

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

IN THE MATTER OF CHANGES TO THE) CAUSE NO. 1R
RULES AND REGULATIONS OF THE OIL)
AND GAS CONSERVATION COMMISSION) DOCKET NO. 1112-RM-04
OF THE STATE OF COLORADO)
_____)

**RESPONSE OF THE
COLORADO OIL AND GAS CONSERVATION COMMISSION STAFF TO
THE PREHEARING STATEMENTS, EXHIBITS, AND ALTERNATIVE PROPOSALS**

The staff of the Colorado Oil and Gas Conservation Commission (COGCC) submits the following response to the prehearing statements, exhibits, and alternative proposals submitted by the parties to this rulemaking.¹ Staff is responding to the prehearing statements now to give Commissioners time to consider, and allow the parties to review, the staff’s views prior to the hearing. This response does not address the parties’ rebuttal statements because they were received less than 24 hours ago.

The following facts provide context for this rulemaking. All of these facts are undisputed or readily verifiable:

- Almost all oil and gas wells in Colorado are hydraulically fractured, and hydraulic fracturing is responsible for much of Colorado’s oil and gas production;
- A number of the 2008 amendments to the COGCC rules address aspects of hydraulic fracturing, including amendments to Rules 205 (Chemical Inventories), 317 (Cement Bond Logs), 317B (Public Drinking Water Sources), 608 (Coalbed Methane Wells), 903 and 904 (Pits), and 906 (Secondary Containment and Spill Control). None of these amendments, however, requires the public disclosure of hydraulic fracturing fluid chemicals;
- Arkansas, Louisiana, Michigan, Montana, New Mexico, Pennsylvania, Texas, and Wyoming have subsequently adopted, or are currently in the process of adopting, public disclosure requirements for hydraulic fracturing chemicals. This last summer, Governor Hickenlooper asked the COGCC to develop such a requirement for Colorado;

¹ The COGCC has received input from many sources, including public comments posted to the COGCC website and prehearing statements submitted by the parties. The COGCC has reviewed each comment and statement carefully and expects more comments from the public at the hearing on December 5, 2011. Due to brevity concerns, the staff has attempted to address the most common and significant issues, but in making this response has not endeavored to address each and every comment received.

- Two intergovernmental groups, the Ground Water Protection Council (GWPC) and the Interstate Oil & Gas Compact Commission (IOGCC), have developed a website for the public disclosure of hydraulic fracturing chemicals, www.FracFocus.org. As of November 21, 2011, 81 operators had registered to participate in FracFocus, it contained information on more than 7,500 wells, and it had received more than 104,000 website visits;
- The FracFocus website currently contains information on more than 1,450 Colorado and gas wells;
- A recent COGCC survey of 300 random Colorado disclosure forms on the FracFocus website indicates that trade secret claims are rare. Only 5.8% of the chemicals listed were subject to a trade secret claim, and 63% of the disclosure forms contained no trade secret claims; and
- The Colorado Open Records Act, the Colorado Uniform Trade Secrets Act, all other states that require hydraulic fracturing chemical disclosure and virtually all federal environmental laws protect trade secrets.

The parties' preliminary statements raise a number of issues, which are addressed sequentially below. But these issues should not obscure the support of all parties for some form of mandatory public disclosure of hydraulic fracturing chemicals. Nor should they take away from the substantial progress on this issue that we have collectively made during the past year, both within Colorado and nationally. A year ago, information on the chemicals used to hydraulically fracture specific Colorado wells was difficult to come by; today, the FracFocus website provides this information for about half of the Colorado wells that were hydraulically fractured this year. Similarly, a year ago only about 7% of drilling activity across the nation occurred in states requiring disclosure of hydraulic fracturing chemicals; today, about 70% of drilling activity occurs in states that require or propose requiring such disclosure. The Draft Rules will help ensure that this progress continues in Colorado and will further improve the COGCC regulatory program.

100 Series: Definitions

Several parties have proposed revisions to, or requested clarifications of, the definitions in the Draft Rules.

Chemical. The Colorado Petroleum Association (CPA) has proposed revising the definition of "chemical" to limit this term to substances regulated by the Occupational Safety & Health Administration (OSHA) as hazardous under 29 CFR § 1910.1200(G)(2) (OSHA Hazardous Substances). This would limit disclosure under the Draft Rule to those hydraulic fracturing fluid chemicals that constitute OSHA Hazardous Substances. No other party has recommended such a limitation, and a number of oil and gas, conservation community, and local government/water district parties have affirmatively supported the disclosure of all chemicals whether or not they are OSHA Hazardous Substances. Other states, such as Montana and Texas,

have similarly required or proposed requiring disclosure of all chemicals. Such disclosure has also been supported by the GWPC and the Secretary of Energy Advisory Board Shale Gas Production Subcommittee (SEAB). Under these circumstances, the COGCC staff recommends that CPA's proposed revision be denied.

Environmental Health Professional. The Upper South Platte Water Conservancy District, Center of Colorado Water Conservancy District, and Headwater Authority of the South Platte (collectively, USPWCD) have requested that a definition be added for "Environmental Health Professionals." The Draft Rules already add a definition for "Health Professionals," and the term "Environmental Health Professionals" is not used in either the Draft Rules or the other changes requested by USPWCD. The COGCC staff therefore recommends that USPWCD's proposed revision be denied.

Hydraulic Fracturing Treatment. The Colorado Oil & Gas Association (COGA) construes the definition of "Hydraulic Fracturing Treatment" to not require disclosure: for minor hydraulic fracturing activity used for testing and not enhancing production; or for hydraulic fracturing of the receiving formation of an underground injection disposal well. The COGCC staff agrees with COGA's interpretation.

Rule 205: Access to Records

Several parties have requested revisions to, and clarifications of, existing Rule 205.

Chemicals Stored For Use Downhole. COGA, CPA, and Williams have requested that Rule 205.c be revised to limit the chemical inventory requirement to chemicals that are used downhole during drilling, completion, and workover operations (other than hydraulic fracturing). In its current form, Rule 205.c requires chemical inventories not only for chemicals that are used downhole but also for chemicals that are stored for use downhole. These parties contend that the latter requirement is duplicative, unnecessary, and unduly burdensome. The COGCC staff agrees with this revision and has included it in the attached Recommended Clarifications to the Draft Rules (Recommended Clarifications).

Fuel Injected For Hydraulic Fracturing. The Colorado Environmental Coalition (CEC) has requested clarification that fuel injected as part of a hydraulic fracturing treatment would be subject to the requirements of Rule 205A. The COGCC staff agrees with this clarification as well, and it too is included in the Recommended Clarifications.

Downhole Chemical Limitation and Five Hundred Pound Threshold. Citizens for a Healthy Colorado (Citizens) and the Northwest Council of Governments (NWCOG) have requested that the chemical inventory requirement be extended to all chemicals, whether or not they are used downhole. USPWCD has similarly requested elimination of the five hundred pound threshold for chemical products. The COGCC extensively considered the downhole chemical limitation and five hundred pound threshold when it adopted the chemical inventory requirement in 2008. Citizens, NWCOG, and USPWCD have provided no evidence that this limitation and threshold have adversely affected public health, safety, or welfare, or that changed conditions warrant the revisions they request. Under these circumstances, the COGCC staff

recommends that these requests be denied.

Rule 205A: Hydraulic Fracturing Chemical Disclosure

A. Applicability

CPA, COGA, Black Hills, Anadarko, Noble, and Williams have all requested that the effective date of Rule 205A be extended from February 1, 2012. CPA requests that the date be extended until six months after Rule 205A is adopted, COGA and Black Hills request that the date be extended until June 1, 2012, Anadarko requests that the date be extended until August 1, 2012, and Noble and Williams do not specify a date for this purpose. These parties contend that an extension is necessary because disclosures to the FracFocus website have previously been limited to OSHA Hazardous Substances and because smaller operators are unfamiliar with the website. The COGCC staff acknowledges that most operators have previously disclosed only OSHA Hazardous Substances and that the Proposed Rule would expand their current disclosure practices. The staff further acknowledges that many smaller operators have not previously used the FracFocus website.

On the other hand, several considerations support prompt implementation of the new disclosure requirements. First, hydraulic fracturing is an important public issue that has attracted widespread concern and attention. Second, most of the disclosure information is reportedly prepared by the service companies, who forward it to the operators, and most of the hydraulic fracturing in Colorado is done for large operators. Third, operators are not required to submit information to the FracFocus website until 60 days after a hydraulic fracturing treatment concludes, which means that the initial disclosures are not required until 60 days after the requirement becomes effective. Fourth, operators can seek variances as warranted under Rule 502.b.

Under these circumstances, the COGCC staff recommends that the effective date be deferred by 60 days to April 1, 2012. This would give operators approximately six months from today before they must begin submitting information to the FracFocus website. It would also provide the staff with additional time to develop the necessary forms and otherwise prepare to implement the Draft Rules. The staff has included language for this purpose in the Recommended Clarifications.

B. Required Disclosures

(1) Vendor and Service Provider Disclosures

COGA and Halliburton have requested clarifications that vendors and service providers need not provide trade secret information to operators under Draft Rule 205A.B.(1). The COGCC staff agrees with this clarification and has incorporated it into the Recommended Clarifications.

(2) Operator Disclosures

Many parties have requested revisions to, and clarifications of, the operator disclosure requirements in Draft Rule 205A.B.(2):

Disclosures Prior to Hydraulic Fracturing. Citizens, the Colorado Water Utility Council (CWUC), Gunnison County (Gunnison), NWCOG, and the Western Colorado Congress (WCC) have all requested that operators be required to submit information on hydraulic fracturing chemicals prior to or at the time of the hydraulic fracturing treatment. The COGCC staff considered this issue carefully in developing the Draft Rules and ultimately decided not to include such a requirement for several reasons.

To begin with, the primary method for protecting the environment during hydraulic fracturing is to ensure the integrity of the well bore with appropriate casing and cementing. As noted previously, the COGCC rules provide additional environmental protection during hydraulic fracturing by requiring cement bond logs, mandating bradenhead testing, imposing special requirements for wells near public water supplies or involving coalbed methane formations, and updating standards for waste management and spill avoidance. These regulations provide responsible protection for the environment; they effectively assume that hydraulic fracturing fluids are potentially dangerous and should be isolated. In addition, the value of requiring disclosure prior to hydraulic fracturing is questionable because the staff understands that hydraulic fracturing fluids are often modified shortly before or at the time of treatment. Finally, if such disclosure is to be reviewed and approved by the COGCC staff, then this would require either a substantial increase in staff size or a substantial reduction in other staff work. The latter could potentially diminish environmental protection because much of the staff's existing work involves ensuring well bore integrity, seeing that wastes are properly handled, evaluating potential environmental effects from new development, compiling environmental data, and overseeing remediation projects. For all of these reasons, the COGCC staff recommends that the requests for disclosure prior to or at the time of hydraulic fracturing be denied.

Posting Information to the COGCC Website. Citizens, CWUC, Gunnison, NWCOG, and WCC have requested that chemical disclosure information be posted on the COGCC website in place of, or in addition to, the FracFocus website. In contrast, many oil and gas parties support posting the information to the FracFocus website and oppose using the COGCC website for this purpose. As a practical matter, the COGCC and FracFocus websites already contain links to each other. The COGCC staff has proposed having the chemical disclosure information posted on the FracFocus website because that website is widely used, both nationally (81 operators registered and more than 7,500 wells reported) and within Colorado (more than 20 operators registered and 1,450 wells reported). Because FracFocus already exists and is used by many Colorado operators, it should be faster, more efficient, and less expensive to use FracFocus than to develop similar capacity at the COGCC. Although Arkansas, New Mexico, Pennsylvania, and Wyoming are using their own websites for this purpose, Louisiana, Montana, and Texas are using FracFocus or are proposing to use FracFocus and they account for more than 50% of the drilling activity in the nation. For all of these reasons, the COGCC staff recommends that the Draft Rules continue to require the posting of information to the FracFocus website.

Disclosure of Concentrations for Chemicals That Are Not OSHA Hazardous Substances.

COGA, CPA, Halliburton, Anadarko, Noble, and Williams have all requested that the proposed requirement in Draft Rule 205A.B.(2).(XI) that operators disclose “the maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid” be limited to OSHA Hazardous Substances. These parties do not oppose disclosure of the identity of such chemicals, but they are concerned that disclosure of the concentration would allow competitors to reverse engineer proprietary products; they also contend that disclosure of the concentrations would not materially further public health, safety, and welfare.

In contrast, several conservation community parties strongly support the disclosure of concentrations for chemicals that are not OSHA Hazardous Substances. They contend that such disclosure will further transparency and public confidence; they also note that proprietary information can be protected as a trade secret under the Draft Rules.

This dispute raises difficult policy issues and competing considerations. To the staff’s knowledge, no other state has required or proposed requiring the disclosure of concentrations for chemicals that are not OSHA Hazardous Substances. Although the SAEB and GWPC have supported the disclosure of all chemicals, they have not specifically addressed the concentration issue. To assist the Commissioners in considering this issue, the staff recommends that the parties address the following questions in detail at the hearing:

- Whether there is any federal or state precedent or authoritative direction on this issue;
- What percentage of hydraulic fracturing fluid chemicals do not constitute OSHA Hazardous Substances, and what are examples of such chemicals;
- What is the relationship between the disclosure of this information and the protection of public health, safety, and welfare;
- What is the relationship between the disclosure of this information and the promotion of transparency and public confidence;
- Whether proprietary concentration information can be protected under the trade secret provisions of the Draft Rules; and
- How the disclosure of this information would affect the availability of hydraulic fracturing fluid products in Colorado.

Disclosure of Additional Information. CEC, Citizens, and CWUC have requested that operator disclosures include various additional information, such as health risks, material safety data sheets, water sources, water disposal practices, water quality, and so forth. To the staff’s knowledge, other states have not required the disclosure of such information in connection with hydraulic fracturing. The FracFocus website does not include such information, and additional staff time would be required to manage and review such information. For these reasons, the COGCC staff recommends that these requests be denied.

Clarification of Longitude and Latitude. COGA has requested that the COGCC clarify

whether the longitude and latitude information required by Draft Rule 205A.B.(2).(A).(VI) should be the “as drilled” coordinates. The COGCC staff believes that as drilled coordinates should be used for this purpose.

(3) Ability to Search for Information

COGA, CPA, and Williams have requested elimination of the searchability provision in the Draft Rules because they believe that a Colorado-only database will be unnecessary and costly, additional search features may become separately available, and the COGCC should not engage in contingent rulemaking. In contrast, CEC has urged that this provision be strengthened by including a staff certification and firmer deadlines. The additional search features in question are intended to facilitate staff use of FracFocus and help promote transparency and public confidence. This provision provides appropriate flexibility for and encourages the development of such features by GWPC and IOGCC. Without this provision, the COGCC may need to conduct another rulemaking on this issue within the next year, which would be inefficient, time-consuming, and potentially expensive. Development of a COGCC database is estimated to cost approximately \$100,000, which would be roughly one-half the development cost of the COGCC’s electronic drilling permit form. For these reasons, the COGCC staff recommends that these requests be denied and that this Draft Rule be retained in its current form.

Noble has requested that the words “and sort” be deleted from Draft Rules 205A.B.(3).(A).(I) and 205A.B.(3).(B). These words are intended to clarify that the searches in question involve identifying and sorting responsive disclosure forms and not aggregating the data in such forms. For this reason, the COGCC staff recommends that this request be denied.

(4) Inaccuracies in Information

Gunnison, NWCC, and USPWCD have requested that this provision be revised to make vendors responsible for inaccuracies in information provided by manufacturers, service providers responsible for inaccuracies in information provided by vendors, and operators responsible for information provided by service companies. This provision is patterned after a similar provision in the proposed Texas rule. A vendor, service provider, or operator is made responsible for inaccuracies in the information that it generates, but not for inaccuracies in the information generated by others. The COGCC staff continues to believe that this is a responsible approach and recommends that this request be denied.

(5) Disclosure to Health Professionals

CWUC requests that this provision be revised to require the disclosure of trade secret information to water and wastewater providers. NWCOG requests a similar revision to benefit emergency response managers. Rule 317B already imposes special requirements to protect public water systems, and Proposed Rule 205A.D.(2) already authorizes the Director to disclose trade secret information to the relevant county public health director or emergency manager. For these reasons, the COGCC staff tentatively recommends that these requests be denied, but invites the parties to address at the hearing the merits of expanding disclosure under this provision to

include water and wastewater providers, and, in particular, emergency response managers.

C. Disclosures Not Required

No party requested changes to this provision.

D. Trade Secret Protection

Many parties have requested revisions to, and clarifications of, the trade secret provisions of Draft Rule 205A.D and the accompanying provisions of the Draft Statement of Basis, Specific Statutory Authority, and Purpose (Draft Statement):

Availability of Trade Secret Designations. Citizens and CWUC request that the trade secret protections in the Draft Rules be eliminated. In contrast, many of the oil and gas parties emphasize that the trade secret protections are critical.

The COGCC staff believes that Draft Rule 205A.D properly balances numerous policy interests, including public interest in greater transparency of hydraulic fracturing operations and the oil and gas industry's interest in protecting legitimate trade secrets. The staff notes that trade secrets are protected by the Colorado Open Records Act, the Colorado Uniform Trade Secrets Act, all other states that require hydraulic fracturing chemical disclosure, and the FracFocus website. The staff also notes that federal environmental laws provide trade secret protections for regulated industries and that trade secrets are recognized as intellectual property that cannot be taken without just compensation.

Under these circumstances, the COGCC staff recommends that the trade secret protections be retained.

COGCC Review and Approval of Trade Secret Designations. Gunnison proposes that all trade secret claims be reviewed and approved by the COGCC staff. CEC and WCC similarly suggest that when a trade secret is claimed both a written trade secret claim and the trade secret information itself should be submitted to the COGCC. Many of the oil and gas parties urge that COGCC staff should not review and approve such claims and that trade secret information should not be submitted to the COGCC.

The COGCC staff has a number of concerns with reviewing and approving trade secrets, including its general lack of experience in evaluating trade secret claims, the risk of inadvertent disclosure, and the potential reprioritization of COGCC objectives and reallocation of COGCC resources. An effective review and approval process would likely require participation by one of the staff's senior managers. Such participation would, in turn, require the affected manager to devote time to this task at the expense of other COGCC priorities, many of which directly or indirectly involve environmental protection.

Additionally, the COGCC staff is concerned that a review and approval process would enable any person to request, under the Colorado Open Records Act, all documents concerning a trade secret designation from the COGCC, including the identity or concentration of the

chemical and any internal staff documents evaluating the designation. In the event of such a request, the COGCC would be obligated to either disclose the information to the requestor, or withhold it as a trade secret. Under the latter scenario, the requesting party could sue the COGCC in district court to challenge the trade secret designation. Although the trade secret claimant would likely intervene in the lawsuit to preserve the confidentiality of the information, the COGCC would nonetheless be a party and would have to devote resources to the litigation. Further, the requester could be entitled to its attorneys' fees and costs from the COGCC. *See* CRS § 24-72-204(5) ("Unless the court finds that the denial of the right of inspection [of the requested information] was proper, it shall order the custodian to permit such inspection and **shall** award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court....") (emphasis added). The staff wishes to avoid these risks.

The staff also notes that, in the event of a spill or release of a trade secret chemical, or for purposes of investigating a complaint alleging such a spill or release, the COGCC Director can demand the trade secret information. Thus, a review and approval process is unnecessary for the COGCC staff to obtain trade secret information.

Under these circumstances, the COGCC staff recommends that the requests that all trade secret claims be subject to staff review and approval be denied and that Draft Rule 205A.D remain in its current form. The staff further notes, however, that Arkansas requires a trade secret claimant to submit a form explaining the basis for its claim that a chemical constituent is a trade secret. *See* Arkansas Oil and Gas Commission, Form 37: Claim of Entitlement to Withhold the Identity of a Chemical Constituent as a Trade Secret or Request for Trade Secret Exemption (attached). The staff therefore recommends that the parties address the benefits and burdens of requiring trade secret claimants to explain the basis for their claims in a manner similar to that required in Arkansas.

Mechanisms to Challenge Trade Secret Designations. All parties agree that there must be an efficient and effective means to challenge the use of the trade secret provisions under the Draft Rules. CEC, Gunnison, and WCC propose that the Draft Rules be revised to add a mechanism by which a person who desires to challenge a trade secret claim can assert that challenge. WCC contends that the proposed rule would allow the industry to assert trade secret claims without any meaningful review by the State or the public. Many oil and gas industry parties propose that the COGCC revise the Draft Statement to address the authority of the public to contest trade secret claims under Section 114 of the Oil and Gas Conservation Act, § 34-60-114, C.R.S.

Section 114 of the Oil and Gas Conservation Act provides: "In the event the commission fails to bring suit to enjoin any actual or threatened violation of this article, or of any rule, regulation, or order made under this article, then any person or party in interest adversely affected and who has notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party." § 34-60-114, C.R.S.

This allows an adversely affected individual to notify the COGCC if they believe a trade secret claim is invalid. The COGCC could issue an order requiring the claimant to demonstrate the validity of its claim. If the COGCC declines to act or if the adversely affected individual disagrees with a COGCC determination that a claim is valid, then such individual could seek judicial review.

In addition, Rule 522.(a)(1) authorizes any person who may be directly and adversely affected or aggrieved as a result of an alleged violation of any COGCC Rule to file a complaint requesting that the Director issue a Notice of Alleged Violation (NOAV). If the Director, after investigating the complaint, decides not to issue an NOAV, the complainant may file an application to the COGCC requesting the COGCC to enter an Order Finding Violation. The COGCC staff believes that such a proceeding could be resolved without disclosure of the chemical identity or concentration. The issue for the COGCC would be whether the claimant can substantiate that the information constitutes “confidential . . . information . . . that is used in an employer’s business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.” Rule 100.

The COGCC staff believes that the foregoing statutory and regulatory provisions allow the COGCC, in its discretion, to receive, investigate, assess and determine claims that a vendor, service company, or operator has improperly claimed a trade secret. The COGCC’s exercise of these powers will be utilized on a case-by-case basis. In some circumstances, the COGCC may exercise its authority to investigate and challenge a trade secret claim. In other circumstances, the COGCC may abstain from such a challenge to allow for immediate resolution by a court, which should have more experience and better procedural tools and protections. Therefore, it would be difficult for the COGCC to articulate a categorical statement whether and under what circumstances it would pursue a trade secret challenge.

The COGCC staff is aware of no evidence that the oil and gas industry is improperly designating information as a trade secret. Further, a COGCC survey of 300 random Colorado disclosure forms on the FracFocus website indicates that trade secret claims are rare. Only 5.8% of the chemicals listed were subject to a trade secret claim, and 63% of the disclosure forms contained no trade secret claims.

Under these circumstances, the COGCC staff recommends that the trade secret provisions contained in the Draft Rules remain as currently written. However, the staff has made certain revisions to the Draft Statement to address this issue, and these revisions are included in the Recommended Clarifications. In addition, the staff recognizes that this issue raises a variety of legal, procedural, and practical considerations and urges the parties to address it further at the hearing.

E. Incorporated Materials

No party requested changes to this provision.

Rule 305.e. (1).A, Landowner Notice

COGA has requested clarification that Draft Rule 305.e.(1).A will not require the landowner notice to include the hydraulic fracturing information sheet if hydraulic fracturing treatments will not be applied to the well in question. The COGCC staff has no objection to this clarification and has included it in the Recommended Clarifications.

Rule 316C., Notice of Intent to Conduct Hydraulic Fracturing Treatment

Notice to Local Governmental Designees. Gunnison and NWCOG propose that the notice of intent to conduct hydraulic fracturing treatments required under proposed Rule 316C also be provided to the local governmental designee, if one has been designated. The COGCC staff believes that this notice could be electronically forwarded upon receipt by the COGCC to the local governmental designee and has incorporated language for this purpose in the Recommended Clarifications.

48 Hour Notice. Several parties have proposed altering the minimum 48 hour notice period under Draft Rule 316C. The primary purpose of the 48 hour notice period is to assist COGCC staff in coordinating observations and inspections of hydraulic fracturing treatments where appropriate. The COGCC staff believes the 48 hour period best serves this goal. Depending upon the location, hydraulic fracturing treatments can occur 24 hours a day, 7 days a week and may be rescheduled on short notice. The COGCC staff must accommodate these scheduling issues, often in remote locations. The staff therefore opposes the proposed alterations to the 48 hour notice period.

Notice to Landowners. NWCC has proposed that the 48 hour notice also be provided to nearby surface owners. As stated above, the primary purpose of the 48 hour notice period is to assist COGCC staff in coordinating inspections and observations where appropriate. Nearby surface owners will receive the COGCC's information sheet on hydraulic fracturing pursuant to Draft Rule 305.e.(1). Upon receipt of such information, the surface owner can collect or seek the collection of baseline water samples, if they wish. Surface owners will also receive both notice of the COGCC's decision to issue a drilling permit under Rule 305.d.(1) and 30 days advance notice before heavy equipment operations commence under Rule 305.e. Accordingly, the COGCC staff recommends that NWCC's proposal be denied as redundant.

Addition to 500 Series Rules: Rule 523C., Base Fine Schedule

Citizens has proposed that violations of the Draft Rules should result in the revocation of the violator's right to conduct oil and gas operations in Colorado. In addition to other potentially applicable environmental statutes, under the Oil and Gas Conservation Act, the COGCC can levy monetary penalties pursuant to § 34-60-121(1), issue cease and desist orders pursuant to § 34-60-121(5), and seek criminal enforcement pursuant to § 34-60-121(2). The COGCC staff therefore opposes this proposal as unnecessary.

Additional Proposals

The COGCC has received many additional creative proposals and thoughtful comments as a

result of its request for prehearing statements. These include:

- NWCC and USPWCD’s proposal to require baseline water samples from certain water wells before drilling, after hydraulic fracturing and annually thereafter;
- Gunnison and USPWCD’s proposal to require inert tracers to be added to fracturing fluid;
- Gunnison’s proposal to prohibit the use of diesel fuel or known carcinogens in hydraulic fracturing fluid;
- CWUC’s proposal to adopt an independent certification process for hydraulic fracturing fluid formulations and constituents;
- Gunnison’s proposal to require the sampling of hydraulic fracturing fluids to facilitate random testing; and
- CWUC’s proposal to require sampling of flowback and produced waters.

The COGCC staff believes that these proposals raise significant issues affecting numerous stakeholders. Many of the proposals advance new approaches that have not been previously adopted by other states or discussed with the stakeholders in this rulemaking. Additionally, the staff is concerned that at least some of these proposals may exceed the scope of the Report of Commission and First Prehearing Order, which initiated a rulemaking “for purposes of adopting rules governing the public disclosure of hydraulic fracturing chemicals, including notification of hydraulic fracturing operations.” For these reasons, the COGCC staff recommends these proposals be denied at this time. If these proposals are to be considered, then staff suggests that such consideration should occur through a subsequent rulemaking.

In addition, CWUC has recommended that the Draft Rules be reopened in 2015 to incorporate the findings from other federal agency efforts to regulate the disclosure of hydraulic fracturing chemicals. The COGCC staff expects all parties to monitor the effectiveness of the Draft Rules as they are implemented and, in the event that such Rules need to be amended, the COGCC can initiate a rulemaking for this purpose at any time under Rule 529.

Respectfully submitted,

Dave Neslin, Director
Colorado Oil and Gas Conservation Commission

December 2, 2011



**ARKANSAS OIL AND GAS
COMMISSION**

Submit Form To:

El Dorado Regional Office
P. O. Box 11510
El Dorado, Arkansas 71731

FORM 37

Claim of Entitlement to Withhold the Identity of a Chemical Constituent as a Trade Secret OR Request for Trade Secret Exemption

SECTION A - Classification of Entity

Permit Holder Person Performing Hydraulic Fracture Other - Specify in Detail _____

SECTION B

Entity Name _____
Address _____
City _____ State _____ Zip _____
Phone _____ Fax _____
Email _____
Permit Holder (if different from Entity) _____

Section C

In accordance with General Rule B-19, a person shall disclose a list of all Chemical Constituents contained in all such Additives, provided, however in those limited situations where the specific identity of any such Chemical Constituent and associated CAS number is entitled to be withheld as a trade secret under the criteria set forth in subsection (a)(2) of 42 U.S.C. § 11042. In such cases, the Chemical Family associated with such Chemical Constituent shall be provided.

Chemical Family associated with the Chemical Constituent: _____

Does the Chemical Constituent, and associated CAS number, qualify for withholding as a trade secret? Yes No

In order to claim that the Chemical Constituent and associated CAS number is entitled to protection as a trade secret, you must include specific information regarding each of the following (Please check all that apply):

- 1. You have not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.
- 2. The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.
- 3. Disclosure of the information is likely to cause substantial harm to the competitive position of such person.
- 4. The chemical identity is not readily discoverable through reverse engineering.

CERTIFICATE

I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge is true, correct and complete.

Permit Holder's Signature

Typed or Clearly Printed Name

For staff use only:

APPROVED: Yes No

Director of Production and Conservation

Date