



INDUSTRIAL COMMISSION OF NORTH DAKOTA

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July 29, 2014

Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460-0001

RE: COMMENTS docket identification (ID) number EPA-HQ-OPPT-2011-1019
Advance notice of proposed rulemaking to seek comment on the information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information
40 CFR Chapter I
Environmental protection, Chemicals, Confidential business information, Exploration and production, Fracking, Hazardous substances, Hydraulic fracturing, Oil and gas, Reporting and recordkeeping.
[FR Doc. 2014-11501 Filed 5-16-14; 8:45 am]

Dear Environmental Protection Agency Administrator McCarthy:

The North Dakota Industrial Commission (NDIC) appreciates the opportunity to offer comments on the Environmental Protection Agency (EPA) advance notice of proposed rulemaking (ANPR) and public participation process to seek comment on the information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information.

There are currently 192 rigs operating in North Dakota and production has increased to over 1,000,000 barrels of oil per day, due solely to hydraulically fractured horizontal wells. As the members of the NDIC, we believe hydraulic fracturing and horizontal wells are key components of energy security and economic recovery for the United States.

As the members of the NDIC, we believe the proposed rulemaking is unnecessary in North Dakota since the NDIC has already promulgated effective regulations requiring chemical disclosure and environmental protection. North Dakota's rules properly focus on well construction and testing to prevent hydraulic fracturing fluids from entering the environment and also include a requirement for operators to disclose chemicals used in hydraulic fracturing on FracFocus within 60 days of completion of the hydraulic fracturing operation.

Therefore, North Dakota has an enormous interest in this proposed rulemaking and provides the following comments:

FracFocus was undergoing final testing at the time Earthjustice and the 114 other groups were preparing the petition that precipitated this advance notice of proposed rulemaking and FracFocus 1.0 went online on 8/11/11, just one week after the petition was received by EPA. In addition, FracFocus has since been upgraded to make it more user friendly and to provide more information about the hydraulic fracturing process. FracFocus has been in use for nearly 3 years and has successfully mapped and reported the chemicals used in almost 78,000 hydraulic fracturing stimulations.

EPA maintains continuing coordination with its Federal partners in planning information reporting rules that will complement the Bureau of Land Management's (BLM) proposed regulation: Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands (78 FR 31636, May 24, 2013). The intent of these dialogues is to ensure both EPA's and BLM's efforts provide useful information for assessment and disclosure purposes, while not overly burdening reporting entities. BLM has chosen FracFocus as the primary method of chemical disclosure.

By far the best way for EPA to minimize reporting burdens and costs, avoid duplication of efforts, and maximize transparency and public understanding is to encourage the use of FracFocus nationwide.

Allowing for trade secret protection as performed within FracFocus is important for three reasons:

- First, it is the law of the land. Current federal and state laws provide for trade secret protection to encourage United States manufacturers and processors to develop newer, safer, and greener products.
- Second, trade secret protection is a wonderful incentive for investment by hydraulic fracturing chemical manufacturers in newer, safer, and greener products.
- Finally, release of such trade secret protected information might encourage operators to forego using the "newest" and "proprietary" chemicals since no proprietary information protection is provided.

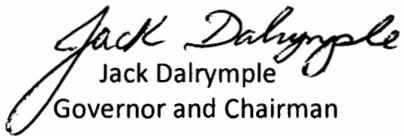
Any information needed to respond to incidents involving release of hydraulic fracturing chemicals not available through FracFocus is already available through EPCRA and CERCLA laws and rules. EPA is encouraged to use incentives and recognition programs to support the development and use of safer chemicals (both those created deliberately and inadvertently) in hydraulic fracturing. Safer chemicals are generally less toxic to human health and the environment, and are less persistent and bioaccumulative than their alternatives. Under an EPA-sponsored voluntary initiative, EPA could provide resources and recognition for companies committed to promoting and using safe and sustainable practices.

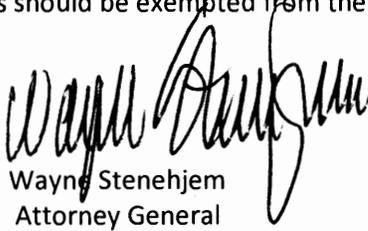
EPA should not consider including reporting on any combination of water and/or chemicals introduced or intended to be introduced into an oil or gas well for the purpose of maintaining or improving the function and productivity of the well, including recovery methods, (e.g., acid treatments, corrosion inhibitors, scale reducers, biocides). Such chemicals are used in volumes several orders of magnitude less than the volume of a typical hydraulic fracturing stimulation, at significantly lower pump pressures than those utilized during typical hydraulic fracturing treatments, and in concentrations much higher than those found in typical hydraulic fracturing fluids. Information on such chemicals used is also already available through EPCRA and CERCLA laws and rules.

EPA should consider funding of programs such as FracFocus and Interstate Oil and Gas / Ground Water Protection Council programs such as State Oil and Gas Regulatory Exchange, UIC Peer Reviews, and National Field Inspector Certification Program. All of these programs are overseen by Governors and state regulators who can provide independent third-party certification, collection of information, and development of best practices about hydraulic fracturing operations in lieu of a new EPA mandatory reporting or voluntary disclosure program.

As the members of the NDIC, we believe the proposed rulemaking is unnecessary since the NDIC has already promulgated regulations requiring chemical disclosure and environmental protection, there are numerous multi-state programs in place to accomplish all of the stated goals of such a rulemaking, and there are no known environmental contamination incidents from hydraulic fracturing cited in the United States. If the EPA proceeds with the proposed rulemaking states like North Dakota that already have comprehensive disclosure requirements should be exempted from the rule.

North Dakota Industrial Commission


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