

RESOLUTION #53-2008 OF THE TOWN BOARD OF THE TOWN OF DELAWARE
ADDRESSING ROAD IMPACTS RELATIVE TO NATURAL GAS EXPLORATION,
DEVELOPMENT, AND PRODUCTION OF MINERAL, OIL, AND GAS RESOURCES; AND
REQUESTING HOMERULE AUTHORITY FROM THE STATE OF NEW YORK ON
IMPLEMENTING ROAD ASSESSMENT FEES, PERFORMANCE BONDS, AND
REQUIRING STEEL TANK STORAGE OF FRACKING MATERIAL PER WELL SITE TO
PROTECT THE HEALTH, SAFETY, AND WELFARE OF THE TOWN.

WHEREAS, the Town of Delaware is located in Marcellus Shale Field Basin; and

WHEREAS, the Marcellus Shale is a deep, fine grained sedimentary rock deposited by a shallow sea and that such shale is a porous rock that contains hydrocarbons but has practically no permeability; and

WHEREAS, due to technological advances and energy related issues, the exploration and production of natural gas in the Marcellus Shale Gas Field has become economically feasible in the recent past; and

WHEREAS, oil and natural gas operations include the clearing and leveling of a site, the construction of access roads, potential digging of reserve pits and impacts upon the water supply; and

WHEREAS, well stimulation, which is the process of creating or enlarging existing pores to allow gas to more readily reach the producing well, and hydraulic fracturing (“fracking”), associated therewith, includes the use of a fracturing fluid, high pressure, and proppants such as sand; and

WHEREAS, drilling and fracking usually involves the use of heavy equipment, including large trucks and related equipment, and often excessive amounts of noise, light, and potential damage to public roads and streets; and

WHEREAS, oil and natural gas exploration and operations are exempt from the Federal Clean Air Act, Federal Clean Water Act, Safe Drinking Water Act (SDWA) and exempt from local planning and zoning review under the NYS Environmental Conservation Law, Section New York Environmental Conservation Law (ECL) Section 23-0303; and

WHEREAS, the Environmental Conservation Law, Section New York Environmental Conservation Law (ECL) Section 23-0303, preempts towns from regulating land use of Gas and Oil Mining in NYS except over local roads or the rights of local governments under the real property tax law.

NOW, THEREFORE, BE IT RESOLVED that the Town of Delaware Town Board agrees that action must be taken to address impacts of the health, safety, and welfare of the Town;

BE IT FURTHER RESOLVED, that the Town will engage in a road assessment study of impacts related to heavy truck traffic with the assistance of the Sullivan County Division of Planning and Environmental Management; and

BE IT FURTHER RESOLVED that because gas companies are privileged to be exempt from federal clean air and water acts, federal safe drinking act, and further exempt from local review that a road assessment study will focus on truck traffic related to gas operations as specified under Section New York Environmental Conservation Law (ECL) Section 23-0303 ; and

BE IT FURTHER RESOLVED that as the Town pursues a road assessment study in preparation for potential gas drilling that the Town, in conjunction with the Supervisors Association, requests our NYS Assembly and Senate representatives to offer legislation, and/or sponsor a local law, to allow the towns more Home Rule discretion in implementing the results of the road assessment study to collect impact fees, performance bonds prior to the DEC issuing a permit to gas drilling companies; and

BE IT FURTHER RESOLVED that additional Home Rule authority is necessary to ensure that the tax burden is not increased or passed on to the residents of the Town due to impacts of the gas industry as it relates to impacts on infrastructure; and

BE IT FURTHER RESOLVED that additional Home Rule authority is necessary to require that fracking material be stored in steel tanks per well site to insure the health, safety, and welfare of town residents from flooding and natural disasters which are becoming more frequent in Sullivan County; and

BE IT FURTHER RESOLVED that the certified copy of this resolution be filed with the New York State Department of State, Office of the Assembly, Office of the NYS Senate, Commissioner of the New York State Department of Environmental Conservation, and the Governor's Office to convey that necessary action is needed to update New York Environmental Conservation Law (ECL) Section 23-0303 to allow for more local influence in protecting the health, safety, and welfare of Town of Delaware residents.

Resolution was thereupon adopted: AYES-3, NAYS-0.