

**DRAFT ONLY**  
**A Local Law of the Town of Otsego**  
**Regarding Brine and Other Gas Industry Waste**

**Local Law No. 1 of the Year 2014**

**Be it enacted by the Town Board of the Town of Otsego as follows:**

Section 1. Statutory Authority; Title

This Local Law is adopted pursuant to the authority of Section 10 of the Municipal Home Rule Law, and shall be known as the “Brine and Other Gas Industry Waste Law of the Town of Otsego.”

Section 2. Purpose

The purpose of this Local Law is to prohibit within the Town of Otsego the disposal of waste associated with natural gas and oil exploration or extraction, or other hydrocarbon exploration and extraction activities.

Section 3. Findings

The process of drilling for and extracting natural gas, oil, or other subsurface hydrocarbons produces large quantities of waste including drill cuttings and two types of wastewater: “flowback water” (used fracking fluid) and “produced water”, which is often referred to as “brine” due to its high levels of salinity.

Fracking fluid is known to contain a complex mixture of water, sand, and numerous chemical additives, many known to be toxic, and some to be carcinogenic. “Flowback” is the used fracking fluid that returns to the surface after hydraulic fracturing. Because of chemical reactions deep underground resulting from heat and pressure from drilling or hydrofracking, and the presence of naturally occurring hazardous substances in deep subsurface layers, flowback may be even more toxic than the original composition of fracking fluid.

Produced water or brine, also known as “formation water,” is fluid emerging from the target drilling formation with the oil or gas. It is typically rich in chlorides and bromides, and may also contain toxic heavy metals, such as cadmium, and also arsenic. This produced water may contain high levels of radioactive material (naturally occurring radioactive materials, or “NORMS”), including radium 226, which is soluble in water and has been demonstrated to accumulate in sediments of waterways into which fracking wastewater has been introduced. Produced water can contain fracking fluid or flowback water as well.

In New York State, drilling wastewater is classified as “industrial waste” instead of “hazardous waste” regardless of its toxicity. Because of this “industrial” classification, it is not tracked, and could be easily dumped onto rural roadsides. Also, due to the expense incurred with legal

disposal, the oil and gas industry is motivated to seek a “beneficial use determination” for these wastes, in particular the produced water, brine, or formation water.

Because of the known presence of numerous toxins found in fracking fluid, flowback, and brine, the Town Board of the Town of Otsego finds these mixtures and all resultant wastes of the drilling and hydrofracking processes to be threats to the health, safety, and welfare of our town. The Town Board is particularly concerned about the possibility of these wastes being illegally dumped or used for de-icing or for dust control; and also introduction of such wastes, particularly drill cuttings, into landfills or transfer stations. Therefore, in order to protect our water resources, the environment, and public health, the Town Board of the Town of Otsego finds it necessary to prohibit all such “natural gas and oil wastes,” defined below, from any roadways (including those privately owned and maintained), land, landfills, transfer stations, and water treatment facilities that may be located within the town.

#### Section 4. Definitions

As used within this Local Law, the several terms listed below shall have the following meaning:

1. “Hydraulic Fracturing” shall mean the fracturing of shale formations by man-made fluid-driven techniques for the purposes of stimulating natural gas, oil, or other subsurface hydrocarbon production.
2. “Natural Gas and Oil Exploration or Extraction Activities” shall mean all geologic or geophysical activities related to the exploration for or extraction of natural gas, oil, or any other subsurface hydrocarbon deposits including, but not limited to, core and rotary drilling and hydraulic fracturing.
3. “Natural Gas and Oil Waste” shall mean any waste, which is generated as a result of natural gas, oil, or other hydrocarbon exploration or extraction activities, which may consist of water, chemical additives, naturally occurring radioactive materials (“NORMs”) and heavy metals. Such waste includes, but is not limited to, leachate from solid wastes associated with natural gas and oil extraction activities; and encompasses the following:

- Treated or untreated “frack flowback” from oil or gas wells
- Treated or untreated produced water from oil or gas wells
- Treated or untreated brine from oil or gas wells
- Treated or untreated fracking fluid
- Treated or untreated drilling mud
- Treated or untreated drill cuttings

In this Local Law, “Natural Gas and Oil Waste” does not include emulsified petroleum products purchased by the Town or Town Highway Superintendent for the purposes of maintaining or repairing roads via “oil and stone,” “pugmill,” “blacktopping,” or similar techniques. Such products are designed to be used under dry conditions, to set and stabilize stone or aggregate onto roadways; in such a manner as to properly maintain or restore the road surface, and to avoid run off or leaching of this material

into ditches or waterways.

4. "Application" shall mean the physical act of placing or spreading natural gas and oil waste on any road or real property located within the Town of Otsego.

#### Section 5. Prohibitions

1. The application of Natural Gas and Oil Waste for de-icing, dust control, or for any other purpose onto any roadway or real property located within the Town of Otsego is prohibited.
2. The introduction of Natural Gas and Oil Waste into any landfill, transfer station, or water treatment facility, which may be located in the Town of Otsego is prohibited.
3. The purchase of Natural Gas and Oil Waste by any officer, employee or agent acting on behalf of the Town of Otsego is prohibited.

#### Section 6. Procurement and Bids

1. In any bid for materials, services, or equipment which relate to property maintenance or road improvements or road construction, the Town of Otsego, in a bid specification or bid document describing the nature of the services or equipment sought, and any agency or division of the Town, shall expressly state in capitalized, bold font, **"THE PLACEMENT OF NATURAL GAS AND OIL WASTE ON ANY ROAD OR PROPERTY OF THE TOWN OF OTSEGO IS UNLAWFUL. ANY BIDDER SHALL FILE A SWORN STATEMENT WITH THEIR BID THAT NO NATURAL GAS AND OIL WASTE AS DEFINED BY LOCAL LAW OF THE TOWN OF OTSEGO WILL BE SOLD TO THE TOWN AS PART OF THE BID, OR UTILIZED, OR PLACED ON ANY PROPERTY OR ROAD OF THE TOWN OF OTSEGO. BIDDERS ARE DIRECTED TO LOCAL LAW NO. 1 OF THE YEAR 2014 FOR THE DEFINITION OF NATURAL GAS AND OIL WASTE."**
2. All public bids and contracts related to the purchase or acquisition of materials to be used to construct, maintain (including de-icing and dust control) a Town road, bridge, infrastructure or real property shall include a provision stating that no materials containing Natural Gas and Oil Waste shall be provided to the Town of Otsego. Any such bid document shall include the following sworn statement under penalty of perjury: **"We \_\_\_\_\_ hereby submit a bid for materials, equipment, or labor for the Town of Otsego. The bid is in response to bid documents titled \_\_\_\_\_. We hereby certify under penalty of perjury that no "Natural Gas and Oil Waste" as defined by Local Law No. 1 of the Year 2014 will be used by the undersigned bidder or any contractor, sub-contractor, agent, or vendor thereof in connection with the bid; nor will the undersigned Bidder or any subcontractor, agent, or vendor thereof and/or therefor apply or supply any "Natural Gas and Oil Waste" to any real property or road(s) within the Town of Otsego as a result of the submittal of this bid, if selected."**

## Section 7. Duties of Town Employees

The Town of Otsego Superintendent of Highways, Deputy Superintendent of Highways, and all officers and employees of the Town shall be familiar with this Local Law, and make all necessary efforts to ensure compliance. This section does not excuse noncompliance by an agent, contractor or vendor of the Town of Otsego.

## Section 8. Penalties

1. Any violation of Section 5 of this Local Law shall be an unclassified misdemeanor, punishable by a fine not to exceed \$25,000 per violation, and/or up to thirty (30) days imprisonment. Each sale and/or application of Natural Gas and Oil Waste shall constitute a separate and distinct violation.
2. Any violation of Section 5 of this Local Law by a contractor shall be deemed a breach of contract and shall authorize the Town Attorney with the approval of the Town Board to commence a civil breach of contract action against the violator of the provisions of this Local Law. Damages sought shall be determined by the Town Attorney but may include, and shall not be limited to the cost of any consequential damages of the breach of contract. In addition, the Town Board and/or Town Highway Superintendent may make a finding that the Contractor is not a responsible bidder. The Town Attorney is further authorized to commence any necessary action to enjoin any violation of this Local Law he or she believes to be occurring.

## Section 9. Severability

If any clause, sentence, sub-paragraph, subsection or section of this Local Law shall be held invalid by any court of competent jurisdiction, or the application of this Local Law to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subparagraph, subsection, section or operation of this Local Law directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this Local Law are hereby declared to be severable.

## Section 10. Effective Date

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of Municipal Home Rule Law.