

TOWN OF SOUTHBURY, CT

ITEM NO: *Entered by Town Clerk*
DEPARTMENT: Department name
CONTACT: Name Contact's phone Contact's email address:
REFERRED TO: *Entered by Town Clerk*
VOTES: Board or commission name vote (y/n/a)

RESOLVED, WHEREAS,

It is in the interests of the Town of Southbury, acting by the members of the Board of Selectmen and First Selectman's office, to protect and preserve public health and safety, property and the natural resources of the Town of Southbury, including but not limited to water and land, now and for generations of citizens in the future;

Natural gas and oil extraction activities involve the use of chemical and hazardous materials during a multi-phase process including drilling, hydraulic fracturing, production, well maintenance, workover operations, and storage; and

Liquid and solid wastes associated with such activities are contaminated with chemicals and naturally-occurring toxins that come from the ground, including but not limited to radioactive materials; and

Many of the chemicals used during extraction activities, and naturally-occurring toxins in the ground that mix with the wastes, have documented adverse health effects and/or adverse environmental impacts; and

These wastes can contain radioactive elements and other toxins, and may threaten the public health and safety, and economic well-being of communities, as businesses, consumers and residents depend on clean drinking water, surface water, property, and natural resources; and

Toxins present in these wastes can contaminate waters, soils and natural resources of Southbury and impact public health and safety where use, leaching, spills, leaks, run-off and discharge into waterways after treatment effort occurs; and

The Town of Southbury is and should be a leader in protecting public health and safety, and our natural resources, including water supplies and water resources for generations to come; and

Protection of public health and safety, ground and surface waters, property, and natural resources in the Town of Southbury is better accomplished by prevention of contamination and environmental degradation, instead of costly remediation of degraded environments after contamination; and

In order to protect public health and safety, and the quality of natural resources and property within the Town of Southbury, it is necessary to adopt an ordinance prohibiting storage, handling, treatment, disposal and use of all waste associated with natural gas and oil extraction, as defined in the ordinance, the text of which is set forth below.

Now, Therefore, the Board of Selectmen hereby adopts An Ordinance Prohibiting Waste Associated with Natural Gas and Oil Extraction within the Town of Southbury, as set forth below:

Town of Southbury, Connecticut
ORDINANCE NO. _____

Ordinance Prohibiting Waste Associated with Natural Gas and Oil Extraction

xxx-01 Definitions for the Purposes of this Ordinance:

- 1) For the purposes of this ordinance, the following terms, phrases, and words shall have the meanings given here, unless otherwise clearly indicated by the context:
- 2) “*Hydraulic fracturing*” shall mean the fracturing of underground rock formations, including shale and non-shale formations, by manmade fluid-driven techniques for the purpose of stimulating oil, natural gas, or other subsurface hydrocarbon production.
- 3) “*Natural gas extraction activities*” shall mean all geologic or geophysical activities related to the exploration for or extraction of natural gas, including, but not limited to, core and rotary drilling and hydraulic fracturing.
- 4) “*Oil extraction activities*” shall mean all geologic or geophysical activities related to the exploration for or extraction of oil, including, but not limited to, core and rotary drilling and hydraulic fracturing.
- 5) “*Natural gas waste*” shall mean: a) any liquid or solid waste or its constituents that is generated as a result of natural gas extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; b) leachate from solid wastes associated with natural gas extraction activities; c) any waste that is generated as a result of or in association with the underground storage of natural gas; d) any waste that is generated as a result of or in association with liquefied petroleum gas well storage operations; and e) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.
- 6) “*Oil waste*” shall mean: a) any liquid or solid waste or its constituents that is generated as a result of oil extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; b) leachate from solid wastes associated with oil extraction activities; and c) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.
- 7) “*Application*” shall mean the physical act of placing or spreading natural gas waste or oil waste on any road or real property located within the Town of Southbury.

xxx-02 Prohibitions:

- 1) The application of natural gas waste or oil waste, whether or not such waste has received Beneficial Use Determination or other approval for use by the Department of Energy & Environmental Protection (“DEEP”) or any other regulatory body, on any road or real property located within the Town for any purpose is prohibited.
- 2) The introduction of natural gas waste or oil waste into any wastewater treatment facility within or operated by the Town is prohibited.

- 3) The introduction of natural gas waste or oil waste into any solid waste management facility within or operated by the Town is prohibited.
- 4) The storage, disposal, sale, acquisition, transfer, handling, treatment and/or processing of waste from natural gas or oil extraction is prohibited within the Town of Southbury.

xxx-03 Provision to be included in bids and contracts related to the construction or maintenance of publicly owned and/or maintained roads or real property within the Town of Southbury:

- 1) All bids and contracts related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas or oil waste shall be utilized in providing such a service.
- 2) All bids and contracts related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas or oil waste shall be provided to the Town of Southbury.
- 3) The following statement, which shall be a sworn statement under penalty of false statement, shall be included in all bids related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and or maintained road or real property within the Town and all bids related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town of Southbury: *"We _____ hereby submit a bid for materials, equipment and/or labor for the Town of Southbury.. The bid is for bid documents titled _____. We hereby certify under penalty of false statement that no natural gas waste or oil waste will be used by the undersigned bidder or any contractor, sub-contractor, agent or vendor agent in connection with the bid; nor will the undersigned bidder or any sub-contractor, agent or vendor agent thereof apply any natural gas waste or oil waste to any road or real property within the Town as a result of the submittal of this bid if selected."*

xxx-04 Penalties

This ordinance shall apply to any and all actions occurring on or after the effective date of this ordinance. In response to a violation of this ordinance, the Town is empowered to a) issue "Cease and Desist" orders demanding abatement of the violation, b) seek any appropriate legal relief, including immediate injunctive relief, as a result of any violation of this ordinance; c) file a complaint with any other proper authority; and d) require removal of any natural gas waste or oil waste and any soils or other materials contaminated thereby, as well as remediation of any harm or damage done to any land, road, building, aquifer, well, watercourse, air quality or other asset, be it public or private, within the Town of Southbury. The Town may recoup from the offending person(s), jointly and severally, all costs, including experts, consultants and reasonable attorney's fees, that it incurs as a result of having to prosecute or remediate any infraction of this ordinance. In addition, any person or entity who violates this ordinance shall be liable for a civil penalty of \$250 per day for each day the condition or damage referenced in the Cease and Desist continues or is not fully remediated or repaired. The Town may also pursue, or may request that DEEP pursue, such other penalties as may be authorized or permitted by the Connecticut General Statutes or DEEP regulations (as the same may be adopted or amended from time to time), or under

other applicable law. All remedies and penalties hereunder shall be cumulative, such that two or more remedies may be pursued or imposed for the same violation.

xxx-05 Enforcement:

The First Selectman of the Town, or any Town official designated by the First Selectman, are authorized to pursue penalties against any person or entity who commits a violation of this ordinance. Such officials may engage the assistance of DEEP or third party testing facilities to determine the chemical contents of any waste products suspected to violate the terms of this Ordinance.

xxx-06 Severability

The provisions of this ordinance are severable, such that, if any clause, sentence, paragraph, subdivision, section or part of this ordinance 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, effect 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 its application to the person, entity, or circumstance identified in such order or judgment.

xxx-07 Transportation

Nothing in this ordinance shall be interpreted to ban the transportation of any product or by-product described herein on any roadway or real property within the Town.

EXPLANATORY COMMENTS

In 2014, PA 14-200-An Act Prohibiting the Storage or Disposal of Fracking Waste in Connecticut was passed, creating a temporary moratorium but also mandating that the Department of Energy and Environmental Protection (DEEP) submit regulations for review for certain wastes from hydraulic fracturing, between July 1, 2017 and July 1, 2018. These regulations will be submitted to the 14 legislator Regulations Review Committee, which does not have the authority to reject regulations and impose a ban.

Future regulations will likely result in: significant increase in tanker trucks traveling on I-84; permits for storage tanks & transfer sites; treatment at HazMat facilities; discharge of partially-treated effluent; and may include beneficial use determination (BUD) permits. Current law specifies DEEP has discretion only to ban wastes and by-products used for road spreading, such as de-icing and dust control, when developing new regulations.

There are loopholes in the current temporary moratorium. The definition of waste within the act referred only to waste "used or generated secondarily to" the "hydraulic fracturing process" for gas wells. This narrow definition excludes other wastes produced during the natural gas and oil extraction lifecycle, and the volumes of these additional toxic, radioactive wastes are enormous.

The drilling process has produced hundreds of thousands of tons of toxic solid waste in a single year in Pennsylvania. Also, the gas production and treatment processes have produced over a billion gallons of toxic brine in a single year in PA. Disposal and re-use of the solid wastes as construction fill, road base or brownfield capping product, and re-use of salts and

liquid brine from the production, treatment and storage process, puts municipalities at risk for contamination.

Some states allow fracking wastes to be re-used, while others have studied the issue and not allowed re-use permits. Despite warnings by environmental and public health advocates, Pennsylvania began issuing re-use permits for drill cuttings 6 years ago. In 2016, PA stopped issuing new permits, citing "lack of transparency". Drillers and waste handlers in PA are currently shipping wastes to at least eight states across the country. PA businesses that process drill cuttings into re-usable by-product will likely be seeking new contracts and delivery points for these fill products, now that new permits in PA have been discontinued.

In addition to drill cuttings, liquid wastes derived from other phases of development include, but are not limited to, drilling fluids, leachate from solid drilling wastes, leachate from landfills that accept fracking and extraction wastes, brines and condensates from the gas & oil production (flow) process, treatment and storage processes, sludges from drilling fluids and treatment of production brine, chemicals used to clean equipment, partially-treated effluent from the production, treatment and storage processes. These wastes are banned by definitions in this local ordinance, but not included in current state law because they are produced outside of and not secondarily to the "hydraulic fracturing process". These wastes can be both chemically toxic and radioactive, and contain other naturally-occurring toxins.

Connecticut municipalities have authority to prohibit wastes pursuant to C.G.S. § 7-148(c)(4)(H), C.G.S. § 7-148(c)(7)(H), C.G.S. § 7-148(c)(7)(H)(ii), C.G.S. § 7-148 (c)(7)(H)(xi), and C.G.S. § 7-148 (c)(8) as amended. Municipalities across Connecticut are passing comprehensive oil and gas drilling and extraction waste bans, most adopting model language developed by the legal counsel for Riverkeeper. These municipalities include: Andover, Ashford, Bloomfield, Bolton, Branford, Chaplin, Columbia, Coventry, Eastford, Hampton, Glastonbury, Hartford, Hebron, Lebanon, Litchfield, Mansfield, Middletown, New London, New Milford, Pomfret, Portland, Washington*, Willington, Windham/Willimantic, Windsor, Woodstock.

*Washington passed an ordinance modeled after PA14-200, not Riverkeeper language.