

**TOWN OF COLESVILLE
LOCAL LAW NO. 1 OF THE YEAR 2009**

Be it enacted by the Town Board of the Town of Colesville as follows:

Town of Colesville Local Law shall be enacted and entitled as follows:

**NATURAL GAS VEHICLE PERMIT REQUIRED FOR USE OF TOWN OF COLESVILLE
ROADS BY CERTAIN VEHICLES WITH A GROSS WEIGHT IN EXCESS OF THE
LIMITATIONS ALLOWED IN SECTION 385 OF THE VEHICLE AND TRAFFIC LAW OF
THE STATE OF NEW YORK**

Section 2. 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 town 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 town roads or highways, similar to that issued by the State of New York relating to the state system of highways. 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.”
- B. 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 subdivisions 7, 10, 12, 16, 18, and 19, respectively, of section 23-0101 of the Environmental Conservation Law of the State of New York.

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- C. As used in this local law, the term “Natural Gas Vehicle” shall mean any vehicle which has a gross vehicle weight in excess of 80,000 pounds and is used to (i) transport or operate Gas drilling, Oil drilling, or Solution Mining machinery, rigs, pipes, supplies, materials or equipment, (ii) explore for, conduct seismic tests for, mine, drill for, pump, extract, transport and/ or produce Gas, Oil, Product, Salt, or water, (iii) locate, space, construct, drill, repair, enlarge, maintain, equip, operate or produce any Oil well, Gas well, water 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.
- D. As used herein, the term “Town” means the Town of Colesville, a municipality located in the County of Broome, State of New York
- E. As used herein, the term “Highway Superintendent” means the Highway Superintendent of the Town.
- F. As used herein, the term “Building and Code Inspector” means the building and code inspector of the Town, Town code enforcement officer, or such other Town official who exercises similar building, code and enforcement powers.
- G. As used in this Local Law, the term “Town Road” shall mean and include any Town highway, road, street, avenue, boulevard, parkway, concourse, driveway, cul de sac, easement, right of way, bridge, culvert, sluice pipe, ditch, dock, tunnel, sidewalk, or any utilities or improvements therein, thereon or thereunder.

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- H. As used in this Local Law, the term “Other Town Property” shall mean and include any real property (including any improvements therein, thereon or thereunder) or personal
- I. property owned by, or leased to, the Town.
- J. As used in this Local Law, the term “DEC” shall mean and refer to the New York State Department of Environmental Conservation.

Section 3. Requirement that a Natural Gas Vehicle Permit be Obtained

Whenever the Town receives notification (from the DEC, Susquehanna River Basin Commission or any other Federal or State agency, board, department, bureau, commission or official), or whenever the Highway Superintendent or Building and Code Inspector receives credible information (from any source), indicating or suggesting, that any Natural Gas Vehicle is or may be used on, parked on, operated on, transported on, or moved on, over or across any Town Road or Other Town property ; or that any Gas exploration, drilling or production or Oil exploration, drilling or production is or may be taking place in the Town; or that any seismic testing is being, or may be, conducted on, over or across any Town Road or Other Town Property; or that any water is or may be removed, extracted or pumped from any river, stream, brook, pond, public water well, private well or any other well within the Town in connection with any Gas exploration, drilling or production or Oil exploration, drilling, or production, the Town shall send a written notice to the owner, lessee or operator of the Natural Gas Vehicle (or to the Gas company or Oil company on whose behalf the Natural Gas Vehicle is going to be so used, parked, operated, transported or moved), advising of the requirements of this local

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law. The owner, lessee or operator of the Natural Gas Vehicle (or the Gas company or Oil company on whose behalf the Natural Gas Vehicle is going to be so used, parked, operated, transported or moved), must then immediately comply with the requirements of this local law.

No person shall use, park, operate, transport or move on, across or over any Town Road or Other Town property a Natural Gas Vehicle or a combination of Natural Gas Vehicles, the gross vehicle weight of which exceed 80,000 pounds, without having first applied for, and obtained, a Natural Gas Vehicle permit (hereinafter "Natural Gas Vehicle Permit") therefore in accordance with the provisions of this local law.

Section 4. Permit Issuing Authority

The Highway Superintendent (or any member of the Highway Committee of the Town Board of the Town, if the Highway Superintendent is unavailable) 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 Town Road or Other Town property. In the event that the holder of a DEC Gas or Oil drilling permit presents proof (satisfactory to the Highway Superintendent) that such holder plans to use more than one Natural Gas Vehicle in connection with Gas or Oil drilling within the Town, the Highway Superintendent may issue to such holder a blanket Natural Gas Vehicle Permit covering all of the Natural Gas Vehicles which such holder plans to use in connection

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with the activities authorized by the DEC Gas or Oil drilling permit; and if any such blanket Natural Gas Vehicle Permit is thereafter issued by the Highway Superintendent, all of the Natural Gas Vehicles specifically listed on such Natural Gas Vehicle Permit shall be deemed to be covered by such Natural Gas Vehicle Permit. A Natural Gas Vehicle Permit can only be issued to applicants who are holders of valid New York State Hauling or Divisible Load Permits issued pursuant to Subpart 154-2 of Title 17(Transportation) of New York Code of Rules and Regulations. The Highway Superintendent is hereby authorized to hire (with the prior approval of the Town Board of the Town) 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. The Natural Gas Vehicle Permit Fee and each annual renewals shall be \$500.00.

Section 5: Application and Gas Vehicle Permit Form.

The Highway Superintendent is hereby authorized to promulgate (i) an application form requesting the issuance of a Natural Gas Vehicle Permit, and (ii) the Natural Gas Vehicle Permit to be issued upon review and approval of said application. The form of the application for the Natural Gas Vehicle Permit and the form of the Natural Gas Vehicle Permit shall be subject to approval by the Town Board of the Town. Said application shall be accompanied by a Full Environmental Assessment Form and any other documents, maps, sketches and plans which the Highway Superintendent may reasonably require. The application for issuance of a Natural Gas Vehicle Permit, and the Natural Gas Vehicle Permit must be obtained on an Annual basis.

Section 6. Damage to Town Roads With the exception of normal wear and tear, the permittee (hereinafter "Permittee") of a Natural Gas Vehicle Permit issued in accordance with the provisions of this local law 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 Town Road or Other Town 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 Town may require the Permittee to repair all damages, injuries, discharges or spills caused to or on any Town Road or Other Town Property; or the Town may arrange for the necessary repairs and restoration and charge the Permittee for all related labor and materials at the prevailing rates. The Town Road and Other Town Property shall be fully restored and maintained (to the satisfaction of the Highway Superintendent) for a period of one year from the date of any repairs or restoration. Particular attention is called to the necessity of thoroughly compacting (to the satisfaction of the Highway Superintendent) the back fill which will be required by the Town.

Section 7. Insurance.

A. The Permittee shall present to the Town certificates of insurance evidencing the Permittee's acquisition of liability insurance coverage naming the Town as an additional insured on a non-contributory basis with the minimum limits of coverage for death or bodily injury equal to \$2,000,000.00 for each person injured, \$4,000,000.00 for aggregate death or bodily injury resulting from each occurrence, and \$2,000,000.00 property damage.

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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 Town 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 Workmen's Compensation Law and Disability Benefits Law of the State of New York.

Section 8. Highway Permit Bond or Maintenance bond

The Permittee shall file with the Town Clerk of the Town a highway permit bond, maintenance bond, or comparable bond in the amount of \$200,000.00 or a bank letter of credit in the amount of \$200,000.00 in favor of the Town guaranteeing compliance with the provisions of the Natural Gas Vehicle Permit. At such time, if ever, that said highway permit bond, maintenance bond, comparable bond or letter of credit is expended, the Permittee shall replace the same within 5 days of the receipt of written notice from the Town, 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 attorney for the Town.

Section 9. Deposits into an escrow account.

In order to provide a source of funds to promptly reimburse the Town for any reasonable costs and expenses incurred by the Town in processing an application for

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a Natural Gas Vehicle Permit and/or in seeking reimbursement for damages, injuries, discharges or spills involving Town Roads or Other Town Property, the applicant for a Natural Gas Vehicle Permit shall also file with the Town Clerk of the Town an initial cash deposit in the sum of \$10,000.00. 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 Section 3 hereof; reasonable administrative costs and expenses incurred by the Town in connection with the permitting process and the repair, restoration and preservation of Town Roads and Other Town Property; and reasonable legal fees, accountants fees, engineers fees, costs, expenses, disbursements, expert witness fees and other sums expended by the Town in pursuing any rights, remedies or claims to which the Town 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 Town shall maintain a separate escrow account for all such funds. The Town is hereby authorized to withdraw funds from said escrow account (without prior notice to the Permittee) in order to promptly reimburse the Town for any costs and expenses (as defined herein). Immediately following any such withdrawals, the Town shall give written notice to the Permittee detailing such withdrawals and the reasons therefor. If, at any time

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during the period when the Natural Gas Vehicle Permit is in effect, this escrow account has a balance less than \$10,000.00, the Permittee shall immediately, upon notification from the Town, replenish said escrow account so that it has a balance of at least \$10,000.00. 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 Town Road or Other Town Property (and that no discharges or spills have occurred on any Town Road or Other Town Property) for which the Town has not been fully reimbursed, the Town shall pay to the Permittee the balance remaining in the escrow account.

Section 10. Reservation of Town's rights to request funds from the State Commissioner of Environmental Conservation

The Town 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 therefore with the New York State Commissioner of Environmental Conservation) from the oil and gas fund to reimburse the Town for costs incurred in repairing damages to any Town Road, or Other Town Property.

Section 11. Indemnity and Save Harmless

The Permittee will be required to agree to fully indemnify, defend, save and hold

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harmless the Town 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 all of the defense, indemnity and save harmless provisions of this Local Law and all other provisions of this Local Law.

Section 12. Stop work orders.

The Highway Superintendent and the Building and 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 DEC; or contrary to the Permittee's application hereunder, or contrary to the conditions upon which its Natural Gas Vehicle Permit was issued.

Section 13.Revocation of Natural Gas Vehicle Permit.

Upon the violation of any provisions of the Natural Gas Vehicle Permit, or violation of

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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 DEC, the Highway Superintendent may suspend any such permit issued hereunder for no more than thirty (30) days, and, following a public hearing (for which a notice of the public hearing shall be published in the official newspaper of the Town at least ten days prior to the date thereof) 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.

Section 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 Town 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.

Section 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

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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 remain valid only for so long as the Permittee continues to hold a valid New York State Hauling or Divisible Load Permits issued pursuant to Subpart 154-2 of Title 17(Transportation) of New York Code of Rules and Regulations
- D. The Natural Gas Vehicle Permit shall not authorize the holder thereof to exceed the maximum gross weight limit authorized for crossing a R-Posted bridge.
- E. The Town makes no warranties or representations as to the conditions or fitness of any Town Road or Other Town Property; or their fitness for any intended use; or the Town's rights, titles or interests therein or thereto.

Section 16. Penalties for violations

A violation of this local law is hereby declared to be a Class A misdemeanor which shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00). Each week's continued violation shall constitute a separate additional violation. The Town Board of the Town may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with, or to restrain by injunction the violation of, this local law.

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Section 16. 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 Town Board of the Town hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 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.

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