces the growth of plants that provide vital underwater food and shelter. In turn, the animals that depend on those plants either emigrate or die.

Your Committee is informed that increased eutrophication from nutrient pollution due to human activities, one of the leading problems facing our watershed, is accelerated by, among other things, the introduction of excessive phosphorus in our water systems. Notably, the overwhelming majority of research identifies the control of phosphorus as a key factor in reducing accelerated eutrophication in aquatic environments.

Your Committee is further informed that one unnecessary source of phosphorus pollution in the watershed is the many pounds of lawn fertilizer applied by homeowners in the County of Westchester to their lawns each year. While lawn fertilizer, which normally contains a mix of nutrients, including nitrogen, phosphorus and potassium, helps to keep lawns nice and green, rainwater runoff from phosphorus-rich lawns treated with fertilizers flows to storm drainage systems and into the lakes where the phosphorus accelerates algae growth and eutrophication in

our water systems, impacting the normal functioning of water ecosystems, and decreasing the resource value of and the water clarity of rivers, lakes, and estuaries such that recreation, fishing, hunting, and aesthetic enjoyment are hindered. Indeed, one pound of phosphorus fertilizer can stimulate the growth of 500 pounds of algae in a lake during a summer season.

Your Committee is advised that in 1997, the New York City Watershed Memorandum of Agreement, which was executed by the Governor, New York City Mayor and representatives of numerous towns and counties and several environmental organizations, provided for, among other things, the establishment of the New York City Watershed Pesticide and Fertilizer Technical Working Group to study the impact of pesticide and fertilizers on the New York City Watershed. Seven years ago, the Working Group issued a Final Report recommending that given the high percentage of phosphorus in the soil, phosphorus should only be added when soil analysis identifies phosphorus deficiencies in the soil. Notably, at that time, the Working Group recommended voluntary measures to reduce or eliminate phosphorus from commercial fertilizers, rather than to pursue regulatory involvement. However, since the issuance of its 2000 Final Report, no real progress has been made in the voluntary reduction or elimination of phosphorus from commercial fertilizers and hence, regulatory measures are now required to protect the watershed.

Your Committee is advised that the unfortunate fact about phosphorus-containing lawn fertilizer is that its use is unnecessary where phosphorus levels are sufficient. Soil tests conducted pursuant to a six-year study by the Cornell Cooperative Extension, an extension of the State's designated Land-Grant University, have shown that approximately 90% of the lawns in

Westchester County have medium to high levels of phosphorus. Specifically, approximately 77% of the lawns in Westchester County have high to very high levels of phosphorus, while an additional 13% of lawns in Westchester County have medium levels of phosphorus. When phosphorus fertilizer is applied to phosphorus-rich lawns, much of the excess simply runs off of the lawn into the storm drainage systems where it can be carried into rivers, lakes, streams, and wetlands, causing eutrophication. As noted by the New York City Watershed Pesticide and Fertilizer Technical Working Group seven years ago, phosphorus should only be added when soil analysis testing, which can cost at little as \$15, identifies deficiencies in the soil.

Your Committee is informed that this Local Law would restrict the application and use of phosphorus-containing lawn fertilizer in order to address one source of unnecessary and preventable phosphorus pollution and will improve water quality in the County. By requiring the use of zero-phosphorus lawn fertilizer, this County will reduce phosphorus inputs to our lakes and streams, resulting in fewer algae problems and clearer water.

Your Committee is advised that this Local Law would prohibit the sale or application of lawn fertilizers containing phosphorus, except in limited circumstances. The Local Law would exempt the sale and use of phosphorus-containing fertilizers for newly-established lawns during their first growing season, lawns where soil tests conducted within the past three years confirm that phosphorus is necessary, agricultural uses, and fertilizer intended for garden and indoor plants as well as those applied to trees and shrubs. Additionally, this Local Law would prohibit the display of lawn fertilizers containing phosphorus, but would authorize the posting of signage

advising consumers that lawn fertilizer containing phosphorus is available upon request for the uses permitted under the Local Law.

This Local Law would be enforced by the Department of Weights and Measures. For the first violation of the provisions of this Law, a civil penalty not exceeding \$50.00 shall be imposed. For the second and succeeding violations, a civil penalty not exceeding \$150.00 shall be imposed for each single violation. This Local Law would take effect on January 1, 2008; however, sixty (60) days after the Local Law's enactment, any person or merchant located and/or doing business within the County of Westchester, which sells or offers for sale lawn fertilizer, would be required to post a sign, in the form provided by the Department of Weights and Measures, containing the regulations set forth in the Law and explaining the effects of phosphorus on water quality and Westchester County waters.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA") and its implementing regulations. See Title 6, Part 617 of the New York Code Rules and Regulations ("N.Y.C.R.R."). Your Committee is in receipt of a Negative Declaration report from the Westchester County Department of Planning concluding, for the purposes of SEQRA, that the proposed Local Law is an Unlisted action that will not have an adverse impact upon the environment. Your Committee has reviewed the Negative Declaration prepared by the Westchester County Department of Planning as well as the accompanying Environmental Assessment Form and the criteria contained in Section 617.7 of 6 N.Y.C.R.R. Part 617, the SEQRA regulations, and concurs with the conclusion that the proposed Local Law is an Unlisted action that will not have an adverse effect upon the environment.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: _____, 2007
White Plains, New York

COMMITTEE ON

A Local Law adding a new Article XXVI to Chapter 863 of the Laws of Westchester County establishing regulations for lawn fertilizer application and sale within the County of Westchester.

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

Section 1. Article XXVI of Chapter 863 of the Laws of Westchester County is hereby added to read as follows:

ARTICLE XXVI

**RESTRICTIONS ON THE APPLICATION AND SALE OF
LAWN FERTILIZER WITHIN THE COUNTY OF WESTCHESTER**

§ 863.1301. Definitions.

§ 863.1302. Regulation of the Use and Application of Lawn Fertilizer.

§ 863.1303. Exemptions.

§ 863.1304. Sale of Fertilizer Containing Phosphorus.

§ 863.1305. Enforcement and Penalties.

§ 863.1306. Reverse Preemption.

§ 863.1307. Separability.

§ 863.1301. Definitions.

(1) “Certified laboratory” means any laboratory certified by the New York State Department of Health pursuant to section five hundred two of the New York State Public Health Law to conduct soil analysis.

(2) “County” means the County of Westchester.

(3) “Commercial fertilizer” means “any substances containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for

use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, agricultural liming material, wood ashes, gypsum and other products exempted by regulation of the New York State Commissioner of Agriculture and Markets.”

(4) “Lawn fertilizer” means “a commercial fertilizer distributed primarily for non-farm use, such as lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and such other use as the commissioner may define by regulation. Lawn fertilizer does not include fertilizer products intended primarily for garden and indoor plant application.”

§ 863.1302. Regulation of the Use and Application of Lawn Fertilizer.

(1) No person shall apply any lawn fertilizer within the County that is labeled as containing more than 0% phosphorus or other compound containing phosphorus, such as phosphate, except as provided in section 863.1303.

(2) No person shall apply lawn fertilizer when the ground is frozen.

(3) No person shall apply lawn fertilizer to any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer must be immediately contained and either legally applied to turf or placed in an appropriate container.

§ 863.1303. Exemptions.

The prohibition against the use of lawn fertilizer under section 863.1302 shall not apply to:

(1) Newly established turf or lawn areas during their first growing season.

(2) Turf or lawn areas that soil tests, performed within the past three years by a certified laboratory or by the Cornell University Cooperative Extension of Westchester County, confirm the need for additional phosphorus application in accordance with the phosphorus levels established by the Cornell University Cooperative Extension of Westchester County. The lawn fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application recommended in the soil test evaluation.

(3) Agricultural uses, vegetable and flower gardens, or application to trees or shrubs.

§ 863.1304. Sale of Fertilizer Containing Phosphorus.

(1) No person located and/or doing business within the County of Westchester shall sell or offer for sale any lawn fertilizer within the County that is labeled as containing more than 0% phosphorus, or other compound containing phosphorus, such as phosphate, except such fertilizer may be sold for use as provided in section 863.1303.

(2) No person located and/or doing business within the County of Westchester shall display for sale lawn fertilizer containing phosphorus. Signs may be posted advising customers that lawn fertilizer containing phosphorus is available upon request for uses permitted by section 863.1303.

(3) Any person located and/or doing business within the County of Westchester, which sells or offers for sale lawn fertilizer, shall be required, at the location where lawn fertilizers are sold, to post a sign, in the form provided by the Department of Weights and Measures, containing the regulations set forth in this Article and explaining the effects of phosphorus on water quality and Westchester County waters.

§ 863.1305. Enforcement and Penalties.

For the first violation of the provisions of this Article, a civil penalty not exceeding fifty dollars (\$50.00) shall be imposed. For the second and succeeding violations, a civil penalty not exceeding one hundred fifty dollars (\$150.00) shall be imposed for each single violation. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard.

§ 863.1306. Reverse preemption.

This chapter shall be null and void on the day that Federal or Statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Board of Legislators may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

§ 863.1307. Separability.

If any section, subsection, sentence, clause, phrase or portion of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 2. This Local Law shall take effect on January 1, 2008, except that Subdivision (3) of Section 863.1304 of the Article shall take effect sixty (60) days after the enactment of the Local Law.