



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAIL 3 J 2017

**MEMORANDUM**

OFFICE OF WATER

**SUBJECT:** Review of Diesel Fuels Hydraulic Fracturing Permitting and Oversight in Response to Office of Inspector General Recommendations

**FROM:** Anita Thompkins  
Director  
Drinking Water Protection Division

**TO:** UIC Program Managers Regions I-X

Thank you for your participation in this review of diesel fuels hydraulic fracturing permitting and oversight in response to Office of Inspector General recommendations. I am providing this memorandum to document the conclusion of this effort based on your input.

In 2015, the Environmental Protection Agency (EPA) Office of Inspector General (OIG) published a final report titled, "Enhanced EPA Oversight and Action Can Further Protect Water Resources from the Potential Impacts of Hydraulic Fracturing," No 15-P-0204. In this report, the OIG found that EPA and states and other stakeholders have collectively established regulations, policy, guidance, industry standards and recommended practices to manage impacts to water resources from unconventional oil and gas development. The OIG also found that the EPA could further improve oversight of permit issuance and compliance for hydraulic fracturing using diesel fuels, and recommended that EPA Office of Water:

- a) Use oversight authorities under the Safe Drinking Water Act (SDWA) to determine whether the EPA, primary states and tribes issue permits for the use of diesel fuel during hydraulic fracturing as required by statute, the interpretive memorandum and permitting guidance;
- b) Report the results of the determination to the public; and
- c) Submit an action plan outlining the steps (along with completion dates) the agency will take if the determination reveals permitting of hydraulic fracturing using diesel fuels is not occurring in accordance with statute, the interpretive memorandum and permitting guidance.

The EPA Office of Water committed to address recommendations 1(a) and 1(b) by March 2017 and agreed to determine the next steps under recommendation 1(c) based on the determination made under 1(a). To fulfill the recommendations, the Office of Water engaged Regional EPA UIC programs with Class II oversight responsibility and direct permitting authority. OW requested that the Regional UIC programs inquire and report on the following questions for states, tribes, and territories responsible for Class II permitting as well as for Class II permitting

programs implemented by the Region (e.g., EPA Region 3 directly implements the Class II program in Pennsylvania).

1. What regulatory or other "controls" are in place regarding the use of diesel fuels in hydraulic fracturing since EPA issued the 2014 diesel fuels hydraulic fracturing guidance and memo<sup>1</sup>?
2. Have there been plans for or documented incidences of diesel fuel use in hydraulic fracturing? If so, what was the outcome of addressing such incidences, for example, permitting, enforcement, alternative chemical use, or other?

Based on this review, we did not identify any states, tribes, territories or EPA Regional UIC programs with permitting authority for Class II that had received applications or issued any permits for the use of diesel fuels in hydraulic fracturing. In addition, based on the following findings, the Office of Water found that unpermitted diesel fuels hydraulic fracturing is unlikely to occur:

State, tribal, and territorial governments, as well as the EPA are aware of the need to permit hydraulic fracturing using diesel fuels under the UIC Class II program;

All states with significant oil and gas development require disclosure of hydraulic fracturing fluid and additive constituents, although in some states this disclosure is after completion of hydraulic fracturing activities;

A small and decreasing number of instances of unpermitted diesel fuels hydraulic fracturing was reported in the Frac Focus chemical disclosure registry;

EPA and primary agencies have found through regular and targeted oversight that industry operators are not hydraulically fracturing using diesel fuels, as EPA has interpreted this term in the SDWA. Anecdotal information indicates that industry operators have forgone using diesel fuels in hydraulic fracturing in favor of substitutes to avoid being subject to the Class II UIC permitting process;

While EPA has issued permitting guidance for diesel fuels hydraulic fracturing, other primary authorities have not issued formal procedures for permitting this activity under Class II because there has been no interest in conducting this activity;

Some states ban the use of diesel fuels in hydraulic fracturing, and other states discourage the use of diesel fuels through their normal programmatic channels or through stakeholder communications.

Based on these findings, the EPA Office of Water has determined that the existing EPA-state-tribal-territory oversight structure is sufficient to ensure unpermitted diesel fuels hydraulic fracturing generally does not occur. While it is possible that unpermitted diesel fuels hydraulic fracturing could occur, particularly in areas that stipulate only post activity fracturing fluid and additive disclosure, it is not likely. Legal disclosure requirements for operators allow permitting

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<sup>1</sup> Diesel Fuels Hydraulic Fracturing <https://www.epa.gov/uic/diesel-fuels-hydraulic-fracturing-dfhf>

authorities to identify such instances. Thus, operators that pursue unpermitted diesel fuels hydraulic fracturing are subject to state and federal penalties.

Given the low level of diesel fuels use in hydraulic fracturing and the existence of effective deterrents and programmatic controls, the Office of Water finds that no action plan is necessary as per Recommendation 1(e). The Office of Water will continue to work through the UIC program's regular oversight and coordination efforts with its Regional, state, tribal and territory partners to ensure appropriate permitting if we identify diesel fuel hydraulic fracturing activity.

The issuance of this memorandum and its publication on the EPA UIC program website are intended to fulfill the Office of Water's obligations under Recommendations 1(a) and 1(b). Thank you again for your program's assistance in responding to the OIG report. We highly value the contributions made to the knowledge and continued oversight of the Class II UIC program and the permitting of diesel fuel hydraulic fracturing. If you have any questions, please contact me or Holly Green at (202) 566-0651.