The Disclosure of Hydraulic Fracturing Fluid Composition Act

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF {enter state}:

SECTION 1. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS

(A) The {insert relevant state agency} by rule shall:

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

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

(b) include in the form completed under Paragraph (A):

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

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

(c) post the completed form described by Paragraph (A) on the website described by that paragraph or, if the website is discontinued or permanently inoperable, post the completed form on another publicly accessible Internet website specified by the (relevant state agency);

(d) submit the completed form described by Paragraph (A) to the (relevant state agency) with the well completion report for the well; and

(e) in addition to the completed form specified in Paragraph (D), provide to the (relevant state agency) a list, to be made available on the internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission or, if necessary, another publicly accessible website, of all other chemical ingredients not listed on the completed form that were intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well. The (relevant state agency) rule shall ensure that an operator, service company, or supplier is not responsible for disclosing ingredients that:

(i) were not purposely added to the hydraulic fracturing treatment;
(ii) occur incidentally or are otherwise unintentionally present in the treatment; or
(iii) in the case of the operator, are not disclosed to the operator by a service company or supplier. The rule shall not require that the ingredients be identified based on the additive in which they are found or that the concentration of such ingredients be provided;

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

(3) prescribe a process by which an entity required to comply with Subdivision (1) or (2) may withhold and declare certain information as a trade secret including the identity and amount of the chemical ingredient used in a hydraulic fracturing treatment;

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

(5) limit the persons who may challenge a claim of entitlement to trade secret protection under Subdivision (3) to:
   (a) the landowner on whose property the relevant well is located;
   (b) a landowner who owns property adjacent to property described by Paragraph (a); or
   (c) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret is relevant;

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

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

(B) The protection and challenge of trade secrets under this section is governed by (relevant state trade secret law).
SECTION 2. This act applies only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued on or after the date the initial rules adopted under that subchapter take effect. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the date the initial rules take effect is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.


Approved by the ALEC Board of Directors, January 17, 2011.