



**TO: SUFFOLK COUNTY LEGISLATURE
SUFFOLK COUNTY EXECUTIVE STEVE LEVY**

**FROM: JOSEPH M. GERGELA, III
EXECUTIVE DIRECTOR, LONG ISLAND FARM BUREAU**

DATE: DECEMBER 1, 2004

**RE: Introductory Resolution No. 2102
Title: ADOPTING LOCAL LAW -2004, A LOCAL LAW TO PROMOTE THE
HEALTH OF SUFFOLK COUNTY RESIDENTS BY LIMITING NON-ESSENTIAL
USE OF TOXIC CHEMICAL PESTICIDES IN SUFFOLK COUNTY.**

Long Island Farm Bureau is a membership association of over 7,200 farmers, fishermen, landscapers, agribusinessmen and individuals interested in a rural quality of life. While we recognize the intent of the Suffolk County Legislature to protect the citizens and environment of Suffolk County, Introductory Resolution No. 2102 entitled 'A Local Law to Promote the Health of Suffolk County Residents by Limiting Non-essential Use of Toxic Chemical Pesticides in Suffolk County' is beyond the County's realm of statutory authority, expertise, nor is it necessary. We note the proposed legislation allows for an agricultural exemption; however, our concern is the precedent such legislation will set, if it should be adopted. We believe I.R. 2102 is a wasteful, redundant duplication of regulation and enforcement tasks already well-executed at the Federal and State levels of government. For Suffolk County to create another level of government bureaucracy is counter-productive to the goals of our residents and the business community. Suffolk County should strive to reduce bureaucracy, not increase it.

Long Island Farm Bureau is strongly opposed to this proposed legislation for the following reasons:

1. Pesticides are regulated by the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, and at the State level by the Department of Environmental Conservation under Section 33 of the New York State Environmental Conservation Law. Registration of pesticide products and certification of applicators using pesticides are under the jurisdiction of the United States Environmental Protection Agency and New York Department of Environmental Conservation. As stated under Title 3-33-0303 of the New York State Environmental Conservation Law (ECL) – Powers and Duties of the Commissioner and the Department: 1.) Jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides is by this Article vested exclusively in the Commissioner. This law has been interpreted by the courts of our state to completely pre-empt local regulation. The argument that this local law does not come under the purview of Article 33 of the ECL is clearly contradicted by two important court decisions against Long Island local governments, *Long Island Pest Control Ass'n v. Town of Huntington* and *Ames v. Smoot*.
2. In *Long Island Pest Control Ass'n v. Town of Huntington*, the Town of Huntington's effort to assert local control over pesticide use was struck down by the State's Appellate Court. The Town of Huntington had enacted an ordinance creating a pesticide control board delegating to it the authority to register all pesticides intended for use or sale in the Town and forbidding the sale or use of unregistered pesticides. In finding that the local law was invalid, the Court concluded that Article 33 of the ECL made it clear that its purpose was to occupy the entire field of pesticide regulation.

3. In *Ames v. Smoot*, a local law of the Village of Laurel Hollow prohibiting aerial spraying was declared void by the State's Appellate Court. Most significantly, the County of Suffolk should be aware that ECL Article 33 and its attendant regulations (6NYCRR Parts 325, and 326) clearly evince the State's intention to pre-empt all local regulation of pesticide use. The very issues which are being put forth by the County Legislature have been dealt with by the Supreme Court Appellate Division Second Department in 1983 in the case of *Ames v. Smoot*, 471 N.Y.S.2d 128, 98 A.D.2d 216 (App. Div. 2d Dep't 1983). In that case the Appellate Division made clear that a law of the Village of Laurel Hollow in Nassau County prohibiting aerial spraying of pesticides was void as it was pre-empted by Article 33 of the ECL and that local government was precluded from creating legislation in the field of pesticide use and application. Most significantly, *Ames v. Smoot* dealt directly with the issue of aerial application:

Furthermore, there is no foundation for the assertion that Article 33 is silent on the subject of aerial spraying. The Statute authorizes the Commissioner to promulgate regulations to 'prescribe methods to be used in the application of pesticides, including the time, place, manner and method of application and equipment used' (ECL 33-0303, subdiv.3, ¶e). Not only is aerial spraying a common method of applying pesticides, but the statute specifically defines the term 'application of pesticide' to include any application by 'aircraft or ground equipment' (ECL 33-0101, subdiv.7). **It is purely sophistry to argue that because the State statute does not recite in haec verba that aerial spraying is permitted or prohibited, it does not contemplate regulation of such a method of application.** (Emphasis supplied.)

The Appellate Division stated "Article 33 vests exclusive jurisdiction in the Commissioner relating to 'all matters pertaining to the distribution, sale, use and transportation of pesticides' without restricting the jurisdiction solely to commercial users". Additionally, the *Ames* Court made clear that the State intended a uniform system of regulation that could not be tampered with by localities:

ECL Article 33 expressly asserts the need for uniformity by declaring that 'it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to pesticides' and by authorizing the Commissioner to adopt regulations in conformity with agencies of the United States government (ECL 33-0303, subdiv.4; 6NYCRR 320.1). If the enhancement of national uniformity is a significant target of Article 33, it would be a peculiar interpretation to view the Statute as permitting New York's 62 counties, 929 towns, 556 villages and 62 cities (see 1980-1981 New York State Legislative Manual, pp 956-1007) to adopt their own regulatory schemes concerning the use of pesticides within their geographical limits (emphasis added).

Education and training are the key elements to appropriate pesticide use, regardless of whether the individual is a homeowner or certified applicator. People need to understand the important role pesticides play in protecting public health (ex., eliminating malaria in the United States). People also need to understand that proper knowledge and training are crucial in order to ensure that pesticides are correctly applied, stored, and

disposed of. Rather than pursue a piece of legislation which will surely invite litigation, we urge the Legislature and County Executive to adopt a County-wide Community Integrated Pest Management (IPM) program. The Community IPM program (formerly the Urban IPM program) is a New York State program, developed at Cornell University, which has been funded at the State level in the amount of \$200,000 per year for the past five years, with Long Island receiving one third of the funding for staff and support. Nassau/Suffolk State Senator Carl Marcellino has championed the Community IPM program. This year, Governor Pataki cut the program funding from the State budget. The current situation presents itself as an opportunity for the Suffolk County Legislature and County Executive to step up and do the job of protecting Suffolk County citizens' health and environment. The framework for this program is in place as developed by Cornell University. Long Island Farm Bureau supports fine-tuning the Community IPM program for Suffolk County's specific needs using the proficiency of the Suffolk County Department of Health Services and Cornell Cooperative Extension. The necessary education, training and outreach can be successfully accomplished through the Cornell Cooperative Extension, provided Suffolk County funds a more extensive program. Rather than spending tens of millions of dollars on more red tape and paperwork by adopting this proposed legislation, Suffolk County should fund the local component of this established state-wide program, tailor it to Suffolk County's needs utilizing the Department of Health Services and Cornell Cooperative Extension, and develop the Suffolk County Community IPM program for the benefit of Suffolk's residents.

From its inception, Suffolk County Legislator Vivian Vilorio-Fisher effectively worked with the Suffolk County Agricultural Environmental Management Task Force for Nitrogen and Pesticide Reduction. This task force outlined in its Final Report delivered May 26th of this year, a comprehensive stewardship program aimed at improving the quality of our groundwater and surface waters in Suffolk County. According to the Task Force Final Report, "[f]unding approaching \$3.5 million per year for the first five years is recommended" (p ii.). The Legislature recently approved start-up funding for this multi-million dollar program in the amount of \$171,646 using the Suffolk County Water Protection Fund. If the Suffolk County Legislature is serious about protecting the health of Suffolk County residents, dedicate the funding necessary to properly implement and develop the Suffolk County Agricultural Steward Program. Do not wantonly throw away millions in tax dollars on frivolous legislation promoting a duplication of regulations and enforcement already executed by the Environmental Protection Agency and New York State Department of Environmental Conservation. Instead, commit that money where it can be put to good use. Long Island Farm Bureau urges the Suffolk County Legislature and the County Executive to sincerely provide for the good health of Suffolk County's citizens and our environment by funding those programs, namely the Community Integrated Pest Management program and the Suffolk County Agricultural Stewardship Program, which have merit and will provide assured, long-term, measurable environmental benefit.

ACTION NEEDED: LONG ISLAND FARM BUREAU OPPOSES INTRODUCTORY RESOLUTION NO. 2102 - A LOCAL LAW TO PROMOTE THE HEALTH OF SUFFOLK COUNTY RESIDENTS BY LIMITING NON-ESSENTIAL USE OF TOXIC CHEMICAL PESTICIDES IN SUFFOLK COUNTY.
