

**Introduced by:** County Administration, Transportation and Rural Development, Public Health and Environmental Protection, and Public Works Committees

**Seconded by:**

**RESOLUTION ADOPTING LOCAL LAW INTRODUCTORY NO 3 OF 2009, ENTITLED: “A LOCAL LAW CREATING CHAPTER 100 OF THE BROOME COUNTY CHARTER AND CODE PROVIDING THAT A NATURAL GAS VEHICLE PERMIT SHALL BE REQUIRED FOR USE OF COUNTY ROADS BY CERTAIN VEHICLES WITH A GROSS WEIGHT IN EXCESS OF THE LIMITATIONS ALLOWED IN THE VEHICLE AND TRAFFIC LAW OF THE STATE OF NEW YORK.”**

WHEREAS, the Marcellus Shale is one of the largest unconventional natural gas reserves in the United States, and

WHEREAS, the Natural Gas Industry has targeted portions of New York State, including Broome County, for potential development of natural gas, and

WHEREAS, natural gas wells in the Marcellus Shale are expected to involve horizontal hydraulic fracturing which requires massive amounts of water use at well sites, and

WHEREAS, the development of a natural gas well will potentially involve high truck traffic during a short period of time including traffic necessary to transport drill rigs, drilling equipment, frac'ing equipment, frac water, frac water by-product, and miscellaneous items, and

WHEREAS, Article 23 of the Environmental Conservation Law of the State of New York reserves to local government jurisdictions the regulation of oil, gas, and solution mining industries over the use of local roads, and

WHEREAS, this Legislature finds that expected truck traffic incident to development of a natural gas well with hydraulic horizontal fracturing is expected to place unreasonably high stresses on the County's road system, now, therefore, be it

RESOLVED, that Local Law Intro. No. 3 of 2009, entitled: “A Local Law Creating Chapter 100 of the Broome County Charter and Code Providing that a Natural Gas Vehicle Permit Shall Be Required for Use of County Roads by Certain Vehicles with a Gross Weight in Excess of the Limitations Allowed in the Vehicle and Traffic Law of the State of New York,” be and the same hereby is adopted and approved in accordance with the Broome County Charter, the Municipal Home Rule Law and all applicable statutes and laws pertaining thereto, and be it

FURTHER RESOLVED, that the County Executive or her duly authorized representative is hereby empowered to execute any such agreements, documents, or papers, approved as to

form by the Department of Law, as may be necessary to implement the intent and purpose of this Resolution.

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## LOCAL LAW INTRODUCTORY NO 3 OF 2009

BE IT ENACTED, by the Legislature of the County of Broome as follows:

Section 1. Chapter 100 shall be created to read as follows:

### § 100-1. Authority for this Local Law; Definitions

- A. This Local Law is enacted pursuant to the authority of Vehicle and Traffic Law Section 385(15) authorizing a county to authorize the issuance of a permit to operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in said section 385 on county roads or highways.
- B. This Local Law is also enacted pursuant to the authority of subdivision 2 of section 23-0303 of the Environmental Conservation Law of the State of New York which provides that "The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries, but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law."
- C. As used in this local law the terms "Gas", "Oil" , "Person", "Product", "Salt", and "Solution Mining" shall have the same meanings, and be defined in the same manner, as those terms are defined in section 23-0101 of the Environmental Conservation Law of the State of New York.
- D. As used in this local law, the term "Natural Gas Vehicle" shall mean any vehicle which is used to (i) transport or operate Gas drilling, Oil drilling, or Solution Mining machinery, rigs, pipes, supplies, pumps, materials, liquids or equipment, (ii) mine, drill for, pump, fracture, extract, transport and/ or produce Gas, Oil, Product, Salt, (iii) locate, space, construct, drill, repair, enlarge, maintain, equip, operate or produce any Oil well, Gas well, or any other well, and/or (iv) transport, move, ship, deliver, pump, remove, or extract any Gas, Oil, Product, water or any other liquid, gas or solid to or from any Oil well, Gas well, river, stream brook, public water well, private water well, or any other well.
- E. As used herein, the term "County" means the County of Broome, a municipality located in the State of New York.
- F. As used herein, the term "Highway Superintendent" means the Deputy Commissioner of Public Works, Highway Division.
- G. As used herein, the term "Code Inspector" means the code inspector of the County, County Engineer, or such other County official who exercises code enforcement powers.
- H. As used in this Local Law, the term "County Road" shall mean and include any County highway, road, street, avenue, boulevard, parkway, shoulder, guard rail, concourse, driveway, easement, right of way, bridge, culvert, sluice pipe, ditch, dock, tunnel, sidewalk, or any utilities or improvements therein, thereon or thereunder.

- I. As used in this Local Law, the term “Other County Property” shall mean and include any real property (including any improvements therein, thereon or thereunder) or personal property owned by, or leased to, the County.
- J. As used in this Local Law “Permittee” shall mean and include the holder of a “Natural Gas Vehicle Permit”, its contractors, sub contractors, employees and agents, issued pursuant to this Local Law.
- K. As used in this Local Law “Well Permit” shall mean a permit to Drill, Deepen, Plug Back or Convert Wells pursuant to part 552, Title 6 (Conservation) New York Code of Rules and Regulations.

#### § 100-2. Requirement that a Natural Gas Vehicle Permit be obtained

No person shall use, park, operate, transport or move on, across or over any County Road or Other County property a Natural Gas Vehicle or a combination of Natural Gas Vehicles, the weights or dimensions of which exceed the limitations provided in section 385 of the New York State Vehicle and Traffic Law of the State of New York, unless a Natural Gas Vehicle permit (hereinafter “Natural Gas Vehicle Permit”) has been issued in accordance with the provisions of this local law.

Any person that has one or more well permits at the time this Local Law is enacted or any person that applies for a well permit after this Local Law is enacted that will require the operation of a Natural Gas Vehicle on County roads or other county property shall immediately comply with the requirements of this local law.

#### § 100-3. Permit Issuing Authority

The Highway Superintendent is hereby designated as the authority to receive and approve applications for a Natural Gas Vehicle Permit to use, park, operate, transport, or move a Natural Gas Vehicle or a combination of Natural Gas Vehicles, the weights or dimensions of which exceed the limitations provided in section 385 of the Vehicle and Traffic Law, on, over or across a designated County Road or other County property.

The Highway Superintendent is hereby authorized to hire, in compliance with County Local Laws and procurement policies, any engineer, consultant and/ or expert which the Highway Superintendent deems necessary to assist the Highway Superintendent in reviewing and evaluating any application hereunder for a Natural Gas Vehicle Permit.

#### § 100-4. Application and Natural Gas Vehicle Permit Form.

A. Any person that holds a well permit or applies for a well permit that will require the operation of a Natural Gas Vehicle on County roads or other county property shall submit an application for a Natural Gas Vehicle Permit.

B. The Highway Superintendent is hereby authorized to promulgate: (i) an application form requesting the issuance of a Natural Gas Vehicle Permit; said application shall require the person requesting the permit to provide at time of initial application and continuing thereafter a

copy of each well permit application, a copy of each well permit received, a proposed road map that the Natural Gas Vehicles will travel on County roads or other County property pursuant to each well permit, a digital or electronic record demonstrating the condition of the proposed County road or other County property described for each well permit, and any other documents, maps, sketches and plans which the Highway Superintendent may reasonably require; (ii) a Natural Gas Vehicle Permit form to be issued upon review and approval of said application; (iii) a county wide maintenance agreement to be executed by the Permittee upon review and approval of said application.

#### § 100-5. Damage to County Roads

The Permittee is and shall be fully responsible and liable for all damages, injuries, discharges, or spills caused by the Permittee's Natural Gas Vehicle (whether owned by, leased by, or otherwise used or operated by or on behalf of, the Permittee) to or on any County Road or Other County Property or to public utilities in the roadway or right of way.

Upon due notice being given to the Permittee and at its option, the County may require the Permittee to repair all damages, injuries, discharges or spills caused to or on any County Road or Other County Property; or the County may arrange for the necessary repairs and restoration and charge the Permittee for all related labor and materials at the prevailing rates.

The Permittee shall be responsible for maintenance of the repaired sections of County Road or Other County Property for a period of one year from the date of any repairs or restoration.

#### § 100-6. Insurance.

- A. The Permittee shall present to the County certificates of insurance evidencing the Permittee's acquisition of liability insurance coverage naming the County as an additional insured on a non-contributory basis with the minimum limits of coverage for death or bodily injury equal to \$\_\_\_\_\_ for each person injured, \$\_\_\_\_\_ for aggregate death or bodily injury resulting from each occurrence, and \$\_\_\_\_\_ property damage.
- B. Said insurance shall be maintained throughout the term of the Natural Gas Vehicle Permit at the cost and expense of the Permittee, and the aforementioned certificates shall provide for thirty (30) days' notice to the County prior to cancellation of coverage.
- C. All persons performing work under the Natural Gas Vehicle Permit shall be fully covered (at the cost and expense of the Permittee) in accordance with applicable provisions of the Workers' Compensation Law and Disability Benefits Law of the State of New York.
- D. Proof of insurance required by §100-6 hereof shall be subject to the approval by the County Risk Manager.

#### § 100-7. Highway Permit Bond or Maintenance bond

Prior to the issuance of a Natural Gas Vehicle Permit, the Permittee shall file with the Broome County Legislative Clerk a highway permit bond, maintenance bond, or comparable blanket bond in the amount of \$\_\_\_\_\_ or an irrevocable bank letter of credit in the

amount of \$\_\_\_\_\_ in favor of the County guaranteeing compliance with the provisions of the Natural Gas Vehicle Permit.

If the Natural Gas Vehicle Permit pertains to more than one well permit, the amount of the required highway permit bond, maintenance bond or comparable blanket bond shall be adjusted as follows: if the Permittee has more than four but less than ten well permits, the amount of the highway permit bond, maintenance bond or comparable blanket bond shall be increased to \$\_\_\_\_\_. The bank letter of credit shall be increased to \$\_\_\_\_\_. Thereafter the amount of the bond and letter of credit shall be increased in increments of \$\_\_\_\_\_ for each additional well permit.

At such time, if ever, that said highway permit bond, maintenance bond, comparable blanket bond or irrevocable bank letter of credit is expended, the Permittee shall replace the same within 5 days of the receipt of written notice from the County, failing which the Natural Gas Vehicle Permit shall be subject to revocation.

The highway permit bond, maintenance bond, comparable bond or letter of credit shall be subject to the approval by the Broome County Risk Manager.

When the well or wells serviced by the Natural Gas Vehicle routes designated in the irrevocable letters of credit or bonds have been properly abandoned in conformity with all regulations of the New York State Department of Environmental Conservation and notice to that effect has been received by the County, the irrevocable letter of credit or bond issued shall be terminated and cancelled.

#### § 100-8. Deposits into an escrow account.

In order to provide a source of funds to promptly reimburse the County for any reasonable costs and expenses incurred by the County in processing an application for a Natural Gas Vehicle Permit and/or in seeking reimbursement for damages, injuries, discharges or spills involving County Roads or Other County Property, the applicant for a Natural Gas Vehicle Permit shall also file with the County Clerk of the County an initial cash deposit in the sum of \$\_\_\_\_\_.

As used in this section, the term "costs and expenses" shall be deemed to include the reasonable fees charged by engineers, consultants and/ or experts hired in accordance with the provisions of §100-3 hereof; reasonable administrative costs and expenses incurred by the County in connection with the permitting process and the repair, restoration and preservation of County Roads and Other County Property; and reasonable legal fees, accountants fees, engineers fees, costs, expenses, disbursements, expert witness fees and other sums expended by the County in pursuing any rights, remedies or claims to which the County may be entitled under this Local Law or under applicable provisions of law, as against any Permittee, any person who has violated this Local Law, any insurance company, any bonding company, any issuer of a letter of credit, and/ or any United States or State of New York agency, board, department, bureau, commission or official.

These funds shall accompany the filing of the application, and the County shall maintain a separate escrow account for all such funds.

The County is hereby authorized to withdraw funds from said escrow account (without prior notice to or consent from the Permittee) in order to promptly reimburse the County for any costs and expenses (as defined herein).

Immediately following any such withdrawals, the County shall give written notice to the Permittee detailing such withdrawals and the reasons therefor.

If, at any time during the period when the Natural Gas Vehicle Permit is in effect, this escrow account has a balance less than \$\_\_\_\_\_, the Permittee shall immediately, upon notification from the County, replenish said escrow account so that it has a balance of at least \$\_\_\_\_\_.

In the event that there is any balance remaining in the escrow account as of the date that the Highway Superintendent determines that the Natural Gas Vehicle Permit has expired and further determines that no damages or injuries have been caused to any County Road or Other County Property (and that no discharges or spills have occurred on any County Road or Other County Property) for which the County has not been fully reimbursed, the County shall pay to the Permittee the balance remaining in the escrow account.

#### § 100-9. Deposits into Road Remediation Account.

In order to provide a source of funds to reimburse the County for Natural Gas Vehicle traffic on County roads that will decrease the natural life expectancy of such roads, before issuance of a Permit pursuant to this Local law, the Permittee shall pay to the County a road damage remediation deposit. Said deposit is not a tax, penalty or permit fee. Said deposit shall be reasonably proportionate and necessary for the County to maintain its roads based upon expected normal usage by Permittee acting in the ordinary course of its business.

Said deposit shall be required for each well permit that requires operation of a Natural Gas Vehicle on County roads or other county property. The amount of the Road Remediation Deposits shall be as set forth in the schedule attached to this Local Law.

Said deposit shall be in addition to Permittee's other obligations under this local law, including §§100-5 and 100-8 hereof.

Said deposit shall be non refundable, and the proceeds may be used by the County to repair any County roads whether or not utilized by the Permittee.

Notwithstanding the foregoing language of §100-9, the Permittee shall not be required to pay a deposit into the Road Remediation Account for the route on any well permit, if after examining the Permittee's well permit application, the Highway Superintendent determines that the Permittee will not drill or rework a horizontal well bore.

#### § 100-10. Reservation of County's rights to request funds from the State Commissioner of Environmental Conservation

The County hereby retains and reserves all rights it has now or may have hereafter, pursuant to the provisions of subdivision 3 of section 23-0303 of the Environmental Conservation Law, to request funds (by filing a request therefor with the New York State

Commissioner of Environmental Conservation) from the oil and gas fund to reimburse the County for costs incurred in repairing damages to any County Road, or Other County Property.

#### § 100-11. Indemnity and Save Harmless

The Permittee will be required to agree to fully indemnify, defend, save and hold harmless the County and all of its departments, bureaus, divisions, boards, officers, employees and agents of and from and against any and all claims, suits, costs, damages, expenses, charges, risks, losses, lawsuits, causes of action, judgments, executions, penalties, fines, assessments or any other liability of any type arising out of, occurring in connection with, or resulting from, any or all actions or activity to be performed by Permittee pursuant to, in violation of, the Natural Gas Vehicle Permit, in violation of this Local Law, in violation of applicable provisions of law, or in violation of any conditions or requirements set forth in any permit issued by the New York State Department of Environmental Conservation.

By accepting the Natural Gas Vehicle Permit, the Permittee shall be deemed to have agreed to the defense, indemnity and save harmless provisions of this Local Law and all other provisions of this Local Law.

#### § 100-12. Stop work orders.

The Highway Superintendent and the Code Inspector shall each have the right and authority to issue stop work orders to those operating in violation of the terms of the Natural Gas Vehicle Permit, in violation of this Local Law, in violation of applicable provisions of law, or in violation of any conditions or requirements set forth in any permit issued by the New York State Department of Environmental Conservation; or contrary to the Permittee's application hereunder, or contrary to the conditions upon which its Natural Gas Vehicle Permit was issued.

#### § 100-13. Revocation of Natural Gas Vehicle Permit.

Upon the violation of any provisions of the Natural Gas Vehicle Permit, or violation of any provisions of this Local Law, or violation of applicable provisions of law, or violation of any conditions or requirements set forth in any permit issued by the New York State Department of Environmental Conservation, the Highway Superintendent may suspend any such permit issued hereunder for no more than thirty (30) days, and, following a public hearing at which the Permittee shall have the right to appear and be heard, may permanently revoke any Natural Gas Vehicle Permit on written notice to the Permittee.

#### § 100-14. Extent of Permittee's Liability and Obligations Hereunder.

The Permittee's obligations hereunder to repair and restore, the Permittee's obligations hereunder to defend, indemnify and hold harmless, and the Permittee's other liability and obligations hereunder shall not be limited by the limits of any applicable insurance coverage, highway permit bond, maintenance bond, letter of credit, comparable bond, escrow account, cash deposit; or rights of the County under subdivision 3 of section 23-0303 of the Environmental Conservation Law of the State of New York. The Permittee's obligations hereunder to repair and restore, the Permittee's obligation hereunder to defend, indemnify, and hold harmless, and the Permittee's other liability and obligations hereunder shall survive any termination or revocation of the Natural Gas Vehicle Permit.



§ 100-15. Special Conditions:

- A. The Natural Gas Vehicle Permit shall not be assigned, conveyed, pledged or transferred without the express prior written consent of the Highway Superintendent.
- B. The Highway Superintendent shall be given one week's written notice in advance by said Permittee of the date when Permittee intends to begin the activity authorized by the Natural Gas Vehicle Permit, and shall be given prompt written notice of its completion.
- C. The Natural Gas Vehicle Permit shall not authorize the holder thereof to exceed the maximum gross weight limit authorized for crossing any bridge. The Highway Superintendent shall have the authority to reasonably alter the proposed County roads and other County property set forth in the application before a permit is issued or after a permit is issued.
- D. The County makes no warranties or representations as to the conditions or fitness of any County Road or Other County Property; or their fitness for any intended use; or the County's rights, titles or interests therein or thereto.

§ 100-16. Penalties for violations

A violation of this local law is hereby declared to be a violation which shall be punishable by a fine not exceeding \_\_\_\_\_ dollars (\$\_\_\_\_\_). The County may also maintain an action or proceeding in a court of competent jurisdiction to compel compliance with, or to restrain by injunction the violation of, this local law.

Each new day that a violation or violations exist shall be considered a new violation.

§ 100-17. Severability

In any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the County hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

§ 100-18. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with the provisions of section 27 of the Municipal Home Rule Law of the State of New York.

Section 2. That this Local Law shall take effect immediately upon filing with the Secretary of State.