



January 6, 2012

HAND DELIVERED

Ms. Florene Davidson
Commission Clerk
Oil Conservation Commission
New Mexico Energy, Minerals and
Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

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Re: Application of the New Mexico Oil & Gas Association for the amendment of certain provisions of Title 19, Chapter 15, Part 16 of the New Mexico Administrative Code concerning Log, Completion, Hydraulic Fracturing and Workover Reports, Statewide.

Dear Ms. Davidson:

Pursuant to the request of the Commission at its November 17, 2011 Meeting, enclosed are the proposed Findings of Fact in the above-referenced case of the New Mexico Oil & Gas Association.

Very truly yours,

William F. Carr

cc: Mr. Steve Henke
President
New Mexico Oil & Gas Association
Post Office Box 1864
Santa Fe, New Mexico 87504-1864

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

**APPLICATION OF THE NEW MEXICO OIL & GAS ASSOCIATION FOR THE
AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15, PART 16 OF
THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING LOG, COMPLETION,
HYDRAULIC FRACTURING AND WORKOVER REPORTS, STATEWIDE.**

CASE NO. 14753

**NEW MEXICO OIL & GAS ASSOCIATION'S
PROPOSED FINDINGS OF FACT**

Pursuant to the request of the Oil Conservation Commission (Commission), the New Mexico Oil & Gas Association (NMOGA) hereby files its proposed Findings of Fact in the above referenced case:

PRELIMINARY MATTERS:

1. Due public having been provided, the Commission has jurisdiction of this matter and the parties hereto.
2. With this application, NMOGA seeks an order amending the provisions of Title 19, Chapter 15, Part 16 of the New Mexico Administrative Code to require the disclosure of the composition of fluids used to hydraulically fracture new and recompleted wells by the party performing the hydraulic fracturing stimulation operation in the template prescribed by the Ground Water Protection Council/Interstate Oil and Gas Compact Commission FracFocus Registry website (FracFocus), or, in the alternative, attach this information with the submittal of the appropriate Oil Conservation Division (Division) Form C-105, C-103, BLM Form 3160-4 or 3160-5.
3. FracFocus is a voluntary registry for individual companies to disclose the chemicals used in hydraulic fracturing operations that appear on a Material Safety Data Sheet (MSDS) adopted by the Environmental Protection Agency (EPA). An MSDS has been adopted for chemicals that have been deemed to be hazardous in an occupational setting under standards adopted by the federal Occupational Safety and Hazard Administration (OSHA). Lachelt at Transcript p. 116. The use of FracFocus is supported by the United States Department of Energy. *See*, Lachelt at Transcript p. 116.

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4. NMOGA's proposal requires the operator of all new or recompleted wells to disclose to the Division the composition of all chemicals appearing on an MSDS within 45 days after hydraulic fracturing operations are conducted on the well. The disclosure is to be filed on either the prescribed July 11, 2011 FracFocus template, or on an alternative form approved by the Division.

5. The Division appeared and presented testimony in support of the NMOGA application for disclosure of the composition of fluids used in hydraulic fracturing operations and proposed that this information be disclosed on a Division form instead of a FracFocus template. Martin at Transcript p. 54.

6. The Oil and Gas Accountability Project (OGAP) appeared and presented testimony in support of the disclosure of chemicals used in hydraulic fracturing but sought amendment of the NMOGA proposal to require disclosure of information in addition than that required by the July 11, 2011 FracFocus template. Lachelt at Transcript pp. 88, 97. OGAP also proposed that this information be disclosed 30 days prior to fracturing operations. Lachelt at Transcript pp. 91, 123 .

7. Halliburton Energy Services Incorporated and the New Mexico Independent Petroleum Association appeared through counsel in support of the NMOGA application but did not present testimony.

THE EVIDENCE:

8. NMOGA testified that:

- A. Adoption of its proposed amendments would result in the mandatory disclosure of the composition of hydraulic fracturing fluids by requiring disclosure to a publicly accessible database each hazardous chemical which is required by OSHA regulations to be listed on an MSDS. Dillon at Transcript p. 46; Martin at Transcript p. 58.
- B. Use of either the template prescribed by the Ground Water Protection Council/Interstate Oil and Gas Compact Commission FracFocus Registry website (FracFocus), or submittal of the appropriate Oil Conservation Division Form would allow operators to easily meet the disclosure requirements of this rule.
- C. Adoption of its proposal and the use of either the FracFocus template or appropriate Division form would result in the Division's well file being one source where all data on a well can be found, including information on how the well is completed, how it is cased, how the related pits are constructed and maintained, how wastes are

managed, and what chemicals are used in the well as part of its completion process.

D. The MSDS:

- i. Must be kept at all times with the chemical (Dillon at Transcript p. 26);
- ii. Identifies what to do in event of an accidental spill (Dillon at Transcript p. 36); and
- iii. Contains a Chemical Abstract Service number which can be used to obtain additional information on the chemical on the EPA website. Dillon at Transcript pp. 21-22.

9. The Division testified that:

- A. After receiving the NMOGA application, it formed a work group to review the proposed amendment to Division rules. Martin at Transcript at p. 53.
- B. It developed its own form for use in disclosing this information to the Division.
- C. The proposed Division form requires essentially the same information as the July 2011FracFocus template (Dillon at 38) and that either the form could be accepted into the Division's well files. Martin at Transcript p. 66.
- D. MSDS are widely accepted by a variety of first responder organizations like police and fire departments and limiting reporting to chemicals for which there are MSDS should be administratively efficient and acceptable to the Division for reporting potentially hazardous components of hydraulic fracturing fluids. Martin at Transcript P. 58.
- E. It believes its form would be easier to use for its reporting system is based on the parameters of section, township and range, where FracFocus identifies wells by latitude and longitude. Under FracFocus, operators would have to obtain well's footage location by using the API number required by the FracFocus template. Dillon at Transcript pp. 49-50; Martin at Transcript pp. 55, 65.
- F. The Division testified that it preferred its own form for reporting data to the adoption of a rule based on determinations of a third party over which the Division has no control. Martin at Transcript p. 54.

10. OGAP's evidence included:

- A. A review of proposals under consideration by other states to address hydraulic fracturing concerns but presented no study indicating that contamination of ground or surface water has occurred as a result of hydraulic fracturing operations. (Lachelt at Transcript p. 124) It testified that it was "not aware of the final conclusions of those studies" concerning any problems resulting from fracturing operations. Lachelt at Transcript p.126.
- B. Testimony that reporting only data on chemicals for which there are MSDS is inadequate because a number of chemicals and other hydraulic fracturing constituents do not have MSD Sheets. Lachelt at Transcript p. 97.
- C. A proposal for the adoption and use of the most current FracFocus template for the disclosure of information to the Division. Lachelt at Transcript pp. 121, 144.

FINDING: The disclosure to the Division of the composition of fluids used to hydraulically fracture new and recompleted wells will result in the Division's well file being one source where all data on a well can be found, including information on how the well is completed, how it is cased, how the related pits are constructed and maintained, how wastes are managed, and what chemicals are used in the well as part of its completion process and should be required by the Division. (See Martin at Transcript p. 56).

DATA REPORTED:

11. The Division proposed that operators report the total volume of the chemicals injected instead of reporting the chemical mass to make the information easier for others to understand. Martin at Transcript p. 55.

12. NMOGA testified that reporting the chemical mass is more accurate because volume reporting requires adjustment of the information for density. Sanchez at Transcript pp. 149-150.

FINDING: Information required by these amended rules should be disclosed to the Division using chemical mass numbers as required by FracFocus.

TRADE SECRET INFORMATION:

13. OGAP proposed disclosure beyond that required under the July 11, 2011 FracFocus template, including the disclosure of confidential, proprietary,

commercial information pursuant to procedures that “deal with proprietary commercial information.” Lachelt at Transcript pp. 131-132.

14. The Division testified it is not able to protect this information and does not want this information to be reported to it. Martin at Transcript p. 59.

15. The disclosure of confidential trade secrets is not required by FracFocus.

FINDING: The Division should not require the disclosure of trade secret information.

NOTICE TO LANDOWNERS:

16. OGAP proposes that notice of hydraulic fracturing be provided to affected landowners 30 days in advance of any fracturing operations.

17. NMOGA presented testimony that established that it is not practical to require operators provide notice 30 days prior to fracturing operation because the operator does not know the final design of the fracturing fluid 30 days in advance of actually pumping the job and only generic data that is available to the public on the EPA website can be provided prior to drilling. Dillon at Transcript pp. 24-29, 44.

18. At present, landowners can obtain this generic information on the Division and FracFocus websites. Lachelt at Transcript p. 128.

19. OGAP admitted that where prior notification of hydraulic fracturing operations is required, companies file estimates and then revise the information within 60 days after fracturing occurs. Lachelt at Transcript p. 137.

FINDING: Operators should be required to disclose the chemicals used in hydraulic fracturing operations within 45 days after the operations are completed.

FINDING: The application of the New Mexico Oil & Gas Association for amendment the provisions of Title 19, Chapter 15, Part 16 of the New Mexico Administrative Code to require the disclosure of the composition of fluids used to hydraulically fracture new and recompleted wells should be GRANTED.

CERTIFICATE OF SERVICE

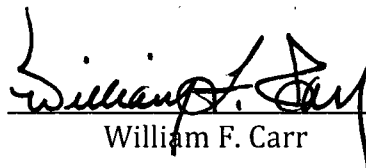
I certify that on January 6, 2012 I served a copy of the foregoing document to the following by Hand Delivery or Facsimile:

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