

# Public Works & Transportation Meeting Agenda



Committee Chair: Erika Pierce

800 Michaelian Office Bldg.  
148 Martine Avenue, 8th Floor  
White Plains, NY 10601  
[www.westchesterlegislators.com](http://www.westchesterlegislators.com)

---

**Monday, March 4, 2024**

**1:00 PM**

**Committee Room**

---

## CALL TO ORDER

Joint with the Committee on Legislation

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website:

<https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

## MINUTES APPROVAL

### I. ITEMS FOR DISCUSSION

Guests: Law Dept.: Chief Deputy County Attorney Stacey Dolgin-Kmetz; Dept. of Environmental Facilities: First Deputy Commissioner Lou Vetrone and Assistant Commissioner Melissa Rotini

1. [2024-4](#) **PH-Source Separation Law**

A RESOLUTION to set a Public Hearing on "A LOCAL LAW amending Chapter 825 of the Laws of Westchester County entitled the 'Westchester County Source Separation Law' to improve recycling, reduction and waste programs in the County of Westchester. [Public Hearing set for \_\_\_\_\_, 2024 at \_\_\_\_\_ .m.]. Local Law Intro 2024-5.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND PARKS & ENVIRONMENT**

2. [2024-5](#) **LOCAL LAW-Source Separation Law**

A LOCAL LAW amending Chapter 825 of the Laws of Westchester County entitled the "Westchester County Source Separation Law" to improve recycling, reduction and waste programs in the County of Westchester.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND PARKS & ENVIRONMENT**

### II. OTHER BUSINESS

### III. RECEIVE & FILE

1. [2024-57](#) **HON. CATHERINE F. PARKER - Memo of Legislation - A law to authorize the exchange real property**

A MEMO OF LEGISLATION to authorize the conveyance of a 13.4 acre parcel of real property currently owned by the County (County Parcel) to the Westchester Joint Water Works (WJWW) in exchange for a 13.4 acre parcel of real property currently owned by WJWW (WJWW Parcel).

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION, PUBLIC WORKS & TRANSPORTATION AND PARKS & ENVIRONMENT**

2. [2024-58](#) **HON. MARGARET A. CUNZIO - Request for Removal from Saw Mill Sanitary Sewer District - 485 Chappaqua Rd., Chappaqua.**

Forwarding a request from the Town of Mt. Pleasant for the removal of property (485 Chappaqua Rd., Chappaqua) from the Westchester County Saw Mill Sanitary Sewer District.

**COMMITTEE REFERRAL: COMMITTEE ON PUBLIC WORKS & TRANSPORTATION**

3. [2024-68](#) **CLERK OF THE BOARD - Westchester Joint Water Works (WJWW) Request**

Forwarding correspondence from the Westchester Joint Water Works (WJWW) requesting approval of the exchange transaction for construction of a filtration plant in the Town of Harrison.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION, PUBLIC WORKS & TRANSPORTATION, AND PARKS & ENVIRONMENT**

4. [2024-72](#) **LEGISLATORS NOLAN & WOODSON-SAMUELS - Memo of Leg. - Restoration of Street Surfaces After Excavation**

A Memo of Legislation requiring that within 60 days of completing work requiring the excavation of any county road, sidewalk or parkway that the same be fully restored from curb to curb.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND PUBLIC WORKS & TRANSPORTATION**

5. [2024-73](#) **HON. CATHERINE F. PARKER - Memo of Leg. - Utility Poles on County Road Rights-of-Way**

A Memo of Legislation to create a law requiring utility companies that utilize Westchester County road right-of-way to remove their lines and equipment from damaged poles in a timely manner.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND PUBLIC WORKS & TRANSPORTATION**

6. [2024-74](#) **LEGISLATORS TUBIOLO & WOODSON-SAMUELS - Memo of Leg. - Prohibit Illegal Dumping**

A Memo of Legislation to prohibit dumping of any kind including commercial and household waste upon any county owned street, lot, park, public place or other areas, public or privately owned. Such dumping would be punished with criminal and/or civil penalties. The law should be modeled after City of Yonkers Code Park VIII Chapter 91, Section 38.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND PUBLIC WORKS & TRANSPORTATION**

## **ADJOURNMENT**

# Westchester County

George Latimer  
County Executive

January 11, 2024

Westchester County Board of Legislators  
800 Michaelian Office Building  
148 Martine Avenue  
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

I respectfully request that your Honorable Board adopt the attached Local Law amending Chapter 825 of the Laws of Westchester County entitled the "Westchester County Source Separation Law" to improve recycling, reduction and waste programs in the County of Westchester. This proposed Local Law will: (1) require separate containers for waste and recyclables in public places; (2) specify and clarify that separate disposal is required for certain items in accordance with state law; (3) expand the language regarding food composting; (3) amend the list of mandatory curbside recyclables to include cartons; (4) require reporting by municipalities, haulers, and recyclers directly to the County Department of Environmental Facilities; and (5) clarify and revise language in certain sections and definitions to reflect actual County recycling operations.

The ease of recycling directly corresponds to increased compliance with recycling requirements. If a waste receptacle is available without a corresponding container for recyclables, an individual is more likely to dispose of the recyclable as waste. Although the current Source Separation Law requires nonresidential waste generators to separate recyclables for curbside collection, in practice and due to health concerns, separation of waste post disposal is extremely unlikely to occur.

In addition, recycling rules vary based upon location and hauler, meaning that without containers and proper signage, consumers may not be aware of proper recycling methods in stores and other businesses. Therefore, this amendment to the law will require separate containers for waste and recyclables in public places.

When recyclables are improperly disposed as waste at transfer stations or end use management facilities, there is no mechanism to remove the recyclables from the waste stream,

Office of the County Executive

Michaelian Office Building  
148 Martine Avenue  
White Plains, New York 10601

Email: [CE@westchestercountyny.gov](mailto:CE@westchestercountyny.gov)

Telephone: (914)995-2900



resulting in disposal where recycling may have been possible. Moreover, the number of fines issued to businesses and haulers for the comingling of recyclables with waste may be reduced where proper containers and signage are required and available to the public, due to consumers properly recycling in the first instance.

According to the County's 2019-2020 Food Waste Study, approximately 22% of residential waste is food waste, which can be managed through composting and/or digestion, rather than as household waste. Although the current Source Separation Law specifically assures residents that garden and yard waste may be composted at home, it is silent on home composting. This amendment specifically states that there is no prohibition against the private composting of food waste or participation in a program for food waste recycling.

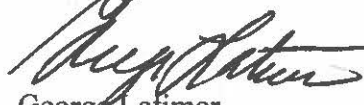
The County Department of Environmental Facilities, Refuse & Recycling (Solid Waste) Division, as the State-designated Solid Waste Management Planning Agency for Refuse Disposal District #1, established a carton recycling program in 2016. Since that time, carton recycling has become the standard for residential collection programs in Westchester County and therefore the law was amended to specify that cartons are considered a mandatory curbside recyclable.

Your Committee recognizes that the County Department of Environmental Facilities, Refuse & Recycling (Solid Waste) Division gathers recycling and waste data from municipalities, haulers, and recyclers in order to prepare and submit reports required by the State and for program planning. The ability of the County Department of Environmental Facilities to gather data directly from municipalities, haulers, and recyclers as will be required under the proposed law, is imperative to comply with State law and to continue to improve recycling, reduction, and waste programs in the County. Certain materials, such as Lithium-Ion Batteries, Freon-containing devices, and mercury-containing items can be dangerous if disposed in household waste. State law already requires proper and safe disposal techniques for these items and the amendment being requested with respect to disposal of special wastes would make the County's law consistent with State law.

The intent of the amendments to Chapter 825 of the Laws of Westchester County is to increase recycling in the County to maintain and improve the health of the environment and benefit the health, safety, and welfare of County residents.

Based upon the foregoing, I believe the proposed legislation is in the best interest of the County and, therefore, recommend your favorable action on it.

Sincerely,



George Latimer  
County Executive

GL/mn  
Attachments

TO: BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee recommends adoption of “A LOCAL LAW amending the Laws of Westchester County by amending Chapter 825, commonly referred to as the “Source Separation Law” to: (1) require separate containers for waste and recyclables in public places; (2) specify and clarify separate disposal is required for certain items in accord with state law; (3) expand the language regarding food composting; (3) amend the list of mandatory curbside recyclables to include cartons; (4) require reporting by municipalities, haulers, and recyclers directly to the Department of Environmental Facilities; and (5) clarify and correct language in certain sections and definitions to reflect actual operations.

Your Committee reports that this amendment was requested by the Department of Environmental Facilities, Refuse & Recycling (Solid Waste) Division, as the State-designated Solid Waste Management Planning Agency of the County, in connection with its continuing agency management of the existing Source Separation Law, to improve recycling within the County.

Your Committee acknowledges that as the State-designated Solid Waste Management Planning Agency, Department of Environmental Facilities, Refuse & Recycling (Solid Waste) Division gathers recycling and waste data from municipalities, haulers, and recyclers in order to prepare and submit reports required by the State and for program planning. The ability of the Department to gather data is imperative to comply with State law and to continue to improve recycling, reduction, and waste programs.

Your Committee is aware that the ease of recycling directly corresponds to increased compliance with recycling requirements. If a waste receptacle is available without a corresponding container for recyclables, an individual is more likely to dispose of the recyclable as waste. Although the current Source Separation Law requires nonresidential waste generators to separate recyclables for curbside collection, in practice and due to health concerns, separation of waste post disposal is extremely unlikely to occur.

Your Committee is also aware that recycling rules vary based upon location and hauler, meaning that without containers and proper signage, consumers may not be aware of proper recycling methods in stores and other businesses.

Your Committee acknowledges that when recyclables are improperly disposed as waste at transfer stations or end use management facilities, there is no mechanism to remove the recyclables from the waste stream, resulting in disposal where recycling may have been possible.

Your Committee recognizes that the number of fines issued to businesses and haulers for the comingling of recyclables with waste may be reduced where proper containers and signage are required and available to the public, due to consumers properly recycling in the first instance.

Your Committee further acknowledges that certain materials, such as Lithium-Ion Batteries, Freon-containing devices, and mercury-containing items can be dangerous if disposed in household waste. State law already requires proper and safe disposal techniques for these items

and the amendment being requested with respect to disposal of special wastes would make the County's law consistent with State law.

Your Committee is aware that according to the County's 2019-2020 Food Waste Study, approximately 22% of residential waste is food waste, which can be managed through composting and/or digestion, rather than as household waste. Although the current Source Separation Law specifically assures residents that garden and yard waste may be composted at home, it is silent on home composting. This amendment specifically states that there is no prohibition against the private composting of food waste or participation in a program for food waste recycling.

Your Committee acknowledges that the Department of Environmental Facilities, Refuse & Recycling (Solid Waste) Division, in its capacity as the management of the Refuse Disposal District #1 established a carton recycling program in 2016. Since that time, carton recycling has become the standard for residential collection programs in Westchester County.

Your Committee notes that the intent of this amendment is to maintain and improve the health of the environment and to benefit the health, safety, and welfare of County residents.

Your Committee is informed by the Department of Planning that the proposed amendment is not an "Action" as defined in 6 NYCRR Part 617, the implementing regulations of the New York State Environmental Quality Review Act ("SEQRA"). The County's Department of Planning has prepared a memorandum dated January 8, 2024, which is on file with the Clerk of the Board of Legislators. Your Committee concurs with the conclusion of that memorandum.

In light of all of the foregoing, your Committee recommends passage of this Local Law.

Dated: \_\_\_\_\_, 2024  
White Plains, New York

COMMITTEE ON

MJR 05/31/2023(01/04/2024)

# FISCAL IMPACT STATEMENT

SUBJECT: Updates to Source Separation Law       NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \_\_\_\_\_

Total Current Year Revenue \$ \_\_\_\_\_ -

Source of Funds (check one):     Current Appropriations     Transfer of Existing Appropriations

Additional Appropriations     Other (explain)

Identify Accounts: \_\_\_\_\_

Potential Related Operating Budget Expenses:                      Annual Amount    0.00

Describe:            This is for an amendments to the source separaation law, no impact on the operating

Potential Related Operating Budget Revenues:                      Annual Amount    0

Describe: \_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year:    N/A

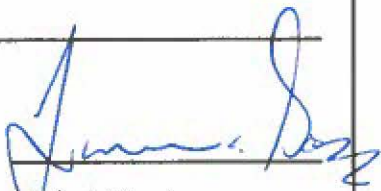
Next Four Years: N/A

Prepared by:            Melissa-Jean Rotini

Title:                      Assistant Commissioner

Department:            Environmental Facilities


Date:                      January 8, 2024

Reviewed By:   
Budget Director

Date:                      1/11/24



TO: George Latimer, County Executive  
Kenneth Jenkins, Deputy County Executive  
John Nonna, County Attorney

FROM: David Kvinge, AICP, RLA, CFM   
Assistant Commissioner

DATE: January 8, 2024

SUBJECT: **ACTIVITIES NOT SUBJECT TO STATE ENVIRONMENTAL QUALITY  
REVIEW**

---

As required by the New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617 (“SEQR”), the Board of Legislators (“BOL”) is the body that must assess the environmental significance of all actions that the BOL has discretion to approve, fund or directly undertake. The Planning Department has historically conducted the necessary environmental review for the BOL to undertake its responsibility under SEQR. Additionally, contracts going before the Board of Acquisition and Contracts (“BAC”) must be reviewed for conformance with SEQR.

Pursuant to Section 617.2(b) of SEQR, “Actions” are defined as:

- (1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
  - (i) are directly undertaken by an agency; or
  - (ii) involve funding by an agency; or
  - (iii) require one or more new or modified approvals from an agency or agencies;
- (2) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;
- (3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
- (4) any combinations of the above.

As has been done in prior years, the Planning Department, in an attempt to streamline the process for SEQR review and related document preparation for the BOL and BAC, has created a list of categories of activities **that do not meet the definition of an “action”** as defined in SEQR. This list (attached) references activities that are routine and which do not change the use, appearance or condition of any natural resource or structure, nor do they involve policies or regulations that may affect the environment. The creation of this list in no way eliminates the BOL’s or BAC’s responsibilities under SEQR. Rather, it establishes a workflow for items that are routine and do not, under the law, require environmental review.

Accordingly, the Planning Department advises that no environmental review is required and no SEQ documentation is necessary for submission with BOL legislation or with resolutions or contracts requiring BAC approval regarding activities on the attached list.

County departments and agencies may reference this memorandum in the legislation in order to document compliance with SEQ for actions listed herein. This memorandum should be considered in effect until rescinded or replaced, with replacements typically occurring annually in mid-January. As such, this memorandum should be kept on file with the Clerk of the Board of Legislators. Legislation should include a statement similar to the following: "The proposed project does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 8, 2024, which is on file with the Clerk of the Board of Legislators."

This memorandum will be distributed to all Commissioners as part of County operations.

Please contact me if you have any questions.

Att.

cc: Malika Vanderberg, Clerk and Chief Administrative Officer to the Board of Legislators  
Joan McDonald, Director of Operations  
Andrew Ferris, Chief of Staff  
Steve Bass, Director of Intergovernmental Relations  
Paula Friedman, Assistant to the County Executive  
Stacey Dolgin-Kmetz, Chief Deputy County Attorney  
Tami Altschiller, Assistant Chief Deputy County Attorney  
Blanca Lopez, Commissioner, Department of Planning

**ACTIVITIES THAT DO NOT MEET THE DEFINITION OF AN “ACTION”  
PURSUANT TO SEQR AND ARE, CONSEQUENTLY, NOT SUBJECT TO SEQR**

1. **BUDGETS AND AMENDMENTS**

- Municipal budgets and amendments to them – The budgeting process merely sets aside funds without a commitment to their expenditure. Operating expenditures are typically for government-related activities that would also not meet the definition of an action. Even the establishment of the Capital Budget is not subject to SEQR because many of the capital projects are usually not definitive enough with respect to potential impacts to be reviewable at the time the budget is adopted. However, any subsequent authorization, such as bonding, to undertake a particular capital project is an action that requires SEQR compliance before it may be approved.
- The transfer of funds within the County operating and capital budgets for the purpose of balancing accounts – It is understood that these actions are purely budgetary, where accounts with excess funds are moved to accounts with existing or anticipated deficits. It is further understood that the activities covered by these accounts have either already occurred or been reviewed in accordance with SEQR, are Type II actions or actions that are not subject to SEQR, or are actions that will require future approval prior to being undertaken, at which time further SEQR review may be appropriate.
- Rescissions or reduction of bond acts to cancel unspent funds.

2. **SERVICES**

- Consultant services – Contracts or agreements that provide for administrative services, training, reports for Boards and Commissions, but not including studies or design of physical improvements, which has been listed under SEQR as Type II.
- Social Services – Actions or agreements that provide services to persons in need, such as employment assistance, family/domestic intervention and respite care.
- Youth services – Actions or agreements that provide for youth services, such as a Resource Allocation Plan, Invest-in-Kids Program, after-school programs, camp programs and head-start programs.
- Senior programs & services – Actions or agreements that provide for services to seniors, such as provision of information/education, home care, nutrition & transportation assistance, caregiver support, and acceptance of federal and state grants providing for such services (e.g., OAA Title III grants and NYSOFA grants, including CSE, CSI, CRC, EISEP, NYSTP, WIN & NSIP).
- Public Safety services – programs that promote public safety, such as STOP-DWI and Police Night Out; intermunicipal agreements (IMAs) for shared training, equipment and response to emergencies, including E-911; acceptance and administration of grants for law enforcement programs (e.g., JAG).
- Fire services – Fire district IMAs for shared training, equipment and response to emergencies.
- Legal services – Contracts for outside counsel, litigation or associated monetary settlements and collections.

- Medical Services – Contracts with medical providers for medical examinations, testing, vaccinations or medical treatment of County employees or the public.
- Mental Health Services – Contracts with agencies to provide treatment, services or education related to mental health.

### 3. PERSONNEL MATTERS

- Actions related to employment or employees.
- Contracts for temporary staff assistance.
- Legislation pertaining to establishment and membership of boards and commissions.

### 4. FINANCES

- Tax Anticipation Notes.
- Bond acts to finance tax certiorari payments.
- Banking contracts/agreements for money management services.
- Mortgage tax receipts disbursements (County Clerk).
- Refinancing of affordable housing mortgages.
- Payment in Lieu of Taxes (PILOT) agreements.

### 5. LAWS

- New laws or amendments of existing laws that regulate the sale or use of products for the protection of public health.
- New laws or amendments of existing laws that regulate businesses for the protection of consumers.
- Pertaining to consumer protection, not including professional licensing, which have been classified as Type II.
- Pertaining to animal welfare, excluding regulations involving habitat management.
- Pertaining to public safety.
- Pertaining to taxation, such as establishment of new taxes or tax exemptions.
- Pertaining to establishment or modification of fees.
- Pertaining to notices, publications and record keeping.
- Pertaining to hiring or contracting procedures.
- Pertaining to the functioning of County government, such as term limits, board appointments, etc. that do not impact the environment.

### 6. MISCELLANEOUS

- Amendments to existing agreements for changes in name or consultants.
- Education/training programs, contracts for clinical instruction.
- Prisoner Transport IMAs.
- Tourism Promotion Agency designation.
- Software licenses.

- IMAs for temporary housing in existing facilities (homeless, inmate, troubled youths, domestic violence victims).
- Naming or renaming of streets, buildings, parks or other public facilities.

WCDP  
JAN 2024

**RESOLUTION NO. \_\_\_\_ – 2024**

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. \_\_\_\_ - 2024, entitled “A LOCAL LAW amending the Laws of Westchester County by amending Chapter 825 regarding source separation of recyclables from the waste stream. The public hearing will be held at \_\_.m. on the \_\_\_\_ day of \_\_\_\_\_, 2024, in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.



**LOCAL LAW INTRO. NO. -2023**

A LOCAL LAW amending Chapter 825 of the Laws of Westchester County entitled the "Westchester County Source Separation Law" to improve recycling, reduction and waste programs in the County of Westchester.

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

Section 1. Chapter 825 of the Laws of Westchester County is amended to read as follows:

**Chapter 825**

**ARTICLE I. - SHORT TITLE AND STATEMENT OF PURPOSE**

**Sec. 825.01. - Short title.**

This shall be known as the "Westchester County Source Separation Law."

**Sec. 825.11. - Purposes.**

The purpose of this chapter is to promote the general health, welfare, and safety of citizens of Westchester County, to protect the environment and to manage the solid waste stream in Westchester County. This legislation is intended to implement existing state solid waste management policy, as declared in Title 1 of Article 27 of the New York State Environmental Conservation Law, under which the County has been designated as the official planning unit for all the solid waste generated and collected within its borders. This Chapter is an essential element of Westchester County's ~~state-approved~~ Solid Waste Management Plan. The reporting requirements of this chapter will permit the County to have informational feedback to assess the effectiveness of its ~~state-approved~~ Solid Waste Management Plan and to develop any necessary future solid waste management options. In addition, this Chapter promotes ~~is for~~

the purpose of reducing the need to dispose of Solid Waste generated in this County ~~through incineration or landfilling~~ by maximization of recycling and to comply with New York State General Municipal Law section 120-aa.

## ARTICLE II. - APPLICABILITY

### Sec. 825.20. - Applicability.

This chapter shall apply to every Waste Generator, Hauler, Recyclables Broker, and Municipality within the County of Westchester.

## ARTICLE III. - DEFINITIONS

### Sec. 825.30. - Definitions.

Unless otherwise expressly stated or unless the context or subject matter specifically requires a different meaning, the meanings of the following terms ~~which are~~ used in this chapter shall be as follows:

1. County shall means the County of Westchester.
2. Commissioner shall means the Commissioner of Environmental Facilities of the County of Westchester or their/his/her duly authorized designee/representative.
3. Construction and dDemolition dDebris or (C&D) has the same meaning as ~~means in the Westchester County Solid Waste Licensing Law. un~~contaminated Solid Waste ~~resulting from the construction, remodeling, repair, and/or demolition of structures and roads, and un~~contaminated solid Waste ~~consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup where such materials are unable to be processed as Yard Waste~~excluding vegetative waste. Such waste includes, but is not limited to, bricks, concrete, and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and

~~components containing no hazardous liquids, and metals that are incidental to any of the above.~~

~~3.4.~~ Department shall mean the County of Westchester County Department of Environmental Facilities.

~~4.5.~~ Electronic Waste shall mean waste items, such as computers, computer peripherals, televisions, small scale servers, small electronic equipment, and wireless telephones, as further defined in New York State Environmental Conservation Law, Article 27, Title 26 and Article 27, Title 23\*2.

~~5.6.~~ Hauler shall mean any person, excluding municipalities, the County, and any County district, including, but not limited to, Refuse Disposal District No. 1 and all County sewer and water districts, who, for a fee or other consideration, collects, stores, transfers, transports, or disposes of Solid Waste, Recyclables, or Construction and Demolition Debris that is generated or originated within the County or brought within the boundaries of the County for disposal, storage, transfer, or processing.

~~6.7.~~ Household Hazardous Wastes (HHW) are materials found in residential wastes that would be regulated as hazardous wastes if they were generated outside of a household. These household wastes can be flammable, toxic, corrosive, or reactive and can be dangerous if handled improperly.

~~7.8.~~ Municipality shall mean any of the towns, villages, and cities located within Westchester County.

~~8.9.~~ Person shall mean any individual, firm, company, association, society, corporation, partnership, co-partnership, joint-stock company, trust, estate, governmental entity, or any other legal entity or legal representatives, agents, or assigns. The masculine gender shall include the feminine, the singular shall include the plural, where indicated by context.

~~9.10.~~ Rechargeable Batteries shall mean any battery included in Article 27, Title 18 of the New York State Environmental Conservation Law, and any other law or regulation related to rechargeable battery recycling.

10.11. Recycle shall means any method, technique, or process utilized to separate, process, modify, convert, treat, or otherwise prepare solid waste so that its component materials or substances may be beneficially used or reused.

11.12. Recyclables shall means the following materials:

- (a) Newsprint: Newspapers as purchased, including any glossy inserts.
- (b) High-grade paper: Includes high quality paper such as letterhead, copier paper, typing paper, tablet sheets, computer printout paper, and all paper of similar quality. This term shall not include carbon paper, self-carbonizing paper, coated or glossy paper, envelopes with intact windows or adhesive labels. Residential waste generators are permitted to commingle high-grade paper with newsprint; however, nonresidential waste generators are required to separate high-grade paper from newsprint. Glass: Glass jars, bottles, and containers of clear, green or amber (brown) color, used to store food or beverages only, which ~~must~~shall be empty and rinsed clean. This term excludes ceramics, window or automobile glass, mirrors, and light bulbs.
- (c) Metals: All ferrous and nonferrous food and beverage containers, including steel, aluminum, and bimetal, which shall be empty and rinsed clean.
- (d) Bulk metals: Large metal fixtures and appliances, including white goods such as washing machines, refrigerators (after Freon has been removed), etc. This term excludes metal containers utilized to store flammable or volatile chemical materials, such as fuel tanks.
- (e) Plastics: All plastics with resin identification codes 1 through 7, including food, beverage, detergent, and shampoo containers and caps, which shall be empty and rinsed clean. This term excludes all plastic film (e.g., dry cleaning bags, and packaging materials), plastic bags, vinyl, all large rigid plastics (e.g., toys, pools, and furniture), non-coded small rigid plastics (e.g., toys, clothing hangers, tableware, and utensils), plastic foam materials (e.g., hot beverage cups, trays, and packaging materials), containers that held potentially hazardous materials (e.g.,

motor oil, solvents, and pesticides), and building materials (e.g., piping, and bathroom and kitchen fixtures).

- (f) Yard ~~W~~waste: Leaves collected during the fall only.
- (g) ~~Vehicular~~ Lead-Acid Vehicular ~~b~~Batteries: ~~Lead acid batteries~~ Batteries used in automobiles and heavy equipment as defined in New York State Environmental Conservation Law § 27-1701; excludes single use non-lithium ion household batteries (e.g., for flashlights, radios, cameras, etc.).
- (h) Used ~~M~~motor ~~O~~oil: The type used in gasoline and diesel vehicle and equipment engines, delivered in an uncontaminated container, as defined in New York State Environmental Conservation Law § 23-2307.
- (i) Cardboard including corrugated cardboard containers, which must be cleaned of excessive amounts of contaminants such as adhesives, metals and plastics; cereal boxes, tissue boxes, paper towel rolls, or any other noncorrugated materials made from cardboard.
- (j) Cartons: Food or beverage container including gable-top containers, typically made of waxed paperboard or paperboard lined with plastic and/or aluminum, and typically used as a container for milk, juice, broth, and/or soup.

~~12.13.~~ Recyclables ~~B~~roker shall means any person, excluding municipalities, the County, and any County district, including but not limited to Refuse Disposal District No. 1 and all County sewer and water districts, who, for a fee or other consideration, collects, picks up, separates, processes, markets, transports, stores or otherwise handles Recyclables exclusively, if those recyclables were generated or originated within the County or brought within the boundaries of the County for disposal, storage, transfer, or processing, excluding those persons who are required to accept beverage containers under § 27-1007 of the New York State Environmental Conservation Law or persons who redeem containers under said law, and those persons who are required to accept Used ~~M~~motor ~~O~~oil, ~~and Lead-Acid~~ ~~v~~Vehicular ~~b~~Batteries, paint, or any other material accepted -free of charge for recycling under applicable state law, whether or not the State program includes a fee collected at the time of product purchase, provided that this

exclusion shall only apply to ~~the aforementioned activities which~~ that are governed by state or county law. A ~~R~~Recyclables ~~B~~Broker may collect, separate, process, store, transport, or otherwise handle ~~S~~Solid ~~W~~Waste contaminants that are collected with ~~R~~Recyclables, provided that the ~~R~~Recyclables ~~B~~Broker has taken reasonable precautions to prevent the introduction of such contaminants.

~~13.14.~~ Separate Collection shall means that any municipality, hauler, or recyclables broker who collects, transports, or stores ~~s~~Solid ~~W~~Waste or ~~r~~Recyclables shall keep source-separated ~~R~~Recyclables separate from ~~S~~Solid ~~W~~Waste during collection, transportation, and storage, except for ~~R~~Recyclables that are mixed with ~~s~~Solid ~~W~~Waste in construction and demolition debris ~~and~~ identifiable bagged ~~R~~Recyclables mixed with bagged ~~S~~Solid ~~W~~Waste, provided that ~~R~~Recyclables are later separated for recycling.

~~14.15.~~ Solid Waste shall means all putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless, or in excess to their owners at the time of such discard or rejection, including but not limited to garbage, refuse, commercial waste, rubbish, ashes, incinerator residue, and ~~C~~Construction and ~~D~~Demolition ~~d~~dDebris. "Solid waste" shall not be understood to include ~~R~~Recyclables as defined in this chapter.

~~15.16.~~ Source Separation shall means the segregation of ~~r~~Recyclables from ~~S~~Solid ~~w~~wWaste at the point of waste generation for separate collection, sale, or other disposition.

~~16.17.~~ Waste Generator shall means any person within Westchester County who produces or is responsible for ~~s~~Solid ~~w~~wWaste or ~~r~~Recyclables ~~in Westchester County~~ requiring disposal.

~~17.18.~~ Residential wWaste generator shall means a ~~W~~Waste ~~G~~Generator who resides in a single- or multifamily dwelling within Westchester County, whose waste is generated from household functions, ~~such as including, but not limited to cooking, or cleaning, etc.~~

~~18.19.~~ Nonresidential wWaste Generator shall mean all waste generators other than ~~R~~Residential ~~W~~Waste ~~g~~gGenerators.

#### ARTICLE IV. - PROVISIONS APPLICABLE TO WASTE GENERATORS



**Sec. 825.40. - Provisions applicable to ~~w~~Waste Ggenerators.**

1. Every ~~w~~Waste Generator in Westchester County shall be responsible for the source separation of ~~s~~Solid ~~w~~Waste and Recyclables at the point of generation. Waste Generators shall source-separate additional materials designated as Recyclables by a local Mmunicipality pursuant to § 120-aa of the General Municipal Law, if that ~~m~~Mmunicipality provides or causes to be provided collection of such materials for the Wwaste Generator, or a location within that Mmunicipality for delivery of such materials by the ~~w~~Waste Generator. With respect to Household Hazardous Materials, Electronic Waste, Lithium-Ion Batteries, Freon and/or Mercury Containing items, and any other material regulated by State law requiring special disposal, Waste Generators shall source separate those materials and ensure safe and proper disposal. Waste Generators shall not be required to source-separate Recyclables contained in Construction and Demolition ~~d~~Debris, provided that such debris is brought to a facility where Recyclables can be separated from the nonrecyclable Solid Wwaste. ~~All waste generators shall commence source separation on September 1, 1992.~~
2. Each Wwaste Generator shall provide for the removal of those separated Recyclables ~~which that~~ the Wwaste Generator is required to source-separate pursuant to subsection 1- above from the property on which they are generated either through service provided by a Mmunicipality, by a Hhauler or a Recyclables ~~b~~Broker, or by taking these materials directly to a Recyclables transfer, storage, or processing location. Materials that are subject to State, County, or Local Law allowing for recycling free of charge (whether or not a fee is assessed at the time of product purchase or by tax) shall be ~~Used motor oil shall be delivered by private individuals to appropriate those designated recycling locations. service stations required to accept this material free of charge in accordance with New York State Environmental Conservation Law § 23-2307. Used vehicular batteries shall be delivered by private individuals to retailers who sell such batteries and who are required to accept such batteries for recycling free of charge in accordance with New York State Environmental Conservation Law § 27-1701 or to scrap recycling facilities which accept this type of used battery for recycling.~~

3. Each waste generator shall be required to prepare those Rrecyclables ~~which that~~ the Wwaste Ggenerator is required to source-separate pursuant to subsection 1-~~above~~ in the manner prescribed in the definition of ~~r~~Rrecyclables in section 825.30 of this chapter, or if no particular manner of preparation is specified for a specific ~~r~~Rrecyclable material in said definition of Rrecyclables, then according to any ordinance, regulation, or rule of the County Refuse Disposal District, or the entity providing Recyclables collection services, municipality that provides recyclables collection services to that waste generator, or if such collection services are provided by a hauler or recyclables broker, then according to the directions of the hauler or recyclables broker. If a Wwaste Ggenerator utilizes direct haul, Rrecyclables shall be prepared in the manner prescribed by the Rrecyclables transfer, storage or processing facility to which the Wwaste Ggenerator delivers such materials.
4. Every Wwaste Ggenerator shall be obligated to ensure that those Rrecyclables ~~which that~~ the wWaste Ggenerator is required to source-separate pursuant to subsection 1-~~above~~ are placed in the location designated for Rrecyclables collection by the Hauler municipality in which the waste generator is located. If no such ordinance exists or is applicable, but the waste generator utilizes a hauler or r or Recyclables bBroker to collecting its Solid Waste and Rrecyclables, then the waste generator shall place its recyclables in any location designated by the hauler or recyclables broker for recyclables collection.
5. In the case of multi-tenant buildings, the owner of such building is responsible to provide the following: appropriate container(s) to hold source-separated materials for the entire building separate from the container(s) where the building's Ssolid Wwaste is stored; a mechanism for disposal of source-separated Rrecyclables, unless ~~m~~Municipal collection is provided; and an educational program for tenants on the manner in which source-separated materials are to be prepared for collection.
6. Nothing in this chapter shall be construed to prohibit private composting of food, garden, and yard waste by a Wwaste gGenerator on the wWaste gGenerator's own property, or to engage in a County, municipal, or private recycling program for those materials.
7. Exemption: wWaste gGenerators who are unable to comply with the requirements of this section for good cause shown (e.g., old age, or mental or physical infirmity, etc.). Exemptions shall be granted solely at the discretion of the Ccommissioner. A person who

applies for an exemption may be required by the Commissioner to supply documentation of the reason(s) supporting the application. Said person shall be required to simultaneously file a copy of the request for exemption, along with all supporting documentation submitted to the Commissioner with the Mmunicipality in which the said person is located. The mMunicipality shall have the right to submit written objections to the Commissioner regarding a request for exemption by a person within that mMunicipality's jurisdiction within twenty (20) days of receipt of its copy of an exemption request. The eCommissioner shall consider a mMunicipality's objections prior to making ahis determination. The Commissioner shall advise the mMunicipality of histhe determination when rendered. ~~The eCommissioner shall maintain and regularly update a list of such exempt wWaste Generators, which shall be made available to the officials charged with enforcing the terms of this chapter.~~

**Sec. 825.41. - Mercury Disposal prohibitions and Source separation.**

(a) Definitions.

- i. Authorized Recycling Facility shall mean any ~~of the recycling facility licensed and or permitted to operate in Westchester County pursuant to all applicable laws, rules and regulations~~ ies on the list of authorized facilities furnished by the Department, the County Department of Health or the County Department of Weights and MeasureConsumer Protection.
- ii. Manometer or mMercury gGauge shall mean an instrument containing mercury used to measure the pressure of gas.
- iii. Mercury bBarometer shall means a mercury-containing instrument used to measure atmospheric (or barometric) pressure.
- iv. Mercury Thermometer shall means a non-digital instrument containing mercury that is used to measure temperature.

- v. **Mercury Thermostat** shall means a non-electronic device, containing one or more mercury tilt switches, that regulates temperature in an enclosed area by controlling heating, cooling or ventilation equipment.
- vi. **Silent Wall Switch** shall means a mercury-containing light switch, manufactured prior to 1991, mounted on a wall which does not make an audible "click" sound when activated.
- vii. **Household Hazardous Chemical Waste Collection Program** shall mean any municipal program designed for the purpose of collecting source separated products, including those containing mercury, for proper disposal apart from the conventional waste stream, whether permanent or periodic, including but not limited to the Household Material Recovery Facility (H-MRF).

(b) **Mercury Disposal Prohibitions.** A person may not knowingly dispose of a Mercury Barometer, Mercury Gauge or Manometer, Mercury Thermometer, Mercury Thermostat or Silent Wall Switch, in:

- i. Solid Waste;
- ii. Wastewater disposal systems, including home septic systems; or
- iii. A landfill, incinerator, waste-to-energy facility, or other solid waste disposal facility, except an Authorized Recycling Facility or a Household Hazardous Chemical Waste Collection Program.

(c) **Source Separation.**

- i. Every Waste Generator in Westchester County shall separate ~~mercury~~ Mercury Barometers, Mercury Gauges or Manometers, ~~mercury~~ Mercury thermometers Thermometers, ~~mercury~~ Mercury thermostats Thermostats, and ~~silent~~ Silent wall Wall switches Switches from Solid Waste at the point of generation.
- ii. After proper separation of Mercury barometers, Mercury Gauges or Manometers, Mercury Thermometers, Mercury Thermostats or Silent Wall Switches, each person who discards that waste shall deliver that waste to an Authorized Recycling Facility that is legally authorized and permitted to accept

that waste pursuant to this section. Residential Waste Generators may additionally deliver that waste to a Household Hazardous~~chemical~~ Waste Collection Program.

- iii. ~~The Department shall make available a regularly updated listing of authorized recycling facilities on the official website of the County.~~

**Sec. 825.45. - Unauthorized Confiscation of Certain Recyclables.**

Except for authorized employees or agents of a ~~m~~Municipality; or authorized employees or agents of Haulers or ~~r~~Recyclables ~~b~~Brokers licensed by the Westchester County Solid Waste Commission utilized by a Waste Generator to collect ~~r~~Recyclables pursuant to a written service contract required by section 826-a.402 of the Laws of Westchester County, it shall be unlawful for any person to remove and transport by motor vehicle any amount of ~~r~~Recyclable paper, cardboard, and/or commingled plastic/glass/metals/cartons that have been placed in the location designated for Recyclables collection for collection or removal by such Municipality or licensed Hauler or Recyclables ~~b~~Broker. This section shall not apply to individuals who~~the~~ remove~~at~~ or transport ~~o~~items intended to be re-used by the individual for personal, non-commercial, use.-(1) cardboard, if for personal use; and (2) bulk metals or other types of used household/consumer goods.

**ARTICLE V. - PROVISIONS APPLICABLE TO HAULERS AND RECYCLABLES BROKERS**

**Sec. 825.50. - Provisions applicable to Haulers and Recyclables ~~b~~Brokers.**

1. Haulers and ~~r~~Recyclables ~~b~~Brokers shall provide regular, reliable, and separate collection of ~~r~~Recyclables to any customer to whom they provide ~~r~~Recyclables collection services.
2. Haulers and Recyclables ~~b~~Brokers shall deliver any Recyclables that they have collected or picked up to a Recyclables transfer, storage, or processing facility. In the event that a market for a particular ~~r~~Recyclable or class of ~~r~~Recyclables collapses or that delivery to a transfer, storage, or processing facility would create a severe economic hardship to a Hauler or

~~r~~Recyclables ~~B~~roker, the ~~e~~Commissioner may, ~~in his sole discretion,~~ grant a temporary waiver to the requirements of this subsection, only upon a written application for waiver from the ~~H~~hauler or ~~R~~ecyclables ~~b~~roker setting forth with specificity the facts and reasons in support of such application. Waivers shall be for a specific period of time and shall be rescinded earlier, if the ~~C~~ommissioner, ~~in his sole discretion,~~ determines that the reasons for granting the waiver no longer exist.

3. Each Hauler and Recyclables Broker shall furnish an annual report regarding its collection activities by the deadline provided by the Department. Such report shall be on the form provided by the Department and shall include, but not be limited to: quantities of all Solid Waste and/or Recyclables hauled in the preceding calendar year and the end disposal location of the material. Notwithstanding the foregoing, each Municipality within Refuse Disposal District #1 shall provide written notification to the Department of any changes to the hauling plan for the Municipality.

## **ARTICLE VI. - PROVISIONS APPLICABLE TO MUNICIPALITIES**

### **Sec. 825.60. - Provisions Applicable to mMunicipalities.**

1. For the purposes of fulfilling its responsibilities as the designated "planning unit" under the authority of New York State Environmental Conservation Law § 27-0107, the County ~~must~~ shall coordinate and analyze the recycling efforts of all the mMunicipalities ~~within its borders to see~~ ensure that the recycling goals for the entire County, as set forth in the County's ~~state approved~~ Solid Waste mManagement plan, are met. ~~The C~~ommissioner ~~shall prepare an annual report on the recycling programs of Westchester's municipalities, based on information obtained under the reporting requirements of this section and any other relevant information available to him, to assess the effectiveness of the M~~municipalities' recycling programs ~~in meeting the County's state approved solid waste management plan recycling goals and to suggest any measures that may need to be taken, if the plan's recycling goals are not being met.~~
2. Each Mmunicipality within the County shall provide, or cause to be provided, the regular, reliable, and separate collection of Recyclables from those Waste generators to which the Mmunicipality provides, or causes to be provided, Solid Waste collection services.



3. ~~Each such m~~Municipality shall furnish a response to the request for an annual report regarding its collection activities by the deadline provided by the Department. At minimum, each Municipality shall provide information related to the types and quantities of Recyclables collected and recycled, including yard waste, during the prior year; whether the materials were collected through municipal or contract collection; the tonnages of each recyclable material delivered to each particular recyclables broker or other market for recyclables. Notwithstanding the foregoing, each Municipality within Refuse Disposal District #1 shall not be required to report the tonnages of those recyclables which are being delivered to a Refuse Disposal District #1 Facility. In addition, each Municipality shall provide written notification to the Commissioner or a his-designee of any changes to the hauling plan for the Municipality. ~~the commissioner with a plan to provide, or cause to be provided, such separate collection and recycling of recyclables, on a form to be provided by the commissioner. Such plan shall include, but not be limited to:~~

4. If upon review of the annual reports submitted by the Municipalities, the Commissioner; in his sole discretion; determines that the waste management and/or recycling percentages for the District and/or County fall below the goals of the County's Solid Waste Management Plan and/or the State waste management goals, a Municipality or Municipalities may be required to submit a plan for increasing participation in recycling efforts and/or addressing waste management goals. The Department shall review plans submitted and work with the Municipality to assist in education and participation rates.

~~(a) A written schedule for the collection and delivery of recyclables, including frequency of collection, and the identification of the marketplace for collected recyclables;~~

~~(b) A separate and distinct section setting forth a plan for the collection and disposition of recyclable yard waste;~~

~~(c) A report on reduction and reuse techniques to be implemented by the municipality, including public education efforts.~~

~~All such plans shall be submitted to the commissioner for his review and use in the manner set forth herein. Municipalities shall submit their plans to the commissioner by September 30, 1992. The commissioner shall transmit the required form for municipal plans to each municipality in the County by certified mail, return receipt requested.~~

- ~~3. Each municipality within the County shall furnish annual recycling reports to the commissioner documenting the types and quantities of recyclables which were collected and recycled by that municipality either through municipal or contract collection in the previous year and identifying the tonnages of each recyclable material delivered to each particular recyclables broker or other market for recyclables. There shall be a separate section in the report for yard waste that was collected and recycled in the prior year. In addition, after a municipality's recycling goals are set pursuant to subsection 5.a. of this section, subsequent annual recycling reports shall contain a municipal recycling plan update that addresses the municipality's progress or lack of progress in meeting its annual recycling goals, and any revisions to its municipal recycling plan necessary to achieve its annual recycling goals that the municipality intends to make and the proposed timetable for implementing any such revisions. The annual recycling report must be submitted on or before March 1 of each year. The commissioner shall provide forms for these reports to each municipality on or before January 15 of each year. Municipalities utilizing the County's materials recovery facility are exempt from reporting on the tonnages of those recyclables which are being delivered by the municipality to said facility. However, any municipality utilizing the materials recovery facility, who is not meeting its recycling goals set pursuant to subsection 5.a. of this section, shall still be required to address how it intends to improve the collection rate of materials delivered to the materials recovery facility in its recycling plan update.~~
- ~~4. For the purposes of this section, municipalities shall not be required to plan for or report on the recycling of used motor oil and vehicular batteries.~~
- ~~5. With respect to the plans and reports filed pursuant to subsections 2. and 3. above, the role of the commissioner shall be as follows:~~

  - ~~a. Commencing with the date of adoption of this chapter and concluding no later than the end of calendar year 1993, the commissioner shall review, evaluate and comment upon the municipal plans and annual reports that he receives during this period and shall establish annual recycling goals for each municipality that shall be substantially in accordance with the recycling goals set forth in the County's state approved solid waste management plan for the planning period covered by the County's state approved solid waste management plan. The commissioner shall confer with and accept comment from~~

~~each municipality prior to setting the municipality's annual recycling goals. A municipality's recycling plan goals may only be revised if necessitated by a state-approved amendment to the County's solid waste management plan. Enforcement of such revised goals pursuant to subsection 5.c. below shall not occur until a municipality has been given a reasonable time to amend and implement its recycling plan to meet such revised goals.~~

~~b. In the event that the annual recycling reports filed by municipalities in 1994, pursuant to subsection 3. above, indicate that a given municipality has not reached its past recycling goals set pursuant to subsection 5.a. above, then by June 1, 1994, the commissioner shall review, evaluate and comment upon said municipality's annual recycling report for the purpose of assisting said municipality in reaching its annual recycling goals. By August 1, 1994, such noncomplying municipalities shall advise the commissioner in writing of the revisions to its recycling plan which it has implemented or intends to implement to achieve compliance with its annual recycling goals and a proposed timetable for implementation, unless the municipality presents evidence to the commissioner demonstrating current compliance with its recycling goals and that it can reasonably be expected to meet its future recycling goals. The revisions to a noncomplying municipality's recycling plan shall be reasonably designed to bring that municipality into compliance with its past annual recycling goals and also shall be reasonably designed to meet its future annual recycling goals. If a noncomplying municipality either fails to submit such a revised plan to the commissioner or fails to demonstrate to the commissioner that it is now in compliance with its municipal recycling goals and can reasonably be expected to meet its future recycling goals, then, by September 1 of that year, the commissioner may find that municipality in violation of this subsection 5.b., subject to the procedures of section 825.80 of this chapter.~~

~~e. In the event that the annual recycling reports filed by municipalities in or after the year 1995, pursuant to subsection 3. above, indicate that a given municipality is not meeting its annual recycling goals and has not implemented measures reasonably designed to reach its recycling goals, then, by June 1 of that year, the commissioner shall review, evaluate and comment upon said noncomplying municipality's annual recycling report and any municipal recycling plan revisions contained in said report. By August 1 of that year, the noncomplying municipality shall submit a plan to the commissioner reasonably designed to reach its recycling goals,~~

~~unless the municipality presents evidence to the commissioner demonstrating current compliance with its recycling goals and that it can reasonably be expected to meet its future recycling goals. By October 1 of that year, the commissioner and the noncomplying municipality must concur upon said noncomplying municipality's plan to achieve compliance, unless the commissioner has determined that evidence submitted by said municipality demonstrates current compliance with its recycling goals and the reasonable expectation that this municipality will meet its future annual recycling goals on or before September 1 of that year. However, in the event that the commissioner does not issue such a determination of compliance and the commissioner and the noncomplying municipality fail to agree upon such a revised recycling plan by October 1 of that year, then the commissioner may find the municipality to be in violation of this subsection, subject to the procedures set forth in section 825.80 of this chapter, if the commissioner either demonstrates that the municipality's recycling plan is not reasonably designed to achieve compliance with that municipality's current and future recycling goals established pursuant to subsection 5.a. of this section or that the municipality has not taken the necessary steps to implement its recycling plan and if the commissioner also demonstrates that one or both of these factors is the primary cause for the municipality's failure to meet its recycling goals.~~

## ARTICLE VII. - NONRESIDENTIAL WASTE GENERATOR PLAN REQUIREMENTS

### Sec. 825.70. - Nonresidential Waste Generator Plans.

1. Except for Mmunicipalities, all Nonresidential Waste Generators who own a or operate a building or buildings commonly containing more than 100 employees, patients, or students during a 24-hour period, including, but not limited to commercial establishments, institutions, and school districts ("Reporting Nonresidential Waste Generators"), shall be required to establish a Source Separation Plan that includes ~~provide the following plan to the commissioner:~~
  - (a) A plan to provide for Source separation of Recyclables; and

- (b) A written schedule for the collection by or delivery of Ssource-Separated Recyclables, which shall include identification of the Hauler, Recyclables Broker or market, collection mechanism, and anticipated volumes of materials.
- ~~2. The commissioner shall provide the required form for such plan to all reporting nonresidential generators.~~
- ~~23. Reporting nonresidential waste generators shall submit their current source separation plan to the commissioner no later than October 1, 2008. New reporting nonresidential waste generators must submit their plan within six (6) months of the commencement of operations in Westchester County. All reporting Nonresidential Waste Generators have a continuing obligation to update such plan as necessary and submit ~~to the plan to the Department upon request. of the Department.~~ every three (3) years. The Commissioner also has the authority to require an update of the plan as ~~s/he or she deems~~ necessary.~~
34. In the event that a commercial establishment, institution, or school district utilizes more than one location, only one Source Separation Plan ~~plan~~ need be ~~developed~~ submitted in accordance with subsection 3 above, provided that such plan identifies activities at each location, unless such location's Source Separation Plan ~~plan~~ is prepared by a building owner pursuant to subsection 5. below, in which case only the owner's name need be identified.
45. In the event that a commercial establishment, institution, or school district is located within a multi-tenant building and there are over 100 employees in such building, it shall be the responsibility of the owner of such building to comply with this section.

Sec. 825.70-A.- Nonresidential Waste Generator Source Separation.

1. Every Nonresidential Waste Generator with areas open to the public or visitors shall have separate disposal receptacles for Solid Waste and for Recycling that are clearly marked and identifiable. All such separate disposal receptacles shall be placed in close proximity next to each other and shall be available on each floor, in each area, and in any food service area accessible to the public and/or visitors.

2. The separate disposal receptacles for Recycling shall be either single stream (pulp/paper and comingled/bottles/cans/cartons together) or dual stream (separate disposal receptacles for pulp/paper and separate disposal receptacles for comingled bottles/can/cartons), based upon the Nonresidential Waste Generator's Source Separation Plan to manage recyclables.

~~4.3.~~ Nonresidential Waste Generators may determine the size, shape, material, and color of any separate disposal receptacle, so long as the receptacles are clearly marked and identifiable so as to avoid the improper mixing of Solid Waste and Recyclables. The Department shall make available to any Nonresidential Waste Generator signage files for the clear demarcation of the separate disposal receptacles.

~~2.4.~~ Nonresidential Waste Generators (their lessee, assigns, operators, managers, etc.) shall comply with reasonable requests for access made by the Department or its Solid Waste Inspectors during the performance of inspections of areas referenced in this section.

## **ARTICLE VIII. - PENALTIES AND ENFORCEMENT**

### **Sec. 825.80. - Penalties and enforcement.**

1. Any person found guilty in a court of competent jurisdiction of failure to comply with any applicable provisions of this Chapter or with any emergency regulation of the Commissioner duly issued under this Chapter shall be guilty of an offense punishable as follows:
  - a. For the first violation, a warning or a fine up to \$100.00;
  - b. For the second violation, a fine of up to \$500.00;
  - c. For the third violation, a fine of up to \$750.00;
  - d. For the fourth and succeeding violations, a fine of up to \$1,000.00.
2. In lieu of, or in addition to, the criminal enforcement provisions and penalties of subsection 1. above, each such compliance violation shall be subject to a civil penalty as follows:



- a. For the first violation, a warning or a fine up to \$100.00;
- b. For the second violation, a warning or a fine of up to \$500.00;
- c. For the third violation, a warning or a fine of up to \$750.00;
- d. For the fourth and succeeding violations, a warning or a fine of up to \$1,000.00.

Each day of a continuing violation shall constitute a separate violation and shall be subject to a separate fine and/or civil penalty.

- 3. In addition to any other penalties prescribed in this section, the County Attorney may maintain an action in a court of competent jurisdiction to compel compliance with or restrain by injunction any violation of the provisions of this Chapter or of ~~the~~ regulations of the Commissioner duly issued pursuant to this Chapter.
- 4. Except for warnings, which may be issued by any ~~police officer or~~ duly appointed County or municipal enforcement officer, the civil penalties recited in subsection 2- of this section shall only be imposed either by a court of competent jurisdiction or by the Commissioner, without first resorting to the courts, pursuant to the following administrative hearing procedure:
  - a. Upon the issuance of a notice of violation and hearing, the Commissioner shall cause to be held a hearing before a hearing officer selected by the Commissioner, unless a person charged with such violation admits liability by returning the notice of violation with payment of the proposed penalty and by signing the admission of liability on said notice.
  - b. A formal hearing shall be on due and adequate notice to the party concerned and shall be set down for a date certain. A notice of violation and hearing shall be served by the Commissioner upon the alleged violator by certified mail, return receipt requested or by personal service. "Personal service" shall be defined as set forth in the New York State Civil Practice Law and Rules.
  - c. A notice of violation and hearing shall include notification of the following:
    - i. The time and place of the hearing;
    - ii. A list of all alleged violations complained of, with specific reference to the provisions and sections of the law, rule, or regulation involved, and a summary of the alleged facts supporting each alleged violation;



- iii. The respondent's right to present evidence;
  - iv. The respondent's right to examine and cross-examine witnesses;
  - v. The respondent's right to be represented by counsel;
  - vi. That a respondent's failure to appear shall constitute a default by the respondent, and that the hearing may proceed in the respondent's absence and a determination made based solely upon evidence submitted by the Commissioner; and
  - vii. That a respondent may waive ~~their~~~~his or her~~ right to such hearing by signing an admission of liability on the notice of violation and hearing and by remitting payment of the assessed penalty.
- d. The hearing officer may grant an adjournment upon request of any party to the proceeding, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a date certain.
- i. If an adjournment is requested in advance of the hearing date, such request shall be presented to the hearing officer, in writing, and shall specify the reason for such request.
  - ii. In considering an application for adjournment of a hearing, the hearing officer shall consider whether the purpose of the hearing will be affected or defeated by the granting of such adjournment.
- e. To aid in the administration of this chapter, the Commissioner, or any hearing officer designated by the Commissioner~~him or her~~ in a particular proceeding, may issue subpoenas in the Commissioner's name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing or proceeding conducted under this section. Service of such subpoena(s), enforcement of obedience thereto, and punishment for disobedience thereof, shall be had as and in the manner provided by the New York State Civil Practice Law and Rules relating to the enforcement of any subpoena issued by a board or committee.
- i. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.

- ii. The hearing officer may add a party to the proceeding upon due and adequate notice to both the party to be added and the parties named in the proceedings.
- f. On the return date of a hearing, the hearing officer shall note the appearances of the persons attending the hearing. Witnesses shall be sworn and testimony shall be recorded either by a certified stenographer or by use of an electronic recording device. Prior to the commencement of the hearing, the hearing officer may conduct a settlement conference. Should the Department and the respondent reach a settlement of which the hearing officer approves, the hearing officer shall dispense with the hearing and shall issue a report and recommendation to the Commissioner that the settlement be approved.
- g. All hearings shall be open to the public. Testimony shall be transcribed upon the request of any interested party. The party requesting the transcript shall pay the costs and expenses in connection therewith.
- h. The hearing officer shall not be bound by the strict rules of evidence in the conduct of a hearing, but ~~the his or her~~ findings of fact shall be founded upon a fair preponderance of the evidence presented at the hearing. The hearing officer shall admit and consider any evidence of mitigation offered by the alleged violator.
- i. After the conclusion of a formal hearing, the hearing officer shall prepare and issue a report containing a summary of the evidence, findings of fact, conclusions of law and recommendations(s) to the Commissioner.
- j. The recommendations of the hearing officer may include, but shall not be limited to the appropriate penalty in the event the Commissioner finds a violation has occurred, or the submission of a recommendation that the Department enter into a stipulation of settlement upon agreement by all parties to the proceeding~~be incorporated in a commissioner's decision and order.~~
- k. Upon the conclusion of a formal hearing and after consideration of the hearing officer's report and recommendations and any evidence of mitigation, the Commissioner shall make a decision based on a fair preponderance of the evidence and shall execute an order carrying such decision into effect, or issue a stipulation of settlement upon agreement of all parties to the proceeding.

- l. The order of the ~~e~~Commissioner may include, but shall not be limited to, the assessment of civil penalties, as provided by this chapter; the issuance of the approval of a stipulation of settlement, which has been agreed to by all parties to the proceeding and which shall include, but not be limited to, a plan and schedule to remedy the condition which that caused the violation, if such measures are necessary and appropriate to correct the violation,~~s~~; and suspended penalties.
  - m. —If the ~~C~~ommissioner determines that the hearing record is not sufficient to make a final determination, the ~~C~~ommissioner may direct a rehearing or require the taking of additional evidence and may rescind or affirm, in whole or in part, a prior determination after such hearing.
  - n. The ~~C~~ommissioner shall cause to be served upon the respondent, copies of the hearing officer's report and the ~~C~~ommissioner's final determination and order or Stipulation of Settlement. Service shall be made in the manner prescribed for the service of a notice of hearing.
5. Where any violation of this chapter causes an expense to the County or to a ~~m~~Municipality enforcing this chapter pursuant to subsection 6: ~~b~~Below, such expense may, in the discretion of the ~~C~~ommissioner, be separately collected by a civil suit against the violator, ~~brought by the County Attorney in the name of the County~~ in a court of competent jurisdiction.
  6. Municipalities may enforce this ~~C~~hapter within their jurisdiction against ~~W~~waste ~~G~~enerators, ~~H~~aulers and ~~R~~ecyclables ~~B~~rokers. A ~~M~~municipality that chooses to enforce this ~~C~~hapter shall designate in writing to the Commissioner the a local enforcement official, who shall have all the powers of the ~~C~~ommissioner ~~and the County Attorney~~ related to enforcement under this section, and shall provide quarterly reports of all enforcement activity. If a ~~M~~municipality enforces a violation of this ~~C~~hapter and undertakes the entire enforcement of a particular offense and/or civil violation of this chapter, then 100 percent of the fines collected in that enforcement proceeding shall be retained by the enforcing ~~M~~municipality. Municipalities may not enforce this ~~C~~hapter against any person against whom the County has already proceeded against for the same or substantially similar violation or violations.

## ARTICLE IX. - EMERGENCY RULEMAKING AUTHORITY AND PROCEDURES

### Sec. 825.90. - Emergency rulemaking authority and procedures.

1. In the event of an emergency which affects the life, safety, health, environment, or welfare of the citizens of this County and circumstances require prompt action to remedy the emergency, the Commissioner may promulgate emergency regulations without the approval of the Board of Legislators, which shall be published in their full text immediately on the Department's website, in one or more newspapers of general circulation designated by the Clerk of the Board of Legislators for this purpose and filed with the Clerk of the Board of Legislators. An emergency regulation shall expire at either the end of the emergency or 45 days after publication, whichever comes first. ~~An emergency regulation may only be extended beyond 45 days with the approval of the majority of the Board of Legislators.~~
2. A compilation of all emergency regulations promulgated pursuant to this section shall be maintained in the office of the Commissioner and shall be available for inspection by any interested party during regular business hours.

## ARTICLE X. - ADMINISTRATION

### Sec. 825.101. - Administration.

The Westchester County Source Separation Law shall be administered and enforced by the Commissioner. Enforcement by Municipalities is also authorized under the limitations set forth in section 825.80, subsection 6-, of this Chapter.

## ARTICLE XI. - SEVERABILITY

### Sec. 825.110. - Severability.

If any clause, sentence, paragraph, subdivision, section or part of this chapter or the application to any person or circumstance be adjudged by any court of competent jurisdiction invalid or unconstitutional, that order or judgment will not affect, impair or invalidate the

remainder thereof but will be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this chapter, or its application to the person or circumstance directly involved in the controversy in which that order or judgment is rendered.

§2. This Local Law shall take effect immediately.

Sdk/Mjr-7/14/23

**Catherine F. Parker**  
**Legislator, 7th District**  
 Chair, Committee on Appointments



**Committee Assignments:**  
 Economic Development  
 Veterans, Seniors & Youth

## MEMORANDUM OF LEGISLATION

**DATE:** January 30, 2024

**TITLE:** A law to authorize the exchange of real property

**SPONSORS:** Legislator Catherine Parker

**INITIAL OR GENERAL IDEA OF THE BILL:** To authorize the conveyance of a 13.4-acre parcel of real property currently owned by the County (County Parcel) to Westchester Joint Water Works (WJWW), in exchange for a 13.4-acre parcel of real property currently owned by WJWW (WJWW Parcel).

**INTENT:** To authorize a “land swap” between the County and WJWW. This legislation and corresponding real-estate contract shall authorize the County to convey the County parcel to WJWW. In exchange, WJWW shall convey the WJWW parcel to the County.

**JUSTIFICATION:** WJWW is a non-profit public benefit corporation that was formed in 1927 consisting of the member municipalities of the Village of Mamaroneck, the Town of Mamaroneck, and the Town/Village of Harrison. WJWW delivers drinking water to its member municipalities and also sells water to portions of the City of Rye and the City of New Rochelle.

Pursuant to an administrative order issued by the US EPA and an order from New York Supreme Court, WJWW is required to build a filtration plant to address the levels of Haloacetic acid found in its water. In June of last year, WJWW formally requested that the County approve the request to exchange land. Shortly thereafter, the NYS Supreme Court dismissed the only lawsuit challenging the proposal to locate the filtration plant on the county owned parcel.

Even then, it was not until September of last year that the Board of Legislators (BOL) commenced its process of “reviewing” the WJWW request. The BOL has been reviewing the WJWW request for months without legislation, giving special attention to those who oppose the filtration plant being located on the parcel of land currently owned by the county. It is time for legislation authorizing the land exchange between the County and WJWW to be brought before this body.

**Present Law:** None

**Fiscal Impact:** None

**Margaret A. Cunzio**  
Minority Leader, Legislator, 3<sup>rd</sup> District  
Co-Chair, Committee on Rules



**Committee Assignments:**  
Legislation  
Public Safety

**MEMORANDUM**

TO: Vedat Gashi, Chair, Board of Legislators

FROM: Margaret Cunzio, Legislator – 3<sup>rd</sup> District

DATE: January 23, 2024

RE: Correspondence: request for Annexation from Westchester County  
Saw Mill Sewer District 485 Chappaqua Road, Chappaqua, NY 10514

---

Please add the attached correspondence to the agenda of the February 5, 2024 Board of Legislators meeting for referral to the appropriate committees.





CARL FULGENZI  
Supervisor

November 17, 202

Honorable Margaret A. Cunzio  
Westchester County Board of Legislators  
800 Michaelian Office Building  
148 Martine Avenue, 8th Floor  
White Plains, New York 10601

Re: Request for removal from Westchester County Saw Mill Sanitary Sewer District

Dear Honorable Cunzio,

Enclosed is a certified copy of Town Board Resolution 405-23 for the following property owner who has requested removal from the County Saw Mill Sewer District.

<u>Name</u>	<u>Tax Map</u>	<u>Address</u>
Deborah Gargiulo	98.8-1-2	485 Chappaqua Road, Chappaqua, NY

Also enclosed is a copy of the town tax map for this parcel. Please have this request processed for removal from the County Saw Mill Sewer District.

Sincerely,

s/ *Carl Fulgenzi*

Carl Fulgenzi, Town Supervisor



**EMILY COSTANZA**  
*Town Clerk*

EXTRACT OF THE MINUTES  
OF THE REGULAR MEETING  
OF THE TOWN BOARD  
TOWN OF MOUNT PLEASANT  
WESTCHESTER COUNTY, NY  
HELD OCTOBER 24, 2023

Authorization to Remove 485 Chappaqua Road from County Saw Mill Sewer District

RESOLUTION 405-23

Upon motion of Ms. Smalley, seconded by Ms. Zaino and unanimously carried, it was,

WHEREAS, certain property owner(s) have requested removal of their property from the Westchester County Saw Mill Sanitary Sewer District because it is not serviced by sanitary sewers and it is not anticipated that sanitary sewers will be constructed in this area in the foreseeable future; and

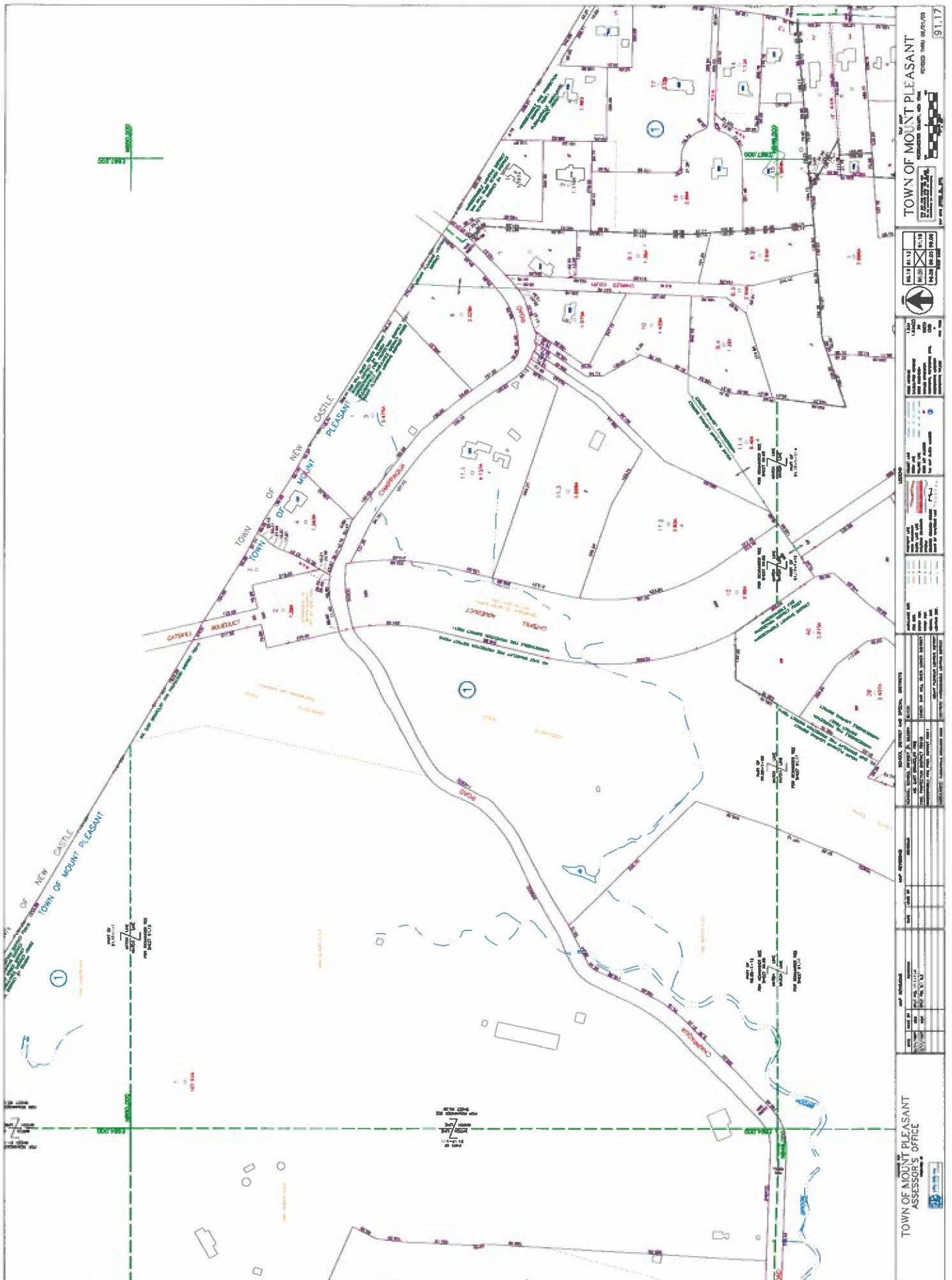
WHEREAS, it is believed by the Town of Mount Pleasant that the property satisfies all criteria set forth by the Westchester County Department of Environmental Facilities (WCDEF) for removal of a property from the tax base; therefore,

BE IT RESOLVED, that the Westchester County Board of Legislators is requested to remove the following parcel from the Westchester County Saw Mill Sanitary Sewer District:

<u>Name</u>	<u>Tax Map</u>	<u>Address</u>
Deborah Gargiulo	98.8-1-2	485 Chappaqua Road

VOTE - AYES - Fulgenzi, Schulman, Sialiano, Smalley, Zaino

EMILY COSTANZA  
TOWN CLERK  
TOWN OF MOUNT PLEASANT





## Westchester Joint Water Works

1625 Mamaroneck Avenue  
Mamaroneck, New York 10543  
www.wjww.com

Telephone: (914) 698-3500  
Fax: (914) 381-4241  
Fax: (914) 381-0349

February 1, 2024

Hon. Vedat Gashi, Chairman and Honorable Members  
Westchester County Board of Legislators  
148 Martine Avenue, 8th Floor  
White Plains, NY 10601

**Re: Westchester Joint Water Works ("WJWW") Request for County Approval of the Exchange Transaction for Construction of a Filtration Plant in the Town of Harrison**

Dear Chairman Gashi and Members of the County Board of Legislators:

In my previous letter to the County Board of Legislators, dated June 15, 2023 (copy attached), WJWW formally requested the County to approve the proposed real estate transaction (the "Exchange Transaction") by which the County would deed title of the 13.4-acre County-owned parcel adjoining the County airport (the "County Parcel") to WJWW for construction of the Filtration Plant in exchange for a WJWW-owned 13.4-acre parcel, also adjoining the County airport, that WJWW would deed to the County (the "WJWW Parcel"). In a subsequent letter to the County Board of Legislators, dated June 28, 2023 (copy attached), I wrote to inform the County that on June 27, 2023, the New York State Supreme Court for Westchester County dismissed the only lawsuit that was filed to challenge the proposal to locate the Filtration Plant on the County Parcel.

WJWW is a not-for-profit public benefit corporation formed in 1927 by the State Legislature at the request of the Town/Village of Harrison, Town of Mamaroneck and Village of Mamaroneck to operate a public water system.

I am writing again to update the County on enforcement actions brought against WJWW and its three constituent municipalities, by the U.S. Department of Justice (USDOJ) on behalf of the U.S. Environmental Protection Agency (USEPA), and the New York State Attorney General's office (NYSAG) on behalf of the New York State Department of Health (NYSDOH). In my previous letter to the County Board of Legislators dated June 15, 2023, I indicated that the USDOJ provided notice, in letters dated April 29, 2021 (copy attached) and May 26, 2021 (copy attached), to WJWW and its constituent municipalities, the Town/Village of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck, to comply with the Safe Drinking Water Act (SDWA) and an Administrative Order (AO) issued by the USEPA, dated November 26, 2019.



### **Federal Enforcement History and Potential Liability without Settlement**

In 2019, monitoring data collected by WJWW for the first, second and third quarters of the year established a violation of the Haloacetic Acids (HAA5) maximum contaminant level (MCL). On November 26, 2019, the USEPA issued an Administrative Order (AO) to WJWW under the federal Safe Drinking Water Act (SDWA). The USEPA AO required WJWW to: (i) take certain interim measures (such as water flushing) to reduce the likelihood of a recurrence of the MCL violation and (ii) construct a Filtration Plant to reduce the organic content of the Rye Lake water in the WJWW system, providing a permanent means of reducing HAA5 concentrations. The USEPA AO contained a deadline of October 1, 2020 for completion of the State Environmental Quality Review Act (SEQRA) process for the Filtration Plant, and January 1, 2022 to obtain all permits and commence construction of the Filtration Plant.

Since receiving the USEPA AO, WJWW has complied with the interim measures specified therein, but WJWW could not meet the USEPA AO's schedule for construction of the Filtration Plant due to delays attendant to the SEQRA process, the elapse of time in the County's consideration of the land swap, and delays in local land use permitting dependent upon entering into the contract for the land swap.

WJWW faces significant federal enforcement liability for the violation of the SDWA MCL during the nine-month period in 2019. Civil penalties under this law are assessed in federal court. The maximum civil penalty for statutory violations in 2019 was \$57,317 per day of violation (approximately \$15.7 million for the 9-month violation period). In addition, the violation of the USEPA AO requiring that WJWW build and operate a filtration plant for its Rye Lake water source as a means of reducing the likelihood of future violations of the MCL. As set forth above, the USEPA AO required WJWW to complete the SEQRA process for the filtration plant by October 1, 2020 and begin construction by January 1, 2022. The current maximum statutory penalty under the SDWA is now \$67,544 per day (approximately \$24.7 million per year). Under the current schedule, construction of the filtration plant is scheduled to commence in approximately June 2025 – 3½ years after the deadline in the USEPA AO. The maximum statutory penalties for violating the USEPA AO (at \$24.7 million per year) are approximately \$86.5 million. Thus, the maximum civil penalty is approximately \$102.2 million (\$15.7 million for the 9-month MCL violation and \$86.5 million for violation of the USEPA AO).

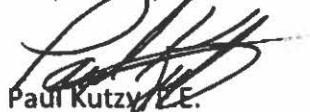
On April 29, 2021, USDOJ, representing the USEPA, sent WJWW a letter stating that the USEPA has referred the matter to USDOJ for civil litigation enforcement in federal court under the SDWA. The USDOJ letter alleged violations of the SDWA by failing to comply with the HAA5 MCL in the first three quarters of 2019 and failing to meet the Filtration Plant milestone dates in the USEPA AO. On May 26, 2021, USDOJ sent a second letter with the same substantive allegations directed to WJWW's three member municipalities (the Town/Village of Harrison, the Town of Mamaroneck and the Village of Mamaroneck). The terms of the proposed consent decree, when approved by the federal court, will supersede the terms of the USEPA AO as to the schedule for completing the Filtration Plant. The settlement injunctive milestones will become enforceable by the federal court.

**New York State Enforcement History and Potential Liability**  
**Without Settlement**

On June 9, 2004, in a lawsuit brought by the NYS Attorney General on behalf of the New York State Department of Health, the NY State Supreme Court issued a permanent injunction requiring WJWW to build the Filtration Plant to comply with the State Sanitary Code. The injunction was affirmed on appeal and remains in effect today. Due to WJWW's inability to meet the terms of the injunction, approximately \$74.8 million of penalties have accrued under the terms of the State Court judgment and a further penalty of \$13,750 continues to accrue each day (approximately \$5 million per year). Under the terms of the state court judgment, penalties will continue to accrue in the amount of \$13,750 per day until the filtration plant is constructed and begins operation on or about December 31, 2028. Accordingly, in addition to the \$74.8 million in past penalties, WJWW is facing the prospect of an additional \$25 million in penalties over the next five years. These penalties are mandatory (non-discretionary) pursuant to the terms of the state court judgment.

In closing, it should be emphasized that by March 31, 2024, WJWW to obtain County authorization of the real estate transaction by which WJWW is seeking to acquire ownership of the land for the site of the Filtration Plant, is the first critical milestone in the settlement negotiated with the USDOJ and NYSAG.

Respectfully submitted,



Paul Kutzy, P.E.  
Manager, WJWW

cc: Hon. George Latimer, County Executive  
Hon. Kenneth Jenkins, Deputy County Executive  
Joan McDonald, Director of Operations  
Sunday Vanderberg, Clerk of the County Board of Legislators  
Hon. Jaine Elkind Eney, Supervisor, Town of Mamaroneck  
Hon. Sharon Torres, Mayor, Village of Mamaroneck  
Hon. Richard Dionisio, Supervisor/Mayor, Town/Village of Harrison  
Lori Lee Dickson, Esq., WJWW General Counsel



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

---

*86 Chambers Street  
New York, New York 10007*

April 29, 2021

**Via E-mail and Federal Express**

Lori Lee Dickson, Esq.  
McCarthy Fingar LLP  
711 Westchester Avenue, Suite 405  
White Plains, New York 10604  
ldickson@mccarthyfingar.com

Re: Violations of the Safe Drinking Water Act and EPA Administrative Order by  
Westchester Joint Water Works and its Constituent Municipalities

Dear Ms. Dickson:

The U.S. Environmental Protection Agency (“EPA”) has referred certain violations of the Safe Drinking Water Act (“SDWA”) to the U.S. Attorney’s Office for the Southern District of New York for litigation in the U.S. District Court for the Southern District of New York.

These violations relate to the failure of Westchester Joint Water Works and its constituent municipalities, the Town of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck (collectively, “WJWW”), to comply with the SDWA and an administrative order (“AO”) issued by EPA dated November 26, 2019. WJWW failed to comply with the maximum contaminant level (“MCL”) for five regulated haloacetic acids (“HAA5”) and, in particular, exceeded the MCL for HAA5 during the first, second, and third quarters of 2019. While WJWW has implemented interim measures to prevent HAA5 MCL exceedances in the short term, it is presently in violation of the SDWA and the AO, including the requirement that it construct a filtration plant at Rye Lake.

Under the SDWA, the United States may bring a civil action in federal district court to require compliance with any applicable requirement of the statute or to enforce compliance with an AO. 42 U.S.C. § 300g-3(b). The court is empowered to issue such judgment as is necessary to protect the public health, and may also impose on the violator a civil penalty for each day of violation.


We understand that you have represented WJWW for certain purposes in related matters in the past and would appreciate if you can confirm whether you will do so for purposes of the United States’ anticipated enforcement action. If so, we would like to arrange a meeting to discuss these violations, and to discuss the terms of a potential judicial consent decree resolving the matter simultaneously with the commencement of litigation. Please contact me at your earliest convenience so that we can set up a meeting to discuss these issues. I can be reached using the contact information below.



Thank you for your cooperation.

Sincerely,

AUDREY STRAUSS  
United States Attorney

By: 

SAMUEL DOLINGER  
Assistant United States Attorney  
Tel.: (212) 637-2677  
E-mail: [samuel.dolinger@usdoj.gov](mailto:samuel.dolinger@usdoj.gov)



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

May 26, 2021

**Via Federal Express**

Frank P. Allegretti, Esq.  
Jonathan D. Kraut, Esq.  
Attorneys for the Town/Village of Harrison  
1 Heineman Place  
Harrison, New York 10528

William Maker, Esq.  
Attorney for the Town of Mamaroneck  
Town Center  
740 West Boston Post Road  
Mamaroneck, New York 10543

Robert Spolzino, Esq.  
Attorney for the Village of Mamaroneck  
Village Hall at the Regatta  
123 Mamaroneck Avenue  
Mamaroneck, New York 10543

Re: Violations of the Safe Drinking Water Act and EPA Administrative Order by  
Westchester Joint Water Works and its Constituent Municipalities

Dear Counsel:

The U.S. Environmental Protection Agency (“EPA”) has referred certain violations of the Safe Drinking Water Act (“SDWA”) to the U.S. Attorney’s Office for the Southern District of New York for litigation in the U.S. District Court for the Southern District of New York.

These violations relate to the failure of Westchester Joint Water Works (“WJWW”) and its constituent municipalities, the Town/Village of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck, to comply with the SDWA and an administrative order (“AO”) issued by EPA dated November 26, 2019. WJWW failed to comply with the maximum contaminant level (“MCL”) for five regulated haloacetic acids (“HAA5”) and, in particular, exceeded the MCL for HAA5 during the first, second, and third quarters of 2019. While WJWW has implemented interim measures to prevent HAA5 MCL exceedances in the short term, it is presently in violation of the SDWA and the AO, including the requirement that it construct a filtration plant at Rye Lake.

Under the SDWA, the United States may bring a civil action in federal district court to require compliance with any applicable requirement of the statute or to enforce compliance with

an AO. 42 U.S.C. § 300g-3(b). The court is empowered to issue such judgment as is necessary to protect the public health, and may also impose on the violator a civil penalty for each day of violation.


We have been in contact with counsel for WJWW and have begun discussions regarding the United States' anticipated enforcement action. Because the Town/Village of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck are also owners and/or operators of the public water system, the United States anticipates that a judicial resolution of this matter will involve the municipalities as parties.

We would like to arrange a meeting to discuss these violations, and to discuss the terms of a potential judicial consent decree resolving the matter simultaneously with the commencement of litigation. Please contact us at your earliest convenience so that we can set up a meeting to discuss these issues. We can be reached using the contact information below.

Thank you for your cooperation.

Sincerely,

AUDREY STRAUSS  
United States Attorney

By:   
SAMUEL DOLINGER  
TOMOKO ONOZAWA  
Assistant United States Attorneys  
Tel.: (212) 637-2677/2721  
samuel.dolinger@usdoj.gov  
tomoko.onozawa@usdoj.gov

cc: Lori Lee Dickson, Esq.  
Philip Karmel, Esq.  
Attorneys for Westchester Joint Water Works  
(via e-mail)



## Westchester Joint Water Works

1625 Mamaroneck Avenue  
Mamaroneck, New York 10543  
www.wjww.com

Telephone: (914) 698-3500  
Fax: (914) 381-4241  
Fax: (914) 381-0349

June 15, 2023

Hon. George Latimer  
Westchester County Executive  
148 Martine Avenue, 9th Floor  
White Plains, NY 10601

Hon. Vedat Gashi, Chairman and Honorable Members  
Westchester County Board of Legislators  
148 Martine Avenue, 8th Floor  
White Plains, NY 10601

**Re: Westchester Joint Water Works ("WJWW") Request for County Approval of the Exchange Transaction for Construction of a Filtration Plant in the Town of Harrison**

Dear County Executive Latimer, Chairman Gashi and Members of the County Board of Legislators:

WJWW is a not-for-profit public benefit corporation formed in 1927 by the State Legislature at the request of the Town/Village of Harrison, Town of Mamaroneck and Village of Mamaroneck to operate a public water system. WJWW supplies water to its three member municipalities for their retail sale to their water consumers and to portions of the cities of Rye and New Rochelle. WJWW also supplies water on a wholesale basis to the Village of Larchmont and Veolia, which sells water to the City of Rye, Village of Rye Brook and Village of Port Chester. In all, up to 100,000 County residents depend on WJWW to provide clean, safe drinking water.

To comply with federal and state drinking water regulations, and to maintain the safety of the water delivered to County residents, WJWW is required to construct a Filtration Plant to treat the water that WJWW withdraws from the Kensico Reservoir. The Filtration Plant is a substantial engineering and construction project with a capital cost of approximately \$138 million. The construction of the Filtration Plant is an urgent matter of public health: the U.S. Environmental Protection Agency ("EPA"), in an administrative order issued to WJWW in 2019, determined that the Filtration Plant is required to address WJWW's recent violations of EPA's maximum contaminant level ("MCL") for haloacetic acids ("HAAS"), as discussed in further detail below.

Since 2019, WJWW has been working with the County to undertake the evaluations and legal processes required to construct the Filtration Plant on a vacant 13.4-acre parcel of County-owned land at the periphery of the County airport (the "County Parcel"). This

effort has included the execution of a 2021 Memorandum of Understanding between the County and WJWW, public hearings, and the preparation of all required SEQRA documents, the Storm Water Pollution Prevention Plan for the County Parcel (the "**SWPPP**"), and the final engineering documents for the construction of the Filtration Plant at the County Parcel. With the County's consent, WJWW has also submitted permit applications to state and local agencies.

On May 26, 2023, the New York City Department of Environmental Protection ("**NYCDEP**") approved the SWPPP, confirming that the construction of the Filtration Plant at the County Parcel will not harm the Kensico Reservoir, will have no stormwater impact on downstream properties, and will comply with the stringent NYCDEP standards for the protection of Kensico Reservoir and its watershed.

In light of the NYCDEP approval, WJWW is now formally requesting the County to approve the proposed real estate transaction (the "**Exchange Transaction**") by which the County would deed title of the 13.4-acre County Parcel to WJWW for construction of the Filtration Plant in exchange for a WJWW-owned 13.4-acre parcel, also adjoining the County airport, that WJWW would deed to the County (the "**WJWW Parcel**").

To assist the County in evaluating the request to approve the Exchange Transaction, this letter:

- provides the required background information, including the location of the County Parcel and WJWW Parcel;
- describes the history of WJWW's effort to construct the Filtration Plant;
- summarizes the terms of the contemplated Exchange Transaction;
- summarizes the Filtration Plant's environmental impacts;
- explains why the County Parcel is the best location for the Filtration Plant; and
- explains why it is critically important that the County consider WJWW's request soon, so as not to further delay construction of the Filtration Plant.

As requested, attached are:

- A draft of the real estate contract to effectuate the Exchange Transaction (Tab A);
- A Federal Aviation Administration ("**FAA**") letter regarding the Exchange Transaction (Tab B);
- Environmental review materials – the Draft Environmental Impact Statement ("**DEIS**") (Tab C), the Final Environmental Impact Statement ("**FEIS**") (Tab D),

SEQRA Findings (Tab E), and a resolution regarding minor post-FEIS site plan changes (Tab F);

- The SWPPP (Tab G) and NYCDEP's approval of the SWPPP (Tab H);
- Final design documents (Tab I).
- Basis of estimate cost report (Tab J)

Public comments on the Filtration Plant are included in FEIS Appendix A (Tab D).

### **Background**

The map below shows the location of: (i) Rye Lake (a component of the Kensico Reservoir); (ii) the location of the existing Rye Lake Pump Station; (iii) the existing raw water transmission main that conveys water from the Pump Station to the Purchase Street Storage Tanks; (iv) the County Parcel on Purchase Street, adjacent to this transmission main; and (v) the WJWW Parcel:



The areas bounded by the dashed orange lines depict the two 13.4-acre tracts that would be subject to the proposed Exchange Transaction. The Filtration Plant must be

located in this general area because the Filtration Plant will filter the raw water from the Rye Lake Pump Station before the water is conveyed to the Purchase Street Storage Tanks.

### **History of WJWW's Effort to Build the Filtration Plant**

In 1994, an engineering firm retained by WJWW prepared a site evaluation report to identify possible locations for the Filtration Plant. The report ranked the County Parcel as the overall best location for the facility. See FEIS, Appendix C, p. at 7 (discussing "Site 3"). The report deemed the County Parcel superior to all other locations because: (i) the site fronts Purchase Street (a State Highway also known as Route 120); (ii) the Filtration Plant would therefore be in close proximity to the existing WJWW water transmission main beneath Purchase Street, thereby minimizing cost and construction impacts; (iii) the County Parcel has easy access, via Purchase Street, to Interstate 684, facilitating truck traffic; (iv) the County Parcel is zoned for business use (rather than residential use); and (v) the existing trees at the County Parcel would screen views of the Filtration Plant from vantage points in the surrounding area. *Id.* at 4, 8 & Table 8.

The same report deemed the current WJWW Parcel (which had yet to be purchased by WJWW) as the second most suitable location for the Filtration Plant. *Id.* at 8 & Table 10 (discussing "Site 5"). The report noted, however, that unlike the County Parcel, the WJWW Parcel is zoned for residential use and that there would be greater visual and construction noise impacts to the surrounding neighbors. *Id.*

At that time, however, Westchester County declined to make the County Parcel available to WJWW for construction of the Filtration Plant. As a result, in 1998, in anticipation of the potential need to build a Filtration Plant for its Rye Lake water source, WJWW acquired the WJWW Parcel and adjoining land that collectively comprised a 39-acre parcel with frontage on Purchase Street.

In 2000, WJWW sold approximately two-thirds of the 39-acre parcel to Sylvan Development, retaining the WJWW Parcel and an easement running from Purchase Street to the WJWW Parcel. See DEIS Figure 5-2.

On June 9, 2004, the Supreme Court for Westchester County issued a permanent injunction requiring WJWW to build the Filtration Plant in order to bring its system into compliance with the New York State Sanitary Code, which regulates public drinking water systems. That injunction remains in effect today.

After the Court's ruling, WJWW pursued an unsuccessful appeal and an unsuccessful petition to the New York State Department of Health ("NYSDOH") to forgo construction of a costly filtration plant in favor of a less costly ultraviolet treatment facility.



Thereafter, WJWW prepared to proceed with construction of the Filtration Plant on the WJWW Parcel. The project was identified as exempt from SEQRA pursuant to the Type II category that is today codified at 6 N.Y.C.R.R. § 617.5(c)(35) (“a particular course of action specifically required to be undertaken pursuant to a judgment or order”). WJWW submitted applications for site plan approval and a special exception use permit to the Harrison Planning Board, which issued a negative declaration under SEQRA and granted certain approvals on June 21, 2005. A local property owner (Sylvan Development), however, thereafter brought a raft of lawsuits challenging different permits and approvals for the proposed facility at the WJWW Parcel.

As a result, the Planning Board rescinded its prior negative declaration and approvals, determined that it would serve as the lead agency for the SEQRA review, and issued a positive declaration under SEQRA on June 11, 2007, thereby requiring preparation of an environmental impact statement (“**EIS**”) prior to the Planning Board’s decision-making on WJWW’s applications to build the facility at the WJWW Parcel.

In accordance with a scope determined by the Planning Board, WJWW proceeded to prepare a draft EIS, which the Planning Board certified as complete on September 25, 2007. The public hearing on the draft EIS was conducted on November 15, 2007. Subsequently, the Town Planner, on behalf of the Planning Board, prepared a six-page memorandum providing review comments on the draft EIS. His review comments requested further discussion of the potential for adverse impacts on adjoining residential land and a further analysis of alternatives, including an evaluation of whether the County had changed its prior position as to the availability of airport land for the Filtration Plant and an evaluation of a regional water treatment facility instead of a WJWW-owned treatment facility.

WJWW had completed its obligations as the applicant for full compliance with the SEQRA review process by submitting a proposed Final Environmental Impact Statement to the Planning Board in July 2008. Yet the Planning Board never completed the SEQRA process for WJWW’s proposal to build the Filtration Plant on the WJWW Parcel. Without completion of the SEQRA review process, no further action could be taken to construct the Filtration Plant at that location.

As a result of the stalled Planning Board process, WJWW explored partnering on a County-lead regional water treatment and conveyance alternative. This option was further evaluated by WJWW, but ultimately, the other regional water utilities involved pursued options that did not provide treated water to WJWW’s system.

With the regional water treatment and conveyance option no longer available, WJWW then investigated the viability of constructing a pipeline for the conveyance of treated water from New York City’s Shaft 20 in Yonkers, which would eliminate WJWW’s use of untreated Rye Lake water. In 2016, the alternative was rejected due to its exorbitant cost and the identified adverse environmental impacts.

Thereafter, in 2019, as a result of further discussions between WJWW and the County, WJWW learned that the County – subject to compliance with SEQRA and other conditions – would consider the parcel exchange transaction by which WJWW would acquire the 13.4-acre County Parcel in exchange for the 13.4-acre WJWW Parcel.

As a result, WJWW’s planning efforts reverted to the original preferred alternative of locating the Filtration Plant on the County Parcel. In a letter to the County dated September 30, 2022, the FAA determined that the proposed land swap “would have no material impact on aircraft operations, at, to, or from the airport; would not affect the safety of people and property on the ground adjacent to the airport as a result of aircraft operations; and would not have an adverse effect on the value of prior Federal investment ... [and therefore] the FAA does not have the authority to ... disapprove ... the proposed project.” FAA Letter, p. 2 (Tab B).

### **The Terms of the Proposed Exchange Transaction**

The proposed exchange contract between the County and WJWW is attached as Tab A. It provides for the County to deed title to the County Parcel to WJWW in exchange for WJWW deeding title to the WJWW Parcel to the County. WJWW provided the draft exchange contract to the County Attorney on March 7, 2023 and has not received any comments on the form of the document.

The two parcels are of the same acreage, and both are unimproved land adjoining the airport. A licensed appraiser, in reports dated March 27, 2023 and provided to the County Attorney at that time, has determined each parcel to be of the same value. Accordingly, the proposed exchange contract provides for the exchange of the parcels without additional cash consideration paid by either party.

The proposed exchange contract further provides that the transaction would “close” (*i.e.*, the titles would be exchanged by the parties pursuant to the contract) only after WJWW receives the remaining discretionary permits and approvals required for WJWW to construct the Filtration Plant at the County Parcel.

The proposed contract further provides for a process by which the County would allow the Filtration Plant to connect to the airport’s sanitary sewer system, with WJWW to bear the costs of the connection.

### **The SEQRA Process and Environmental Impacts**

WJWW, as lead agency, has completed the SEQRA process for constructing and operating the Filtration Parcel on the County Parcel, as follows:

- On March 10, 2021, the Commissioner of the New York State Department of Environmental Conservation (“**NYSDEC**”) determined that WJWW would serve as the lead agency for the SEQRA review.
- On March 23, 2021, WJWW adopted a draft scope for the EIS.
- On April 13, 2021, WJWW held a duly noticed public session on the draft scope.
- On May 10, 2021, WJWW closed the public comment period on the draft scope, and thereafter considered all comments received on the draft scope and prepared a response to comment document.
- On October 26, 2021, WJWW published the final scope for the EIS.
- On April 12, 2022, WJWW accepted the DEIS as adequate and complete for public review.
- On May 25, 2022, WJWW held a duly noticed public hearing on the DEIS.
- On June 6, 2022, WJWW closed the public comment period on the DEIS.
- On September 28, 2022, WJWW published the FEIS.
- On October 12, 2022, the WJWW board enacted a resolution approving the issuance of WJWW’s SEQRA Findings Statement.

The County Board of Legislators and relevant County departments were identified as “involved agencies” and were provided with all SEQRA notices and documents throughout the process.

To assess the potential environmental impacts of the Filtration Plant, the DEIS and FEIS examined the site plan that WJWW has proposed for the facility. The site plan depicted below is similar to the one assessed in the DEIS and FEIS but reflects minor changes made after publication of the FEIS to reduce construction in the buffer area to the wetlands on the County Parcel:



- Implementation of a landscaping plan, including the installation of approximately 300 trees, to replace some of the invasive vegetation to be cleared, enhancing the visual quality of the development with diverse indigenous species, screening man-made structures from the street and other public vantage points, and retaining natural vegetation along the street as a buffer.
- Designing the building to comply with the dimensional zoning standards of the County Parcel's business district zoning including yard setbacks, building height, and building lot coverage, so that the building is contained within the requisite zoning envelope.
- Exterior lighting to be energy efficient and shielded and directed downward so as not to illuminate off-site areas or parts of the site that do not need to be lit.
- The façade of the building will include a partial stone veneer that resembles the stone used in walls along the street and the building will be of muted colors to blend into its surroundings. A gabled roof will make the building look less commercial. The front façade will include windows and translucent panels to provide visual interest.
- The Filtration Plant will connect to an existing sanitary main on the airport property via a four-inch force main to the Westchester County Airport Sewer Collection System to eliminate the need for onsite sewage discharge. Treatment of the wastewater will occur at the Blind Brook Wastewater Treatment Plant, which is outside of the Kensico Watershed.
- Photovoltaic arrays (solar panels) will be installed on the roof of the building to reduce demand for nonrenewable energy resources and partially offset energy and climate-related impacts.
- Preparation and implementation of a SWPPP that meets the standards and requirements of NYSDEC, NYCDEP, and the Town/Village of Harrison code.
- Utilization of dust control practices during construction, including providing a temporary truck wash off station onsite to remove dust from construction vehicles and equipment before exiting the site, applying water or calcium chloride to bare soil periodically as necessary, maintaining low onsite construction vehicle speeds, and covering stockpiles if they are to remain for more than a few days.
- Construction dump trucks will be covered when exporting from the site.
- Delineate by temporary fencing areas of clearing prior to disturbance to prevent accidental encroachment into wetlands or areas that are not to be disturbed.

- The required two emergency generators will be installed on the south side of the building, which is as far as possible from the residence and Purchase Friends Meeting House properties to the north.
- Sound barriers consisting of sound attenuated enclosures and exhaust silencers will mitigate noise from the generators and 100-foot front and side setback buffers will further reduce impacts from noise on the surrounding neighborhood.
- All construction equipment will be turned off when not in use, as New York State law requires no idling of unused equipment in excess of five minutes.
- Use of ambient sensitive self-adjusting back up alarms.
- Mufflers will be required on all equipment.
- The Project will adhere to the Town/Village of Harrison Noise Ordinance limits. No construction will take place on Sundays.
- The above ground propane storage tank and backup diesel generator tanks will be equipped with overflow fill protections and meet all applicable requirements of Federal, State, and local agencies, including secondary containment.
- Truck drivers will be directed to use major roads and highways where possible to avoid the use of residential roads and back streets. All construction truck traffic will be required to approach and depart the Site from and to the north.
- Retain reusable soil on-site to the extent practical to reduce off-site shipments/truck trips.

Based on these mitigation measures and the results of a thorough environmental review, the DEIS and FEIS concluded that locating the Filtration Plant at the County Parcel would not result in any significant impacts to the environment.

Because the County Parcel is located in the watershed of the Kensico Reservoir, the Filtration Plant and its sewer line require approvals from the NYCDEP, including its approval of the SWPPP. *See* Public Health Law § 1100; 10 N.Y.C.R.R. § 128-3.9; 15 Rules of the City of New York (“**RCNY**”) Chapter 18. To approve the SWPPP, NYCDEP must determine that the Filtration Plant will comply with rigorous standards to protect the reservoir from contamination, degradation and pollution. *See* 15 RCNY § 18-39. As noted above, on May 26, 2023, NYCDEP approved the SWPPP, confirming that the construction and operation of the Filtration Plant at the County Parcel will not harm the Kensico Reservoir and will comply with the stringent performance standards required for new construction in its watershed. Similarly, the NYC Watershed Inspector General, an office within the Environmental Protection Bureau of the New York Attorney General’s office, reviewed drafts of the SWPPP and determined that the final SWPPP had addressed each of its earlier comments.



### **Reasons for Locating the Filtration Plant on the County Parcel**

The SEQRA Findings Statement approved by the WJWW board of trustees on October 12, 2022, selected the County Parcel as the best location for the Filtration Plant, as compared to the WJWW Parcel and the other alternatives studied in the DEIS and FEIS. All three members of the WJWW board – the Town Supervisor/Mayor of the Town/Village of Harrison, the Town Supervisor of the Town of Mamaroneck, and the Mayor of the Village of Mamaroneck – approved the resolution to issue the SEQRA Findings Statement selecting the County Parcel as the location for the Filtration Plant.

The SEQRA Findings Statement acknowledges that the WJWW Parcel has two environmental characteristics that weigh in its favor: (a) unlike the County Parcel, it is not within the Kensico Reservoir watershed; and (b) construction of the Filtration Plant at the WJWW Parcel would require the removal of approximately 366 trees with a diameter of 8" or greater, which is fewer than the approximately 408 trees of this size that would be removed to construct the Filtration Plant on the County Parcel. In considering the first issue, WJWW concluded that the Filtration Plant, as designed, will not result in adverse impacts to the Kensico Reservoir because of the Filtration Plant's comprehensive stormwater management facilities and the requirement that the facility's design, operations, construction and SWPPP comply with the stringent regulations that the NYCDEP has put into place to protect the reservoir. WJWW also noted that water treatment facilities are commonly located within the New York City watershed. As to the issue of tree removal, WJWW noted that the removal of trees at the WJWW Parcel would impact an ecologically valuable native Oak-Tulip Tree Forest as compared to the trees at the County Parcel, most of which are less ecologically valuable invasive species and Successional Southern Hardwood Forest.

Against the two considerations favoring the WJWW Parcel, the SEQRA Findings Statement weighed the following considerations favoring the County Parcel:

- The County Parcel is in a business (non-residence) zoning district, while the WJWW Parcel is in an R-2, One-Family Residence zoning district. As noted above, a key impediment to the Planning Board's completion of action on the prior SEQRA review to build the Filtration Plant on the WJWW Parcel was the perceived conflict and concerns regarding project consistency with surrounding residential land uses given that the WJWW Parcel is situated in the R-2 One-Family Residence district.
- The County Parcel is bordered to the northeast, east, southeast and south by airport-related uses. Within a ½-mile from the County Parcel there are several water supply facilities, including the Rye Lake Pump Station and ultraviolet (UV) treatment facility, and the Purchase Street Water Storage Tanks, all owned and managed by WJWW. The Rye Lake water source is also within a ½ mile from the County Parcel. Interstate 684 is approximately 500 feet from the County Parcel,



and Westchester County Airport is contiguous to the County Parcel. Development of the Filtration Plant on the County Parcel would be consistent with the surrounding utility and transportation facilities.

- By contrast, the WJWW Parcel is adjacent to the airport only on its narrow eastern lot line; it is otherwise surrounded by land zoned for residential use. *See* DEIS Figure 5-3. The WJWW Parcel is adjacent to existing residential uses to the north and a golf course to the south and adjoins the presently undeveloped but approved Sylvan Development residential subdivision to the west, with access to Purchase Street only through this subdivision via a residential side street. The WJWW Parcel is surrounded by fewer utility and transportation land uses and more residential land uses than the County Parcel.
- The construction of the facility on the WJWW Parcel would require disturbance of regulated freshwater wetlands. By contrast, the construction of the Filtration Plant on the County Parcel avoids any disturbance of wetlands.
- The construction of the facility on the WJWW Parcel would involve more extensive construction to provide the requisite utility connections, because the WJWW Parcel is not situated proximate to existing utility lines. All utilities – and a new water main – would have to run along the proposed 2,700-foot long access road within the easement from Purchase Street. DEIS Figure 5-2. The County Parcel has more convenient connections to existing utilities and the existing water main beneath Purchase Street due to its location with frontage on Purchase Street.
- The WJWW Parcel – unlike the County Parcel – has no direct street frontage on Purchase Street, requiring a long driveway and associated increase in tree clearing and construction disturbance. *See* DEIS Figure 5-2. The 12.77 acres of disturbance on the WJWW Parcel is more than double the 6.16 acres of disturbance required for construction of the Filtration Plant on the County Parcel. The construction of the facility on the WJWW Parcel would result in approximately double the extent of impervious surfaces (4.6 acres), as compared to the 2.4 acres of impervious surfaces to be constructed at the County Parcel.

### **The Need for Prompt Approval of the Exchange Transaction**

In consultation with the County, WJWW has proposed the land swap to expedite construction of the Filtration Plant. Since the County expressed its receptivity to the land swap in 2019, WJWW has spent almost four years and \$7 million to date preparing engineering plans, the SWPPP and the required SEQRA documents to move the project forward. At this point, the planning process can go no further unless and until the County approves the Exchange Transaction, because the Town of Harrison Planning Board has stated that it will not schedule a public hearing on WJWW's pending land use applications unless and until the County approves the transaction.

WJWW is under substantial pressure to construct the Filtration Plant as soon as possible. This pressure comes from different sources.

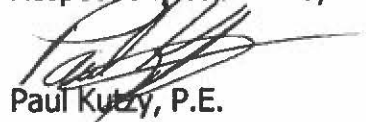
First and foremost is that the Filtration Plant is required to bring the WJWW system into compliance with safe drinking water regulations and ensure the safety of the drinking water that WJWW supplies to up to 100,000 County residents. The federal Safe Drinking Water Act regulations establish a MCL for HAA5 at 0.060 milligrams per liter. 40 C.F.R. § 141.64(b). The EPA has determined that organic materials in surface water interact with required treatment chemicals to form HAA5 in drinking water. *See* National Primary Drinking Water Regulations; Stage 2 Disinfectants and Disinfection Byproducts Rule, 71 Fed. Reg. 388, 393 (Jan. 4, 2006). The EPA has determined that the MCL for HAA5 provides for increased public health protection against the increased risks for cancer and reproductive and developmental health effects (*i.e.*, birth defects) from exposure to HAA5. *Id.* at pp. 394-400. Monitoring data collected by WJWW in the first, second and third quarters of 2019 established a violation of the HAA5 MCL in the WJWW system. In immediate response to these MCL violations, WJWW began an aggressive water distribution system flushing program that wastes approximately 80 million gallons of water per year at a cost of close to \$500,000 per year to water consumers. These measures remain in place and are expected to continue until the Filtration Plant is constructed and operational. As a result of the MCL violation, on November 26, 2019, the EPA ordered WJWW to construct the Filtration Plant to reduce the organic content of the Rye Lake water in the WJWW system, thereby reducing the likelihood of future violations of the HAA5 MCL. And as noted above, WJWW was, many years ago, subject to a state court injunction requiring it to construct the Filtration Plant in order to comply with State law.

The second source of pressure is that U.S. Department of Justice on behalf of EPA and the New York Attorney General's office on behalf of NYSDOH have provided notice to WJWW and its three member municipalities that they will bring enforcement actions against WJWW and the municipalities seeking massive civil penalties of many millions of dollars if a consent decree is not signed committing WJWW and the municipalities to construct the Filtration Plant on an expedited schedule that can only be met by continuing on the path we have been on for the last four years of building the Filtration Plant on the County Parcel. These are not idle threats: statutory penalties under the Safe Drinking Water Act are up to \$32,500 per day per violation, and penalties for violating State law are also substantial. It is the WJWW system water customers or the municipalities who would ultimately bear the cost of paying these civil penalties if the Filtration Plant is further delayed. These enforcement actions can only be resolved by proceeding with the proposed consent decree that is currently being negotiated by the parties – a settlement of the enforcement actions that assumes that WJWW can proceed with its plan to construct the Filtration Plant on the current schedule that takes advantage of the work we have done to design and obtain approval of the Filtration Plant's construction on the County Parcel.

County disapproval of the proposed Exchange Transaction – or prolonged inaction on WJWW’s request for approval – would delay construction of the Filtration Plant thereby putting the health of up to 100,000 County residents at risk. Given the enormous amount of effort required to construct the facility, attempting to move the proposal back to the WJWW Parcel – as the County Parcel neighbors have suggested – would delay its construction by years and add millions of dollars to the project cost and consequently result in even higher water rates for consumers. This delay would have grave consequences for public health by deferring the mitigation of an already existing public health threat that will only be made worse by the progression of climate change. For all these reasons, WJWW respectfully requests that the County approve the proposed Exchange Transaction as soon as possible.

WJWW would be pleased to provide any further information that the County may request to consider the request for approval of the Exchange Transaction.

Respectfully submitted,



Paul Kutzy, P.E.  
Manager, WJWW

cc: Hon. Kenneth Jenkins, Deputy County Executive  
Joan McDonald, Director of Operations  
Hon. Thomas A. Murphy, Mayor, Village of Mamaroneck  
Hon. Rich Dionisio, Supervisor/Mayor, Town/Village of Harrison  
Hon. Jaine Elkind Eney, Supervisor, Town of Mamaroneck

Attachments:

Tab A Draft Exchange Transaction Contract  
Tab B FAA Letter dated September 30, 2022 regarding Exchange Transaction  
Tab C DEIS for Filtration Plant on County Parcel (without appendices)  
Tab D FEIS for Filtration Plant on County Parcel (without appendix B)  
Tab E WJWW SEQRA Findings Statement for Filtration Plant on County Parcel  
Tab F Post-FEIS site plan change resolution and technical memorandum  
Tab G Storm Water Pollution Prevention Plan for Filtration Plant on County Parcel  
Tab H NYCDEP Approval dated May 26, 2023 for Filtration Plant on County Parcel  
Tab I Final Engineering Documents for Filtration Plant on County Parcel  
Tab J Basis of Estimate Cost Report for Filtration Plant on County Parcel



## Westchester Joint Water Works

1625 Mamaroneck Avenue  
Mamaroneck, New York 10543  
www.wjww.com

Telephone: (914) 698-3500  
Fax: (914) 381-4241  
Fax: (914) 381-0349

---

June 28, 2023

Hon. George Latimer  
Westchester County Executive  
148 Martine Avenue, 9th Floor  
White Plains, NY 10601

Hon. Vedat Gashi, Chairman and Honorable Members  
Westchester County Board of Legislators  
148 Martine Avenue, 8th Floor  
White Plains, NY 10601

**Re: Westchester Joint Water Works ("WJWW") Request for County Approval of the Exchange Transaction for Construction of a Filtration Plant in the Town of Harrison**

Dear County Executive Latimer, Chairman Gashi and Members of the County Board of Legislators:

In my letter dated June 15, 2023 (copy attached), WJWW formally requested the County to approve the proposed real estate transaction (the "**Exchange Transaction**") by which the County would deed title of the 13.4-acre County-owned parcel adjoining the County airport (the "**County Parcel**") to WJWW for construction of the Filtration Plant in exchange for a WJWW-owned 13.4-acre parcel, also adjoining the County airport, that WJWW would deed to the County (the "**WJWW Parcel**"). I am writing again to inform the County that on June 27, 2023, the New York State Supreme Court for Westchester County dismissed the only lawsuit that was filed to challenge the proposal to locate the Filtration Plant on the County Parcel. A copy of the Court's decision is attached.

The WJWW Board of Trustees is comprised of the Supervisor/Mayor of the Town/Village of Harrison, the Supervisor of the Town of Mamaroneck, and the Mayor of the Village of Mamaroneck. The litigation challenge that has now been rejected by the Court had sought to nullify the unanimous resolution of the WJWW Board, made on October 12, 2022, to approve a resolution selecting the County Parcel as the best location for the Filtration Plant pursuant to the State Environmental Quality Review Act ("SEQRA"). The Court upheld WJWW's determination that, from an environmental perspective, the County Parcel is the best location for the Filtration Plant. *See* Decision, pp. 14-18.

The Court also rejected petitioner's contention that the Filtration Plant would result in significant noise impacts (Decision, pp. 9-10), rejected petitioner's contention that the Filtration Plant would result in significant historic and archaeological resource impacts (*id.*, pp. 10-12), rejected petitioner's contention that the Filtration Plant would result in significant adverse visual impacts (*id.*, p. 11); rejected petitioner's contentions that the Filtration Plant would result in significant growth-inducing impacts (*id.*, pp. 12-13), and rejected petitioner's challenge to the assessment of the Filtration Plant's effect on water rates. *Id.*, pp. 13-14.

The Court also held that WJWW complied with all of the required SEQRA procedures in preparing the DEIS, FEIS and SEQRA Findings Statement for the Filtration Plant. *See* Decision, pp. 3-5.

More specifically, with regard to the selection of the County Parcel as the preferred location for Filtration Plant, the Court stated that:

[T]he record reflects that [WJWW] ... considered the [County Parcel] ... location preferable due to the lesser impact that it would present to the significant existing and progressing residential use of the areas lying in close proximity to the [WJWW Parcel].... [T]he Court finds that the record amply demonstrates that [WJWW] ... undertook the requisite hard look at feasible alternatives to the [County Parcel] ... for the location of the [Filtration] Plant, and further provided a reasoned elaboration for its conclusion that the development and operation of the Plant upon the [County Parcel] ... would be a superior choice when compared against the ... alternative [the WJWW Parcel].... [T]his Court's review of the respondent WJWW's determination to deem the DEIS and FEIS complete ... reveals that the respondent [WJWW] identified the pertinent areas of environmental concern, took a hard look at those areas and made a reasoned elaboration of the basis for its determination.....

Decision, pp. 16-18.

Regarding the issue of airport growth, the Court stated that:

[T]he primary concern raised by the petitioner relates to its speculative concern that the development of the [Filtration] Plant upon the ... [County Parcel] might impact the County's potential plan for growth of the airport in the future .... , [but] Westchester County's representation that it has no intention of making any use of that land parcel for the expansion of the ... [airport], nor any other development or use aside from serving as an undeveloped buffer between the ... [airport] and surrounding properties is referenced within the DEIS and the Findings Statement.... [T]he record is devoid of any indication that the development and



operation of the Plant to filter and treat water from the nearby Rye Lake could in some manner spur or otherwise induce commercial, residential or any other form of increased development upon any parcel of land associated therewith, which leaves the petitioner's contrary suggestion to be lacking a fact-based foundation.... Accordingly, the Court finds that the record amply demonstrates that [WJWW] ... undertook the requisite hard look at the potential growth inducing impact of the proposed [Filtration] Plant....

Decision, pp. 12-13.

Regarding the issue of noise buffering, the Court stated that:

[T]he primary concern which the petitioner raises is related to the proposed removal of trees incident to the diminishment of noise buffering that is anticipated by the petitioner as a result ... As detailed in the DEIS and FEIS, and summarized in [WJWW's] ... Findings Statement, the proposed construction of the Plant could require the removal of approximately 408 trees, whereas the landscaping plan associated with the development of the Plant site provides for the installation/planting of approximately 300 new trees, in addition to the existing unspecified number of trees which will remain undisturbed within the area lying between the Plant and the Meeting House. In addition, the DEIS, FEIS and Findings Statement reveal that although the Meeting House is currently impacted by significant levels of noise generated by the routine operation of the ... Airport due to its location beneath the flight path used by planes accessing one of the airport runways, the proposed location of the Plant upon the undeveloped land lying between the Meeting House and the airport-related facilities would serve as an additional noise buffer inuring to the benefit of the petitioner.... Furthermore, the record demonstrates that the only anticipated exterior noise emanating from the Plant's operations would be generated by the Plant's own air-conditioning units and [emergency] generators, which would be mitigated by sound-attenuated enclosures and exhaust silencers.... [T]his Court finds that the record reveals that [WJWW] ... made a reasoned elaboration of the basis for its challenged determination as required by SEQRA.

Decision, pp. 9-10.

Regarding the issue of visual impacts, the Court stated that:

In relation to [the potential for visual] impacts upon the petitioner's members, the record reveals that the ... DEIS, as well as ...


[WJWW's] Finding Statement, reflect its consideration and recognition of the mitigating effects anticipated from the existing trees and the additional trees to be planted in the buffer area of concern to the petitioner, as well as the several hundreds of feet of distance between all points of the proposed Plant and the petitioner's property, the design of the proposed Plant's dimensions and appearance in compliance with all applicable zoning codes, [and] the design of exterior lighting to minimize its exposure to the Meeting House and its surrounding environs....

Decision, p. 11.

\* \* \* \*

WJWW would be pleased to provide any further information that the County may request to consider the request for approval of the Exchange Transaction.

Respectfully submitted,



Paul Kurzy, P.E.  
Manager, WJWW

cc: Hon. Kenneth Jenkins, Deputy County Executive  
Joan McDonald, Director of Operations  
Hon. Thomas A. Murphy, Mayor, Village of Mamaroneck  
Hon. Rich Dionisio, Supervisor/Mayor, Town/Village of Harrison  
Hon. Jaine Elkind Eney, Supervisor, Town of Mamaroneck

Attachments:

Tab A WJWW Letter dated June 15, 2023  
Tab B Court Decision dated June 27, 2023





## MEMORANDUM OF LEGISLATION

DATE: February 02, 2024

TITLE: Restoration of Street Surfaces After Excavation

SPONSOR: Minority Leader James Nolan, Majority Leader Tyrae Woodson-Samuels

PURPOSE OR GENERAL IDEA OF BILL: To require that within 60 days of completing work requiring the excavation of any county, road, sidewalk, or parkway that the same be fully restored from curb to curb.

INTENT: To ensure complete restoration after repairs and prevent patchwork repairs.

JUSTIFICATION: Westchester County does not currently have a law mandating that repairs must be made from curb to curb. The County Department of Public Works requires a permit for work on County roads, and the permittee must agree that "any present or future damage, injury to or disturbance of the highway, its pavements, slopes or gutters, caused by placing of any structures pursuant to the terms of the permit, shall be immediately repaired by the Permittee at his or its own expense and to the satisfaction of the Commissioner." The application specifies that replacement pavement "must be at least 10 feet long as measured parallel to the center line of the pavement."

Many municipalities in Westchester have passed legislation specifically requiring that restoration of pavement be made from curb to curb. For example, Bronxville Village Code Section 260- 26.1(A)(3) provides that "restoration of pavement shall be curb to curb ... Where no curb exists, the restoration shall extend to the existing pavement limits." Rye Brook Village Code Section 215-7 (C) states that for final restoration, "if the patch falls within 18 inches of the curb or pavement edge, the patch shall extend to the curb or pavement edge." Yonkers City Code Section 96-2(C) states that "If any excavation for which a permit has been issued hereunder exceeds 25 feet in length, the permittee shall be responsible for resurfacing the street from curb to curb over the entire area or as determined by the City Engineer. Where no curb exists, the resurfacing shall extend to the existing pavement limits or as determined by the City Engineer."

Requiring complete coverage rather than spot repaving is not just more aesthetically acceptable, but also more economical in the long run. It can prevent rutting and erosion from water seepage into surface cracks, which would then require further repairs. It will also set clear standards as to what is required for repairs.

PRESENT LAW: None.

FISCAL IMPACT: TBD

cc: Marcello Figueroa, Legislative Director  
Dylan Tragni, Chief of Staff

**Catherine F. Parker**  
**Legislator, 7th District**  
Chair, Committee on Appointments



**Committee Assignments:**  
Economic Development  
Veterans, Seniors & Youth

### MEMORANDUM OF LEGISLATION

DATE: February 2, 2024

TITLE: Utility Poles on County Road Rights-of-Way

SPONSOR: Legislator Catherine F. Parker

PURPOSE OR GENERAL IDEA OF BILL: To create a law requiring utility companies that utilize Westchester County road right-of-way to remove their lines and equipment from damaged poles in a timely manner.

INTENT: To enhance public safety and the aesthetic appearance of roadways in Westchester County by ensuring that utility companies repair and replace damaged utility poles without delay.

JUSTIFICATION: Public utility companies place poles in County road rights-of-way to facilitate the delivery of electric, telephone and cable television services to County residents. These poles are often damaged by traffic accidents or adverse weather conditions. Public safety can be compromised when utility lines and equipment remain affixed to damaged poles for unreasonably long periods of time. A utility company's delay in removing lines and equipment from damaged poles in turn delays the removal of the pole itself, and simultaneously causes many aesthetically unpleasant "double woods" along roadways.

Other municipalities in New York have addressed this issue. For example, Suffolk County Code Section 808-3 provides that if the County notifies a public utility that a pole in a County road right-of-way is damaged and poses a potential threat to public safety, the utility must remove its plant from the damaged pole with 15 days of receiving notice of such from the County. If there is a double pole in a County road right-of-way, the utility must remove the top plant on the double pole within 60 days of receipt of notification from the County.

PRESENT LAW: None.

FISCAL IMPACT: TBD

cc: Marcello Figueroa, Legislative Director  
Dylan Tragni, Chief of Staff



## MEMORANDUM OF LEGISLATION

DATE: February 2, 2024

TITLE: Prohibit Illegal Dumping

SPONSOR: Legislator David Tubiolo, Majority Leader Tyrae Woodson-Samuels

PURPOSE OR GENERAL IDEA OF BILL: To prohibit dumping of any kind including commercial and household waste upon any county owned street, lot, park, public place or other areas, public or privately owned. Such dumping would be punished with criminal and/or civil penalties. The law should be modeled after City of Yonkers Code Part VIII Chapter 91 Section 38.

INTENT: To enact a county-wide law that would prohibit the illegal dumping of any kind in areas not designated to receive such waste. This would inherently add a layer of environmental protection to county owned property and its resources.

JUSTIFICATION: Throughout the County there are many complaints of illegal dumping especially in our County Parks. While municipalities in Westchester County such as Yonkers and Greenburgh have illegal dumping laws, they do not capture County owned property and therefore the laws are unable to be enforced. This law would create a deterrent against such illegal dumping by creating a unique fine and penalty structure to specifically target this behavior.

An example of the need for a county-wide law can be seen through City of Yonkers Code Part VIII: Garbage, Landfills and Public Utilities, Chapter 91 Section 38 which addresses illegal dumping in the City of Yonkers by stating “ *It shall be unlawful for any person, his or her agent or employee or any person under his or her control to suffer or permit any dirt, sand, gravel, clay, loam, stone, rocks, rubble, building rubbish, sawdust, shavings or commercial or household waste, refuse, ashes, manure, garbage, rubbish or debris of any sort or any other organic or inorganic material or thing being transported in a dump truck or other vehicle to be dumped, deposited or otherwise disposed of in or upon any street, lot, park, public place or other area, whether publicly or privately owned.* ” However, the law is limited to areas that fall within the jurisdiction of the City of Yonkers. However, a county park within Yonkers, such as Tibbetts Brook Park, falls outside of the city’s enforcement. fails to capture county-owned property and parks that are within the city. This law would encompass county-owned property throughout Westchester, in every municipality.

PRESENT LAW: There is no county law that specifically prohibits illegal dumping.

FISCAL IMACT: TBD

cc: Marcello Figueroa, Legislative Director  
Dylan Tragni, Chief of Staff