



Montana Board of Oil and Gas Conservation
Attention: Board members
2535 St. Johns Avenue
Billings, MT 59102

April 18, 2018

Re: Request to initiate rulemaking on hydraulic fracturing chemical disclosure

Dear Members of the Montana Board of Oil and Gas Conservation,

Northern Plains Resource Council (“Northern Plains”) submits the following comments on the Board of Oil & Gas Conservation’s (“Board’s”) upcoming rulemaking on hydraulic fracturing chemical disclosure.

Northern Plains commends the Board’s work toward initiating rulemaking on hydraulic fracturing chemical disclosure, and reaffirms our support of revising the existing rules to require pre-fracking disclosure of chemicals and to place limits on the trade secret exemption.

At this juncture, Northern Plains respectfully requests that the Board formally initiate their rulemaking on hydraulic fracturing chemical disclosure. Currently, the Board has been discussing changes to the hydraulic fracturing chemical disclosure rules in an informal way to prepare for a formal rulemaking via Board discussions and committee meetings—work that we greatly appreciate. However, given the length of time that these discussions have continued, it seems appropriate for the Board vote to initiate rulemaking on hydraulic fracturing chemical disclosure at their April 18, 2018 board meeting.

Formal rulemaking still provides the Board space to evaluate options, debate different elements of the rules, and write and revise drafts. Unlike an informal process, however, formal rulemaking enters the public’s participation into the formal record, and sets out a clear timeline and process for the drafting and finalization of proposed changes. The process for a formal rulemaking is outlined in the Montana Administrative Procedure Act, MCA 02-04. It includes publication of a notice to revise rules, publication of draft revisions, a comment period, a public hearing, and possibly more.

For the sake of simplicity and ease, Northern Plains will here reiterate our desired changes in the existing rules around hydraulic fracturing chemical disclosure. As outlined in earlier comments to the Board, Northern Plains requests to see the following changes:

- 1) We request that the Board amend ARM 36.22.608 to require that disclosure include the individual chemical compound names for hydraulic fracturing fluid ingredients and their associated CAS numbers. Specifically, we request the following language be incorporated into ARM 36.22.608 as item (3)(c):

(c) the chemical ingredients of the well stimulation fluid and the proposed rate or concentration for each ingredient as described in MCA 82-10-603(2)(a)-(b)

This proposed change was discussed and agreed upon in advance by ourselves, Earthjustice, and the Montana Petroleum Association.

- 2) We request that the Board require chemical disclosure to be made at least 45 days in advance of all chemical well stimulation activities, including for wildcat wells. Given that the majority of Montana wells are classified as wildcat, an exemption for that category would render the rule purposeless. A 45-day timeline gives landowners an appropriate length of time to conduct baseline water testing that corresponds with the chemicals that will be used.

We also note that a pre-fracking disclosure should be followed up by a post-fracking disclosure, and that discrepancies between the two is an understandable and expected part of the process. Operators would not be locked into the exact combination of chemicals that they disclosed beforehand, provided that changes are made in good faith.

- 3) Finally, we request that the Board create a separate page on its website to make chemical disclosure results public. Ideally, this page would be searchable by operator name, well name, and well location, and would include materials supporting trade secret requests and the determinations on those requests. Easily accessible data is critical to the functionality of this rule in the first place, most particularly for landowners in the eastern and northern parts of the state who are located long distances from the Billings field office.

Northern Plains appreciates the Board's efforts to protect the land, air, water, and citizens of Montana. Changes to the existing hydraulic fracturing chemical disclosure rule of the kind delineated above would give landowners greater access to data that directly pertains to their homes and livelihoods, stronger protections of their water, and the ability to reliably trust their government to have their best interests in mind.

Sincerely,



Deborah Hanson

Chair, Northern Plains Resource Council Oil and Gas Task Force
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