

RESOLUTION 108 - 2012
LOCAL LAW INTRO NO. 5675 - 2012

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed "A LOCAL LAW adding a new Chapter 532 to the Laws of Westchester County in relation to the sale, application and disposal of waste associated with natural gas exploration and extraction activities."

Your Committee is aware that hydraulic fracturing is a process in which shale formations are fractured by man-made fluid-driven techniques for the purpose of stimulating natural gas or oil well production. Your Committee has been informed that the fluids utilized in and that result from this process, contain toxic substances that cannot be adequately filtered by waste water treatment facilities. Your Committee has been informed that natural gas exploration and extraction activities, such as hydraulic fracturing, create multiple types of liquid and solid waste which pose a significant public health and environmental risk if sent to waste water treatment facilities. Your Committee has been informed that such waste types include: (1) flowback fluid, which is the chemically treated liquid waste that flows back after hydraulic fracturing; (2) produced fluid or brine, which is the liquid waste that is mobilized and returns to the surface with the gas containing chemicals, naturally occurring radioactive material (NORMs), and is as much as eight times saltier than sea water; (3) solid wastes, such as drill cuttings and mud; and (4) leachate from solid waste associated with natural gas exploration and extraction activities. Your Committee has been further informed that there are seven waste-water treatment plants in Westchester that could potentially receive waste from natural gas exploration and extraction activities as identified in Appendix 21 of the New

York State Department of Environmental Conservation's (DEC) Revised Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program (RDSGEIS) if permitted to do so. Your Committee is also aware that fifty-nine international scientists attested to the fact that municipal wastewater treatment facilities are not designed to handle chemicals, contaminants and radioactive materials resulting from hydraulic fracturing operations. Your Committee is of the opinion that the risks are simply too great to allow natural gas exploration and extraction waste to be sent to waste water treatment plants in the County, as these treatment plants are not designed to handle the chemicals, contaminants, and radioactive material in this waste.

Your Committee has been further informed that DEC currently permits the use of produced fluid from low-volume hydraulic fracturing operations for road spreading as a deicer or for dust control if the road spreader obtains a Beneficial Use Determination (BUD) from DEC, and that the RDSGEIS leaves open the possibility of spreading produced fluid from high-volume hydraulic fracturing on roads pending further study of its radioactive ingredients.

Your Committee is of the opinion that the sale of waste associated with natural gas exploration and extraction activities as well as its application upon the roadways and real property located within the County of Westchester poses health and environmental risks to residents and should therefore be prohibited.

Your Committee is aware that this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA") and its implementing regulations. *See* Title 6, Part 617 of the New York Code Rules and Regulations ("N.Y.C.R.R."). Your Committee is in receipt of a Negative Declaration from the Westchester County Department of Planning concluding, for the purposes of SEQRA, that the proposed Local Law is an Unlisted action that will not have an adverse impact upon the environment. Your Committee has reviewed the Negative Declaration prepared by the Westchester County Department of Planning as well as the accompanying Environmental Assessment Form and the criteria contained in Section 617.7 of 6 N.Y.C.R.R. Part 617, the SEQRA regulations, and concurs with the conclusion that the proposed Local Law is an Unlisted action that will not have an adverse effect upon the environment. Accordingly, Your Committee recommends passage of the annexed Resolution.

In light of all of the foregoing, your Committee recommends the adoption of this
Local Law in order to protect the health of the residents of the County of Westchester.

Dated: 2012
White Plains, New York

Dated: November 26, 2012
William J. Ryan
Debra Wilkin
Dr. RL (w/o/p)
P. H. M.
Mary Jane Kennedy
2012.11.26
[Signature]

LEGISLATION

COMMITTEE ON

A/tgg/11-27-12

Dated: 11/29/12

Cathy B.
William J. Ryan
P. H. M.
[Signature]
Susan J. Smith
Mary Jane Kennedy
Debra Wilkin

Government Operations

RESOLUTION NO. ¹⁰⁸-2012

WHEREAS, there is pending before this Honorable Board a Local Law that would prohibit the sale, application and disposal of natural gas waste in the County of Westchester; and

WHEREAS, as this project is an Unlisted action under the State Environmental Quality Review Act ("SEQRA"), an Environmental Assessment Form has been prepared by the Department of Planning to assist this Honorable Board in complying with its responsibilities under SEQRA; and

WHEREAS, this Honorable Board has carefully considered this proposed action and has reviewed the Environmental Assessment Form and the criteria set forth in 6 NYCRR Part 617 of the SEQRA regulations and has identified the relevant areas of environmental concern, as are fully set forth in the attached "Negative Declaration," to determine if this proposed action will have a significant impact on the environment.

NOW, THEREFORE, BE IT

RESOLVED, by the County Board of Legislators of the County of Westchester, State of New York, that based on this Honorable Board's review of the Environmental Assessment Form and for the reasons set forth in the annexed "Negative Declaration", it determined that the proposed project will not have a significant impact on the environment; and be it further

RESOLVED, that the Clerk of the Board of Legislators is authorized and directed to sign the determination of Significance in the attached Environmental Assessment Form as Responsible Officer in Lead Agency; to execute and issue the attached Negative Declaration on behalf of this Board pursuant to Article 8 of the Environmental Conservation Law; and to immediately transmit the same to the Commissioner of Planning to be filed, published and made available pursuant to the requirements of Part 617 of the New York Codes, Rules and Regulations; and be it further

RESOLVED, that this Resolution shall take effect immediately.

STATE ENVIRONMENTAL QUALITY REVIEW

NEGATIVE DECLARATION

This notice has been prepared pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the New York State Environmental Conservation Law.

The County of Westchester has assumed the role of Lead Agency for the action described below. It has been determined by the County, acting by and through its Board of Legislators, that the proposed action will not have a significant effect on the environment.

TITLE OF ACTION: Hydraulic Fracturing Law

LEAD AGENCY: County of Westchester

SEQR STATUS: Unlisted Action

LOCATION OF ACTION: County-wide
Westchester County, New York

NATURE OF ACTION: The County proposes to adopt a local law prohibiting the disposal of wastes generated from exploration or extraction of natural gas or other subsurface hydrocarbon deposits at any wastewater treatment plant within the county and prohibiting the sale of such wastes and their application on any road or real property within Westchester County. Additionally, the law will require all bids and contracts pertaining to the construction or maintenance of a County road to include a provision stating that no materials containing natural gas waste shall be provided or utilized in providing services to the County.

SEQR DETERMINATION: Negative Declaration

BACKGROUND:

SEQR Classification – The proposed action is classified as an Unlisted action pursuant to Section 617.2(ak), "...all actions not identified as a Type I or Type II action...."

Lead Agency – The County of Westchester is the only involved agency and, therefore, must serve as lead agency.

Project Purpose/Need – Natural gas exploration and extraction activities, such as hydraulic fracturing, create multiple types of liquid and solid waste which can pose a public health and environmental risk. Such waste types include: (1) flowback fluid, which is the chemically treated liquid waste that flows back after hydraulic fracturing; (2) produced fluid or brine, which is the liquid waste that is mobilized and returns to the surface with the gas containing chemicals, naturally occurring radioactive material and is as much as eight times saltier than sea water; (3) solid wastes, such as drill cuttings and mud; and (4) leachate from the solid wastes.

The wastewater treatment plants of Westchester County were identified as potential recipients of such waste if hydraulic fracturing was allowed in New York State. It is reported that the fluids utilized in the hydraulic fracturing process contain toxic substances that cannot be filtered by wastewater treatment facilities. It is also reported that New York State Department of Environmental Conservation currently permits the re-use of produced fluid from low-volume hydraulic fracturing as a deicer for roadways and is open to the possibility of approving re-use of such fluids from high-volume hydraulic fracturing pending further study of its radioactive ingredients. The adoption of the County law will serve to protect the natural resources of Westchester County as well as avert any health risks associated with allowing such waste to enter into the County environment.

REASONS SUPPORTING THIS DETERMINATION:

The proposed local restrictions on the disposal, sale and re-use of waste generated from natural gas exploration or extraction activities will not result in adverse environmental impacts. Hydraulic fracturing for natural gas production does not occur nor is anticipated to occur within Westchester County due to the lack of appropriate underground resources. As such, wastes associated with this process are not generated within Westchester County. Similarly, neither flowback nor production fluid has ever been used by the County for deicing of roads or any other purpose. Environmentally safer alternatives exist and are being used for deicing purposes.

The law will serve to protect the health, safety and welfare of the general public as well as the environmental resources of Westchester County.

Hydraulic Fracturing Law
Negative Declaration
Page 3

DETERMINATION: Based on the information in the attached Environmental Assessment Form and the criteria in Section 617.7 of 6 NYCRR Part 617, the County of Westchester, acting by and through its Board of Legislators, has determined that the proposed project will not have a significant impact on the environment.

CONTACT

PERSON:

David Kvinge, Director of Environmental Planning
Westchester County Department of Planning
148 Martine Avenue, 4th Floor
White Plains, NY 10601
(914) 995-4400



Tina Seckerson, Clerk and Chief Administrator
Westchester County Board of Legislators

12-10-12

Date

Enclosures:

Short Environmental Assessment Form

SHORT ENVIRONMENTAL ASSESSMENT FORM

PART 1 - PROJECT INFORMATION

1. **APPLICANT/SPONSOR**

County of Westchester

2. **PROJECT NAME**

Hydraulic Fracturing Law

3. **PROJECT LOCATION:**

County-wide

County: Westchester

4. **PRECISE LOCATION:**

5. **IS PROPOSED ACTION:**

 X New Expansion Modification/alteration

6. **DESCRIBE PROJECT BRIEFLY:**

Adoption of a local law prohibiting the disposal of wastes generated from exploration or extraction of natural gas or other subsurface hydrocarbon deposits at any wastewater treatment plant within the county and prohibiting the sale of such wastes and their application on any road or real property within Westchester County. Additionally, the law will require all bids and contracts pertaining to the construction or maintenance of a County road to include a provision stating that no materials containing natural gas waste shall be provided or utilized in providing services to the County.

7. **AMOUNT OF LAND AFFECTED:**

Initially N/A acres Ultimately N/A acres

8. **WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?**

 Yes No If no, describe briefly

N/A

9. **WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?**

☒ Residential ☒ Industrial ☒ Commercial ☒ Agricultural
☒ Park/Forest/Open Space ☒ Other

DESCRIBE:

The law applies to wastewater treatment plants, roads and properties throughout the county, which are bordered by all types of land uses.

10. **DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?**

☐ Yes ☒ No If yes, list agency(s) and permit/approvals

11. **DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?**

☐ Yes ☒ No If yes, list agency(s) and permit/approvals

12. **AS A RESULT OF PROPOSED ACTION, WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?**

☐ Yes ☒ No

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE.

Applicant/Sponsor Name: County of Westchester Date: 1/29/12

Signature: David S. Kvinge
David S. Kvinge, Director of Environmental Planning

PART II - ENVIRONMENTAL ASSESSMENT

- A. DOES THE ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4?** If yes, coordinate the review process and use the Full EAF.

_____ Yes X No

- B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6?** If no, a negative declaration may be superseded by another involved agency.

_____ Yes X No

- C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING:**

- C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:**

No. On the contrary, the law will serve to protect the waters and environment within the county from the introduction of contaminated liquid and solid waste generated by hydraulic fracturing.

- C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:**

No. The law will not result in physical impacts, but will serve to protect the natural resources of the county.

- C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:**

No. The law will serve to protect wildlife habitats by preventing harmful chemicals from entering the environment.

- C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:**

No. The law does not affect land use.

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

None. There will be no impact on current operations within Westchester County. Hydraulic fracturing for gas or oil production does not presently occur, nor is anticipated to occur, within Westchester County due to the lack of appropriate underground resources. As such, liquid or solid wastes associated with this process are not generated within the county. The County does not use, nor has ever used, flowback or produced fluids from hydraulic fracturing for deicing purposes. The County utilizes products that are safer for the environment as well as best management practices that minimize environmental impact.

C6. Long-term, short-term, cumulative, or other effects not identified in C1-C5? Explain briefly:

None.

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

None.

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CEA?

_____ Yes X No If yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

_____ Yes X No If yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE

- ☐ Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the **FULL EAF** and/or prepare a positive declaration.
- ☒ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide on attachments, as necessary, the reasons supporting this determination:

County of Westchester

Name of Lead Agency

Tina Seckerson
Name of Responsible Officer

Clerk & Chief Administrator of the Board of Legislators
Title


Signature of Responsible Officer


Signature of Preparer

12-10-12
Date

FISCAL IMPACT STATEMENT

SUBJECT: Chapter 532 -Hydraulic Fracturing Brine

☒ NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) ☐ GENERAL FUND ☐ AIRPORT ☐ SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 0

Total Current Year Revenue \$ 0

Source of Funds (check one): ☐ Current Appropriations

☐ Transfer of Existing Appropriations ☐ Additional Appropriations ☐ Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount \$ 0

Describe: A LOCAL LAW adding a new Chapter 532 to the Laws of Westchester County in relation to the disposal and application of hydraulic fracturing brine.

Potential Related Revenues: Annual Amount \$ 0

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \$ 0

Next Four years: \$ 0

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Reviewed By: [Signature]

Budget Director

If you need more space, please attach additional sheets.

LOCAL LAW INTRO. NO.5675-2012

A LOCAL LAW adding a new Chapter 532 to the Laws of Westchester County in relation to the sale, application and disposal of waste associated with natural gas exploration and extraction activities.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Chapter 532 is hereby added to the Laws of Westchester County to read as follows:

Chapter 532

HYDRAULIC FRACTURING

Section 532.01. Definitions.

Section 532.02. Prohibitions.

Section 532.03. Provision to be included in bids and contracts related to the construction or maintenance of County roads.

Section 532.04. Duty of Employees to be Familiar with this Chapter.

Section 532.05. Penalties.

Section 532.06. Severability.

Section 532.01. Definitions.

1. As used in this Chapter the term "hydraulic fracturing" shall mean the fracturing of shale formations by man-made fluid-driven techniques for the purpose of stimulating natural gas or other subsurface hydrocarbon production.
2. As used in this Chapter the term "natural gas extraction activities" shall mean all geologic or geophysical activities related to the exploration for or extraction of natural

gas or other subsurface hydrocarbon deposits, including, but not limited to, core and rotary drilling and hydraulic fracturing.

3. As used in this Chapter the term "natural gas waste" shall mean any waste which is generated as a result of natural gas extraction activities, which may consist of water, chemical additives, or naturally occurring radioactive materials ("NORMs") and heavy metals. Natural gas waste includes, but is not limited to, leachate from solid wastes associated with natural gas extraction activities.

4. As used in this Chapter the term "application" shall mean the physical act of placing or spreading natural gas waste on any road or real property located within the County of Westchester.

Section 532.02. Prohibitions.

1. The introduction of natural gas waste into any wastewater treatment facility within or operated by the County of Westchester is prohibited.

2(a). The sale of natural gas waste within the County of Westchester is prohibited.

(b). The application of natural gas waste on any road or real property located within the County of Westchester is prohibited.

Section 532.03. Provision to be included in bids and contracts related to the construction or maintenance of County roads.

1. All bids and contracts related to the purchase or acquisition of materials to be used to construct or maintain a County road shall include a provision stating that no materials containing natural gas waste shall be provided to the County.

2. All bids and contracts related to the retention of services to construct or maintain a County road shall include a provision stating that no materials containing natural gas waste shall be utilized in providing such a service.

Section 532.04. Duty of Employees to be Familiar with this Chapter.

The County Executive or, at the County Executive's option, any Department head or commissioner appointed by the County Executive is authorized to develop policies to ensure county employees are familiar with the provisions of this Chapter and take such steps as are directed by the County Executive or such department head or commissioner to ensure a diligent effort by the County that materials supplied to the County or used on County roads or property comply with this law. This Section shall not excuse non-compliance by a contractor or vendor of the County.

Section 532.05. Penalties.

Any violation of Section 532.02 of this Chapter shall be an unclassified misdemeanor punishable by a fine not to exceed \$25,000.00 per violation and/or up to thirty days' imprisonment. Each sale and/or application of natural gas waste shall constitute a separate and distinct violation.

Section 532.06. Severability.

If any clause, sentence, subparagraph, subsection or section of this Chapter shall be held invalid by any court of competent jurisdiction, or the application of this Chapter 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 Chapter directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this Chapter are hereby declared to be severable.

§2. This Local Law shall take effect in sixty days.

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I HEREBY CERTIFY that I have compared the foregoing Resolution No. 108 - 2012, and Local Law Intro No. 5675 - 2012, with the originals on file in my office, and that the same are correct transcripts therefrom, and of the whole, of said original Resolution, and Local Law, which were duly adopted by the Westchester County Board of Legislators, of the County of Westchester on December 10, 2012, and approved by the County Executive on December 20, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 2nd day of January, 2013.



Tina Seckerson

Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

