

Sec. 873.1329. Air Quality; Onroad and nonroad vehicles; Emission standards.

[Added by Act No. 19-2006]

1. Definitions. Whenever used in this section, the following terms shall have the meaning indicated:
 - a. "Best Available Technology" (BAT) means a system for reducing the emission of pollutants which is based on technology verified by the United States Environmental Protection Agency or the California Air Resources Board or which has been identified pursuant to New York City's Department of Environmental Protection (under Local Law 77 § 24-163.3d.(1)) that
 - i. reduces diesel particulate matter emissions by at least 85 percent, as compared to a similar engine operating on traditional diesel fuel without emission control technology, or reduces engine emissions to 0.01 grams diesel particulate matter per brake horsepower per hour or less; and
 - ii. achieves the greatest reduction in emissions of nitrogen oxides at a reasonable cost and in no case produces a net increase in nitrogen oxides in excess of 10%.
 - b. "Contractor" means any person (as defined in Section 873-1301(27), who enters into an agreement or contract with Westchester County valued at more than Editor's Note: So in original; should be "than." \$150,000 (such sum to increase \$5,000 on the first day of January each year following the enactment of this section until it reaches a maximum of \$250,000) to perform County work or any person who enters into an agreement or contract with such person to perform County work.
 - c. "County work" means to provide labor, services, material and/or equipment which traditionally has been provided by the government of the County of Westchester through county employees or contractors except it does not include labor, services, materials and/or equipment provided by (1) a common carrier, (2) a shipping company (including overnight delivery companies) or (3) a manufacturer or delivery company which does not deliver materials or equipment to Westchester County government on a regular and frequent basis.
 - d. "Nonroad diesel engine" means an internal combustion engine (including the fuel system) operating on diesel fuel not used in a motor vehicle or a vehicle used solely for competition or not subject to standards promulgated under United States Code Title 42 sections 7411 or 7521, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.
 - e. "Nonroad diesel vehicle" means a vehicle that is powered by a diesel engine fifty horsepower or greater, including but not limited to excavators, backhoes, cranes, compressors, bulldozers and similar equipment, but not including a vehicle used solely for competition.
 - f. "Onroad diesel vehicle" means any selfpropelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel.
 - g. "Owned, leased and/or operated by or on behalf of Westchester County" includes all diesel-powered vehicles owned by Westchester County or a contractor, which are used by Westchester County or a contractor to do County work.
 - h. "Reasonable cost" means that the cost to purchase and install the system with technologies to reduce both Particulate Matter and Nitrogen Oxides does not exceed the cost of the system without Nitrogen Oxide control by more than thirty percent.
 - i. "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

- j. "Westchester County" means all departments, agencies, bureaus, boards, commissions, sewer and water and other districts, the Westchester Community College, the Westchester County Airport and all other entities whose expenses are shown in the Operating Budget of Westchester County and/or are paid in whole or in part from Westchester County funds.
2. Requirements: ultra low sulfur diesel fuel and best available technology.
 - a. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County when used to perform County work as defined herein shall be powered by ultra low sulfur diesel fuel beginning as soon as practicable but in no event later than September 1, 2006.
 - b. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County equipped with an model year 2003 or older engine when used to perform county work as defined herein shall utilize the best available technology in accordance with the following schedule:
 - i. 35% of all such motor vehicles in each department or agency by September 1, 2007;
 - ii. 65% of all such motor vehicles in each department or agency by September 1, 2008;
 - iii. 100% of all such motor vehicles in each department or agency by September 1, 2009.
 - c. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County when used to perform county work as defined herein having a gross vehicle weight rating of more than 14,000 pounds shall utilize the best available technology or be equipped with an engine certified to the applicable 2007 United States environmental protection agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent, in accordance with the following schedule:
 - i. 35% of all such motor vehicles in each department or agency by September 1, 2007;
 - ii. 65% of all such motor vehicles in each department or agency by September 1, 2008;
 - iii. 100% of all such motor vehicles in each department or agency by September 1, 2009.
 3. Agreements and contracts. Westchester County shall specify in all of its solicitations, bids and requests for proposals to perform County work issued after the effective date hereof and in all contracts pursuant thereto that all contractors in the performance of each such contract shall comply with the provisions of Paragraph 2 of this section.
 4. Determination of fuel non-availability. If sufficient quantities of ultra low sulfur diesel fuel are not available to meet the needs of Westchester County or a contractor to fulfill the requirements of this section, the Commissioner may issue a written determination permitting the use of diesel fuel with a sulfur content of no more than thirty parts per million to fulfill the requirements of this section provided that Westchester County or the contractor to the extent practicable shall use whatever quantity of ultra low sulfur diesel fuel is available. Such determination shall be made on a case by case basis upon written application of Westchester County or a contractor which determination shall expire sixty days thereafter and may be renewed in writing for additional periods of sixty days.
 5. Determination of best available technology.
 - a. On or before September 1, 2006, the Westchester County Commissioner of Health, or such other Commissioner as the County Executive may designate in writing to the Clerk of the Board of Legislators, shall, in consultation with the Commissioners of Public Works and Transportation, determine the best available technology as defined herein for

reducing the emission of pollutants for each type of diesel-powered onroad and nonroad vehicle to which this section applies and the strategy to be used with respect to each type of vehicle to which this section applies.

- b. The Commissioner shall publish a list, delivered in writing to the Clerk of the Board of Legislators, containing such determinations, which the Commissioner shall revise, as needed, on a regular basis, but in no event less often than once every twelve months.
 - c. Neither Westchester County nor any contractor shall be required to replace best available technology or other authorized technology utilized for each diesel-powered motor vehicle in accordance with this section for three years from having first utilized such technology for said vehicle.
 - d. For new engines to be delivered after the effective date of this act, BAT may be installed by the Original Equipment Manufacturer (OEM) and need not be shown on the EPA or CARB. verified retrofit list, provided that the technology otherwise complies with the definition of BAT as defined herein.
6. Applicability. This act shall not apply:
- a. where federal or state funding precludes the requirements of this act;
 - b. where such applicability would interfere Editor's Note: So in original; should be "interfere." with the purchase, lease or operation of emergency response vehicles operated by the Department of Emergency Management or the Department of Public Safety;
 - c. to purchases that are determined to be emergency procurements as by the Commissioner of Health or accelerated procurements compliant with the County Procurement Policy as adopted by the Board Editor's Note: So in original; should be "Board." of Legislators as Act No. 23 of 1992;
 - d. to any agreement or contract entered into prior to the effective date hereof;
 - e. to a diesel-powered nonroad vehicle where.
 - i. the commissioner certifies that the best available technology for reducing the emission of pollutants as required herein is unavailable for such vehicle, in which case such agency or contractor shall use whatever technology available and appropriate for such vehicle that the commissioner approves for reducing the emission of pollutants; or
 - ii. the vehicle is used for fewer than five calendar days per Editor's Note: So in original; apparently should be "per." contract; or
 - iii. the commissioner issues a written waiver based upon a finding that the use of the best available technology for reducing the emission of Editor's Note: So in original; apparently should be "emission of pollutants." may present a hazard or threat to the safety of the operator, other workers or members of the public.
7. Reporting.
- a. On or before April 1, 2007, and every succeeding April 1, all Westchester County departments, agencies, bureaus, boards, commissions, districts and other entities to which this act applies shall report to the Clerk of the Board of Legislators on the use of ultra low sulfur diesel fuel in onroad and nonroad diesel vehicles and the use of the best available technology for reducing the emission of pollutants and such other authorized technology in accordance with this act for the immediately preceding fiscal year. This report shall include, but not be limited to
 - (i) the total number of onroad and nonroad diesel vehicles it owned, leased and/or operated;

- (ii) the number of such onroad and nonroad diesel vehicles that were powered by ultra low sulfur diesel fuel;
 - (iii) the number of such onroad and nonroad diesel vehicles that utilized the best available technology or retrofit technology, including an itemization by vehicle model and the type of technology used for each vehicle;
 - (iv) the number of onroad and nonroad diesel vehicles that utilized other authorized technology in accordance with this act, including an itemization by vehicle model and the type of technology used for each vehicle;
 - (v) all findings, determinations and renewals of such findings and determinations which it issued or which were issued relative to said entity pursuant to this act, which shall include, but not be limited to the quantity of diesel fuel needed to power each onroad and nonroad diesel vehicles owned by, operated by or on behalf of or leased by the entity or used to fulfill the requirements of a public work contract for such entity;
 - (vi) specific information concerning the availability of ultra low sulfur diesel fuel or low sulfur diesel fuel where it is used;
 - (vii) detailed information concerning the entity's and its or contractor's efforts to obtain ultra low sulfur diesel fuel and low sulfur diesel fuel, and
 - (viii) all findings, determinations and waivers, and renewals thereof issued including all specific information submitted by an entity or contractor upon which such are based authorizing alternative technology, if any, utilized instead of the best available technology for reducing the emission of pollutants.
- b. Notwithstanding the foregoing, whenever a determination pursuant to subdivision 4 above is in effect, information regarding alternative fuel shall be reported wherever information regarding ultra low sulfur diesel fuel is required to be reported.
8. Contractor violations. The Commissioner is authorized to enforce the provisions of this section.
- a. Any contractor who violates any provision of this section shall be liable for a civil penalty not to exceed ten thousand dollars plus twice the amount of money saved by such contractor for failure to comply with this section.
 - b. Any contractor who makes a false claim may be liable for a civil penalty not to exceed twenty thousand dollars, in addition to twice the amount of money saved by such contractor as a result of having made such false claim.
9. Miscellaneous. Nothing in this section shall be construed to limit Westchester County's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification as a vendor, or otherwise deny a person or entity public entity business.