

*Town of Perinton, NY
Monday, March 3, 2014*

Chapter 144. GAS AND OIL EXPLORATION

[HISTORY: Adopted by the Town Board of the Town of Perinton 9-12-2012 by L.L. No. 8-2012. Amendments noted where applicable.]

§ 144-1. Purpose.

The Town of Perinton believes that the protection of residents, neighborhoods, and the natural environment is an appropriate use of its police powers. Allowing one or more of the explicitly prohibited uses described in § 144-2 to be conducted in the Town of Perinton would likely be hazardous to the public health, safety and welfare of the inhabitants of the Town, causing air pollution, dust, odors, and excessive truck traffic to and from the sites of such uses. Furthermore, the high costs associated with the disposal of natural gas and/or petroleum extraction, exploration or production wastes (as defined in § 144-5) have in other localities resulted and could, in our Town, result in such material being deposited along roadways, in vacant lots, or business sites or in other unauthorized places. The purpose of this chapter is to avoid the adverse impacts from these prohibited uses and to protect the health, safety and welfare of the Town residents.

§ 144-2. Explicitly prohibited uses.

- A. The following uses and activities (being respectively defined in § 144-5 below of this Chapter 144) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:
- (1) Land application facility;
 - (2) Natural gas and/or petroleum exploration activities;
 - (3) Natural gas and/or petroleum extraction activities;
 - (4) Natural gas and/or petroleum extraction, exploration or production wastes disposal/storage facility;
 - (5) Natural gas and/or petroleum extraction, exploration or production wastes dump;

- (6) Natural gas compression facility;
- (7) Natural gas processing facility;
- (8) Nonregulated pipelines;
- (9) Underground injection; and
- (10) Underground natural gas storage.

B. Any condition caused or permitted to exist in violation of § 144-2 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance.

§ 144-3. Prohibition against natural gas and/or petroleum extraction, exploration or production wastes.

- A. The Town of Perinton hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this chapter complies with at least the minimum applicable requirements set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.
- B. It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any natural gas and/or petroleum extraction, exploration or production wastes, except for methane gas which is produced at a permitted landfill within the Town of Perinton.

§ 144-4. No application to customary local distribution lines.

The prohibitions set forth above in this Chapter 144 are not intended, and shall not be construed, to prevent or prohibit:

- A. The right to use roadways in commerce or otherwise for travel;
- B. The transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or
- C. The incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal agriculture, residential, business, commercial, and other uses within the Town.

§ 144-5. Definitions.

For purposes of this chapter, the following terms shall have the meanings respectively set forth below:

AGRICULTURAL USE

The use of the land for agricultural purposes, including, but not limited to, dairying, pasturage, truck farms or nurseries, greenhouses, horticulture, viticulture and apiaries, animal and poultry husbandry and the necessary accessory uses for storage; provided, however, that the operation of any such accessory use shall be incidental to that of the principal agricultural activities.

BELOW-REGULATORY CONCERN

Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR § 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

GATHERING LINE or PRODUCTION LINE

Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under Section 1(b) of the Natural Gas Act, and which does not meet the definition of a "major utility transmission facility" under the Public Service Law of New York, Article 7, § 120(2)(b).

INJECTION WELL

A bored, drilled or driven shaft or a dug hole through which fluids (which may or may not include semisolids) are injected into the subsurface.

LAND APPLICATION FACILITY

A site where any natural gas and/or petroleum extraction, exploration or production wastes are applied to the soil surface or injected into the upper layer of the soil.

NATURAL GAS

Methane and any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons, excluding any gas produced by a permitted landfill.

NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES

Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons, including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES

The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing, excluding any gas produced by a permitted landfill.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES

A. Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste:

- (1) Below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons;
- (2) Natural gas or petroleum drilling fluids;
- (3) Natural gas or petroleum exploration, drilling, production or processing wastes;
- (4) Natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced

water, brine, flowback, sediment and/or any other liquid or semiliquid material);

(5) Any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum;

(6) Soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum;

(7) Drill cuttings from natural gas or petroleum wells; or

(8) Any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum.

B. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 CFR § 261.4(b).

C. The definition of natural gas and/or petroleum extraction, exploration or production wastes does not include:

(1) Recognizable and nonrecognizable food wastes; or

(2) Waste generated by agriculture use.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY

Any of the following:

A. Tanks of any construction (metal, fiberglass, concrete, etc.);

B. Impoundments;

C. Pits;

D. Evaporation ponds; or

E. Other facilities, in any case used for the storage or treatment of natural gas and/or petroleum extraction, exploration or production wastes; that:

(1) Are being held for initial use;

(2) Have been used and are being held for subsequent reuse or recycling;

(3) Are being held for treatment; or

(4) Are being held for storage.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DUMP

Land upon which natural gas and/or petroleum extraction, exploration or production wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded.

NATURAL GAS COMPRESSION FACILITY

Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

NATURAL GAS PROCESSING FACILITY

Those facilities that separate and recover natural gas liquids (NGLs) and/or other nonmethane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

NONREGULATED PIPELINES

Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

PIPELINE

All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment, such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment) whether or not laid in public or private easement or private right-of-way within the Town. This term includes, without limitation, gathering lines, production lines, and transmission lines.

RADIOACTIVE MATERIAL

Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is radioactive material for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the New York State Department of Labor, the United States Nuclear Regulatory Commission, the United States Environmental Protection Agency, the United States Department of Energy, the United States Department of Transportation, or any other regulatory agency.

RADIATION

The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

SUBSURFACE

Below the surface of the earth, or of a body of water, as the context may require.

TRANSMISSION LINE

A pipeline that transports petroleum, natural gas, or water to end users as a public utility and which is subject to regulation either by:

- A. The Federal Energy Regulatory Commission's jurisdiction under Section 1(b) of the Natural Gas Act; or
- B. As a major utility transmission facility under the Public Service Law of New York, Article 7, § 120(2)(b).

UNDERGROUND INJECTION

Subsurface emplacement of natural gas and/or petroleum extraction, exploration or production wastes by or into an injection well.

UNDERGROUND NATURAL GAS STORAGE

Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.