

Disclosing Composition of Hydraulic Fracturing Fluids

This SSL draft is based on Texas law. According to a Texas legislative bill analysis, hydraulic fracturing, commonly called “fracking,” is a natural gas drilling method in which a well is drilled vertically more than a mile deep and then extended horizontally into a targeted rock formation. Fracturing fluids, consisting of water, sand, and chemical additives, are pumped at extremely high pressure down the wellbore. The fracturing fluids flow through perforated sections of the wellbore and into the surrounding formation, fracturing the rock and injecting sand into the cracks to hold them open. This process is repeated multiple times to reach maximum areas of the wellbore. The water pressure then is reduced and fluids are returned up the wellbore for disposal or for treatment and reuse, leaving the sand in place to prop open the cracks and allow the gas to flow and be collected at the surface.

This Act requires operators of wells undergoing hydraulic fracturing treatment to complete and post a form on a Hydraulic Fracturing Chemical Registry website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission disclosing the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient used in it. The Act addresses how some of that information can be protected from disclosure as trade secrets, and how people can challenge designating such information as trade secrets.

Submitted as:

Texas

[HB No. 3328 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating to the Disclosure of the
2 Composition of Hydraulic Fracturing Fluids Used in Hydraulic Fracturing Treatments.”

3
4 Section 2. [*Disclosure of Composition of Hydraulic Fracturing Fluids.*]

5 (a) The [commission] by rule shall:

6 (1) require an operator of a well on which a hydraulic fracturing treatment is
7 performed to:

8 (A) complete the form posted on the hydraulic fracturing chemical registry
9 Internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact
10 Commission with regard to the well;

11 (B) include in the form completed under Paragraph (A):

12 (i) the total volume of water used in the hydraulic fracturing treatment;
13 and

14 (ii) each chemical ingredient that is subject to the requirements of 29
15 C.F.R. Section 1910.1200(g)(2), as provided by a service company or chemical supplier or by the
16 operator, if the operator provides its own chemical ingredients;

17 (C) post the completed form described by Paragraph (A) on the website
18 described by that paragraph or, if the website is discontinued or permanently inoperable, post the
19 completed form on another publicly accessible Internet website specified by the [commission];

20 (D) submit the completed form described by Paragraph (A) to the
21 [commission] with the well completion report for the well; and

22 (E) in addition to the completed form specified in Paragraph (D), provide to
23 the [commission] a list, to be made available on a publicly accessible website, of all other chemical
24 ingredients not listed on the completed form that were intentionally included and used for the
25 purpose of creating a hydraulic fracturing treatment for the well. The [commission] rule shall ensure
26 that an operator, service company, or supplier is not responsible for disclosing ingredients that:

27 (i) were not purposely added to the hydraulic fracturing treatment;

28 (ii) occur incidentally or are otherwise unintentionally present in the
29 treatment; or

30 (iii) in the case of the operator, are not disclosed to the operator by a
31 service company or supplier. The [commission] rule shall not require that the ingredients be
32 identified based on the additive in which they are found or that the concentration of such ingredients
33 be provided;

34 (2) require a service company that performs a hydraulic fracturing treatment on a well
35 or a supplier of an additive used in a hydraulic fracturing treatment on a well to provide the operator
36 of the well with the information necessary for the operator to comply with Subdivision (1);

37 (3) prescribe a process by which an entity required to comply with Subdivision (1) or
38 (2) may withhold and declare certain information as a trade secret for purposes of [insert citation],
39 including the identity and amount of the chemical ingredient used in a hydraulic fracturing
40 treatment;

41 (4) require a person who desires to challenge a claim of entitlement to trade secret
42 protection under Subdivision (3) to file the challenge not later than the [second anniversary] of the
43 date the relevant well completion report is filed with the [commission];

44 (5) limit the people who may challenge a claim of entitlement to trade secret
45 protection under Subdivision (3) to:

46 (A) the landowner on whose property the relevant well is located;

47 (B) a landowner who owns property adjacent to property described by
48 Paragraph (A); or

49 (C) a department or agency of this state with jurisdiction over a matter to
50 which the claimed trade secret is relevant;

51 (6) require, in the event of a trade secret challenge, that the [commission] promptly
52 notify the service company performing the hydraulic fracturing treatment on the relevant well, the
53 supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other
54 owner of the trade secret being challenged and provide the owner an opportunity to substantiate its
55 trade secret claim; and

56 (7) prescribe a process, consistent with 29 C.F.R. Section 1910.1200, for an entity
57 described by Subdivision (1) or (2) to provide information, including information that is a trade
58 secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health professional or
59 emergency responder who needs the information in accordance with Subsection (i) of that section.

60 (b) The protection and challenge of trade secrets under this section is governed by [insert
61 citation].

62 (c) This Act applies only to a hydraulic fracturing treatment performed on a well for which
63 an initial drilling permit is issued on or after the date the initial rules adopted by the [commission] to
64 implement this Act take effect. A hydraulic fracturing treatment performed on a well for which an
65 initial drilling permit is issued before the date the initial rules take effect is governed by the law as it
66 existed immediately before the effective date of this Act, and that law is continued in effect for that
67 purpose.

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69 Section 3. [*Severability.*] [Insert severability clause.]
70
71 Section 4. [*Repealer.*] [Insert repealer clause.]
72
73 Section 5. [*Effective Date.*] [Insert effective date.]