



*Rural Stormwater Coalition*  
*in*  
*Chemung, Steuben and Schuyler Counties*  
851 Chemung Street Horseheads, NY 14845

December 29, 2011

dSGEIS Comments  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6510

Subject: Comment on the DRAFT SPDES General Permit for Stormwater Discharges from HVHF Fracturing

To Whom It May Concern:

We are writing today in regards to the DRAFT *New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges From High-Volume Hydraulic Fracturing*. The comment period is set to expire on January 11, 2012. Our review and comments are being put forth in an effort to assist the Department in delivering a clear, concise permit. Our comments are as follows:

1. The NYS Department of Environmental Conservation webpage ([www.dec.ny.gov/permits/77251.html](http://www.dec.ny.gov/permits/77251.html)) for the SPDES General Permit for Stormwater Discharges from High Volume Hydraulic Fracturing (HVHF) starts out by stating: "DEC has made the **tentative** decision to issue a SPDES General Permit that will authorize point source discharges from high volume hydraulic fracturing (HVHF) operations to, in or over waters of the State."

Our group would like to know what does "tentative" mean in this situation. Is there a possibility that this general permit will not get issued? If this is the case, how will stormwater discharges be handled for HVHF operations? The Rural Stormwater Coalition (RSC) feels that a separate general permit related to stormwater discharges from HVHF is necessary.

2. The Notice of Intent is to be filed by the *Owner/Operator*, and the definition of Owner/Operator is: *the person, persons, or legal entity which owns or leases the*

*property on which the HVHF operations are occurring; and/or an entity that has operational control over the HVHF operations, including the ability to make modifications to the operations and authorization to make management decisions to assure long-term environmental compliance with the environmental laws and regulations.*

We feel that this definition could possibly allow for the owner of the land to be utilized as the permittee, which should not be allowed to happen. We think that this definition should be cleaned up to make only the company holding the lease or doing the actual work to be the permittee. This is especially important for the maintenance of post-construction stormwater practices; see comment 6 below. We think that the definition should be refined to make only the company holding the lease or conducting the actual work, to be the permittee unless the gas company actually owns the land.

3. The draft permit utilizes Calendar days as opposed to Business days. With the staff shortages within the New York State Department of Environmental Conservation, we feel that the time frames should be in Business days not Calendar days. Also, the SPDES General Permit for Construction Activity (GP-0-10-001) utilizes Business days therefore there should be consistency between the stormwater general permits. We suggest thirty (30) business days be allowed for review.
4. Part II.A SWPPP Location states *the SWPPP must be available during normal business hours*. Part III.B.2 contradicts this statement by stating *the SWPPP must be available at all times*. We think that there needs to be consistency in these statements and it would be reasonable for the SWPPP to be available during normal business hours.
5. Part III.A.3 *Stormwater runoff from all land disturbances associated with well site, including the construction of access roads, well pads, **pipelines**, staff accommodations, impoundments and equipment storage areas must be addressed in the Construction SWPPP.*

What pipelines is the permit referring to? Is it the “feeder” pipelines that feed into main transmission lines? These smaller “feeder” pipelines are generally covered under the SPDES General Permit for Stormwater Discharges from Construction Activity as well as the NYS Public Service Commission regulations. These projects utilize the Public Service Commission’s Environmental Management and Construction Standards and Practices (EM&CS&P) which differ from the New York Standards and Specifications for Erosion and Sediment Control. There are clear differences. Pipeline companies traditionally defer to the Public Service Commission’s Standards; therefore we feel that more detail is required here for what standards need to be followed. The Rural Stormwater Coalition would like to

see the New York State Standards and Specifications for Erosion and Sediment Control followed.

Also, if the draft permit is referring to feeder/gathering lines, we feel the entire length of pipeline should be covered under this permit and follow the New York State Standards and Specifications for Erosion and Sediment Control.

6. We were pleased to see that Post Construction Stormwater Management Practices are required for the HVHF sites and that the excess runoff created from these impervious areas will be treated. However, we have concerns about who will own and maintain these structures after the project is complete.

In Part XX.A.2.i-iv of the permit it discusses the need for a signed Post Construction Certification Statement meeting one of the following criteria:

- i. That the post construction stormwater management practice(s) and any right-of-way(s) needed to maintain such practice(s) have been deeded to the municipality in which the practice is located;*
- ii. that the executed maintenance agreement is in place with the municipality that will maintain the post-construction stormwater management practice(s);*
- iii. for post-construction stormwater management practices that are privately owned, that the owner or operator has modified, or caused to be modified, the deed of record to include a deed covenant that requires operation and maintenance of the practice(s) in accordance with the operation and maintenance plan; or*
- iv. for post-construction stormwater management practices that are owned by a public or private institution (e.g. school, college, university), or government agency or authority, that the owner or operator has policy and procedures in place that ensures operation and maintenance of the practices in accordance with the operation and maintenance plan.*

This language is directly out of the SPDES General Permit for Construction Activity (GP-0-10-001) and does not seem appropriate for this type of project because it is not a local property owner constructing the site. It is probable that there could be hundreds of these post construction practices per county and it does not seem that the burden of maintenance should go to either the property owner or the municipality. Some of these practices may have

specialized units (i.e. - oil and water separators) that can be costly to maintain. An owner or municipality may not be aware of the cost of maintenance which could mean the practice never gets taken care of. The burden of operation and maintenance should be placed on the company that owns the well or the company that leases the property that the well is located on.

Secondly, the permit only calls for a certification statement to be signed. It does not describe who should sign this certification. It seems appropriate that a P.E. sign off on the post construction practice.

Will NYS Department of Environmental Conservation keep an inventory of the Post Construction Practices and inspect them periodically to ensure they are functioning?

7. Part IV.E of the permit discusses the Enhanced Phosphorus Removal Standards.  
*All operations located within the Susquehanna and Chemung Watersheds shall prepare a Construction SWPPP that includes post-construction stormwater management practices designed in conformance with the Enhanced Phosphorus Removal Standards (Chapter 10) included in the 2010 New York State Stormwater Design Manual.*

We are curious why the Chemung and Susquehanna Watersheds were singled out in this section. It would seem that Part III. D. Total Maximum Daily Load Strategy section would adequately address any additional sizing requirements for Post Construction Stormwater Management Practices. If this is not true then all other watersheds under the Enhanced Phosphorus Removal Standards should be added to this permit language because it is a State wide general permit.

8. Parts VIII.A.2, Part XII.A.6, Part IX.A.14 discuss the requirement to keep a list of HVHF additives that are utilized during the HVHF phase of production. These sections of the permit also state that the list can: *"Exclude any information that is determined to be confidential business information."*

What is the definition of confidential business information? Who makes the determination that something would be considered confidential business information?

9. Appendix B Secondary Containment-

*d. Discharge Screening- Prior to each discharge from a secondary containment system the stormwater must be screened for contamination. (Note: All stormwater must be inspected for visible evidence of contamination.) **The owner or operator must collect and analyze a representative sample of the stormwater.** If the water contains no pollutants, the stormwater may be discharged. Otherwise it must either be disposed of in an onsite or off-site wastewater treatment plant designed to treat and permitted to discharge such wastewater.*

We feel that this section needs to be more specific and detailed. Who analyzes the sample (i.e.-laboratory)? What is the stormwater tested for?

10. Part IX.A.16.a discusses Best Management Practices. It goes on to suggest:

*Selection of BMPs should take into consideration:*

- i. The quantity and nature of the pollutants, and their potential to impact the water quality of receiving waters,*
- ii. Opportunities to combine the dual purposes of water quality protection and local flood control benefits, including physical impacts of high flows on streams (e.g., bank erosion, impairment of aquatic habitat, etc.); and*
- iii. Opportunities to offset the impact of impervious areas of the well site on ground water recharge and base flows in local streams, taking into account the potential for ground water contamination.*

This statement suggests that the owner/operator only has to consider the above items. We feel that all of the above items should be required. So our suggestion is to change the word 'should' to 'shall'.

11. Part IX.B.5 Routine Site Inspections- *Qualified Personnel must inspect all areas of the well site where industrial materials or HVHF activities are exposed to stormwater.*

*Qualified Personnel Definition from Appendix A-Qualified personnel are those who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at your facility, and who can evaluate the effectiveness of BMPs.*

We feel that the definition of Qualified Personnel needs more detail. What type of qualifications must this person possess? This person will be inspecting and evaluating the function of BMP's so they should possess a certain skill set and have a certain number of years of experience.

12. Part IX.B.7- Employee Training- *The HVHF SWPPP must describe the stormwater employee training program for the HVHF Phase and Production Phase. The description*

*should include the topics to be covered, such as spill response, good housekeeping, material management practices, and must identify periodic dates for such training (e.g., annually, every six (6) months during the months of July and January). Employee training must be provided for all employees who work in areas where industrial materials or HVHF activities are exposed to stormwater, and for employees who are responsible for implementing the HVHF SWPPP (e.g., inspectors, sampling personnel, and maintenance people). The training should inform employees of the components and goals of the HVHF SWPPP.*

*At a minimum, training shall take place annually with the first training completed prior to employment at any HVHF operation. Continued or significant non-compliance may be deemed evidence of an inadequate employee training program.*

Who will develop and deliver this Employee Training Program?

Will it be the Qualified Personnel?

Will NYS Department be reviewing these training programs to ensure a proper program is in place?

Will the NYS Department of Environmental Conservation be putting together a “model” training program for companies to utilize?

13. In Appendix A, Berm- means a structure meant to contain fluids within a defined area.

We feel that the definition should also state that the berm be constructed of materials that are impermeable.

14. Part X.J.2.q- Piping/Conveyances- *Perform and document hydrostatic integrity testing of all water transfer facility piping. Hydrostatic testing must be done before any materials other than water are introduced into the piping;*

How will the hydrostatic testing water be disposed of?

Does the hydrostatic testing water need to be tested prior to discharge?

15. Part X.N- Well Production Phase-*The HVHF SWPPP shall include and describe measures that prevent or minimize the contamination of precipitation/surface runoff from compressors, brine storage tanks and other equipment, which remains on site during the production phase, so that spills of contaminants will not permeate, drain, infiltrate or otherwise escape to the groundwaters or surface waters before cleanup occurs. All production brine/fluids must be collected and disposed of in a Department approved manner.*

Will the NYS Department of Conservation be providing a list of approved disposal manners?

Who will be giving approval within the NYS Department of Environmental Conservation, the HVHF Stormwater General Permit Coordinator?

16. After reviewing all sections of the permit it is clear that the NYS Department of Environmental Conservation is allowing the owner/operator to do all Visual Monitoring, Dry Weather Flow Inspections, and Benchmark Compliance Monitoring and Analysis. This puts a majority of environmental inspections in the hands of the owner/operator when it would be best handled by a third party. How can the Department be sure that the owner/operator is qualified, knowledgeable or trained in these techniques? Doesn't this pose a conflict of interest (e.g., environment vs. business decisions)?
17. The NYS Department of Environmental Conservation HVHF Stormwater General Permit Coordinator will be responsible for all phases of permitting, as well as tracking the Discharge Monitoring Reports. How can one person review, track, and understand information for so many projects? It would seem that one person would not be capable of handling this work load and the Rural Stormwater Coalition hopes that NYS DEC will be hiring sufficient staff to handle this important work.
18. Municipal Separate Storm Sewer System (MS4) Communities  
After reviewing all sections of the permit, the only mention of MS4 communities is for:
  - i) Whether a well site discharges into a designated MS4; or
  - ii) If the site has had a discharge through an MS4 then the owner/operator must submit Discharge Monitoring Reports and Annual Certifications to said MS4.

What responsibilities does an MS4 have? Clearly the Department is not allowing the MS4 to review the Stormwater Pollution Prevention Plan (SWPPP) to ensure compliance with the MS4 Stormwater Regulations. Why would the owner/operator need to submit these reports to an MS4 if the MS4 doesn't have a say in the stormwater plans? The Rural Stormwater Coalition feels the MS4 should be involved in the review of SWPPP's.

*Part XXI.Q Inspection and Entry states that an MS4 can enter the site at any given time;*

Why would they need to if there is no responsibility for the MS4 to ensure

Municipal Stormwater Compliance? Again, the Rural Stormwater Coalition thinks that the MS4's should have more involvement.

What are the MS4s responsibilities in regards to the Post Construction Best Management Practices (e.g., Operation and Maintenance, Inventory)?

19. *Part XXI.N.2 Requiring an Individual Permit or an Alternative General Permit*  
*When the Department requires any discharger authorized by a general permit to apply for an individual SPDES permit, it shall notify the discharger in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or the operator to file the application for an individual SPDES permit, and a deadline, not sooner than 180 calendar days from receipt of the owner's or operator's receipt of the notification letter, whereby the authorization to discharge under a SPDES general permit shall be terminated. The Department may grant additional time upon demonstration, to the satisfaction of the Regional Water Engineer, that additional time to apply for an alternative authorization is necessary or where the Department has not provided a permit determination in accordance with 6 NYCRR Part 621*

Will Individual Permits be the responsibility of the Regional Water Engineer?

Many NYS Department of Environmental Conservation Division of Water Regional Offices are understaffed and cannot get to all of the existing workload that they are responsible for. How will these Regional offices be capable of handling additional workload without additional staffing, especially if the workload consists of issuing Individual Permits and making time extension determinations for HVHF well sites?

20. *Part XIX HVHF Phase Completion-*

*1. The owner or operator must notify the Department in writing within seven (7) calendar days when Partial Site Reclamation has been completed in accordance with **Part VIII.A.5.** of this general permit.*

*2. The Partial Site Reclamation form must be sent to the HVHF Stormwater Coordinator at the address provided below, as well as the appropriate Regional Water Engineer, at the address provided in Appendix C of this general permit:*

*HVHF Stormwater General Permit Coordinator NYSDEC*

*Division of Water, Bureau of Water Permits*

*625 Broadway Albany, NY 12233-3505*



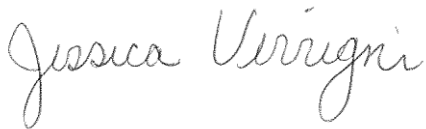
*3. The form shall contain a certification from the owner or operator that the requirements of this Part of the general permit have been met and include a signed Partial Site Reclamation certification statement. This notification must be received by the Department, before the inspection and monitoring requirements of Parts XIV and XV of this general permit become effective.*

The section cited within the draft permit is incorrect. Part VIII.A.6 is the section that discusses Partial Site Reclamation.

We suggest that the partial site reclamation form include a spot for the signature of the Department Inspector that verifies the site meets the definition of Partial Site Reclamation (Part VIII.a.6).

We appreciate the opportunity to comment on this important draft stormwater permit and sincerely hope the NYS DEC will provide adequate staff to ensure its measures are adequately addressed.

Sincerely and on behalf of the entire Rural Stormwater Coalition,



Jessica Verrigni, CPESC, CPSWQ  
Chemung County Stormwater Technician



Elaine Dalrymple, CPESC  
Schuyler County District Field Manager



Jeff Parker, CPESC  
Steuben County SWCD District Manger

A handwritten signature in cursive script that reads "Meghan Thoreau Jacquet".

Meghan Thoreau Jacquet

Southern Tier Central Regional Planning and Development Board

A handwritten signature in cursive script that reads "Janet Thigpen".

Janet Thigpen, CFM

Southern Tier Central Regional Planning and Development Board