

## DISPOSING OF PRODUCTION BRINE IN NEW YORK ISN'T GETTING ANY EASIER

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Many oil and gas wells produce water as a byproduct. The water contains dissolved salt and trace organic compounds, and is commonly known as brine. Historically, this brine has been used for road spreading to reduce dust, as a deicer on winter roads, re-injected to enhance oil production, and years ago, was often simply dumped on the ground or into nearby streams.

The New York State Department of Environmental Conservation (DEC) defines production brine as industrial wastewater, and for many years it has been illegal to dump brine on the ground or into streams without a State Pollutant Discharge Elimination System (SPDES) permit. Since 2015, the DEC has been conducting widespread inspections of brine disposal procedures in conjunction with petroleum bulk storage compliance inspections. Several producers have been served with complaints by the DEC as a result of alleged improper discharge of brine in violation of 6 NYCRR 703. The DEC has also begun a review of SPDES permits for discharge of brine, and identified some as expired, not properly renewed, or out of compliance.

The DEC Region 9 Division of Water sent out a form letter on March 10, 2017 announcing a review of all current and expired SPDES permits issued for brine producing oil and gas operators. This letter reminded operators with expired

permits that any discharge to surface or groundwater without a current permit is a violation of Environmental Conservation Law Article 17, and subject to penalties of up to \$37,500 per day for each violation. The letter also enclosed a "compliance certificate" requesting holders of expired permits to certify that they either no longer produce brine, or that they dispose of it through transportation out of state by a permitted waste hauler. This is another example of the state's tactic to make regulated operators act as enforcers against themselves. Any response to information demands from a regulatory agency such as this "certificate of compliance" should be done in consultation with legal counsel.

The letter also informed operators holding current SPDES permits that if a permit is no longer needed, it must be properly terminated in accordance with the terms of the permit and the governing regulations in 6 NYCRR 750-2.11. Current permit holders were also required to complete and submit a wastewater Form NY-2C (Industrial) which is a seven page application with 30 pages of instructions available on the DEC website. Current permit holders are also required to submit a grab sample to a certified laboratory for analysis and reporting to the DEC of seven specified quality parameters. Failure to comply with these requirements could violate the information requirements of a SPDES permit, and provide a basis for DEC enforcement action.

The seven specified water quality parameters are introduced as likely limits for discharge of production brine that SPDES permit holders will need to comply with in the near future. These quality parameters are for:

- pH between 6.5 and 8.5 SU
- Total Dissolved Solids  $\leq$  500 mg/L
- Oil and grease  $\leq$  15 mg/L
- Benzene  $\leq$  5  $\mu$ g/L
- Toluene  $\leq$  5  $\mu$ g/L
- Ethylbenzene  $\leq$  5  $\mu$ g/L
- Xylene  $\leq$  5  $\mu$ g/L

Interestingly, these planned standards are consistent with the EPA drinking water quality standards for several of these chemicals, and stricter than the drinking water quality standards for the rest. This is a major escalation of the discharge quality requirements. The explanation offered by the DEC is that these standards are a result of focusing on the limited assimilative capacity of small streams into which most brine is discharged pursuant to existing SPDES permits. The DEC has not yet implemented these stricter standards, but may choose to do so in the near future. Current SPDES permit holders should be prepared for them to be imposed as a condition of permit renewals. 

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