

Intro. Res. No. 1162-2011
Introduced by Presiding Officer Lindsay and Legislator Anker

Laid on Table 3/8/2011

**RESOLUTION NO. 440 -2011, ADOPTING LOCAL LAW
NO. 27 -2011, A LOCAL LAW TO BAN THE SALE AND USE
OF COAL TAR SEALERS IN SUFFOLK COUNTY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 8, 2011, a proposed local law entitled, "**A LOCAL LAW TO BAN THE SALE AND USE OF COAL TAR SEALERS IN SUFFOLK COUNTY**;" now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 27 -2011, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO BAN THE SALE AND USE OF COAL TAR
SEALERS IN SUFFOLK COUNTY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that Suffolk County is committed to protecting the environment and the health and safety of its residents.

This Legislature also finds and determines that Suffolk County is located on a sole source aquifer which supplies the County's drinking water.

This Legislature further determines that coal tar sealer is a waste product from steel manufacturing which is used to protect pavement and asphalt against water damage and cracking.

This Legislature finds that parking lot sealers made with a coal tar base contain large quantities of polycyclic aromatic hydrocarbons ("PAHs"), a known carcinogen.

This Legislature determines that PAHs are known to cause asthma and other ailments in children exposed to high concentrations of the chemical.

This Legislature also finds that PAHs are present in high amounts in many waterways, as it can seep into groundwater and nearby waterways and enter the run-off stream from coal tar sealed asphalt. Animals exposed to PAHs in water, including frogs and insects, have shown stunted growth, with most dying shortly after exposure to high concentrations of the chemicals.

This Legislature further finds that PAHs from coal tar asphalt sealers not only wear off with friction, but also evaporate into the atmosphere, which allows them to enter the air and combine with household dust.

This Legislature also determines that ground floor residential spaces located near coal tar sealed parking lots have been tested for PAHs and have pollution levels twenty five times higher than those with parking lots coated with other sealers.

This Legislature further determines that drainage ditches near some coal tar sealed lots have also been found to have higher PAH levels than found at toxic waste sites and severely polluted waterways.

This Legislature finds that, in recognition of the dangers posed by coal tar sealers, Lowes and Home Depot have discontinued the sale of such products at their stores nationwide.

This Legislature determines that municipalities throughout the nation, including many in Texas and Minnesota, have banned the sale and use of coal tar sealers in their jurisdictions.

This Legislature also finds that asphalt and latex based sealants are safe alternatives to coal tar sealers and do not contain any PAHs.

Therefore, the purpose of this law is to ban the sale and use of coal tar sealers in the County of Suffolk.

Section 2. Definitions.

As used in this law, the following terms shall have the meaning indicated:

“ALTERNATIVE BASED SEALER” shall mean any sealer material that does not contain coal tar and is used on asphalt or concrete surfaces, including a driveway, parking lot or other paved surface.

“COAL TAR” shall mean a viscous substance obtained by the destructive distillation of coal and containing levels of polycyclic aromatic hydrocarbons in excess of ten thousand milligrams per kilogram. This definition shall include, but not be limited to, refined coal tar, high temperature coal tar, coal tar pitch, or any substance identified by chemical abstract number 65996-93-2.

“COAL TAR SEALER” shall mean a sealer material containing coal tar that is used on an asphalt or concrete surface, including a driveway, parking lot or other paved surface.

“COMMISSIONER” shall mean the Commissioner of the Department of Health Services.

“PAHs” shall mean polycyclic aromatic hydrocarbons, a group of organic chemicals which are formed during the incomplete burning of coal, oil, gas or other hydrocarbons. These chemicals are present in coal tar and are known to be harmful to humans, fish and other aquatic life.

“PERSON” shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity or business organization of any kind.

Section 3. Prohibitions.

- A. No person shall sell or offer for sale any coal tar sealer in the County of Suffolk.

- B. No person shall apply any coal tar sealer to any driveway, parking lot or other surface within the County of Suffolk.

Section 4. Exemptions.

- A. This law shall not apply to any person who is conducting bona fide research on the effects of coal tar sealer products or PAHs on the environment with the written consent of the Commissioner.
- B. This law shall apply only to the sale and use of coal tar sealers and shall not affect the use of alternative based sealers or other alternatives that do not contain PAHs in the County of Suffolk.

Section 5. Penalties.

Violation of this law shall be subject to a civil fine of five hundred dollars (\$500.00) for an initial violation, with a penalty of seven hundred fifty dollars (\$750.00) for any subsequent violations.

Section 6. Enforcement and Investigations.

- A. This law shall be enforced by the Department of Health Services in accordance with the procedures set forth in §760-202 through 760-215 of the Suffolk County Sanitary Code.
- B. The Department of Consumer Affairs is hereby authorized and empowered to investigate alleged violations of this law upon the request of the Commissioner. Upon the completion of an investigation, the Department of Consumer Affairs shall forward its findings to the Commissioner.

Section 7. Rules and Regulations.

The Commissioner is hereby authorized and empowered to establish rules and regulations necessary for the implementation of this law.

Section 8. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

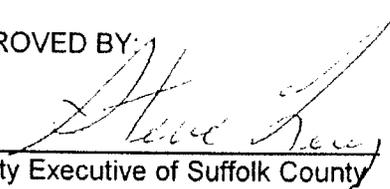
This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect on January 1, 2012.

DATED: June 7, 2011

APPROVED BY:


County Executive of Suffolk County

Date: 7/8/11 JUL 08 2011

After a public hearing duly held on June 22, 2011
Filed with the Secretary of State on July 28, 2011

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

July 7, 2011

Presiding Officer William J. Lindsay and
Members of the Suffolk County Legislature
William H. Rogers Legislative Building
725 Veterans Memorial Highway
Smithtown, New York 11787

RE: RESOLUTION NO. 187 – 2011, ADOPTING LOCAL LAW NO. -2011, A LOCAL LAW TO BAN THE SALE AND USE OF COAL TAR SEALERS IN SUFFOLK COUNTY.

Dear Presiding Officer Lindsay and Members of the Legislature:

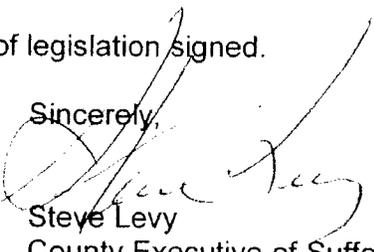
I am returning herein **RESOLUTION NO. 187 – 2011, ADOPTING LOCAL LAW NO. -2011, A LOCAL LAW TO BAN THE SALE AND USE OF COAL TAR SEALERS IN SUFFOLK COUNTY**; signed.

Despite the fact that I am returning this bill signed I do still have some reservations that implementing this legislation too quickly could potentially hurt many of the businesses in this industry which will have little time to adjust to this ban.

I have reached an understanding with the Presiding Officer, who has agreed to introduce an amendment to this legislation which would delay the implementation for an additional six months. This will provide the industry an opportunity to transition to newer environmentally friendly products, while phasing out the use of coal tar sealers. It is my hope that a phased in approach will mitigate any undue financial burden placed on the industry as a result of this legislation, while also providing them with time to service patrons with the more environmentally acceptable products.

I am, therefore, returning the following piece of legislation signed.

Sincerely,


Steve Levy

County Executive of Suffolk County

cc: All Suffolk County Legislators
Tim Laube, Clerk of the Legislature
Christine Malafi, Esq., Suffolk County Attorney
Lynne A. Bizzarro, Esq., Chief Deputy County Attorney
Christopher Kent, Chief Deputy County Executive
Edward Dumas, Chief Deputy County Executive
Eric Naughton, Deputy County Executive for Finance and Management
Ken Crannell, Deputy County Executive
Connie Corso, Budget Director
Eric Kopp, Assistant Deputy County Executive
Dan Aug, Director of Communications
Mark Smith, Deputy Director of Communications

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on June 7, 2011 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res.

1162

Res. No.

440

June 7, 2011

Motion:

Romaine, Schneiderman, Browning, Muratore, Anker
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore, Anker
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:

Romaine, Schneiderman, Browning, Muratore, Anker
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE		/			
2	Jay H. SCHNEIDERMAN	/				
3	Kate M. BROWNING	/				
4	Thomas MURATORE		/			
6	Sarah S. ANKER	/				
7	Jack EDDINGTON	/				
9	Ricardo MONTANO	/				
10	Thomas CILMI		/			
11	Thomas F. BARRAGA		/			
12	John M. KENNEDY, JR.		/			
13	Lynne C. NOWICK		/			
14	Wayne R. HORSLEY	/				
15	DuWayne GREGORY	/				
16	Steven H. STERN	/				
17	Lou D'AMARO	/				
18	Jon COOPER	/				
5	Vivian VILORIA-FISHER, D.P.O.			/		
8	William J. LINDSAY, P.O.	/				
Totals		11	6	-	1	-

MOTION
<input checked="" type="checkbox"/> Approve
___ Table: _____
___ Send To Committee
___ Table Subject To Call
___ Lay On The Table
___ Discharge
___ Take Out of Order
___ Reconsider
___ Waive Rule ___
___ Override Veto
___ Close
___ Recess
APPROVED <input checked="" type="checkbox"/> FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
___ NOT ADOPTED

Tim Laube

Tim Laube, Clerk of the Legislature

Roll Call ___ Voice Vote