

ORANGE COUNTY LEGISLATURE

LOCAL LAW NO. 10 OF 2013

A LOCAL LAW OF THE COUNTY OF ORANGE, NEW YORK KNOWN AS THE "HYDRAULIC FRACTURING BRINE PROHIBITION ACT."

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

WHEREAS, this Legislature hereby finds and determines that brine from gas extraction wells may contain toxic substances, including but not limited to heavy metals and radioactive elements, and

WHEREAS, this Legislature hereby finds and determines that the use of brine from gas extraction wells and road surface treatment may create health and safety risks to the citizens of Orange County,

NOW THEREFORE,

BE IT ENACTED, by the Legislature of Orange County, New York, as follows:

Section 1: Title

This Local Law shall be known by and may be cited as the "Hydraulic Fracturing Brine Prohibition Act".

Section 2: Definitions

As used in this Chapter, the following terms shall have the following meanings:

"Application" shall mean the physical act of placing Brine on one or more County Roads or one or more pieces of County property. Each physical act shall be deemed separate when the person committing the act stops for any reason the placement of the Brine for any purpose, including but not limited to stopping a vehicle in the placement of the Brine, stopping work for any reason, or re-loading or replacing any material or equipment necessary to apply the Brine.

"Brine" shall mean (a) production brine; or (b) produced waters; or (c) flowback; or (d) flowback fluids; or (e) hydraulic fracturing fluid, any or all, which are generated as a result of drilling for, or seeking gas in wells including but not limited to High Volume Hydraulic Fracturing, as defined herein.

"Commissioner" shall mean: The Commissioner of the Department of Public Works except for the use of the word "commissioner" in Section 5 may mean any other commissioner designated by the County Executive or may mean the Commissioner of Public Works as determined by the County Executive.

"Flowback" shall mean liquids and solids produced during initial completion and clean-up of the well or clean-up of a well following a re-fracture or workover.

"Flowback fluids" shall mean liquids produced following drilling and initial completion and clean-up of the well or clean-up of a well following a re-fracture or workover.

"High Volume Hydraulic Fracturing" shall mean a natural gas well stimulation technique consisting of the injection into the earth of a water and chemical mix with the intent of increasing the ability to extract natural gas from very tight rock.

"Hydraulic fracturing fluid" shall mean fluid used to perform hydraulic fracturing and includes the primary carrier fluid and all applicable additives.

"Municipality" shall mean the County of Orange.

"Production brine or produced waters" shall mean liquids co-produced during oil and gas production.

"Property" shall mean real property, improved or otherwise, which the County of Orange owns or controls.

"Roads" shall mean public roads, streets, or bridges owned or controlled by the Municipality.

Section 3: Use of the Brine prohibited.

No Brine (as defined in Section 2) shall be applied to or placed upon Property or Roads of the Municipality. In any bid for materials, services, or equipment which relate to property maintenance or road improvements or road construction, the Municipality, in a bid specification or bid document describing the nature of the services or equipment sought, and any agency or division of the Municipality, shall expressly state in capitalized, bold font, **"THE PLACEMENT OF BRINE ON ANY ROAD OR PROPERTY OF THE COUNTY OF ORANGE IS UNLAWFUL. ANY BIDDER SHALL FILE A SWORN STATEMENT WITH THEIR BID THAT NO BRINE AS DEFINED BY LOCAL LAW OF THE MUNICIPALITY WILL BE SOLD TO THE MUNICIPALITY AS PART OF THE BID, OR UTILIZED ON OR PLACED ON ANY PROPERTY OR ROAD OF THE COUNTY OF ORANGE. BIDDERS ARE DIRECTED TO COUNTY OF ORANGE LOCAL LAW NO. OF THE YEAR 2013 FOR THE DEFINITION OF BRINE."**

Section 4: Statement to be included in Bid.

The Statement provided for in Section 3, which shall be a sworn statement under penalty of perjury, shall read substantially as follows:

"We, _____ hereby submit a bid for materials, equipment, or labor for the _____ of _____. The bid is for bid documents titled _____. We hereby certify under penalty of perjury that no Brine will be used by the undersigned bidder or any contractor, sub-contractor, agent or vendor thereof in connection with the bid; nor will one undersigned Bidder or any sub-contractor, agent, or vendor thereof and/or therefor apply or supply any Brine to any property or road(s) of the County of Orange as a result of the submittal of this bid if selected." The Statement shall otherwise be sworn under penalty of perjury in a form of satisfactory to the County Attorney.

Section 5: Duty of Employees to be Familiar with this Local Law.

The County Executive or, at the County Executive's option, a department head or a commissioner of any department appointed by the County Executive is authorized to develop policies to ensure County employees are familiar with this Local Law 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 Local Law. This shall not excuse non-compliance by a contractor or vendor of the County.

Section 6: Penalties for Violations.

- A.** Breach of Contract. A violation of the provisions of this Local Law shall be deemed a breach of contract and shall authorize the Director of Purchasing in cooperation with the County Attorney and other officer or employee of the County deemed necessary by the County Attorney, 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 County Attorney but may include, and shall not be limited to the cost of any consequential damages of the breach of contract. In addition, the Director of Purchasing may make a finding that the Contractor is not a responsible bidder. The County Attorney is further authorized to commence any necessary action to enjoin any violation of this Local Law he or she believes to be occurring.

- B.** Criminal Penalties. In addition to prosecution for a Perjury as determined by the District Attorney, any person who violates this article shall be guilty of an unclassified misdemeanor and subject to a fine not to exceed \$25,000.00 per violation and/or up to fifteen days' imprisonment. Each application of Brine shall constitute a separate and distinct violation.

Section 7: Severability

If any provision of this Local Law is held invalid, such invalidity shall not affect the remaining provisions of the Local Law which shall remain effective absent the invalid provision, and to this end, the provisions of the Local Law are declared to be severable.

Section 8: Effective Date.

This Local Law shall take effect as provided by the New York State Municipal Home Rule Law and upon completion of the requisite filings and procedures.