

IN THE COUNTY COMMISSION OF FAYETTE COUNTY, WEST VIRGINIA

**ORDINANCE BANNING THE STORAGE, DISPOSAL, OR
USE OF OIL AND NATURAL GAS WASTE
IN FAYETTE COUNTY, WEST VIRGINIA**

**Be it enacted and ordained by the County Commission of Fayette County, West Virginia,
to provide as follows:**

Short Title

Ordinance banning the storage, disposal or use of oil and natural gas waste, waste water or any derivate thereof within Fayette County, WV.

Findings

WHEREAS oil and natural gas waste contains water, rock cuttings and sludge contaminated with carcinogenic chemicals such as benzene, heavy metals such as arsenic and mercury, and radioactive material such as radium, radon, uranium, thorium, polonium, and strontium;

WHEREAS oil and natural gas companies are seeking ways to dispose of trillions of gallons of oil and natural gas waste annually;

WHEREAS West Virginia sewage treatment plants and centralized waste treatment plants are possible sites for disposal of this waste;

WHEREAS disposal experience of oil and natural gas waste in West Virginia includes injecting waste into the ground through wastewater injection wells;

WHEREAS road spreading of oil and natural gas waste water for dust control and de-icing increases risk of exposure to drivers and pedestrians and contamination of nearby fields and surface waters;

WHEREAS this County Commission finds that the injection of waste derived or resulting from the extraction of oil and natural gas into the ground, as well as the disposal of such waste into surface waters, onto the land or into the air in Fayette County poses a significant threat to the health, safety and welfare of county residents;

WHEREAS this County Commission finds that it has plenary authority to eliminate hazards to public health and safety and to abate or cause to be abated anything which this Commission determines to be a public nuisance;

WHEREAS this County Commission has determined that the disposal of natural gas and oil waste constitutes a hazard to the public health and safety of the citizens of Fayette County;

WHEREAS this County Commission has determined that the disposal of mine waste constitutes a hazard to the health and safety of the citizens of Fayette County;

WHEREAS this County Commission has determined that the mixing of natural gas and oil waste with storm water runoff is both an intolerable public health and safety hazard and a nuisance;

Definitions

“Application” shall mean the physical act of placing or spreading natural gas waste or oil waste on any road or real property located within Fayette County.

“Corporations” shall include any corporation, limited partnership, limited liability partnership, business trust, or Limited Liability Company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State conferred limited liability attributes for its owners, directors, officers and/or managers.

“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.

“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.

“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.

“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.

“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.

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement.

Section 1 – Prohibitions

1. It shall be unlawful for any individual or corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to deposit, store, treat, inject or process waste water, produced water, frack water, brine or other materials, chemicals or by-products that have been used in the extraction of gas, onto or into the land, air or waters within Fayette County. This prohibition shall specifically apply to disposal injection wells.
2. The application of natural gas waste or oil waste, whether or not such waste has received approval for use by the Department of Environmental Protection (DEP) or any other regulatory body, on any road or real property located within Fayette County for any purpose is prohibited.
3. The introduction of natural gas waste or oil waste into any wastewater treatment facility within Fayette County is prohibited.
4. The introduction of natural gas waste or oil waste into any solid waste management facility within Fayette County is prohibited.
5. The sale, acquisition, storage, handling, treatment and/or processing of natural gas waste or oil waste within Fayette County is prohibited.
6. No permit, license, privilege or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance shall be deemed valid within Fayette County.

Section 2 – Provision to be included in bids and contracts

1. 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 roads or real property within Fayette County shall include a provision stating that no materials containing natural gas waste or oil waste shall be provided to the County.
2. 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 County shall include

a provision stating that no materials containing natural gas waste or oil waste shall be utilized in providing such a service.

3. The following statement, which shall be a sworn statement under penalty of perjury, 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 County 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 County:

“We _____ hereby submit a bid for materials, equipment and/or labor for Fayette County. The bid is for bid documents titled _____. We hereby certify under penalty of perjury 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 County as a result of the submittal of this bid if selected.”

Section 3 – Enforcement

1. Any person, corporation, or other entity that violates any prohibition of this Ordinance may be guilty of a misdemeanor. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.
2. The Fayette County Commission may, at their discretion, also enforce this Ordinance through an action in equity, including but not limited to injunctive relief, brought in the Circuit Court or any court with jurisdiction. In such an action, the Fayette County Commission shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.
3. Any resident of Fayette County shall have the authority to enforce this Ordinance through an action in equity brought in the Circuit Court of Fayette County. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 4 - Penalties

1. Any person who disposes of such natural gas or oil waste, as heretofore defined, is guilty of causing and maintaining a nuisance, a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand (\$1,000) and not more than five million (\$5,000,000) and may be confined in the regional jail for not less than ninety (90) days nor more than one (1) year for each offense. Said fine shall be commensurate with the costs of remediation and abatement associated with said offense.

2. This ordinance shall apply to any and all actions occurring on or after the effective date of this ordinance. The County is empowered to issue "Cease and Desist" orders in case of any violation of the Prohibitions and Provisions stated above. It is further empowered to require remediation of any damage done to any land, road, building, aquifer, well, water course, air quality or other asset, be it public or private, within Fayette County.
3. Whether criminal or civil, a defendant found guilty or liable for violating this ordinance may be ordered to pay any costs of restitution or remediation of damages.

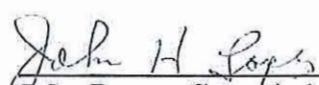
Section 5 – Severability


The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part or provision of this Ordinance is illegal, invalid or unconstitutional, such decision shall not affect, impair or invalidate any of the remaining sections, clauses, sentences, parts or provisions of the Ordinance. The County Commissioners of Fayette County hereby declare that in the event of such a decision and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part or provisions that the court decides is illegal, invalid or unconstitutional.

Entered this 12th day of January, 2016.

FAYETTE COUNTY COMMISSION



Matthew Wender, President

John Lopez, Commissioner

Denise Scalph, Commissioner

FIRST READING: DECEMBER 15, 2015
SECOND READING: JANUARY 12, 2016