Why is Pesticide Notification Important?

New Yorkers are becoming increasingly concerned about the impacts of pesticides on human health and natural resources. Pesticides are chemical or biological substances designed to kill, control or repel a variety of living organisms, such as insects (insecticides), weeds (herbicides), mold or fungus (fungicides) and rodents (rodenticides). They are poisons, and their use is regulated by both the United States Environmental Protection Agency (EPA) and the New York State Department of Environmental Conservation (DEC). The fact that a pesticide is registered by the EPA does not mean that it is safe; it simply means that standards have been established to minimize the risks associated with its use. Many widely-used pesticides were registered many years ago under less stringent standards than are used today. They can pose health risks, even when used and applied in full compliance with manufacturers' recommendations and legal requirements.

Large amounts of pesticides are being applied every year in New York. In 1998, DEC reported that 4.5 million gallons and 29.4 million pounds of pesticides were applied by commercial applicators and sold to farmers statewide. To find out the quantity and types of pesticides used in a particular county you can access the state database at the Cornell website: http://pmep.cce.cornell.edu/regulation/psur. Several pesticides commonly used in lawn care are classified as probable or possible carcinogens by the EPA. Some of these and other pesticides are associated with a variety of other health problems including damage to the liver, kidneys, and nervous and endocrine systems, and acute skin irritation and respiratory distress. Infants and young children, whose body systems are still developing, are particularly susceptible to these risks, as are pregnant women and the elderly and infirm. Inadvertent exposure to pesticides can occur when they are applied without notice on neighboring properties, or in apartment buildings, schools or daycare centers. To limit the likelihood of inadvertent exposure and the resulting health risks, a number of state laws now require that individuals be notified when pesticides are being applied in these areas.
Since the 1980's, commercial pesticide applicators have been subject to certain contractual and notification requirements. (See section below entitled "Other Requirements for Commercial Applications of Pesticides.") "Commercial applicators" includes all businesses and individuals who apply pesticides for hire, such as lawn care companies, exterminators and groundskeepers. They are distinguished from "residential" applications, where an individual applies pesticides to his or her own residence or grounds. Agricultural pesticide applications are exempt from state pesticide notification requirements. In 2000, after many years of public debate, legislation was enacted (chapter 285 of the Laws of 2000) requiring notice of pesticide applications in schools and daycare centers, and providing counties with the option of requiring advance notification to neighbors before both commercial and residential applications of lawn care pesticides.

"Neighbor Notification" for Lawn Applications
The new state legislation authorizes counties and New York City to adopt local laws that establish significant new notification requirements for commercial and residential lawn applications (agricultural, golf course and turf farm applications are excluded). If a county "opts-in" and adopts such a law:

- Commercial applicators must provide 48 hours' advance written notice to occupants of neighboring dwellings with property lines within 150 feet of the application. In the case of apartment buildings, notice must be given to the owner or owners' agent, who must in turn provide advance notice to the residents of the building. Environmental Conservation Law ("ECL") § 33-1004(1)(b). The notice must at a minimum provide the following information:
  - the address of the premises where the pesticide is being applied;
  - the name, telephone number and pesticide business registration number or certified applicator number of the pesticide applicator;
  - the specific date and two rain dates for each application;
  - the name(s) and EPA registration number(s) of the pesticide(s) being applied; and
  - a prominent statement suggesting the recipient take precautions to minimize exposure and providing the telephone numbers of pesticide information lines to obtain information about the pesticide being applied.

ECL § 33-1005(3). Commercial applicators are subject to substantial fines and criminal prosecution for violations of these requirements. ECL § 71-2907.

- The above requirements do not apply to:
- applications of anti-microbial products (disinfectants), biopesticides or substances exempt from federal pesticide regulation;
- use of pesticides in aerosol cans for personal protection;
- use of bait in tamper-resistant containers;
- granular applications;
- spot applications of less than 9 square feet;
- applications by direct injection;
- use of boric acid or horticultural nonsynthetic soaps and oils;
- applications in cemeteries; and
- emergency applications to protect against an imminent threat to human health (which must be immediately reported to the Commissioner of the New York State Department of Health).

- Persons applying pesticides on their own property to an area greater than 100 square feet must place visible markers along the perimeter on the day of application with notices to warn others that pesticides have been applied and not to remove the markers for 24 hours. ECL § 1004(1)(c). This provides warning for people to avoid the treated area and keep their children and pets away.

- Retail stores selling pesticides must post a sign warning customers to follow label directions, informing them of the posting requirements, and recommending that they notify their neighbors before the application. ECL § 1004(1)(a).

It is important to note that the above requirements only apply in counties that have adopted a local law to implement them. If your county has not adopted such a law, you may wish to contact your county legislators and encourage them to do so. A list of the chairs of all the county legislatures and a model local law to implement these new requirements are printed at the end of this guide. The local law must follow the language of the state law exactly. This is because pesticide regulation has been held to be a matter for state control, and an area in which local governments cannot act except as specifically authorized by the state.

**Other Requirements for Commercial Applications of Pesticides**

Existing law requires anyone who engages in the commercial application of pesticides to be certified by the DEC. ECL § 33-0905(1). Violation of any statute or regulation governing pesticide applications can subject a certified applicator to revocation of his or her certification and penalties. ECL § 33-0909(1). With respect to commercial lawn applications, ECL §§ 33-1001 and 1003 require applicators to:

- Enter into a written contract with the owner of the property on which pesticides are to be applied, specifying the approximate date or dates of application, the number of applications, and the cost; a list of the
pesticides to be applied; and any warnings regarding human or animal
health or the environment that appear on the pesticide labels. Verbal
agreements between an applicator and homeowner are not acceptable.

- Notify the owner if the date of application needs to be changed, and obtain
  the owner's acceptance of the new application date.
- Place clearly visible markers along the perimeter of application areas on
  the day of application, with notices instructing people not to enter the area
  or remove the markers for 24 hours.

With respect to indoor or outdoor applications on residential premises,
ECL § 33-0905(5) imposes the following notice requirements:

- When pesticides are applied in or on the premises of a one- or two-family
dwelling, the applicator must, prior to the application, provide the
  occupants with a written copy of the information and warnings included
  on the label of the pesticide to be applied.
- When pesticides are applied in a multiple dwelling or nonresidential
  building, the applicator must, prior to the application, provide to the owner
  of the building or the owner's agent, a written copy of the information and
  warnings included on the label of the pesticide to be applied. The owner or
  agent must provide this information to the occupants of the building at
  reasonable times upon request. Where a resident of an apartment building
  retains an applicator to apply pesticides in the resident's apartment, the
  applicator must provide the same information to the occupants of the
  apartment prior to the application.

State law does not require landlords to give prior notification to tenants
prior to pesticide applications. However, a tenant is free to request prior
notification and may be able to obtain such a requirement as a term of his
or her lease.

**Notification of Pesticide Applications in Schools**

- The school must provide written notice to staff and parents or guardians,
at the beginning of each school year (or within one week of a student's
enrollment), informing them that:
  - pesticides may be used at school facilities or on school grounds
    throughout the school year;
  - the school is required to maintain a list of staff and parents who
    wish to receive 48 hours' advance written notice of pesticide
    applications, with instructions on how to register to receive such
    notice; and
  - inquiries for more information should be directed to a particular
    school contact person at a specified telephone number.
• Three times a year, following winter and spring recesses and the end of the school year, the school must provide written notice to all staff and parents informing them of the date, location and product used for each pesticide application at the school since the last notice. This notice must again state that the school is required to maintain a list of staff and parents who wish to receive 48 hours' advance written notice of pesticide applications, provide information on how to register for such notice and how to obtain more information about the pesticides used, and provide the name and number of a school contact.

• At least 48 hours prior to the application of a pesticide at a school facility, the school must provide written notice to those who have requested it, including the specific date of application and two rain dates, if applicable, and the product name and EPA registration number of the pesticide being applied. The notice must contain language encouraging the parent to discuss with the school representative the precautions being taken to protect children from exposure, the name and number of the school representative, and the numbers of pesticide information services that can provide information and warnings from the labels of the pesticides being applied.

• The prior notice requirements do not apply to:
  o applications of anti-microbial products (disinfectants), biopesticides or substances exempt from federal pesticide regulation;
  o use of pesticides in aerosol cans for personal protection;
  o use of nonvolatile rodent and insect baits in tamper-resistant containers or areas inaccessible to children;
  o use of silica gels and other nonvolatile ready-to-use paste foam or gel insecticides in areas inaccessible to children;
  o use of boric acid and related compounds;
  o emergency applications to protect against an imminent threat to human health (which must be immediately reported to the Commissioner of the New York State Department of Health); and
  o applications after which the facility will be unoccupied for at least 72 hours.

• The State Education Commissioner is required to establish a procedure for parents to notify the state of any school's failure to comply with these requirements, and school aid can be withheld where a school is found not to have complied.

At the end of this Guide is a sample letter to send to the principal of your child's school requesting 48-hour advance notice of pesticide applications at the school. You can photocopy this sample letter, including the appropriate information, and mail it to your school, or compose your own letter.
**Notice of Pesticide Applications in Daycare Centers**

The legislation enacted in 2000 added the following notification requirements, Social Services Law § 390-c, applicable to daycare centers:

- At least 48 hours prior to a pesticide application, a notice must be posted in a common area that is conspicuously visible to persons dropping off or picking up children.
- The notice must include the date and location of the application and, in the case of outdoor applications, two rain dates; the name and EPA registration number of the product being applied; a statement encouraging parents to discuss with a facility representative the precautions being taken to protect children from exposure; telephone numbers of pesticide information lines to obtain more information about the pesticides being applied; and the name and number of the facility representative.
- The prior notice requirements do not apply to:
  - applications of anti-microbial products (disinfectants), biopesticides or substances exempt from federal pesticide regulation;
  - use of pesticides in aerosol cans for personal protection;
  - use of nonvolatile rodent and insect baits in tamper-resistant containers or areas inaccessible to children;
  - use of silica gels and other nonvolatile ready-to-use paste foam or gel insecticides in areas inaccessible to children;
  - use of boric acid and related compounds;
  - emergency applications to protect against an imminent threat to human health (which must be immediately reported to the Commissioner of the New York State Department of Health); and
  - applications after which the facility will be unoccupied for at least 72 hours.
Sample Letter to Request Notification of School Pesticide Application

[Date]
[Address of School]

Dear Principal ___________

I am the parent [or guardian] of __________________ [name(s) of student(s)], who attend(s) __________________ School in the ____ grade[s]. It is my understanding that, starting July 1, 2001, a new state law will require every school to maintain a list of parents who wish to receive advance notice of pesticide applications at the school their child attends. Each time pesticides are scheduled to be applied at the school, parents on the list must be provided with a written notice at least 48 hours in advance specifying the specific date and location of the application, the name and EPA registration number of the product being applied, the name and number of a person at the school who can be contacted to discuss the precautions being taken to protect children from exposure, and telephone numbers of information services that can provide specific information about the pesticides being applied.

Please consider this my formal request to be placed on the list to receive those notices and information. If the notices are to be mailed, please mail them to me at the following address:

_____________________________
_____________________________
_____________________________

I can be reached by telephone at the following numbers:

_________________________ (day)

_________________________ (evening)

Sincerely,

_________________
Signature of Parent/Guardian
Local Law No. ______, _____________ County, New York

A Local Law to Adopt Special Requirements for Commercial and Residential Lawn Applications

Be It Enacted by the County Legislature of the County of ________________:

§ 1. Legislative intent. The purpose of this Act is to implement the provisions of section 33-1004 of the New York Environmental Conservation Law. It is intended that this Act be read and applied consistently with that section and all other applicable provisions of the New York Environmental Conservation Law and regulations promulgated thereunder.

§ 2. Definitions. As used in this Act:

A. "Pesticide" means:
   1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
   2. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

B. "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. For the purposes of this Act the following shall not be considered commercial lawn application:
   1. the application of pesticide for the purpose of producing an agricultural commodity;
   2. residential application of pesticides;
   3. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
   4. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirement pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and
   5. the application of pesticides on golf courses or turf farms.

C. "Residential lawn application" means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the person making such application. For the purposes of this Act the following shall not be considered residential lawn application:
   1. the application of pesticides for the purpose of producing an agricultural commodity;
   2. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
   3. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirement pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and
4. the application of pesticides on golf courses or turf farms.

D. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the New York Environmental Conservation Law.

E. "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation.

F. "Abutting property" means any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.

G. "Dwelling" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or two families.

H. "Multiple dwelling" means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.

I. "Premises" means land and improvements or appurtenances or any part thereof.

3. Special requirements for commercial and residential lawn applications.

A. All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the Commissioner pursuant to subdivision one of section 33-1005 of the New York Environmental Conservation Law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

B. 1. At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply the written notice provided for in subdivision three of Section 33-1005 of the New York Environmental Conservation Law, to occupants of all dwellings on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to owners, owners' agents, or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the Commissioner.

2. Such prior notification provisions shall not apply to the following:

   a. the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136 (mm) and 136q(h)(2);
   b. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps, and hornets. This section shall not exempt from
notification the use of any fogger product or aerosol product that discharges to a wide area;
c. the use of non-volatile insect or rodent bait in a tamper resistant container;
d. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;
e. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;
f. the use of boric acid and disodium octaborate tetrahydrate;
g. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;
h. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;
i. the application of a pesticide by direct injection into a plant or the ground;
j. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;
k. the application of a pesticide to the ground or turf of any cemetery; and
l. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application, the person making such application shall notify the Commissioner of the New York State Department of Health, using a form developed by such Commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

C. 1. All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

2. Such markers shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.
§ 4. Enforcement and administrative sanctions.

A. Pursuant to section 33-1004 of the New York Environmental Conservation Law, the County shall have concurrent authority to enforce the provisions of this Act administratively, provided that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as provided herein and shall be payable to the County.

B. Except as provided in paragraphs (1) and (2) of this subdivision, any person who violates any provision of this Act shall be liable for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent violation. Notwithstanding the foregoing:

1. An owner or owner's agent of a multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises, who violates any provision of subdivision (B) of section 3 of this Act, and a person who violates any provision of subdivision (C) of such section, shall for a first such violation, in lieu of a penalty, be issued a written warning and shall also be issued educational materials prepared by the Commissioner pursuant to subdivision two of section 33-1005 of the New York Environmental Conservation Law. Such person shall, however, for a second violation, be liable for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation.

2. Any person who violates any provision of subdivision (A) of section 3 of this Act shall be issued a warning for the first violation and shall be provided seven days to correct such violation; and shall be liable for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for a subsequent violation.

§ 5. Criminal sanctions. Penalties imposed pursuant to this section may be assessed only against a person providing a commercial lawn application.

A. Any person having the culpable mental states defined in subdivision one or two of section 15.05 of the New York Penal Law who violates any provision of this Act, except an offense relating to the application of a general use pesticide, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

B. Any person who violates any provision of this Act relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be
punished by a fine not to exceed twenty-five hundred dollars. If the conviction is for a subsequent offense committed after the first such conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars.

§ 6. This Act shall take effect on the first day of January immediately succeeding the date of its filing with the Secretary of State.

**BOARD CHAIRS**

<table>
<thead>
<tr>
<th>County</th>
<th>Chair</th>
<th>Address</th>
<th>Phone No.</th>
<th>Fax No.</th>
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</thead>
<tbody>
<tr>
<td><strong>Albany County</strong></td>
<td>Charles Houghtaling, Jr.</td>
<td>112 State Street, Room 1114</td>
<td>(518) 447-7168</td>
<td>(518) 447-5695</td>
</tr>
<tr>
<td><strong>Allegany County</strong></td>
<td>Edgar Sherman</td>
<td>7 Court Street</td>
<td>(716) 268-9222</td>
<td>(716) 268-9446</td>
</tr>
<tr>
<td><strong>Broome County</strong></td>
<td>Daniel Schofield</td>
<td>PO Box 1766</td>
<td>(607) 778-2131</td>
<td>(607) 778-8869</td>
</tr>
<tr>
<td><strong>Cattaraugus County</strong></td>
<td>Gerard Fitzpatrick</td>
<td>303 Court Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Oneida County</strong></td>
<td>Gerald Fiorini</td>
<td>County Office Building</td>
<td>(315) 798-5900</td>
<td>(315) 798-5924</td>
</tr>
<tr>
<td><strong>Onondaga County</strong></td>
<td>William Sanford</td>
<td>407 Court House</td>
<td>(315) 435-2070</td>
<td>(315) 435-8434</td>
</tr>
<tr>
<td><strong>Ontario County</strong></td>
<td>Donald Ninestine</td>
<td>27 N. Main Street</td>
<td>(716) 396-4447</td>
<td>(716) 396-8818</td>
</tr>
<tr>
<td><strong>Orange County</strong></td>
<td>Richard Hansen, Sr.</td>
<td>County Government Center</td>
<td>(845) 291-4800</td>
<td></td>
</tr>
</tbody>
</table>
Cayuga County
Ralph Standbrook
Chair, County Legislature
160 Genesee Street
Auburn, New York 13021
Phone No.: (315) 253-1273
Fax No.: (315) 253-1586

Chautauqua County
Jane Fagerstrom
Chair, County Legislature
Gerace Office Building
Mayville, New York 14757
Phone No.: (716) 753-7111
Fax No.: (716) 753-4277

Chemung County
John Flory
Chair, County Legislature
John H. Hazlett Building
203 Lake Street, PO Box 588
Elmira, New York 14902
Phone No.: (607) 737-2066
Fax No.: (607) 737-2851

Chenango County
Richard Decker
Chair, Board of Supervisors
County Office Building
5 Court Street
Norwich, New York 13815
Phone No.: (607) 337-1430
Fax No.: (607) 336-6551

Clinton County
Celine Paquette
Chair, Board of Legislators
County Government Center
137 Margaret Street
Plattsburgh, New York 12901
Phone No.: (518) 565-3300
Fax No.: (518) 565-4616

Columbia County
Gerald Simons
Chair, Board of Supervisors

Orleans County
Marcia Tuohey
Chair, County Legislature
Courthouse Square
3 South Main Street
Albion, New York 14411
Phone No.: (716) 589-7053
Fax No.: (716) 589-1618

Oswego County
Floyd Boynton
Chair, County Legislature
County Office Building
46 E. Bridge Street
Oswego, New York 13126
Phone No.: (315) 349-8230
Fax No.: (315) 349-8257

Otsego County
Carl Higgins
Chair, Board of Representatives
County Office Building
197 Main Street
Cooperstown, New York 13326
Phone No.: (607) 547-4202
Fax No.: (607) 547-4260
Phone No.: (716) 938-9111
Fax No.: (716) 938-9438

Putnam County
Regina Morini
Chair, County Legislature
40 Gleneida Avenue
Carmel, New York 10512
Phone No.: (914) 225-3641
Fax No.: (914) 225-0715

Rensselaer County
Neil Kelleher
Chair, County Legislature
County Office Building
1600 7th Avenue
Troy, New York 12180
Phone No.: (518) 270-2880
401 State Street  
Hudson, New York 12534  
Phone No.: (518) 828-1527  
Fax No.: (518) 822-0684

**Cortland County**  
W. Harrington  
Chair, County Legislature  
County Office Building  
60 Central Avenue  
Cortland, New York 13045  
Phone No.: (607) 753-5048  
Fax No.: (607) 756-3492

**Delaware County**  
Joseph Hanley  
Chair, Board of Supervisors  
111 Main Street  
Delhi, New York 13753  
Phone No.: (607) 746-2603  
Fax No.: (607) 865-9314

**Dutchess County**  
Bradford Kendall  
Chair, County Legislature  
County Office Building  
22 Market Street  
Poughkeepsie, New York 12601  
Phone No.: (914) 486-2100  
Fax No.: (914) 486-2113

**Erie County**  
Charles Swanick  
Chair, County Legislature  
25 Delaware Avenue, 7th Floor  
Buffalo, New York 14202  
Phone No.: (716) 858-7500  
Fax No.: (716) 858-8895

**Essex County**  
Michael Connery  
Chair, Board of Supervisors  
Government Center  
Court Street, PO Box 217  
Elizabethtown, New York 12932  
Phone No.: (518) 873-3700  
Fax No.: (518) 270-2983

**Rockland County**  
Kenneth Zebrowski  
Chair, County Legislature  
11 New Hempstead Road  
New City, New York 10956  
Phone No.: (845) 638-5100  
Fax No.: (845) 638-5675

**Saratoga County**  
John Lawler  
Chair, Board of Supervisors  
40 McMaster Street  
Ballston Spa, New York 12020  
Phone No.: (518) 885-5381  
Fax No.: (518) 884-4771

**Schenectady County**  
Robert Farley  
Chair, County Legislature  
620 State Street  
Schenectady, New York 12305  
Phone No.: (518) 388-4280  
Fax No.: (518) 388-4591

**Schoharie County**  
James Brown  
Chair, Board of Supervisors  
PO Box 429  
Schoharie, New York 12157  
Phone No.: (518) 295-8347  
Fax No.: (518) 295-8482

**Schuyler County**  
Thomas Gifford  
Chair, County Legislature  
County Office Building  
105 Ninth Street, Unit 6  
Watkins Glen, New York 14891  
Phone No.: (607) 535-8100  
Fax No.: (607) 535-8109

**Seneca County**  
Robert Hayssen  
Chair, Board of Supervisors
Fax No.: (518) 873-3356

**Franklin County**
Richard Ryan
Chair, County Legislature
Courthouse
63 West Main Street
Malone, New York 12953
Phone No.: (518) 481-1641
Fax No.: (518) 481-1639

**Fulton County**
Claude Faville
Chair, Board of Supervisors
County Building
Johnstown, New York 12095
Phone No.: (518) 736-5540
Fax No.: (518) 762-0224

**Genesee County**
Roger Triftshauser, D.D.
Chair, County Legislature
County Courthouse
7 Main Street
Batavia, New York 14020
Phone No.: (716) 344-0775
Fax No.: (716) 344-8582

**Greene County**
Frank Stabile, Jr.
Chair, County Legislature
288-292 Main Street, PO Box 467
Catskill, New York 12414
Phone No.: (518) 678-5652
Fax No.: (518) 943-6721

**Hamilton County**
William Farber
Chair, Board of Supervisors
PO Box 205
Lake Pleasant, New York 12108
Phone No.: (518) 548-6651
Fax No.: (518) 548-7608

**Herkimer County**
Robert Nightingale

One DiPronio Drive
Waterloo, New York 13165
Phone No.: (315) 539-1700
Fax No.: (315) 539-0207

**St. Lawrence County**
R. Gray
Chair, Board of Legislators
Courthouse
48 Court Street
Canton, New York 13617
Phone No.: (315) 379-2276
Fax No.: (315) 379-2333

**Steuben County**
Stoner Horey, M.D.
Chair, County Legislature
Three East Pulteney Square
Bath, New York 14810
Phone No.: (607) 776-9631
Fax No.: (607) 776-6926

**Suffolk County**
Paul Tonna
Presiding Officer, County Legislature
PO Box 6100
Hauppauge, New York 11788
Phone No.: (631) 853-4088
Fax No.: (631) 853-4071

**Sullivan County**
Raymond Pomeroy, II
Chair, County Legislature
County Government Center
100 North Street, PO Box 501
Monticello, New York 12701
Phone No.: (914) 794-3000
Fax No.: (914) 794-0650

**Tioga County**
Peter Ward
Chair, County Legislature
County Office Building
56 Main Street
Owego, New York 13827
Phone No.: (607) 687-8200
Chair, County Legislature
109 Mary Street, Suite 1310
Herkimer, New York 13350
Phone No.: (315) 867-1112
Fax No.: (315) 867-1109

Jefferson County
Michael Behling
Chair, Board of Legislators
175 Arsenal Street
Watertown, New York 13601
Phone No.: (315) 785-3000
Fax No.: (315) 785-5070

Lewis County
Ralph Farney
Chair, Legislative Board
Courthouse
Lowville, New York 13367
Phone No.: (315) 376-5355
Fax No.: (315) 376-5445

Livingston County
James Merrick
Chair, Board of Supervisors
Government Center
6 Court Street
Geneseo, New York 14454
Phone No.: (716) 243-7030
Fax No.: (716) 243-7045

Madison County
Rocco DiVeronica
Chair, Board of Supervisors
PO Box 635
Wampsville, New York 13163
Phone No.: (315) 366-2201
Fax No.: (315) 366-2502

Monroe County
Dennis Pelletier
President, County Legislature
39 West Main Street
Rochester, New York 14614
Phone No.: (716) 428-5255
Fax No.: (607) 687-6162

Tompkins County
Barbara Mink
Chair, Board of Representatives
Courthouse
320 North Tioga Street
Ithaca, New York 14850
Phone No.: (607) 274-5434
Fax No.: (607) 274-5430

Ulster County
Daniel Alfonso
Chair, County Legislature
244 Fair Street, Box 1800
Kingston, New York 12402
Phone No.: (845) 340-3000
Fax No.: (845) 340-3651

Warren County
Louis Tessier
Chair, Board of Supervisors
Municipal Center
1340 State Street, Route 9
Lake George, New York 12845
Phone No.: (518) 761-6535
Fax No.: (518) 761-7652

Washington County
Donald Cummings
Chair, Board of Supervisors
Upper Broadway
Fort Edward, New York 12828
Phone No.: (518) 746-2210
Fax No.: (518) 746-2219

Wayne County
Marvin Decker
Chair, Board of Supervisors
Courthouse
26 Church Street
Lyons, New York 14489
Phone No.: (315) 946-5400
Fax No.: (315) 946-5942

Westchester County
Montgomery County
Ronald Barone, Sr.
Chair, Board of Supervisors
Annex Building, 20 Park Street
Fonda, New York 12068
Phone No.: (518) 853-3431
Fax No.: (518) 853-8220

Nassau County
Judith Jacobs
Presiding Officer, County Legislature
One West Street, Room 110
Mineola, New York 11501
Phone No.: (516) 571-6216
Fax No.: (516) 571-6287

Niagara County
Clyde Burmaster
Chair, County Legislature
Courthouse
Lockport, New York 14094
Phone No.: (716) 439-7000
Fax No.: (716) 439-7124

George Latimer
Chair, Board of Legislators
148 Martine Avenue
Michaelian Office Building
White Plains, New York 10601
Phone No.: (914) 285-2802
Fax No.: (914) 285-3113

Wyoming County
Anne Humphrey
Chair, Board of Supervisors
Courthouse
143 N. Main Street
Warsaw, New York 14569
Phone No.: (716) 786-8800
Fax No.: (716) 786-8802

Yates County
Robert Multer
Chair, County Legislature
County Building
110 Court Street
Penn Yan, New York 14527
Phone No.: (315) 536-5150
Fax No.: (315) 536-5166
Attorney General's Hotlines:

- Consumer Helpline: 1-800-771-7755
- Crime Victims Hotline: 1-800-771-7755
- Medicaid Fraud Control Unit: 212-417-5397
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- For the Hearing Impaired: 1-800-788-9898

Executive Offices:

**Albany** *(map)*
The Capitol
Albany, NY 12224-0341
(518) 474-7330

**New York City** *(map)*
120 Broadway
New York City, NY 10271
(212) 416-8000

Regional Offices:

**Binghamton** *(map)*
44 Hawley Street, 17th Floor
Binghamton, NY 13901-4433
(607) 721-8778

**Brooklyn** *(map)*
55 Hansen Place
Brooklyn, NY 11217-1523
(718) 722-3949

**Buffalo** *(map)*
Statler Towers
107 Delaware Avenue
Buffalo, New York 14202-3473
(716) 853-8400

**Hauppauge** *(map)*
300 Motor Parkway
Hauppauge, NY 11788-5127
(631) 231-2400

**Harlem** *(map)*
163 West 125th Street
New York, NY 10027-8201
(212) 961-4475

**Mineola** *(map)*
200 Old Country Road
Mineola, NY 11501-4241
(516) 248-3302

**Plattsburgh** *(map)*
70 Clinton Street
Plattsburgh, NY 12901-2818
(518) 562-3282

**Poughkeepsie** *(map)*
235 Main Street, 3rd Floor
Poughkeepsie, NY 12601-3194
(845) 485-3900

**Rochester** *(map)*
144 Exchange Boulevard
Rochester, NY 14614-2176
(585) 546-7430

**Syracuse** *(map)*
615 Erie Blvd. W., Suite 102
Syracuse, NY 13210-2339
(315) 448-4800

**Utica** *(map)*
207 Genesee St., Room 504
Utica, NY 13501-2812
(315) 793-2225

**Watertown** *(map)*
317 Washington Street
Watertown, NY 13601-3744
(315) 785-2444

**White Plains** *(map)*
101 East Post Road
White Plains, NY 10601-5008
(914) 422-8755