

6 NYCRR Parts 52, 190, 550-556, 560, and 750
HIGH-VOLUME HYDRAULIC FRACTURING

REVISED REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 52, 190, 550-556, 560 and 750. The purpose of the proposed revised rulemaking is to amend the Department's oil and gas regulations to modernize existing regulations to reflect current Department and industry practice and to add new regulations to the Department's state lands, mineral resources, and water regulations to address the use of high-volume hydraulic fracturing (HVHF). The Department is currently involved in a multi-year environmental review of HVHF. As a result of this process, the Department has identified a number of application requirements and mitigation measures that are expected to be uniformly applied to all HVHF wells to ensure such wells are drilled and operated properly.

The proposed revised rules will supplement the Department's ability to monitor and enforce certain measures identified in the Department's revised draft Supplemental Generic Environmental Impact Statement (2011 rdSGEIS), and will update some of the Department's regulations to reflect technological advances and current industry practice. The Department's review of HVHF under the State Environmental Quality Review Act (SEQRA) has already been the subject of two public comment periods (2009 and 2011) and the Department will receive further public comments on these proposed revised rules.

Effect of rules. These proposed revised rules will not have substantial adverse effects on small businesses and local governments. The proposed revised rules will apply to any well operator who intends to utilize HVHF to produce natural gas from wells permitted by the Department. This will, for the most part, involve large national and international corporations. Approval of well drilling permits where HVHF is planned

will create opportunities for small businesses to engage in activities such as waste hauling, water hauling, basic construction services (e.g. land clearing and grading), as well as lodging, food and other personal services.

This revised proposal does not directly mandate the expenditure of funds by any sector of local government. Although the acceptance of wastewater will involve some costs, those costs are expected to be offset by the income generated by acceptance of the waste. In addition, one of the measures contained in the proposed rules will require well operators to conduct baseline water well testing. Results of water well testing may increase complaints to the county health department regardless of whether contamination is pre-existing or attributed to nearby HVHF wells. These costs are speculative and cannot be quantified. Approval of HVHF is also expected to impact local roads, leading to increased maintenance costs. To mitigate this impact the proposed revised rules require an applicant for HVHF to submit a transportation plan detailing proposed routes, estimated number of truck trips and local road conditions, and such plan will assist local government to respond to local infrastructure needs. Well operators will also be encouraged to engage local government early in the planning process by entering into road use agreements, so that both the regulated community and local governments can prepare for the potential impacts of HVHF. The 2011 rdSGEIS contains a detailed analysis of the socioeconomic impacts associated with approval to utilize HVHF.

Compliance requirements. The regulated community, which is the main focus of the proposed revised rules, are well operators who plan to utilize HVHF to facilitate production of natural gas wells. Well operators capable of acquiring sufficient mineral rights to enable them to apply for a Department permit to utilize HVHF are typically well funded national and international companies. The costs to the regulated community for the proposed revised regulations related to HVHF will not differ substantially from the potential costs that the regulated community should have expected from the mitigation measures and/or permit conditions that have been identified in the 2011 rdSGEIS.

Certain aspects of drilling a well, such as clearing the site to construct the well pad and securing enough water to use during fracturing operations will likely involve some small businesses. The proposed revised rules do not impose substantial costs on small business, with costs limited to paperwork requirements. To the extent that small businesses apply for a permit to drill a well utilizing HVHF, they are required to comply with the same permitting requirements as other regulated entities.

In situations where a small business controls the mineral rights in an area where HVHF may be used, and such small business enters into a joint operating agreement with the well operator or elects to participate in the operation through the Department's compulsory integration process, the proposed revised rules will increase the costs of participating in the operation. In such cases, the cost of complying with the proposed rules will still fall largely on the well operator since the well operator is required by the Environmental Conservation Law to control a requisite percentage of the mineral rights in the spacing unit before the well operator is allowed to apply for a permit to drill. The new application, reporting and operating requirements proposed to be added as new, revised Parts 560 and 750-3 are identified by the Department as necessary measures to ensure HVHF wells are drilled and operated properly and to ensure all wastes generated during well construction, hydraulic fracturing and production are handled appropriately.

Local governments are not required to take any affirmative action under the proposed revised rules. However, municipalities that operate publicly owned treatment works (POTW) may elect to accept wastewater from HVHF operations for disposal. POTWs must have a DEC-approved pretreatment or mini pretreatment program for accepting any HVHF wastewater and must notify DEC if they plan to receive wastewater prior to acceptance. POTWs are required to perform a headworks analysis to ensure they can handle the wastewater without upsetting their system or causing a problem in the receiving water. While there are costs associated with the headworks analysis and securing DEC approval of such, the costs may be offset by a disposal fee for allowing disposal of the HVHF wastewater at their facility. Small businesses that operate privately owned industrial treatment facilities are not required to take any affirmative action under the proposed revised rules.

However, small businesses that operate such treatment facilities may elect to accept wastewater from HVHF operations for disposal, and will be subject to similar requirements and costs. Therefore, the costs associated with complying with the proposed revised rule will not vary across the state or in rural areas, since the decision to accept wastewater from HVHF wells is voluntary.

Professional services. Local governments are not required to take any affirmative actions under the proposed revised rules. However, in order to be responsive to situations that could arise, local governments may want to proactively retain professional services to assist with emergency response and traffic control in certain circumstances. It is not anticipated that small businesses associated with high-volume hydraulic fracturing will need to enter into contracts for professional services to comply with these proposed revised regulations.

Compliance Costs. For small businesses and local governments that are actively participating in an activity associated with HVHF operations, the compliance costs for the proposed revised rules will be associated with: additional paperwork requirements for waste tracking; additional paperwork, permitting, testing and other costs associated with operation of a wastewater treatment plant when such small business or local government plans to treat wastewater from an HVHF well; emergency response activities; and impacts to county health departments who respond to complaints about water well quality. Local governments may also incur costs associated with road maintenance. As stated above, it is not expected that small businesses or local government will be engaged in HVHF itself. For small businesses that apply for a permit to drill an HVHF well, revised Parts 560 and 750-3 rules will result in increased compliance costs compared to a non-HVHF well. However, the costs are not expected to materially differ from the costs expected to implement the mitigation measures identified in the 2011 rdSGEIS. Cost projections from the Independent Oil and Gas Association of New York (IOGA) for complying with the 2011 rdSGEIS range from \$400,000 to \$1,700,000 for the first well

drilled on a well pad. The Department conducted its own limited cost assessment, and found that, with respect to at least two categories of cost estimates, IOGA's estimates were excessive. Unfortunately, despite repeated requests by the Department to industry to provide additional cost of compliance information, industry has refused to provide the Department with any additional cost information.

Apart from the provisions in the proposed revised rules related to HVHF, the proposed revised changes to Parts 550-556 will raise the minimum requirements to plug and abandon a well under the Department's jurisdiction. There have been occasions where local governments have drilled self-help wells, or wells meant to supply gas to local buildings. There also exists the possibility that abandoned wells may exist on public lands. Part 555 currently provides minimum plugging standards for wells; however, plugging procedures often depend on site-specific factors such as the condition of the well and well construction methods. The proposed revisions to Part 555 would still specify minimum standards but the proposed revisions to Part 555 would not raise the cost of plugging a well above that which is often already required by current Department practices. The costs associated with the new reporting requirements contained in the proposed changes to 6 NYCRR Parts 550-556 are expected to be minimal.

Economic and technological feasibility. There should be no economic or technological feasibility issues created by the proposed revised rules. To the extent that local governments or small business may want to allow and/or participate in a facet of HVHF operations, such could result in a substantial increase in economic activity in the affected areas and also result in a substantial increase in tax revenues to the state and to localities.

Minimizing adverse impact. The proposed revised rules contain some measures to mitigate potential impacts on local government, such as the need for well operators to submit a transportation plan to the Department prior to issuance of a drilling permit. A transportation plan would assist localities in planning for HVHF to allocate resources and initiate a dialogue with well operators. As stated above, the regulated

community under the proposed revised rules includes large national and international corporations. Small businesses who intend to drill an HVHF well will be subject to the same rules as larger businesses and the costs of complying with the proposed revised rules is not expected to differ from the cost of complying with the application requirements and mitigation measures identified in the 2011 rdSGEIS. Small businesses, such as waste haulers and water haulers, who provide support services to well operators will have minimal costs to comply with the rules, with costs limited to paperwork requirements (e.g., tracking waste from an HVHF well pad to a destination for disposal or reuse).

Small business and local government participation. The Department participated in outreach to the regulated community through the initial rulemaking process, including the solicitation of comments from affected industry. Additionally, the proposed use of HVHF in New York has been the subject of substantial public outreach and input over the last several years. During scoping sessions, before and after issuance of the 2009 draft SGEIS, prior to issuance of the 2011 rdSGEIS, and since the issuance of the 2011 rdSGEIS, the Department received over 66,000 individual public comments on these documents, from postal mail, electronic submissions, and speakers at public hearings in several of the potentially affected areas. The Department has had multiple interactions with the regulated community, small business, and local governments on HVHF and the quickly-evolving HVHF industry. The scope of the 2011 rdSGEIS also considered the impact of proposed additions and revisions of the Department's HVHF regulations, allowing for extensive participation on both the rules and the environmental review process simultaneously. Through this proposed revised rulemaking, the Department will provide for an additional public review and comment period.