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MONTANA BOARD OF OIL &  
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To: Montana Board of Oil & Gas Conservation  
Subject: Hydraulic Fracturing Chemicals Management and Disclosure Rules  
February 12, 2018

In considering adoption of new rules for management and disclosure of chemicals used in oil & gas hydraulic fracturing exploration & drilling, please note that in early 2015 the State of Colorado passed new legislation into law establishing ground-breaking rules for the responsible development of oil and gas natural resources. This work resulted from a cooperative task force comprised of state legislators, the oil and gas industry operating in Colorado and a major environmental group, under the leadership of the Governor.

We believe this legislation provides an excellent reference framework for new MT BOGC chemical disclosure rules.

Administration, monitoring & enforcement of the rules is the responsibility of Colorado Oil and Gas Conservation Commission, within the Colorado Department of Natural Resources:

“ The Colorado Oil and Gas Conservation Commission (COGCC) is charged with fostering the responsible development of Colorado’s oil and gas natural resources in a manner consistent with the protection of public health, safety, and welfare, including the environment and wildlife resources. Our agency seeks to serve, solicit participation from, and maintain working relationships with all those having an interest in Colorado’s oil and gas natural resources. The most current public data on oil and gas operations, staff contact information, and rules and policies may be found at the COGCC website at: [www.cogcc.state.co.us](http://www.cogcc.state.co.us).”

The following is the Central Montana Resource Council’s (CMRC, Lewistown) summary of the **COGCC Rule 205 covering the management and disclosure of hydraulic fracturing chemicals:** (The actual Rule 205 is attached for your review.)

- Operators must maintain a Chemical inventory by well site for each Chemical Product used downhole or stored for use downhole during drilling, completion and workover operations, including fracture stimulation, in an amount exceeding a cumulative 500 pounds during any quarterly reporting period. Operations must maintain a Chemical inventory by well site for fuel stored at the well site, again for amounts exceeding a cumulative 500 pounds per quarter. These records must be maintained in a readily retrievable format at the operator’s local field office. The Director, or designees, shall have ready access to these Chemical inventory records.
- Where the composition of a chemical product is declared to be a Trade Secret, operators will be required to maintain the chemical family identity of the Trade Secret Chemical Product and shall not be required to maintain information concerning the identity of its chemical constituents or the amounts of such constituents.
- However, in the event of a spill or release of the Trade Secret Chemical Product, the vendor or service provider must provide to the Commission a list of the chemical

constituents and their amounts, upon receipt from the Director of a letter stating that such information is necessary to respond to a spill or release, or to a potentially affected landowner, regarding impacts to public health, safety, welfare or the environment. Also required, if through the Commission authorized form, a medical physician requests this information in treatment of an affected patient. The information must be provided within three business days after receipt of the written directive. This information will be kept confidential and not made available to the general public.

- The operator's Chemical Inventory records shall be kept on file and available for inspection by the Commission for the life of the applicable oil and gas well or oil and gas location and for five years after plugging and abandonment.
- The director and authorized deputies shall have access to all well records wherever located and to inspect the record and operation of wells, given that such information will be kept confidential and reported only to the Commission or its authorized agents.

#### Rule 205A. Hydraulic Fracturing Chemical Disclosure

The service provider who performs any part of a hydraulic fracturing treatment and a vendor who provides hydraulic fracturing additives directly to the operator for a hydraulic fracturing treatment, shall provide the following information. For those chemicals declared to be Trade Secret, the chemical family must be provided. The constituent information will then be provided only in the event of a spill or release of the chemical, upon official notification.

1. The operator name;
2. The date of the hydraulic fracturing treatment;
3. The county in which the well is located;
4. The API number for the well;
5. The well name and number;
6. The longitude and latitude of the wellhead;
7. The true vertical depth of the well;
8. The total volume of water used in the hydraulic fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;
9. Each hydraulic fracturing additive used in the hydraulic fracturing fluid and the trade name, vendor, and a brief descriptor of the intended use or function of each hydraulic fracturing additive in the hydraulic fracturing fluid;
10. Each chemical intentionally added to the base fluid;
11. The maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid;
12. The chemical abstract service number for each chemical intentionally added to the base fluid, if applicable.

Within 60 days following the conclusion of the hydraulic fracturing treatment, or no later than 120 days after the commencement of such hydraulic fracturing treatment, the

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operator of the well must complete the chemical disclosure form and post the form on the chemical disclosure registry.

**Water Testing:**

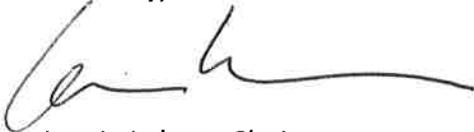
Of course, the rules governing the use of chemicals in hydraulic fracturing treatments must also address the testing for chemicals in drinking water sources, including wells and surface sources such as streams, rivers and tributaries. The Colorado rules provide that applicable chemical, professional base water testing is to be done for all such water sources within one mile of the proposed well, prior to issuance of a permit to drill the well. Follow-up comparative water testing is to be done upon completion of the well production. The Commission pays for the water testing in Colorado, not the landowners or operators. Rule 900 covers this area.

**Set-Backs:**

Appropriate set-backs of wells from public drinking water sources must also be established. The Colorado Rule 317B covers this area. There are three buffer zones established ranging out to 2,640 feet of the proposed well site from drinking water sources. Each zone requires specific operating protections and procedures be established and followed.

You may access all of these standard-setting rules, established with the participation and approval of the oil and gas industry in Colorado, through the website [www.cogcc.state.co.us](http://www.cogcc.state.co.us). We hope you will find this information useful. Please contact us – we are available for discussion and any assistance we may provide.

Sincerely,



Laurie Lohrer, Chair  
Central Montana Resource Council  
PO Box 721  
Lewistown MT 59457

Cc:

Eric Vanderbeek, Vice Chair, Central Montana Resource Council  
Linda Roche, Treasurer, Central Montana Resource Council  
Jo Shipman, Secretary, Central Montana Resource Council  
Noel Birkland, Board Representative, Central Montana Resource Council  
Roger Lohrer, Board Representative, Central Montana Resource Council  
Art Canfield, Central Montana Resource Council Lewistown  
Caitlin Cromwell, Northern Plains Resource Council

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COGCC Chemical Disclosure  
Rules attached.

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## About the COGCC

### Our Mission

The mission of the **Colorado Oil and Gas Conservation Commission**

(COGCC) is to foster the responsible development of Colorado's oil and gas natural resources.

Responsible development results in:

- The efficient exploration and production of oil and gas resources in a manner consistent with the protection of public health, safety and welfare.
- The prevention of waste.
- The protection of mineral owners' correlative rights.
- The prevention and mitigation of adverse environmental impacts.

The COGCC seeks to serve, solicit

## What We Do

### Engineering Unit

- Class II Underground Injection Control
- Class II UIC Seismicity Review
- Flowline Integrity
- Wellbore Integrity

### Environmental Unit

- Overview
- Exploration and Production Waste Management
- Ground Water Sampling
- Oil and Gas Location Assessment Permit
- Spill Reporting, Tracking, and Remediation

### Field Inspection Unit

- Overview

### Financial Unit

- Annual Funding and Budget

### Hearings Unit

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- Enforcement Program
- Local Government and Public Participation

### Permitting Unit

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## Rules & Regulations

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- [900 Series Exploration and Production Waste Management](#)
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## Related News

### [Flowline Rulemaking \(continued to February 13, 2018\)](#)

Published: 01/28/2018

**The draft rules for Flowline Rulemaking have been ...**

### [Mill Levy Rulemaking](#)

Published: 12/20/2017

**On December 15, 2017 the COGCC issued a Notice of ...**

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MONTANA BOARD OF OIL &  
GAS CONSERVATION • BILLINGS**205. ACCESS TO RECORDS**

- a. All producers, operators, transporters, refiners, gasoline or other extraction plant operators and initial purchasers of oil and gas within this State, shall make and keep appropriate books and records covering their operations in the State, including natural gas meter calibration reports, from which they may be able to make and substantiate the reports required by the Commission or the Director.
- b. Beginning May 1, 2009 on federal land and April 1, 2009 on all other land, operators shall maintain MSDS sheets for any Chemical Products brought to a well site for use downhole during drilling, completion, and workover operations, including fracture stimulation.
- c. Beginning June 1, 2009, operators shall maintain a Chemical Inventory by well site for each Chemical Product used downhole or stored for use downhole during drilling, completion, and workover operations, including fracture stimulation, in an amount exceeding five hundred (500) pounds during any quarterly reporting period. Operators shall also maintain a Chemical Inventory by well site for fuel stored at the well site during drilling, completion, and workover operations, including fracture stimulation, in an amount exceeding five hundred (500) pounds during any quarterly reporting period.

The five hundred (500) pound reporting threshold shall be based on the cumulative maximum amount of a Chemical Product present at the well site during the quarterly reporting period. Entities maintaining Chemical Inventories under this section shall update these inventories quarterly throughout the life of the well site. These records must be maintained in a readily retrievable format at the operator's local field office. The Colorado Department of Public Health and Environment may obtain information provided to the Commission or Director in a Chemical Inventory upon written request to the Commission or the Director.

- d. Where the composition of a Chemical Product is considered a Trade Secret by the vendor or service provider, Operators shall only be required to maintain the identity of the Trade Secret Chemical Product and shall not be required to maintain information concerning the identity of chemical constituents in a Trade Secret Chemical Product or the amounts of such constituents. The vendor or service provider shall provide to the Commission a list of the chemical constituents contained in a Trade Secret Chemical Product upon receipt of a letter from the Director stating that such information is necessary to respond to a spill or release of a Trade Secret Chemical Product or a complaint from a potentially adversely affected landowner regarding impacts to public health, safety, welfare, or the environment. Upon receipt of a written statement of necessity, information regarding the chemical constituents contained in a Trade Secret Chemical Product shall be disclosed by the vendor or service provider directly to the Director or his or her designee.

The Director or designee may disclose information regarding those chemical constituents to additional Commission staff members to the extent that such disclosure is necessary to allow the Commission staff member receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further. In addition, the Director may disclose information regarding those chemical constituents to any Commissioner, the relevant County Public Health Director or Emergency Manager, or to the Colorado Department of Public Health and Environment's Director of Environmental Programs upon request by that individual. Any information so disclosed to the Director, a Commission staff member, a Commissioner, a County Public Health Director or Emergency Manager, or to the Colorado Department of Public Health and Environment's Director of Environmental Programs shall at all times be considered confidential and shall not become part of the Chemical Inventory, nor shall it be construed as publicly available. The Colorado Department of Public Health and Environment's Director of Environmental Programs, or his or her designee, may disclose information regarding the chemical constituents contained in a Trade Secret Chemical Product to

Colorado Department of Public Health and Environment staff members under the same terms and conditions as apply to the Director.

- e. The vendor or service provider shall also provide the chemical constituents of a Trade Secret Chemical Product to any health professional who requests such information in writing if the health professional provides a written statement of need for the information and executes a Confidentiality Agreement, Form 35. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the chemical constituents of such Trade Secret Chemical Product will assist in such diagnosis or treatment. The Confidentiality Agreement, Form 35, shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need, and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the chemical constituents of a Trade Secret Chemical Product are necessary for emergency treatment, the vendor or service provider shall immediately disclose the chemical constituents of a Trade Secret Chemical Product to that health professional upon a verbal acknowledgement by the health professional that such information shall not be used for purposes other than the health needs asserted and that the health professional shall otherwise maintain the information as confidential. The vendor or service provider may request a written statement of need, and a Confidentiality Agreement, Form 35, from all health professionals to whom information regarding the chemical constituents was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall not become part of the Chemical Inventory and shall in no way be construed as publicly available.
- f. Such books, records, inventories, and copies of said reports required by the Commission or the Director shall be kept on file and available for inspection by the Commission for a period of at least five years except for the Chemical Inventory, which shall be kept on file and available for inspection by the Commission for the life of the applicable oil and gas well or oil and gas location and for five (5) years after plugging and abandonment. Upon the Commission's or the Director's written request for information required to be maintained or provided under this section, the record-keeping entity or third-party vendor shall supply the Commission or the Director with the requested information within three (3) business days in a format readily-reviewable by the Commission or the Director, except in the instance where such information is necessary to administer emergency medical treatment in which case such information shall be provided as soon as possible. Information provided to the Commission or the Director under this section that is entitled to protection under state or federal law, including C.R.S. § 24-72-204, as a trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data shall be kept confidential and protected against public disclosure unless otherwise required, permitted, or authorized by other state or federal law. Any disclosure of information entitled to protection under any state or federal law made pursuant to this section shall be made only to the persons required, permitted, or authorized to receive such information under state or federal law in order to assist in the response to a spill, release, or complaint and shall be subject to a requirement that the person receiving such information maintain the confidentiality of said information. The Commission or the Director shall notify the owner, holder, or beneficiary of any such protected information at least one (1) business day prior to any required, permitted, or authorized disclosure. This notification shall include the name and contact information of the intended recipient of such protected information, the reason for the disclosure, and the state or federal law authorizing the disclosure. Information so disclosed shall not become part of the Chemical Inventory and shall in no way be construed as publicly available.
- g. The Director and the authorized deputies shall have access to all well records wherever located. All operators, drilling contractors, drillers, service companies, or other persons engaged in drilling or servicing wells, shall permit the Director, or authorized deputy, at the Director's or their risk, in the absence of negligence on the part of the owner, to come upon any lease, property, or well

operated or controlled by them, and to inspect the record and operation of such wells and to have access at all times to any and all records of wells; provided, that information so obtained shall be kept confidential and shall be reported only to the Commission or its authorized agents.

- h. In the event that the vendor or service provider does not provide the information required by Rules 205.d, 205.e, or 205.f directly to the Commission or a health professional, the operator is responsible for providing the required information.
- i. In the event the operator establishes to the satisfaction of the Director that it lacks the right to obtain the information required by Rules 205.d, 205.e, or 205.f and to provide it directly to the Commission or a health professional, the operator shall receive a variance from these rule provisions from the Director.

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**205A. HYDRAULIC FRACTURING CHEMICAL DISCLOSURE.**

a. **Applicability.** This Commission Rule 205a applies to hydraulic fracturing treatments performed on or after April 1, 2012.

b. **Required disclosures.**

(1) **Vendor and service provider disclosures.** A service provider who performs any part of a hydraulic fracturing treatment and a vendor who provides hydraulic fracturing additives directly to the operator for a hydraulic fracturing treatment shall, with the exception of information claimed to be a trade secret, furnish the operator with the information required by subsection 205A.b.(2)(A)(viii) – (xii) and subsection 205A.b.(2)(B), as applicable, and with any other information needed for the operator to comply with subsection 205A.b.(2). Such information shall be provided as soon as possible within 30 days following the conclusion of the hydraulic fracturing treatment and in no case later than 90 days after the commencement of such hydraulic fracturing treatment.

(2) **Operator disclosures.**

A. Within 60 days following the conclusion of a hydraulic fracturing treatment, and in no case later than 120 days after the commencement of such hydraulic fracturing treatment, the operator of the well must complete the chemical disclosure registry form and post the form on the chemical disclosure registry, including:

- i. the operator name;
- ii. the date of the hydraulic fracturing treatment;
- iii. the county in which the well is located;
- iv. the API number for the well;
- v. the well name and number;
- vi. the longitude and latitude of the wellhead;
- vii. the true vertical depth of the well;
- viii. the total volume of water used in the hydraulic fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;
- ix. each hydraulic fracturing additive used in the hydraulic fracturing fluid and the trade name, vendor, and a brief descriptor of the intended use or function of each hydraulic fracturing additive in the hydraulic fracturing fluid;
- x. each chemical intentionally added to the base fluid;
- xi. the maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid; and
- xii. the chemical abstract service number for each chemical intentionally added to the base fluid, if applicable.

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- B. If the vendor, service provider, or operator claim that the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical is/are claimed to be a trade secret, the operator of the well must so indicate on the chemical disclosure registry form and, as applicable, the vendor, service provider, or operator shall submit to the Director a Form 41 claim of entitlement to have the specific identity of a chemical, the concentration of a chemical, or both withheld as a trade secret. The operator must nonetheless disclose all information required under subsection 205A.b.(2)(A) that is not claimed to be a trade secret. If a chemical is claimed to be a trade secret, the operator must also include in the chemical registry form the chemical family or other similar descriptor associated with such chemical.
- C. At the time of claiming that a hydraulic fracturing chemical, concentration, or both is entitled to trade secret protection, a vendor, service provider or operator shall file with the commission claim of entitlement, Form 41, containing contact information. Such contact information shall include the claimant's name, authorized representative, mailing address, and phone number with respect to trade secret claims. If such contact information changes, the claimant shall immediately submit a new Form 41 to the Commission with updated information.
- D. Unless the information is entitled to protection as a trade secret, information submitted to the Commission or posted to the chemical disclosure registry is public information.

(3) Ability to search for information.

A. If the Commission determines, as of January 1, 2013, that:

- i. The chemical disclosure registry does not allow the Commission staff and the public to search and sort the registry for Colorado information by geographic area, ingredient, chemical abstract service number, time period, and operator; and
- ii. There is no reasonable assurance that the registry will allow for such searches by a date certain acceptable to the Commission,

Then the provisions of subsection 205A.b.(3)(B) below shall apply.

B. Beginning February 1, 2013, any operator who posts a chemical disclosure form on the chemical disclosure registry shall also submit the form to the Commission in an electronic format acceptable to the Commission. As soon thereafter as practicable, the Commission shall make such forms available on the Commission's website in a manner that allows the public to search the information and sort the forms by geographic area, ingredient, chemical abstract service number, time period and operator, as practicable.

- (4) Inaccuracies in information. A vendor is not responsible for any inaccuracy in information that is provided to the vendor by a third party manufacturer of the hydraulic fracturing additives. A service provider is not responsible for any inaccuracy in information that is provided to the service provider by the vendor. An operator is not responsible for any inaccuracy in information provided to the operator by the vendor or service provider.
- (5) Disclosure to health professionals. Vendors, service companies, and operators shall identify the specific identity and amount of any chemicals claimed to be a trade secret to any health professional who requests such information in writing if the health professional

provides a written statement of need for the information and executes a confidentiality agreement, Form 35. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the information will assist in such diagnosis or treatment. The confidentiality agreement, Form 35, shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need, and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the specific identity and amount of any chemicals claimed to be a trade secret are necessary for emergency treatment, the vendor, service provider, or operator, as applicable, shall immediately disclose the information to that health professional upon a verbal acknowledgement by the health professional that such information shall not be used for purposes other than the health needs asserted and that the health professional shall otherwise maintain the information as confidential. The vendor, service provider, or operator, as applicable, may request a written statement of need, and a confidentiality agreement, Form 35, from all health professionals to whom information regarding the specific identity and amount of any chemicals claimed to be a trade secret was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall in no way be construed as publicly available.

c. Disclosures not required. A vendor, service provider, or operator is not required to:

- (1) disclose chemicals that are not disclosed to it by the manufacturer, vendor, or service provider;
- (2) disclose chemicals that were not intentionally added to the hydraulic fracturing fluid; or
- (3) disclose chemicals that occur incidentally or are otherwise unintentionally present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid.

d. Trade secret protection.

- (1) Vendors, service companies, and operators are not required to disclose trade secrets to the chemical disclosure registry.
- (2) If the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical are claimed to be entitled to protection as a trade secret, the vendor, service provider or operator may withhold the specific identity, the concentration, or both the specific identity and concentration, of the chemical, as the case may be, from the information provided to the chemical disclosure registry. Provided, however, operators must provide the information required by Rule 205A.b.(2)(B) & (C).

The vendor, service provider, or operator, as applicable, shall provide the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to the Commission upon receipt of a letter from the Director stating that such information is necessary to respond to a spill or release or a complaint from a person who may have been directly and adversely affected or aggrieved by such spill or release. Upon receipt of a written statement of necessity, such information shall be disclosed by the vendor, service provider, or operator, as applicable, directly to the Director or his or her designee and shall in no way be construed as publicly available.

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The Director or designee may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to additional Commission staff members to the extent that such disclosure is necessary to allow the Commission staff member receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further. In addition, the Director may disclose such information to any Commissioner, the relevant county public health director or emergency manager, or to the Colorado Department of Public Health and Environment's director of environmental programs upon request by that individual. Any information so disclosed to the Director, a Commission staff member, a Commissioner, a county public health director or emergency manager, or to the Colorado Department of Public Health and Environment's director of environmental programs shall at all times be considered confidential and shall not be construed as publicly available. The Colorado Department of Public Health and Environment's director of environmental programs, or his or her designee, may disclose such information to Colorado Department of Public Health and Environment staff members under the same terms and conditions as apply to the director.

e. Incorporated materials. Where referenced herein, these regulations incorporate by reference material originally published elsewhere. Such incorporation does not include later amendments to or editions of the referenced material. Pursuant to section 24-4-103 (12.5) C.R.S., the Commission maintains copies of the complete text of the incorporated materials for public inspection during regular business hours. Information regarding how the incorporated material may be obtained or examined is available at the Commission's office located at 1120 Lincoln Street, Suite 801, Denver, Colorado 80203.