

Subparagraph (iv) of section 750-1.5(a)(6) is amended to read as follows:

(iv) injection into the well is approved by EPA if EPA approval is required, in accordance with 40 CFR Parts 124.10, 144 and 146 (see section 750-1.24 of this Part).

A new Subpart 750-3 of this Part is adopted to read as follows

Subpart 750-3 High-Volume Hydraulic Fracturing (HVHF) Operations

(Statutory authority: Environmental Conservation Law, art. 3, titles 1, 3; art. 15, titles 3, 31; art. 17, titles 3, 5, 7, 8; art. 21; art. 70, title 1; art. 71, title 19; New York State Penal Code, arts. 175, 210; Public Health Law, section 502; Federal Water Pollution Control Act, 33 USC 1251, *et seq.*)

750-3.1 Scope and purpose

(a) HVHF operations, as defined in section 750-3.2, require a SPDES permit.

(b) Unless in conflict, superseded or expressly stated otherwise in this Subpart, the provisions set forth in Subpart 750-1 and Subpart 750-2 of this Part shall apply to HVHF operations.

750-3.2 Definitions

(a) For the purposes of this Subpart, the definitions of section 750-1.2 of this Part apply to the extent not superseded by this Subpart. Terms not defined herein or in section 750-1.2 of this Part shall be defined by the context in which they are used.

(b) Whenever used in this subpart, the following terms will have the meanings set forth below:

- (1) 100-year floodplain means an area of special flood hazard, which is the land in the flood plain within a municipality subject to a 1 percent or greater chance of flooding in any given year. The area may be designated on a Flood Insurance Rate Map as a Zone A , AO, AH, A1-A30, AE, A99, AR, AR/A1-A30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE or V.
- (2) Access road means a road constructed to the well pad that provides access during the drilling and operation of the well.
- (3) Aquifer means a zone of permeable, water-saturated material below the surface of the earth capable of producing usable quantities of water.
- (4) BUD means a Beneficial Use Determination issued by the Department, pursuant to Part 360 of this Title.
- (5) CAS Number means the Chemicals Abstract Service Registry number, a unique numeric identifier for a substance, assigned by Chemical Abstracts Service, which is part of the American Chemical Society.
- (6) Casing means pipe, typically made of steel, placed in the drilled hole of a well of an oil and gas well.
- (7) Chemical additive means a substance composed of one or more chemical constituents that is intentionally added to a base fluid.
- (8) Chemical constituent means a discrete chemical with its own specific name or identity, such as a CAS Number, which is contained within an additive product.
- (9) Closed-loop tank system means a pitless drilling system where all drilling fluids and cuttings are contained at the surface within piping, separation equipment and tanks.
- (10) Comprehensive Stormwater Pollution Prevention Plan (SWPPP) means the combined Construction SWPPP and HVHF SWPPP.

- (11) Construction Phase means the phase between commencement of surface soil disturbance associated with the construction of access roads, well pads, and other appurtenances and Construction Phase Completion.
- (12) Construction Phase Completion means when (a) all construction activities in the Construction SWPPP have been completed; (b) all the areas of disturbance have achieved final grade and measures have been applied that will achieve final stabilization; and (c) all post-construction stormwater management practices have been constructed in conformance with the Construction SWPPP and are operational.
- (13) Construction SWPPP means the stand-alone stormwater pollution prevention plan that includes best management practices and other requirements to control the pollution of stormwater during both construction of the well site and post-construction at the well site.
- (14) Cuttings or samples means chips of rock cut by the drill bit and brought to the surface by the drilling fluid.
- (15) Drilling fluid means mud, water, brine, or other fluid, including air, pumped down the drill string which acts as a lubricant and coolant for the drill bit and is used to carry rock cuttings back up the wellbore. It may also be used for pressure control in the wellbore and to drive a mud motor and bit for directional drilling.
- (16) Final stabilization means all soil disturbance activities have ceased and a uniform, perennial vegetative cover with a density of at least eighty (80) percent has been established or other equivalent stabilization measures, such as sod, permanent landscape mulches, rock rip-rap or washed/crushed stone, have been applied on all disturbed areas that are not covered by permanent structures, concrete or pavement.

- (17) Flood Insurance Rate Map (FIRM) means an official map of a community on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.
- (18) Flowback means liquids and solids produced during initial completion and clean up of the well or clean up of a well following re-fracture or workover of a well.
- (19) Formation fluids means fluids in a liquid or gaseous physical state, present within the pore spaces, fractures, faults, caverns, or any other spaces of formations, whether or not naturally occurring or injected therein.
- (20) Freeboard means the distance between the maximum water surface elevation anticipated in design and the top of retaining banks or structures. Freeboard is provided to prevent overtopping due to unforeseen conditions.
- (21) Fresh water supply means those groundwaters having a chloride concentration equal to or less than 250 mg/L or a total dissolved solids concentration equal to or less than 1,000 mg/L.
- (22) High-Volume Hydraulic Fracturing (HVHF) means the stimulation of a well using 300,000 gallons or more of water as the base fluid in the hydraulic fracturing fluid per well completion. In determining whether the 300,000 gallon threshold has been met, the Department will take into account the sum of all water-based fluids, including fresh water and recycled flowback water, used in all HVHF stages.
- (23) High-Volume Hydraulic Fracturing Phase (HVHF Phase) means the phase following Construction Phase Completion and through completion of Partial Site Reclamation. This phase includes well drilling, high-volume hydraulic fracturing, and on-site handling and treatment of HVHF wastewater produced until all wells planned for that well pad have been completed.

- (24) High-Volume Hydraulic Fracturing Operations (HVHF Operations) means: (i) the Construction Phase, (ii) the HVHF Phase, and (iii) the Production Phase.
- (25) HVHF general permit means a SPDES permit issued pursuant to section 750-3.11 of this Part.
- (26) HVHF SPDES permit means an individual SPDES permit for HVHF operations (individual HVHF SPDES permit) or an HVHF general permit.
- (27) HVHF SWPPP means the stand-alone stormwater pollution prevention plan required by a SPDES permit that includes structural and non-structural best management practices and other activity-specific requirements to control the pollution of stormwater during the HVHF Phase and the Production Phase.
- (28) HVHF wastewater means liquid waste consisting of one or more of the following: drilling fluids, formation fluids, flowback, or production brine.
- (29) Horizontal drilling means the deviation of the borehole from vertical so that the borehole penetrates the objective formation in a manner parallel to the formation.
- (30) Hydraulic fracturing means the act of pumping hydraulic fracturing fluid and a proppant into a formation to increase its permeability.
- (31) Hydraulic fracturing fluid means fluid used to perform hydraulic fracturing; includes the base fluid and all chemical additives.
- (32) Life of the well means the period of time from initial drilling of the well through plugging and abandonment, in accordance with Part 555 of this Title, as adopted on XX, 20XX.
- (33) Naturally Occurring Radioactive Materials (NORM) means the radioactivity that can exist naturally in native materials, like some shales, and may be present in certain wastes from a well.
- (34) Objective formation means the reservoir or target formation that the operator is trying to reach and evaluate and/or complete when drilling a well.

(35) Partial site reclamation means (a) when all of the equipment, materials and BMPs associated with the HVHF Phase have been removed, (b) surface disturbances not associated with production activities have been scarified or ripped to alleviate compaction prior to replacement of topsoil, and (c) all the disturbed areas have been stabilized after topsoil replacement, in accordance with the Partial Site Reclamation Plan submitted pursuant to Part 560.3(a)(17) of this Title, as adopted on XX, 20XX.

Partial reclamation and final reclamation of any well pad and access road must be done in conformance with the plans approved by the department.

(36) Plugged and abandoned (plug and abandon) means the permanent abandonment of a well bore including the placing of all bridges, plugs and fluids therein.

(37) Primary/Principal aquifers –

(i) Primary aquifers are highly productive aquifers presently being utilized as sources of water supply by major municipal water supply systems.

(ii) Principal aquifers are aquifers known to be highly productive or whose geology suggests abundant potential water supply, but which are not intensively used as sources of water supply by major municipal systems at the present time.

(38) Product means an additive that is manufactured using precise amounts of specific chemical constituents and is assigned a commercial name under which the material is sold or utilized.

(39) Production brine means liquids co-produced during oil and gas production.

(40) Production Phase means the phase following Partial Site Reclamation through the termination of coverage under an HVHF general permit or termination of an individual HVHF SPDES permit. This phase includes the production of natural gas and the on-site handling and treatment of production brine at the well site.

- (41) Proppant means a material such as sand or ceramic particles that is carried in suspension by the fracturing fluid and that serves to keep the induced fractures open when fracturing fluid is withdrawn after a fracture treatment.
- (42) Reserve pit means a lined, mud pit in which a supply of drilling fluid has been stored, or a waste pit, usually an excavated pit.
- (43) Reservoir, in relation to surface waters, means a ponded or impounded waterbody designated for use as a public water supply, any portion of which is classified as A or AA, per Parts 800-941 of this Title.
- (44) Stage means isolation of a specific interval of the wellbore and the associated interval of the formation for the purpose of maintaining sufficient fracturing pressure.
- (45) Stimulation means the act of increasing a well's productivity by artificial means such as hydraulic fracturing, acidizing, and shooting.
- (46) Storage means the holding of a material, container or equipment at a well site.
- (47) TDS means Total Dissolved Solids.
- (48) Temporary stabilization means that exposed soil has been covered with material(s) to prevent the exposed soil from eroding. The materials can include, but are not limited to, mulch, seed and mulch, and erosion control mats (e.g. jute twisted yarn, excelsior wood fiber mats).
- (49) Unfiltered surface drinking water supplies means those public drinking water supplies that the EPA or New York State Department of Health have determined meet the requirements of the "Interim Enhanced Surface Water Treatment Rule" (IESWT Rule) for unfiltered drinking water supply systems. The IESWT Rule is a December 16, 1998 amendment to the Surface Water Treatment Rule that was originally promulgated by EPA on June 29, 1989. In New York State, this includes the New York City Drinking Water Supply Watershed and the Syracuse Drinking Water Supply Watershed.

- (50) Watershed means the region drained by, or contributing water to, a stream, lake, or other body of water.
- (51) Well pad means the area directly disturbed during drilling and operation of a gas well.
- (52) Well site means the well pad and access roads, equipment storage and staging areas, vehicle turnarounds, and any other areas directly or indirectly impacted by activities involving a well.
- (53) Wellbore means a borehole; the hole drilled by the bit. A wellbore may have casing in it or it may be open (uncased); or part of it may be cased, and part of it may be open.
- (54) Wetland means any area regulated pursuant to Article 24 of the Environmental Conservation Law and any other wetlands regulated under Section 404 of 33 U.S.C. 1251, *et seq.*
- (55) Workover means any downhole operation in an existing well performed after initial completion that is designed to sustain, restore or increase efficiency, make the well safer, or correct a known or potential environmental hazard.

750-3.3 Prohibited Activities and Discharges

(a) The prohibitions in this section are in addition to those listed in section 750-1.3 of this Part, unless in conflict, superseded or expressly stated otherwise in this section. Well pads for HVHF operations are prohibited, and no SPDES permit will be issued authorizing any such activity or discharge:

- (1) within 4,000 feet of, and including, an unfiltered surface drinking water supply watersheds;
- (2) within 500 feet of, and including, a primary aquifer;
- (3) within 100-year floodplains;
- (4) within 2,000 feet of any public (municipal or otherwise) drinking water supply well, reservoir, natural lake, man-made impoundment, or spring; and

(5) within 2,000 feet around a public (municipal or otherwise) drinking water supply intake in flowing water with an additional prohibition of 1,000 feet on each side of the main flowing waterbody and any upstream tributary to that waterbody for a distance of one mile from the public drinking water supply intake; and

(6) within 500 feet of a private water well or domestic use spring, or water supply for crops or livestock, unless the Department has granted a variance from the setback pursuant to subparagraph 560.4(c) of this Title, adopted on XX, 20XX.

(b) All distances noted above are measured from the closest edge of the HVHF well pad.

750-3.4 Requirement to obtain a permit

(a) The requirements in this section are in addition to those listed in section 750-1.4 of this Part, unless in conflict, superseded or expressly stated otherwise in this section.

(b) HVHF operations cannot commence without a valid HVHF SPDES permit.

750-3.5 Exceptions

(a) The exceptions listed in this section are in addition to those listed in section 750-1.5 of this Part, except paragraph 750-1.5(a)(6) of this Part, which is replaced by subdivisions (b), (c), (d) and (e) of this section.

(b) The injection of water, gas or other material through HVHF into a well, except a disposal well, to facilitate production of gas resources, does not require a SPDES permit under ECL Article 17, Titles 7 or 8, or this Part if the following conditions apply:

(1) the well used for injection is approved by authority of the department;

(2) the department determines that such injection will not result in the degradation of ground or surface water resources;

(3) the injection does not result in a discharge at the surface; and

(4) injection into the well is approved by EPA if EPA approval is required in accordance with 40 CFR Parts 124.10, 144 and 146 (see section 750-1.24 of this Part).

(c) At a minimum, in order for the department to make a determination that the injection will not result in the degradation of ground or surface water resources pursuant to paragraph 750-3.5(b)(2) of this Part:

(1) the top of the target fracture zone, at any point along any part of the proposed length of the wellbore, for HVHF must be deeper than 2,000 feet below the ground surface and must be deeper than 1,000 feet below the base of a known freshwater supply; and

(2) the owner or operator must have measures in place to ensure compliance with the requirements of paragraphs 750-3.7(k)(1), (2), (3), (4), (6), and (7) of this Part and subdivisions 750-3.7(l), (m), and (n) of this Part.

(d) The department may change any previously-issued determination in the event that the permittee fails to comply with any requirement described in this subdivision or such injection results in the degradation of ground or surface water resources.

(e) An exception from requiring a SPDES permit pursuant to subdivision 750-3.5(b) of this Part only applies to the injection of water, gas or other material through HVHF and does not apply to other activities or discharges associated with HVHF operations.

750-3.6 Individual HVHF SPDES Permit Application Requirements

- (a) The requirements in this section are in addition to those listed in section 750-1.7 of this Part, unless in conflict, superseded or expressly stated otherwise in this section.
- (b) The owner or operator of an HVHF well site must submit an application for an HVHF SPDES permit, which contains certifications that the owner or operator has measures in place to ensure compliance with paragraphs 750-3.7(k)(1), (2), (3), (5), (6), and (7) of this Part and subdivisions 750-3.7 (l), (m), and (n) of this Part.
- (c) The owner or operator must submit documentation of the anticipated depth of the top of the objective formation, and the depth of the base of the known freshwater supply, along the proposed length of the wellbore.
- (d) The owner or operator must have an approvable plan identifying the ultimate disposition of HVHF wastewater (Fluid Disposal Plan), in accordance with the requirements set forth in paragraph 554.1(c)(1) of this Title, as adopted on XX, 20XX. In addition to the requirements of paragraph 554.1(c)(1) of this Title, as adopted on XX, 20XX, the department will take into consideration compliance with any other law or regulation before approving the Fluid Disposal Plan. As part of the approvable Fluid Disposal Plan, an applicant must also submit an acceptable contingency plan, for disposition or disposal of such fluids that must be implemented when the primary plan is unsafe or impracticable at the time of disposition or disposal.
- (e) The owner or operator must develop and submit a final Comprehensive SWPPP to the department.

750-3.7 Application of standards, limitations and other requirements

- (a) The requirements in this section are in addition to those listed in section 750-1.11 of this Part, unless in conflict, superseded or expressly stated otherwise in this section.
- (b) The owner or operator must ensure that the Comprehensive SWPPP is implemented. This includes any

changes made to the Comprehensive SWPPP.

- (c) All BMPs must be inspected to ensure the effective implementation of the Comprehensive SWPPP. Records must be kept of all inspections, conducted in accordance with applicable permit conditions.
- (d) The owner or operator must keep the Construction SWPPP current so that it at all times accurately documents the erosion and sediment control practices that are being used or will be used during construction, and all post-construction stormwater management practices that will be used on the well site.
- (e) The Construction SWPPP must include erosion and sediment control practices and post-construction stormwater management practices.
- (f) The owner or operator must ensure that all erosion and sediment control practices and all post-construction stormwater management practices identified in the Construction SWPPP are maintained in effective operating condition throughout the term of the HVHF SPDES permit.
- (g) The owner or operator must ensure proper and adequate Construction Phase Completion. Final stabilization must be achieved within four weeks of the implementation of final stabilization measures unless otherwise approved by the department.
- (h) Prior to terminating an HVHF SPDES permit, the owner or operator must ensure the continued operation and maintenance of the post-construction stormwater management practices.
- (i) The owner or operator must keep the HVHF SWPPP current so that at all times it accurately documents the applicable BMPs for HVHF operations.
- (j) At a minimum, the HVHF SWPPP must document that measures are in place to ensure compliance with the requirements listed in subdivisions 750-3.7(k), (l), (m), (n), and (o) of this Part.
- (k) The following conditions apply to all owners or operators during the HVHF Phase and Production Phase:

- (1) The owner or operator's disclosure of hydraulic fracturing fluid must be in accordance with subparagraph 560.3(d) of this Title, as adopted on XX, 20XX.
- (2) The owner or operator's alternative analysis must be in accordance with subparagraph 560.3(d)(1)(vii) of this Title, as adopted on XX, 20XX. This includes documentation to the department's satisfaction, utilizing existing data and studies, that proposed chemical additives exhibit reduced aquatic toxicity and pose at least as low a potential risk to water resources and the environment as all known available alternatives; or documentation, to the Department's satisfaction, that available alternative products are not effective in achieving the desired results or economically feasible. The owner or operator must use the proposed alternatives that satisfy the foregoing requirements.
- (3) At the well site, the owner or operator must maintain a list of the chemical additives used on the well site.
- (4) The owner or operator must maintain a Fluid Disposal Plan, as required by 750-3.6(d) of this Part, and any modifications to that Fluid Disposal Plan, including modifications that cover HVHF wastewater from wells not originally identified.
- (5) The owner or operator must conduct residential water well testing in accordance with the requirements of subdivision 560.5(d) of this Title, as adopted on XX, 20XX, except that copies of test results and documentation related to delivery of test results to owners of water wells must be sent to New York State Department of Health.
- (6) The owner or operator must remove all drilling fluid, formation fluid, or flowback from the well site consistent with paragraph 560.6(b)(2) of this Title, as adopted on XX, 20XX, and subdivision 560.7(a) of this Title, as adopted on XX, 20XX.

(7) The owner or operator must provide, implement, and operate secondary containment measures for activities that are conducted on the well site. Such secondary containment must, at a minimum, meet the following requirements: they must (a) be designed and constructed in accordance with good engineering practices, (b) be constructed, coated or lined with materials that are chemically compatible with the environment and the substances to be contained, (c) be protected from heavy vehicle or equipment traffic; and (d) have a volume of at least 110 percent of the single largest storage container or tank within a common containment area. No more than one hour before initiating any HVHF stage, all secondary containment must be visually inspected to ensure all structures and equipment are in place and working order. The results of the inspection must be recorded and documented by the owner or operator, maintained, and available to the department upon request.

(8) Within 12 months after all planned wells at the well pad have been completed, the owner or operator must complete Partial Site Reclamation, as defined in this Part. After the completion of Partial Site Reclamation, the owner or operator must continue to adhere to the reclamation measures in accordance with the Partial Site Reclamation plan submitted pursuant to subdivision 560.7(l) of this Title, as adopted on XX, 20XX.

(9) The owner or operator must have, and implement as necessary, a Spill Prevention Control and Countermeasure Plan (SPCC) on the well site through the HVHF Phase and Production Phase. The SPCC plan must include the Emergency Response Plan, as required by subsection 560.5(a) of this Title, as adopted on XX, 20XX, an explanation of existing or planned material handling procedures, storage requirements, secondary containment, equipment (e.g., diversion valves), and reporting, that are intended to minimize spills or leaks at the well site. Quantities and types of equipment specified in the SPCC must be present on the well site at all times.

(10) The owner or operator must plug and abandon the gas wells pursuant to Part 555 of this Title, as adopted on XX, 20XX, prior to terminating an HVHF SPDES permit, unless otherwise approved by the Department. Prior to plugging and abandonment, the owner or operator must notify the department and modify the HVHF SWPPP to include stormwater controls during plugging and abandonment operations and any reclamation done in accordance with subdivision 560.7(l) of this Title, as adopted on XX, 20XX.

(l) Flowback and production brine are prohibited from being directed to or stored in any reserve pit or freshwater impoundment. For containment of flowback and production brine, unless otherwise approved by the department, the owner or operator must follow the requirements set forth in paragraph 560.6(c)(27) and subdivision 560.7(j) of this Title, as adopted on XX, 20XX.

(m) Any reserve pit, drilling pit or mud pit on the well pad must be maintained in a leak free condition and constructed, for any number of wells, in accordance with the requirements set forth in paragraph 560.6(a)(4) of this Title, as adopted on XX, 20XX. Additionally, such pits must be constructed, coated, or lined with materials that are chemically compatible with the substance stored.

(n) A closed-loop tank system must be used instead of a reserve pit to manage drilling fluids and cuttings, in cases set forth in paragraph 560.6(c)(7) of this Title, as adopted on XX, 20XX.

(o) The department may require that an approvable groundwater monitoring program be developed and implemented.

750-3.8 Monitoring requirements in HVHF SPDES permits

(a) The requirements in this section are in addition to those listed in section 750-1.13 of this Part, unless where in conflict, superseded or expressly stated otherwise in this section.

(b) All stormwater discharges must be monitored, recorded and reported in accordance with the terms and conditions of an applicable HVHF SPDES permit to ensure effective operation of the stormwater controls.

(c) The HVHF SWPPP must include provisions to monitor and record:

(1) the volume of all water delivered for use at the well site from each source. Records must be maintained identifying each truck/pipeline delivery of water and the source of the water;

(2) the volume of all recycled wastewater;

(3) the volume of water used for each HVHF stage. The volume must be metered with an automatic continuous recording device (or its equivalent) that measures to within five percent (5%) of actual flow;

(4) the amounts of all chemical additives used for each HVHF stage.

(5) the volume of all flowback and production brine. The volume must be metered with an automatic continuous recording device or equivalent that measures to within five percent (5%) of actual flow; and

(6) the volume of all sanitary and non-domestic wastewater produced onsite. The HVHF SWPPP must also include a transportation record, which may also be required by Part 364 of this Title, of all sanitary and non-domestic wastewater leaving the well pad. The transportation record must include the volume of all sanitary and non-domestic wastewater shipped offsite by individual trucks and/or pipeline, as well as the destination of the receiving facility(ies), and associated permit number if applicable.

(d) All records must be maintained at the well site and furnished to the department upon request.

(e) During HVHF operations, all stormwater discharges must be monitored, recorded and reported to ensure effective implementation of the Comprehensive SWPPP, as well as compliance with applicable statutes, regulations and any permit conditions.

750-3.9 Renewal of Existing HVHF SPDES permits

- (a) The requirements in this section are in addition to those listed in section 750-1.16 of this Part, unless in conflict, superseded or expressly stated otherwise in this section.
- (b) Before an HVHF SPDES permit can be renewed, the owner or operator must provide documentation of measures to ensure compliance with subdivision 750-3.6(d) of this Part.

750-3.10 Denial, Suspension or Revocation of HVHF SPDES permits

- (a) The requirements in this section are in addition to those listed in section 750-1.20 of this Part, unless in conflict, superseded or expressly stated otherwise in this section.
- (b) The department may deny, suspend, or revoke an HVHF SPDES permit if the permittee violates any provision of this Subpart.

750-3.11 HVHF general permit

- (a) The requirements of this section are in addition to those listed in sections 750-1.21, 750-3.7, 750-3.8, and 750-3.11 of this Part, unless in conflict, superseded or expressly stated otherwise in this section.
- (b) Discharges from HVHF operations may be authorized in accordance with an HVHF general permit.
- (c) An HVHF general permit does not authorize the discharge of hazardous substances (as listed in Part 597 of this Title) or petroleum.
- (d) HVHF operations within certain distances of specific surface or ground waters may be ineligible for coverage under an HVHF general permit and would require authorization under an Individual SPDES permit. At a minimum, HVHF operations sited within the following buffers cannot be authorized by a HVHF GP (calculated from the closest edge of the well pad):

Principal Aquifer	500 feet
Wetland	300 feet
Perennial or intermittent streams, as described in Parts 800-941 of this Title, storm drains, lakes, or ponds	300 feet

(e) The following non-stormwater discharges are ineligible for coverage under an HVHF general permit and must be authorized under a separate SPDES permit, or be discharged to a sanitary sewer in accordance with applicable pretreatment requirements, or be transported off-site for proper disposal:

- (1) discharges of sanitary wastewater;
- (2) vehicle and equipment washwater, including tank cleaning operations or substances (hazardous, non-hazardous, etc.) resulting from an on-site spill and materials collected in drip pans;
- (3) washwaters from material handling and processing areas; or
- (4) washwaters from drum, tank, or container rinsing and cleaning.

(f) The following activities are ineligible for coverage under an HVHF general permit and would require authorization under an individual SPDES permit:

- (1) Construction and use of a centralized flowback impoundment;
- (2) Construction activities related to HVHF operations:
 - (i) where the discharges from the construction activities are tributary to waters of the state classified as AA or AA-s; and
 - (ii) which disturb land with no existing impervious cover; and

(iii) which are undertaken on land with a Soil Slope Phase that is identified as an E or F, or the map unit name is inclusive of 25% or greater slope, on the United States Department of Agriculture (USDA) Soil Survey for the surface area where the disturbance will occur.

(3) HVHF operations that adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat;

(4) HVHF operations that adversely affect a property that is listed or is eligible for listing on the State or National Register of Historic Places (Note: includes Archeological sites), unless there are written agreements in place with the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) or other governmental agencies to mitigate the effects, or there are local land use approvals evidencing the same;

(g) The following stormwater discharges cannot be authorized by an HVHF general permit:

(1) Contaminated stormwater discharges from drilling operations that are subject to nationally established Best Available Technology Economically Achievable (BAT) or Best Practicable Control Technology Currently Available (BPT) guidelines found at 40 CFR Part 435;

(2) Discharges from HVHF operations that are mixed with sources of non-stormwater other than those expressly authorized under either the HVHF general permit or a different SPDES permit;

(3) Discharges from HVHF operations where a SPDES individual or general permit located at the HVHF operation site has been terminated, revoked, suspended, or denied, or which have been issued an individual or alternative general permit;

(4) Discharges from HVHF operations, which either cause or contribute to a violation of water quality standards adopted pursuant to the ECL and its accompanying regulations;

(h) Obtaining coverage under an HVHF general permit:

(1) All of the following must be satisfied in order for an owner or operator to be authorized to

discharge under an HVHF general permit:

- (i) Where required, all necessary department permits subject to the Uniform Procedures Act have been obtained, unless the department determines otherwise pursuant to paragraph 621.(3)(a)(4) of this Title;
 - (ii) Preparation of the final Comprehensive SWPPP;
 - (iii) The owner or operator must submit certifications to the department that the owner or operator has measures in place to ensure compliance with in paragraphs 750-3.7(k)(1), (2), (3), (4), (6), and (7) of this Part and subdivisions 750-3.7(l), (m), and (n) of this Part.
 - (iv) The owner or operator must also submit documentation to the department of the anticipated depth of the top of the objective formation and the depth of the base of the known freshwater supply, along the proposed length of the wellbore.
 - (v) Preparation of an approvable plan identifying the ultimate disposition of HVHF wastewater (Fluid Disposal Plan), in accordance with the requirements set forth in paragraph 554.1(c)(1) of this Title, as adopted on XX, 20XX. In addition to the requirements of paragraph 554.1(c)(1) of this Title, as adopted on XX, 20XX, the department will take into consideration compliance with any other law or regulation before approving the Fluid Disposal Plan. As part of the approvable Fluid Disposal Plan, an applicant must also submit an acceptable contingency plan, for disposition or disposal of such fluids that must be implemented when the primary plan is unsafe or impracticable at the time of disposition or disposal ; and
 - (vi) A complete Notice of Intent has been submitted to the department.
- (2) An owner or operator may not commence any construction activities related to HVHF operations until its authorization to discharge under the HVHF general permit is effective.
- (3) Coverage under an HVHF general permit authorizes stormwater discharges from construction

activities only from those areas of disturbance that are identified in the Notice of Intent. If an owner or operator wishes to have stormwater discharges from future or additional areas of disturbance authorized, the owner or operator must submit an amendment to the Notice of Intent that addresses the future or additional areas of disturbance, unless otherwise notified by the department.

(i) Duration of an HVHF general permit:

(1) The duration of an HVHF general permit may be no more than five (5) years from its effective date.

(2) In the event a new HVHF general permit is not issued prior to termination of the current HVHF general permit, the owner or operator may continue to operate and discharge in accordance with the terms and conditions of the current HVHF general permit until such time as a new HVHF general permit is issued. Unless otherwise notified by the department in writing, an owner or operator with coverage under the current HVHF general permit that seeks authorization under the new HVHF general permit must submit a new Notice of Intent in accordance with the terms of such new HVHF general permit.

(3) Coverage for new owners or operators will not be accepted under any continued HVHF general permit.

(j) Transfer of coverage under an HVHF general permit:

(1) If there is a change in the owner or operator with coverage under the HVHF GP, the original owner or operator must notify the new owner or operator, in writing, of the requirement to obtain general permit coverage. Once the new owner or operator obtains general permit coverage, the original owner or operator must then submit a completed Notice of Termination to the department with the name and permit identification number of the new owner or operator.

(2) General permit coverage for the new owner or operator will be effective as of the date the department receives a completed Notice of Intent, provided the original owner or operator had coverage

under an HVHF general permit as of the date the department receives the Notice of Intent from the new owner or operator.

(3) If the original owner or operator maintains control or ownership of a portion of the HVHF operation, the owner or operator must maintain its coverage under an HVHF general permit.

(k) Renewal of coverage under an HVHF general permit:

(1) Before coverage under an HVHF general permit can be renewed, the owner or operator must provide documentation of compliance with subdivision 750-3.6(d) of this Part.

(l) Denial, suspension or revocation of coverage under an HVHF general permit:

(1) As set forth in subdivision 750-1.21(e) of this Part, the department may require any owner or operator authorized to discharge in accordance with an HVHF general permit to apply for and obtain an individual SPDES permit or apply for authorization to discharge in accordance with another general permit.

(2) The department may suspend, terminate, or deny an owner's or operator's coverage under an HVHF general permit if the department determines that the Comprehensive SWPPP does not meet any HVHF general permit requirements.

(3) Upon a finding of significant non-compliance with the Comprehensive SWPPP, the department may order an immediate stop to all activity at the well until the non-compliance is remedied. The stop work order must be in writing, describe the non-compliance in detail, and be sent to the owner or operator.

An owner or operator must comply with all terms of a stop work order issued pursuant to this paragraph.

(m) Unless and until a fee is promulgated specifically for an HVHF general permit, HVHF operations are considered a SPDES permit for stormwater discharges from construction activity for purposes of assessing SPDES general permit fees.

(n) Coverage under an HVHF general permit may be terminated by the owner or operator upon:

- (1) plugging and abandonment of all wells in accordance with Part 555 of this Title, as adopted on XX, 20XX;
- (2) transfer of coverage under an HVHF general permit where all other conditions in this general permit for the transfer of coverage have been met;
- (3) authorization for the discharge under an alternative SPDES permit or an individual SPDES permit is obtained; or
- (4) as otherwise approved by the department.

750-3.12 Disposal of HVHF wastewater

- (a) All HVHF wastewater must be treated, recycled, or otherwise properly disposed through the life of the well in accordance with all applicable federal and state laws.
- (b) The discharge of flowback to the ground is prohibited. The discharge of drilling fluids, formation fluids and production brine to the ground is prohibited, except in accordance with the terms and conditions of a BUD.
- (c) Requirements for acceptance, treatment, and disposal of HVHF wastewater at a POTW:
 - (1) HVHF wastewater may be accepted only by a POTW that has a valid SPDES permit and a pretreatment program approved by EPA or a mini-pretreatment program approved by the department, and is permitted by the department to accept HVHF wastewater.
 - (2) Prior to being permitted to accept HVHF wastewater, the POTW must perform a headworks analysis for the HVHF wastewater and submit the analysis for review and approval by the department and EPA. The headworks analysis must meet the requirements of 40 CFR Part 403, including a representative assay of the concentrations of chemical constituents present, as well as other parameters

that may be present in the HVHF wastewater. The headworks analysis must demonstrate that the HVHF wastewater will not cause a violation of the POTW's effluent limits or sludge disposal criteria, and will not result in pass through of substances present in HVHF wastewater, or adversely affect the POTW's treatment processes.

(3) Once the headworks analysis is approved by both the department and EPA, the department shall include in the POTW's SPDES permit, or may modify the POTW's existing SPDES permit to include appropriate monitoring, recording, and reporting requirements, and effluent limitations associated with HVHF wastewater.

(4) Any HVHF wastewater to be treated by the POTW must be introduced to the headworks of the POTW, unless otherwise permitted by the department.

(5) For each introduction of HVHF wastewater to the headworks of the POTW, the following documentation must be maintained by the POTW:

- (i) the source well of the HVHF wastewater, including the identity of the HVHF well owner or operator;
- (ii) a list of chemical constituents used in HVHF, along with a representative assay of the concentrations of chemical constituents present, as well as other parameters that may be present; and
- (iii) the volume of wastewater to be accepted by the POTW.

(6) Prior to being permitted to accept HVHF wastewater the POTW must demonstrate that it has an approved method for transport and disposal of residuals in compliance with Parts 360, 364, 380 and 381 and subdivision 750-2.8(e) of this Part.

(7) All POTWs shall provide adequate notice to the Department and to EPA of the following:

(i) Any new introduction of pollutants to the POTW from an indirect discharger that would be subject to section 301 or 306 of the CWA if it were directly discharging those pollutants;

(ii) Any substantial changes in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit

(iii) For the purposes of this paragraph, adequate notice shall include information on:

(a) the quality and quantity of effluent introduced into the POTW; and

(b) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(d) Requirements for offsite acceptance, treatment, recycling, and disposal of HVHF wastewater at a privately owned industrial wastewater treatment facility:

(1) HVHF wastewater may be accepted only by a facility that has a valid SPDES permit and is permitted by the department to accept HVHF wastewater.

(2) Prior to being permitted to accept HVHF wastewater, the facility must complete an approvable treatability analysis for the HVHF wastewater. The treatability analysis must demonstrate that the HVHF wastewater will not cause a violation of the facility's effluent limits or sludge disposal criteria, and will not result in pass through of substances present in HVHF wastewater, or adversely affect the facility's treatment processes. The treatability analysis must include the following:

(i) each source of HVHF wastewater to be accepted and the identity of each HVHF well owner or operator;

(ii) the total volume of HVHF wastewater to be accepted by the facility from each source of HVHF wastewater, and the proposed rate of introduction into the facility;

(iii) for each identified source of HVHF wastewater, a representative assay of the concentrations of chemical constituents present, as well as other parameters that may be present in the HVHF wastewater;

(iv) the expected effluent concentrations of all chemical constituents present, as well as other parameters that may be present in the HVHF wastewater; and

(v) the volume of treated HVHF wastewater to be discharged as effluent and the volume of treated HVHF wastewater to be generated for reuse.

(3) Once the treatability analysis is approved by the department, the department shall include in the facility's SPDES permit, or may modify the facility's existing SPDES permit to include, appropriate monitoring, recording and reporting requirements, and effluent limitations associated with HVHF wastewater.

(4) Any HVHF wastewater to be treated by the facility must be introduced to the headworks of the facility, unless otherwise permitted by the department.

(5) For each introduction of HVHF wastewater to the headworks of the facility, the following documentation must be maintained by the facility:

(i) the source well of the HVHF wastewater, including the identity of the HVHF well owner or operator;

(ii) a list of all chemical constituents used in HVHF, along with a copy of the representative assay required in subparagraph (2) (iii) above; and

(iii) the volume of wastewater to be accepted by the facility.

- (6) Prior to being permitted to accept HVHF wastewater, the facility must also demonstrate that it has an approved method for transport and disposal of residuals in compliance with Parts 360, 364, 380 and 381 and subdivision 750-2.8(e) of this Part.
- (e) Requirements for onsite treatment and recycling of HVHF wastewater:
- (1) Facilities constructed specifically for the onsite treatment of HVHF wastewater are prohibited from directly discharging to the waters of the State pursuant to 40 CFR Part 435. These onsite facilities are not eligible to obtain a SPDES permit. All HVHF wastewater accepted and treated by these onsite facilities must be either reused, as approved by the department, or transported for offsite disposal at a permitted facility.
- (2) Prior to acceptance of any HVHF wastewater, the onsite facility must demonstrate to the department that it has an approved method of disposal of residuals in compliance with Parts 360, 364, 380, and 381 of this Title and subdivision 750-2.8(e) of this Part.
- (f) Requirements for deep well injection of HVHF wastewater:
- (1) HVHF wastewater may be accepted only by a deep well injection facility that has a valid SPDES permit and is permitted by the department to accept HVHF wastewater.
- (2) The owner or operator of the disposal well must obtain a permit, or a modification to an existing permit, under the EPA Underground Injection Control (UIC) program for disposal wells prior to applying for a SPDES permit, or a modification to an existing SPDES permit, in accordance with this subpart and subpart 750-1.
- (3) The SPDES permit application for a new deep well injection facility or modification of an existing deep well injection facility SPDES permit to accept HVHF wastewater must include the following:

- (i) each source of HVHF wastewater and the identity of each HVHF well owner or operator;
- (ii) the total volume of HVHF wastewater from each source of HVHF wastewater, and the proposed rate of introduction into the disposal well;
- (iii) for each identified source of HVHF wastewater, a representative assay of the concentrations of chemical constituents present, as well as other parameters that may be present in the HVHF wastewater;
- (iv) geotechnical information regarding the ability of the disposal stratum to accept and retain the injected fluid, including an estimate of available capacity;
- (v) a water quality analysis of the receiving stratum for chemical constituents present, as well as other parameters that may be present in the HVHF wastewater; and
- (vi) injection well construction and operational control information showing that the well meets the applicable EPA UIC injection well standards as promulgated under 40 CFR Parts 144-148 and sections 1423 and 1425 of the Safe Drinking Water Act.

(4) The SPDES permit application for an existing deep well injection facility that has already been approved to accept HVHF wastewater, but wishes to accept another source of HVHF wastewater must include the items listed in paragraph 750-3.12 (f)(3).

(5) In addition to the requirements of the EPA UIC program, the department may propose appropriate monitoring, recording and reporting requirements and effluent limitations in the SPDES permit, including:

(i) effluent limitations, pursuant to Parts 701-706 of this Title for chemical constituents present, as well as other parameters that may be present in the HVHF wastewater;

(ii) the proposed well construction and operation program; and

(iii) installation of upgradient and downgradient monitoring wells and a monitoring program with periodic monitoring for chemical constituents present, as well as other parameters that may be present in the HVHF wastewater.