

Municipality of the County of Inverness Fracturing By-law #45

BEING A BY-LAW TO PROHIBIT THE USE OF CHEMICAL (*SLICKWATER*), HYDRAULIC FRACTURING, OTHERWISE KNOWN AS HIGH VOLUME HYDRAULIC FRACTURING (HVHF) OR *FRACKING*, TO EXTRACT METHANE GAS OR PETROLEUM

- 1) **WHEREAS** The Municipality of the County of Inverness supports conventional methods of exploration for, and harvesting of oil, and gas, but not chemical hydraulic fracturing, to fracture underground rock structures as a means to explore for or extract oil or methane gas from drilled wells within the territorial jurisdiction of Municipality of the County of Inverness; and,
- 2) **WHEREAS** it is generally acknowledged that within free and democratic societies the power to govern derives solely from the authority and consent of those governed;
- 3) **AND WHEREAS** Section 7 of the Canadian Charter of Rights and Freedoms, enshrined within the Constitution Act of 1982, guarantees a person's right to *Life, Liberty, and Security of Person*;
- 4) **AND WHEREAS** the Supreme Court of Canada has made clear that *Life, Liberty, and Security of Person* are distinct and separate rights and has ruled in past cases that the particular and universal right to *Security of Person* embraces an individual's "*health and well being*";
- 5) **AND WHEREAS** International Law recognizes the *Precautionary Principle* which states that action which may cause morally unacceptable harm to humans or the environment **not be taken**, the accepted threshold for caution and restraint being that the identified potential harm is scientifically plausible;
- 6) **AND WHEREAS** the Supreme Court of Canada in **114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)**, [2001] 2 S.C.R. 241, 2001 SCC 40 referred directly to said *Precautionary Principle* in its unanimous judgment upholding the legal right of the town of Hudson, Quebec, under that province's **Cities and Towns Act, Section 410(1)**, to adopt a bylaw that legislated restrictions on the use of pesticides in order to protect the "*health and general welfare in the territory of the municipality*";
- 7) **AND WHEREAS** said Supreme Court 2001 decision implies that, not only do municipal, county, provincial, and federal governments all bear a common responsibility to protect the health and well being of their residents but, further, that government at every level has latitude and broad discretion to regulate activities that pose potential harm to residents within their respective jurisdictions;
- 8) **AND WHEREAS** previous interpretation of said Section 7 by the Supreme Court of Canada (**Blencoe v. BC (Human Rights Commission)** 2000 SCC 44) has broadened the scope of an individual's "*health and well being*" to include an individual's "*psychological integrity*", thereby asserting an individual's right to be protected from undue mental stress;
- 9) **AND WHEREAS** the municipalities of the Province of Nova Scotia derive their power under the **Municipal Government Act (S.N.S. 1998 Chapter 18)** which in **Section 2(General Purpose)** expanded the scope of the previous **Municipal Act (RSNS 1989, Chapter 295)** in order to: (a) give

broad authority to councils, including broad authority to pass by-laws, and to respect their right to govern municipalities in whatever ways the councils consider appropriate within the jurisdiction given to them; (b) enhance the ability of councils to respond to present and future issues in their municipalities; and (c) recognize that the functions of the municipality are to (i) provide good government, (ii) provide services, facilities and other things that, in the opinion of the council, are necessary or desirable for all or part of the municipality, and (iii) develop and maintain safe and viable communities;

10) AND WHEREAS said **Municipal Government Act 1998** in **Part III Section 47(1)** confers general power to legally elected councils of Provincial municipalities to make bylaws and further enshrines in **Part VII** the following powers: **Section 171(1)** *Subject to Part VIII, in this Act, the power to (a) license includes the power to regulate; (b) regulate includes the power to license and (c) regulate includes the power to prohibit;* **Section 172(1)** *A Council may make by-laws, for municipal purposes respecting (a) the health, well being, safety and protection of persons, (b) the safety and protection of property; and* **Section 172(2)** *Without restricting the generality of subsection (1) but subject to Part VIII a Council may, in any By-law, (a) regulate or prohibit, (b) regulate any development, activity, industry, business ..., (c) provide, that in a prosecution for violation of a by-law, evidence that one neighbour is disturbed is prima facie evidence that the neighbourhood is disturbed;*

11) AND WHEREAS no statutory declaration within said **Nova Scotia Municipal Government Act of 1998** can be reasonably interpreted as intent on the part of the Province to preclude a municipality's right under **Section 172(1)** to prohibit the widespread introduction of toxic chemicals on such a scale, considering International Law's *Precautionary Principle*, as to seriously impact the environment and, accordingly, the *health, well being, safety and protection of persons*;

12) AND WHEREAS the Municipality of the County of Inverness hereby asserts its legislative right on behalf of its residents under **Section 172(1)** of said **Nova Scotia Municipal Government Act of 1998** to take preventative action in countering a scientifically plausible threat to "*health and well being*" based on said Supreme Court citation of said *Precautionary Principle*;

13) AND WHEREAS said **Nova Scotia Municipal Government Act of 1998** further states in **Schedule B, (Statement of Provincial Interest Regarding Drinking Water)** an explicit goal "*To protect the quality of drinking water within municipal water supply watersheds*" noting further that "*A safe supply of drinking water is a basic requirement for all Nova Scotians*" and that "*Inappropriate development in municipal water supply watersheds may threaten the quality of drinking water*";

14) AND WHEREAS the **Water for Life: Nova Scotia's Water Resource Management Strategy** of 2011 lists as primary goals: "**Human Health** • *ensure safe, secure water for consumption, recreation, and livelihoods*, **Economic Prosperity** • *ensure sustainable and beneficial use of water resources*, and **Ecosystem Integrity** • *protect, conserve, and enhance water resources and dependent ecosystems*, with emphasis on the "*stewardship*" of water as a "*guiding principle*" toward achieving "*one of the most environmentally and economically sustainable ways of life in the world by 2020*";

15) AND WHEREAS benzene is a volatile organic compound (VOC) typical of numerous VOCs that make up proprietary fracking fluid recipes used by corporations to hydraulically fracture rock formations;

16) AND WHEREAS petrolific formations are associated with not only VOCs (particularly benzene) but also naturally occurring radioactive metals (NORM including uranium, highly radioactive radium,

and radioactive isotopes of thorium and lead) all of which make their way back up drilled wells as components of “produced water” (flowback), a net result of the highly pressurized injection of the millions of liters of water needed to “frack” a single gas or oil well;

17) AND WHEREAS Health Canada’s Publication 4162 (**Benzene Guideline Technical Document: Guidelines for Canadian Drinking Water Quality, June 2009**) details benzene’s acute effects on human health which extend to carcinogenic and genetic toxicity;

18) AND WHEREAS the Municipality of the County of Inverness, recognizing that physical health and economic wellbeing depend on the viability of the County’s watersheds, hereby asserts that all residents of the County possess a fundamental right to pure water, this inalienable right encompassing and extending to all County waters, wetlands, aquifers, and interrelated natural communities occupying the County’s land base, particularly with regard the purposeful introduction of any known or suspected carcinogen, neurotoxin, mutagen, or otherwise life disrupting agent through the use of hydraulic fracturing to extract gas or oil;

19) AND WHEREAS scientific studies have identified the presence of benzene and other VOC’s in airborne emissions from fracking operations at concentrations above levels considered safe for human health and whereas heavier than air VOCs tend to settle in low lying valleys typically well populated in Inverness County, the Municipality of the County of Inverness hereby asserts that all residents of the County possess a fundamental and inalienable right to clean air free of airborne contaminants at levels known to pose a risk to human health and wellbeing;

20) AND WHEREAS the **Nova Scotia Environmental Goals and Sustainable Prosperity Act** of 2007 states as fundamental principles the following: “(a) *the health of the economy, the health of the environment, and the health of the people are interconnected;* (b) *environmentally sustainable economic development that recognizes the value of the Province’s environmental assets is essential to the long-term prosperity of the Province;* (c) *the environment and the economy of the Province are a shared responsibility of all levels of government, the private sector, and all the people of the Province;* and (d) *the environment and economy must be managed for the benefit of future generations;*”

21) AND WHEREAS, the Municipality of the County of Inverness hereby asserts that County residents have a fundamental and inalienable right to non-polluting diversified development consistent with the County’s **Integrated Community Sustainability Plan (ICSP)** established to protect and enhance the County’s “*Environmental, Economic, Social, and Cultural*” wellbeing;

22) AND WHEREAS the chemical contamination of water sources, the emission of noxious gases, and the widespread degradation of natural assets, all clearly associated with the utilization of unconventional hydraulic fracturing technology to extract gas and oil, bear negatively both on those inherent rights claimed herein and, accordingly, on the ability of the Municipality to protect the viability of the County’s natural environment upon which depends the present health and future wellbeing of its residents;

NOW THEREFORE THE COUNCIL OF THE MUNICIPALITY OF THE COUNTY OF
INVERNESS ENACTS AS FOLLOWS: BY-LAW # 45

(1) No person, partnership, joint venture, or trust or any corporate, governmental, or quasi-governmental entity or joint venture thereof may utilize chemical (*slickwater*) hydraulic fracturing, (otherwise known as High Volume Hydraulic Fracturing (HVHF) or, simply, *fracking*) to fracture (*frack*) underground rock structures as a means to explore for or extract oil or methane gas from drilled wells within the territorial jurisdiction of Municipality of the County of Inverness.

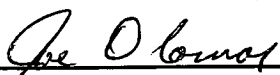
(2) The Municipality of the County of Inverness may adopt policies reasonably related to the implementation and enforcement of this By-law.

(3) Any violation of this By-law is hereby declared to be a nuisance.

(4) Any legal person, partnership, joint venture, or trust or any corporate, governmental, or quasi-governmental entity or joint venture thereof which violates this By-law is guilty of an offence and shall be subject to a fine for each day a violation of this By-law continues in the amount of \$10,000.00.

(5) If any clause, sentence, section, or provision of this Bylaw is determined by any court of competent jurisdiction to be invalid in any respect, each remaining clause, sentence, section and provision of this By-law shall remain undiminished and in full force.

**THIS IS TO CERTIFY that the foregoing
By-Law is a true copy of a by-law duly passed
at a duly called meeting of the Municipal Council
of the Municipality of the County of Inverness
duly held on the 6th day of May A.D., 2013.**



Joe O'Connor, Clerk

Date of First Reading: **October 1, 2012**

Date of Second Reading: **May 6, 2013**

Date of Advertisement of Passage of By-Law: **May 15, 2013**