

RAILROAD COMMISSION OF TEXAS

ELIZABETH AMES JONES, CHAIRMAN
DAVID PORTER, COMMISSIONER
BARRY T. SMITHERMAN, COMMISSIONER

INTERNAL
OIL AND GAS DIVISION



MEMORANDUM

TO: Chairman Elizabeth Ames Jones
Commissioner David Porter
Commissioner Barry T. Smitherman

FROM: Leslie Savage, Chief Geologist
Oil and Gas Division

DATE: August 22, 2011

SUBJECT: New 16 Tex. Admin. Code §3.29, relating to
Hydraulic Fracturing Chemical Disclosure Requirements

August 29, 2011		
APPROVE	DENY	ABSTAIN
		
		

Attached are Staff's recommended preamble and rule text to propose new §3.29, relating to Hydraulic Fracturing Chemical Disclosure Requirements. This rule would implement Texas Natural Resources Code, Chapter 91, Subchapter S, §91.851, relating to Disclosure of Composition of Hydraulic Fracturing Fluids, as enacted by House Bill (HB) 3328 (82nd Legislature (Regular Session, 2011)).

The recommended 30-day comment period would actually be 32 days, from the anticipated September 9, 2011, date of publication in the *Texas Register*, to Tuesday, October 11, 2011. During the comment period, the Commission is scheduled to conduct a public comment hearing, on Wednesday, October 5, 2011. In addition, the proposal and an online comment form will be available on the Commission's web site beginning tomorrow, which is 10 days prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments.

Staff requests approval to publish the proposal in the *Texas Register*.

Cc: John J. Tintera
Gil Bujano
Ramon Fernandez
Lindil C. Fowler, Jr.
David Cooney
Mary Ross McDonald

EXHIBIT

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The Railroad Commission of Texas (Commission) proposes new §3.29, relating to Hydraulic Fracturing Chemical Disclosure Requirements. The Commission proposes the new rule to implement Texas Natural Resources Code, Chapter 91, Subchapter S, §91.851, relating to Disclosure of Composition of Hydraulic Fracturing Fluids, as enacted by House Bill (HB) 3328 (82nd Legislature (Regular Session, 2011)).

The Commission has been very active from the beginning in the issue of disclosure of hydraulic fracturing chemicals through the Interstate Oil and Gas Compact Commission and the Ground Water Protection Council, as well as other avenues. Commission staff was active in the development of FracFocus. In addition, Texas was the first state in the nation to enact disclosure legislation.

The Commission proposes new §3.29(a), relating to definitions, to define terms used in the proposed new rule.

The Commission proposes new §3.29(b), relating to applicability, to state that this proposed new section applies to a hydraulic fracturing treatment performed on a well in this state for which the Commission has issued an initial drilling permit on or after the effective date of this rule.

The Commission proposes new §3.29(c), relating to required disclosures, to detail the hydraulic fracturing treatment chemical disclosure requirements for suppliers, services companies, and operators. Consistent with the provisions of HB 3328, subsection (c) requires an operator to submit information about the chemical ingredients and volume of water used in the hydraulic fracturing treatment of a well to the hydraulic fracturing chemical registry Internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission known as "FracFocus." Should this website be discontinued or become permanently inoperable, the Commission will amend the new rule to specify another publicly accessible Internet website on which this information must be posted.

Proposed new §3.29(d), relating to disclosures not required, states that a supplier, service company, or operator is not required to disclose ingredients that are not disclosed to it by the

manufacturer, supplier, or service company; disclose ingredients that were not intentionally added to the hydraulic fracturing treatment; disclose ingredients that occur incidentally or are otherwise unintentionally present which may be present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid; or identify specific chemical ingredients that are eligible for trade secret protection based on the additive in which they are found or provide the concentration of such ingredients.

Proposed new §3.29(e), relating to trade secret protection, states that a supplier, service company, or operator is not required to disclosure information that is entitled to trade secret protection, unless the claim has been successfully challenged under Texas Government Code, Chapter 552.

Proposed new §3.29(f), relating to trade secret challenge, codifies the eligibility requirements in Texas Natural Resources Code, §91.851, of a person who may challenge a claim of entitlement to trade secret protection, and outlines the procedures and requirements for such a challenge.

Proposed new §3.29(g), relating to trade secret confidentiality, requires that a health professional or emergency responder to whom trade secret information is disclosed under proposed new subsection (f) must hold the information confidential, except that the health professional or emergency responder may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health professional, emergency responder or accredited lab.

Proposed new §3.29(h), relating to penalties, states that violations of this new section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission, and that the certificate of compliance for a well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) for violation of this section.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years the new rule as proposed would be in effect, there will be some fiscal implications for the

state as a result of enforcing or administering the rule. There will be no estimated reductions in costs or estimated loss or increase in revenue to the state. There will be additional costs to the state. All well completion reports and the required attachments are currently scanned and made public on the Commission's Internet website. The Commission proposes to include in that scanned information the copy of the Chemical Disclosure Registry form and the supplemental list of chemical ingredients provided by operators with their well completion reports. Some additional staff time will be required to scan the additional information. In addition, although the Commission cannot estimate how many persons will challenge a claim to entitlement of trade secret protection, some staff time and resources will be necessary to review each request and forward the information to the Office of the Attorney General for disposition, which would be required to devote some staff time and resources to resolving those matters referred by the Railroad Commission.

Ms. Savage has determined that for each year of the first five years the new rule as proposed would be in effect, there will be no fiscal implications for local governments.

Ms. Savage also has determined that for each year of the first five years that the new rule would be in effect, the public benefit would be efficient notice of the chemical composition of hydraulic fracturing treatments performed on wells in Texas to officials and the public.

The Commission finds that the proposed new rule likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed rule is not a major environmental rule, because the rule does not meet the requirements set forth in Texas Government Code, §2001.0225(a). The proposed rule does not exceed the express requirements of state law, and is not being adopted solely under the general powers of the agency.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic

Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission the number of their employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons engaged in activities associated with hydraulic fracturing treatment of the operation of oil and natural gas land wells that include wells that have not actively produced in at least 12 months will be classified as small businesses or micro-businesses, as those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The Commission expects that there are entities engaged in activities associated with the hydraulic fracturing treatment of the operation of oil and natural gas wells that fall within the definition of a small business or micro-business.

The Commission anticipates that the proposed new rule may have an adverse economic impact on suppliers, service companies, and operators but it will be relatively minor. The economic impact on the regulated industry of the proposed rule to implement House Bill 3328 may include costs for new or increased record-keeping; for new or increased reporting requirements to the Commission; for modifying existing processes and procedures; and for consulting with professionals, including attorneys and

engineers.

Based on the information available to the Commission regarding oil and gas operators, Ms. Savage concludes that, of the businesses that could be affected by the proposed new rule, it is possible that some would be classified as a small business, and possible that some could be classified as micro-businesses, as those terms are defined in Texas Government Code, §2006.001. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas wells fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements- Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001.

Entities primarily engaged in providing support services, on a fee or contract basis, required for drilling or operating oil and gas wells, including hydraulic fracturing of wells on a contract basis, are classified in U.S. Industry 213112, Support Activities for Oil and Gas Operations. This category is listed on the Texas Comptroller of Public Accounts website as business type 2131 (Support Activities for Mining), for which there are listed 2,134 companies in Texas. This source further indicates that 1,841 companies (86.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001.

It is not possible to provide a general estimate of the cost of the proposed new rule because the cost will depend upon numerous variables that cannot be quantified. Nevertheless, while the Commission cannot provide a general estimate of the cost of compliance for any particular supplier, service company or operator, the Commission can estimate the type and general range of the costs for complying with those elements of the rule that could result in a cost to suppliers, service companies, and operators.

Commission information indicates that 15,466 drilling permits were issued for new drills in 2010.

The Commission estimates that 85 percent of those wells were hydraulically fractured. Therefore, the Commission estimates that approximately 13,000 wells undergo hydraulic fracturing treatment in the State of Texas each year. The economic impact of the proposed new rule will be the same for small businesses and micro-businesses as for larger businesses.

Currently, operators are required to have the information on the Material Safety Data Sheet (MSDS) on the drill site. The MSDS contains much of the information required by the Chemical Disclosure Registry. The Commission assumes that the supplier and/or service company currently provides the operator with certain other information related to the chemical ingredients of a hydraulic fracturing treatment for a specific well. Therefore, the Commission assumes that the costs imposed by the proposed rule requirements relating to chemical disclosure involve the additional activities and associated costs of entering the data into the Chemical Disclosure Registry and preparing the supplemental list, if all chemical ingredients have not been entered into the Chemical Disclosure Registry. The Commission estimates these additional costs would range from \$50 to \$100 per well. The number of oil and/or natural gas wells on which an entity performs hydraulic fracturing treatments should be proportionate to the relative size of the entity. Therefore, the Commission anticipates that overall costs to small businesses and micro-businesses as a result of this new rule should be smaller than the overall costs for larger entities. Furthermore, the total cost of an oil or natural gas well on which hydraulic fracturing treatment is performed ranges from \$2 million to \$5 million, depending on factors such as the area, depth of the target formation, transportation costs, local taxes or restrictions, and leasing costs. Therefore, the compliance costs of this rule are relatively minor.

The Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC) launched the FracFocus Internet website on April 1, 2011. As of August 16, 2011, operators had entered into the voluntary FracFocus Chemical Registry chemical disclosure information for almost 950 wells in Texas. During that same period, operators submitted completion reports for 2,141

oil and natural gas wells, or approximately 1,820 wells that underwent hydraulic fracturing treatment, if the Commission assumes that 85% of all wells undergo hydraulic fracturing treatment. Therefore, the Commission estimates that operators already are voluntarily entering data into FracFocus for approximately 50% of all wells on which hydraulic fracturing treatment is performed. These operators include Anadarko Petroleum Corporation, Apache Corporation, BP America Production Company, Chesapeake Operating, Inc., Chevron USA Inc., ConocoPhillips Company, Devon Energy Production Company LP, El Paso E&P Company, Energen Resources Corporation, EnerVest, Ltd., EOG Resources, Inc., EXCO Resources Inc., Forest Oil Corporation, HighMount Exploration & Production, Newfield Exploration, Occidental Oil & Gas, Penn Virginia Oil & Gas Corporation, Petrohawk Energy Corporation, Pioneer Natural Resources, Plains Exploration & Production Company, Range Resources Corporation, Rosetta Resources, Shell Exploration & Production Company, SM Energy, Southwestern Energy, Talisman Energy USA Inc., Williams, and XTO Energy/ExxonMobil. The Commission commends these companies for being proactive in the disclosure of hydraulic fracturing chemicals.

In addition, the proposed rule provides for the opportunity for certain persons to challenge a claim of entitlement to trade secret protection. Should the Commission receive such a request, the owner of the trade secret will be required to provide certain information to the Office of the Attorney General, Open Records Division, to substantiate its claim of entitlement to trade secret protection in accordance with Texas Government Code, Chapter 552. The owner of the trade secret must make a factual showing to the Office of the Attorney General, Open Records Division, that the information meets the following factors, in accordance with the definition of "trade secret" in the Restatement of Torts, Comment B to Section 757 (1939), as adopted by the Texas Supreme Court in *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958):

- (1) the extent to which the information is known outside of the company;
- (2) the extent to which it is known by employees and others involved in the company's business;

- (3) the extent of measures taken by the company to guard the secrecy of the information;
- (4) the value of the information to the company and its competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by

others.

Making such a showing could require the owner of the trade secret to consult with attorneys or other professionals, and thus would require the owner of the trade secret to bear the expense of those professional consultations. Other than the cost of preparing and filing the documents to substantiate the claim, there is no additional cost; there is no fee for filing the documents to substantiate the claim. The Commission estimates that the approximate cost of substantiating a claim of entitlement to trade secret protection would range between \$1,000 and \$5,000. The Commission further estimates that costs associated with any appeal of a decision by the Office of the Attorney General could range between \$5,000 and \$25,000. The Commission anticipates that there will be no difference in the cost of compliance borne by suppliers, service companies, and operators that are larger companies as compared to entities that are small businesses or micro-businesses.

The Commission also has determined that a regulatory flexibility analysis is not required because the amendments to the Texas Natural Resources Code enacted by HB 3328 were specifically intended by the Texas Legislature to make public information relating to chemical ingredients used in hydraulic fracturing treatments. The changes that will result from the proposed new rule concerning disclosure of the composition of hydraulic fracturing fluids are mandated by the Texas Legislature, 82nd Legislative Session (Regular Session, 2011). The Commission has developed rules that would have the minimum economic impact to all suppliers, service companies, and operators – regardless of whether or not they are small businesses or micro-businesses – and still be consistent with the intent of the legislation. Because the express legislative purpose for the enactment of the amendments to the Texas Natural Resources Code

in HB 3328 is to make public the chemical ingredients in hydraulic fracturing treatments performed on wells in this state, the Commission concludes that a regulatory flexibility analysis is not required. There are no additional alternative regulatory methods that will achieve the purpose of the statutes while minimizing the adverse impacts on small businesses and micro-businesses; exempting small businesses and micro-businesses from the requirements of the rules would not be consistent with the health, safety, and environmental and economic welfare of the state.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0272062, and will be accepted until 12:00 p.m. (noon) on Tuesday, October 11, 2011, which is 32 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons additional time to review and analyze the proposal and to draft and submit comments.

In addition, the Commission will hold a public hearing to receive public comments on the proposed new rule. The hearing will be held on Wednesday, October 5, 2011, at 1:00 p.m. Central Daylight Time, at the Commission's headquarters at the William B. Travis State Office Building, 1701 N. Congress Avenue, Room 1-111, First Floor, Austin, Texas.

The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the new rule pursuant to Texas Natural Resources Code, §81.051 and

§81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter S, as enacted by HB 3328, relating to Disclosure of Composition of Hydraulic Fracturing Fluids; Texas Natural Resources Code, §91.101, which gives the Railroad Commission authority to adopt rules and orders governing the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission; and Texas Government Code, §2001.006, which authorizes a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Natural Resources Code, §§81.051, 81.052, and 91.851 are affected by the proposed new rule.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 91.851; Texas Government Code, §2001.006.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91.

§3.29. Hydraulic Fracturing Chemical Disclosure Requirements.

(a) Definitions. The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited laboratory--A laboratory as defined in Texas Water Code, §5.801.

(2) Additive--Any chemical substance or combination of substances, including a proppant, contained in a hydraulic fracturing fluid that is intentionally added to a base fluid for a specific purpose whether or not the purpose of any such substance or combination of substances is to create

fractures in a formation.

(3) API number—A unique, permanent, numeric identifier assigned to each well drilled for oil or gas in the United States.

(4) Base fluid—The continuous phase fluid type, such as water, used in a particular hydraulic fracturing treatment.

(5) Chemical Abstracts Service—The division of the American Chemical Society that is the globally recognized authority for information on chemical substances.

(6) Chemical Abstracts Service number or CAS number—The unique identification number assigned to a chemical by the Chemical Abstracts Service.

(7) Chemical Disclosure Registry—The chemical registry website known as FracFocus developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

(8) Chemical family—A group of chemical ingredients that share similar chemical properties and have a common general name.

(9) Chemical ingredient—A discrete chemical constituent with its own specific name or identity, such as a CAS number, that is contained in an additive.

(10) Commission—The Railroad Commission of Texas.

(11) Delegate—The person authorized by the director to take action on behalf of the Railroad Commission of Texas under this section.

(12) Director—The director of the Oil and Gas Division of the Railroad Commission of Texas or the director's delegate.

(13) Health professional or emergency responder—A physician, industrial hygienist, toxicologist, epidemiologist, nurse, or emergency responder providing medical or other health services to a person exposed to a chemical ingredient.

(14) Hydraulic fracturing fluid—The fluid, including the applicable base fluid and all

additives, used to perform a particular hydraulic fracturing treatment.

(15) Hydraulic fracturing treatment—The act of stimulating a well by the application of hydraulic fracturing fluid under pressure for the purpose of creating fractures in a target geologic formation to enhance production of oil and/or natural gas.

(16) Landowner—The person listed on the appraisal roll as owning the real property on which the relevant well-head is located.

(17) Operator—An operator as defined in Texas Natural Resources Code, Chapter 89.

(18) Person—Natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(19) Proppant—Sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed.

(20) Requestor—A person who is eligible to request information claimed to be entitled to trade secret protection in accordance with Texas Natural Resources Code, §91.851(a)(5).

(21) Service company—A person that performs well stimulation services, including hydraulic fracturing treatments, on a well in this state.

(22) Supplier—A company that sells or provides an additive for use in a hydraulic fracturing treatment.

(23) Total water volume—The quantity of water from all sources used in the hydraulic fracturing treatment, including surface water, ground water, produced water or recycled water.

(24) Trade name—The name given to an additive or a hydraulic fracturing fluid system under which that additive or hydraulic fracturing fluid system is sold or marketed.

(25) Trade secret —Any formula, pattern, device, or compilation of information that is used in a person's business, and that gives the person an opportunity to obtain an advantage over

competitors who do not know or use it; and requires a factual showing to the Office of the Attorney General, Open Records Division, that the information meets the following factors, in accordance with the definition of "trade secret" in the Restatement of Torts, Comment B to Section 757 (1939), as adopted by the Texas Supreme Court in *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958):

- (A) the extent to which the information is known outside of the company;
- (B) the extent to which it is known by employees and others involved in the company's business;
- (C) the extent of measures taken by the company to guard the secrecy of the information;
- (D) the value of the information to the company and its competitors;
- (E) the amount of effort or money expended by the company in developing the information; and
- (F) the ease or difficulty with which the information could be properly acquired or duplicated by others.

(26) Well—A well as defined in Texas Natural Resources Code, Chapter 89.

(27) Well completion report—The report an operator is required to file with the Commission following the completion or recompletion of a well, if applicable, in accordance with §3.16(b) of this title (relating to Log and Completion or Plugging Report.)

(b) Applicability. This section applies to a hydraulic fracturing treatment performed on a well in the State of Texas for which the Commission has issued an initial drilling permit on or after the effective date of this rule.

(c) Required disclosures.

(1) Supplier and service company disclosures. As soon as possible, but not later than 30 days following the completion of a hydraulic fracturing treatment on a well, the supplier or the service

company must provide to the operator of the well each chemical ingredient intentionally added to the hydraulic fracturing fluid including:

(A) each chemical ingredient subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2); and

(B) all other chemical ingredients not submitted under subparagraph (A) or this paragraph that were intentionally included in, and used for the purpose of creating, a hydraulic fracturing treatment for the well.

(2) Operator disclosures.

(A) On or before the well completion report for a well on which a hydraulic fracturing treatment was conducted is submitted to the Commission in accordance with §3.16(b) of this title, the operator of the well must complete the Chemical Disclosure Registry form and post the form on the Chemical Disclosure Registry, including:

- (i) the operator name;
- (ii) the date of the hydraulic fracturing treatment;
- (iii) the county in which the well is located;
- (iv) the API number for the well;
- (v) the well name and number;
- (vi) the longitude and latitude of the wellhead;
- (vii) the total vertical depth of the well;
- (viii) the total volume of water used in the hydraulic fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;
- (ix) each additive used in the hydraulic fracturing fluid and the trade name, supplier, and a brief descriptor of the intended use or function of each additive in the hydraulic

fracturing treatment;

(x) each chemical ingredient used in the hydraulic fracturing treatment of the well that is subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2), as provided by the chemical supplier or service company or by the operator, if the operator provides its own chemical ingredients;

(xi) all chemical ingredients intentionally added by the operator; and

(xii) the actual or maximum concentration of each chemical ingredient listed under item (ix), (x), or (xi) of this subparagraph in percent by mass.

(B) If the Chemical Disclosure Registry known as FracFocus is temporarily inoperable, the operator of a well on which a hydraulic fracturing treatment was performed must supply the Commission with the required information with the well completion report and must enter the information on the FracFocus Internet website as soon as the website is again operable.

(C) The operator of the well on which a hydraulic fracturing treatment was conducted must submit to the Commission with the well completion report for the well:

(i) a copy of the disclosure form posted on the Chemical Disclosure Registry; and

(ii) a supplemental list of all chemicals and their respective CAS numbers, not listed on the Chemical Disclosure Registry, that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatment for the well.

(D) An operator may provide all of the required information on the Chemical Disclosure Registry form.

(E) If the supplier, service company, or operator claim that the specific identity or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment is entitled to protection as trade secret information pursuant to the criteria provided by Texas Government Code,

Chapter 552, the operator of the well must indicate on the Chemical Disclosure Registry form or the supplemental list that the additive or chemical ingredient is entitled to trade secret protection. If a chemical ingredient name or CAS number is entitled to trade secret protection, the operator must provide the chemical family or other similar descriptor associated with such chemical ingredient. The operator of the well on which the hydraulic fracturing treatment was performed must provide the contact information, including the name, authorized representative, mailing address, and phone number of the business organization claiming entitlement to trade secret protection.

(F) Unless the information is entitled to protection as a trade secret under Texas Government Code, Chapter 552, information submitted to the Commission or posted to the Chemical Disclosure Registry is public information.

(3) Inaccuracies in information. A supplier is not responsible for any inaccuracy in information that is provided to the supplier by a third party manufacturer of the additives. A service company is not responsible for any inaccuracy in information that is provided to the service company by the supplier. An operator is not responsible for any inaccuracy in information provided to the operator by the supplier or service company.

(4) Disclosure to health professionals and emergency responders. A supplier, service company or operator may not withhold information related to chemical ingredients used in a hydraulic fracturing treatment, including information identified as a trade secret, from any health professional or emergency responder who needs the information for diagnostic, treatment or other emergency response purposes subject to procedures set forth in 29 Code of Federal Regulations §1910.1200(i). A supplier, service company or operator must provide directly to a health professional or emergency responder, all information in the person's possession that is required by the health professional or emergency responder, whether or not the information may qualify for trade secret protection under subsection (e) of this section. In a medical emergency, the supplier, service company or operator must provide the information

immediately on request. The person disclosing information to a health professional or emergency responder must include with the disclosure, as soon as circumstances permit, a statement of the health professional's confidentiality obligation.

(d) Disclosures not required. A supplier, service company, or operator is not required to:

(1) disclose ingredients that are not disclosed to it by the manufacturer, supplier, or service company;

(2) disclose ingredients that were not intentionally added to the hydraulic fracturing treatment;

(3) disclose ingredients that occur incidentally or are otherwise unintentionally present which may be present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid; or

(4) identify specific chemical ingredients that are eligible for trade secret protection based on the additive in which they are found or provide the concentration of such ingredients.

(e) Trade secret protection.

(1) A supplier, service company, or operator is not required to disclose trade secret information, unless the Office of the Attorney General or a court of proper jurisdiction determines that the information is not entitled to trade secret protection under Texas Government Code, Chapter 552.

(2) If the specific identity of a chemical ingredient, the concentration of a chemical ingredient, or both the specific identity and concentration of a chemical ingredient are claimed or have been finally determined to be entitled to protection as a trade secret under Texas Government Code, Chapter 552, the supplier, service company, or operator, as applicable, may withhold the specific identity, the concentration, or both the specific identity and concentration, of the chemical ingredient, as the case may be, from the information provided to the operator. If the supplier, service company, or operator, as

applicable, elects to withhold that information, the supplier, service company, or operator, as applicable, must provide to the Commission information that:

- (A) discloses the chemical family associated with the chemical ingredient;
- (B) states that the specific identity of the chemical ingredient, the concentration of the chemical ingredient, or both the specific identity and concentration of the chemical ingredient are entitled to protection as trade secret information; and
- (C) discloses the properties and effects of the chemical(s), the identity of which is withheld.

(f) Trade secret challenge.

(1) The following persons may challenge a claim of entitlement to trade secret protection:

- (A) the landowner on whose property the relevant well-head is located;
- (B) the landowner who owns real property adjacent to property described in subparagraph (A) of this paragraph; or
- (C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret information is relevant.

(2) A requestor must certify in writing to the director, over the requestor's signature, to the following:

- (A) the requestor's name, address, and daytime phone number;
- (B) if the requestor is a landowner, a statement that the requestor is listed on the appraisal roll as owning the property on which the relevant well-head is located or is listed on the appraisal roll as owning property adjacent to the property on which the relevant well-head is located;
- (C) the county in which the well-head is located; and
- (D) the API number or other Railroad Commission of Texas identifying information, such as field name, oil lease name and number, gas identification number, and well number.

(3) A requestor may use the following format to provide the written certification required by paragraph (2) of this subsection:

Figure: 16 TAC §3.29(f)(3)

**REQUEST TO CHALLENGE CLAIM OF ENTITLEMENT
TO TRADE SECRET PROTECTION OF HYDRAULIC FRACTURING
TREATMENT CHEMICAL COMPOSITION**

I, _____ (name) _____, challenge the claim of entitlement to trade secret protection for portions of the chemicals or other substances used in the hydraulic fracturing treatment of the following well:

Operator name: _____
County name: _____
API number: _____
Field Name: _____
Railroad Commission oil lease name and number: _____
Railroad Commission gas identification number: _____
Well Number: _____

I certify that I am listed on the appraisal roll as owning the property on which the relevant well-head is located or I am listed on the appraisal roll as owning property adjacent to the property on which the relevant well-head is located.

Name of requestor: _____
Mailing address of Requestor: _____
Phone number of requestor: _____
Email address of requestor (optional): _____

EMAIL ADDRESS: YOU ARE NOT REQUIRED TO PROVIDE AN EMAIL ADDRESS when completing and filing this form. Please be aware that information provided to any governmental body may be subject to disclosure pursuant to the Texas Public Information Act or other applicable federal or state legislation. **IF YOU PROVIDE AN EMAIL ADDRESS, YOU AFFIRMATIVELY CONSENT TO THE RELEASE OF THAT EMAIL ADDRESS TO THIRD PARTIES.** Other departments within the Railroad Commission also may use the email address you provide to communicate with you.

Signature of Requestor: _____
Date: _____

(4) A requestor must file a request no later than 24 months from the date the operator filed the final well completion report.

(5) Within 10 business days of receiving a request that complies with paragraph (2) of

this subsection, the director must:

(A) submit to Office of the Attorney General, Open Records Division, a request for decision regarding the challenge;

(B) notify the owner of the claimed trade secret information of the submission of the request to the Office of the Attorney General and of the requirement that the owner of the claimed trade secret information submit directly to the Office of Attorney General, Open Records Division, the claimed trade secret information, clearly marked "confidential," submitted under seal; and

(C) inform the owner of the claimed trade secret information of the opportunity to substantiate to the Office of the Attorney General, Open Records Division its claim of entitlement of trade secret protection, in accordance with Texas Government Code, Chapter 552.

(6) If the Office of the Attorney General determines that the claim of entitlement to trade secret protection is valid under Texas Government Code, Chapter 552, the owner of the claimed trade secret information may not be required to disclose the trade secret information, subject to appeal.

(7) A final determination by the Office of the Attorney General regarding the challenge to the claim of entitlement of trade secret protection of any withheld information may be appealed within 10 business days to a district court of Travis County pursuant to Texas Government Code, Chapter 552.

(8) If the Office of the Attorney General or a court of proper jurisdiction on appeal of a determination by the Office of the Attorney General determines that the withheld information is not entitled to trade secret protection under Texas Government Code, Chapter 552, the owner of the claimed trade secret information must disclose such information to the director within 30 days of the final disposition of the case or cease the use of such chemical ingredient in hydraulic fracturing treatments performed in this state.

(g) Trade secret confidentiality. A health professional or emergency responder to whom information is disclosed under subsection (c)(4) must hold the information confidential, except that the

health professional or emergency responder may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health professional, emergency responder or accredited laboratory. A health professional, emergency responder or accredited laboratory to which information is disclosed by another health professional or emergency responder under this subsection must hold the information confidential and the disclosing health professional or emergency responder must include with the disclosure, or in a medical emergency, as soon as circumstances permit, a statement of the recipient's confidentiality obligation pursuant to this subsection.

(h) Penalties. A violation of this section may subject a person to any penalty or remedy specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) for violation of this section.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on August 29, 2011.

Filed with the Office of the Secretary of State on August 29, 2011.

Mary Ross McDonald
Mary Ross McDonald
Managing Director, Special Counsel
Office of General Counsel
Railroad Commission of Texas