



AN ACT REQUIRING PUBLIC DISCLOSURE OF FRACTURING FLUID INFORMATION IN OIL AND GAS OPERATIONS; ESTABLISHING INFORMATION TO BE DISCLOSED; ALLOWING AN OWNER, OPERATOR, OR SERVICE COMPANY TO REQUEST INFORMATION BE WITHHELD; DIRECTING THE ADMINISTRATOR OF THE BOARD OF OIL AND GAS CONSERVATION TO DETERMINE IF INFORMATION MAY BE WITHHELD; ESTABLISHING REQUIREMENTS TO REQUEST INFORMATION BE WITHHELD; ESTABLISHING A FEE; REQUIRING THE BOARD OF OIL AND GAS CONSERVATION TO AMEND ARM 36.22.608, 36.22.1015, AND 36.22.1016 RELATED TO DISCLOSURE OF FRACTURING FLUIDS; AND AMENDING SECTION 82-11-117, MCA.

WHEREAS, Board of Oil and Gas Conservation rules related to the disclosure of fracturing fluids are made redundant by passage of this bill; and

WHEREAS, ARM 36.22.608 contradicts the provisions of this bill because a description of the requirements for a proposed well stimulation do not conform to the requirements which would be reflected in law; and

WHEREAS, ARM 36.22.1015 contradicts the provisions of this bill because disclosure of well stimulation fluids do not conform to the requirements which would be reflected in law; and

WHEREAS, ARM 36.22.1016 contradicts the provisions of this bill because options for the protection of proprietary chemicals and trade secrets do not conform to the requirements which would be reflected in law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Legislative findings -- purpose. The purpose of [sections 1 through 3] is to provide a fair process for disclosure of fracturing fluids to facilitate transparency, while protecting valuable trade secrets and allowing well owners, operators, and service companies to protect their right to obtain an advantage over competitors.

Section 2. Fracturing fluid disclosure -- requirements. (1) The board of oil and gas conservation shall require the disclosure of fracturing fluids in accordance with [section 3] and this section.

(2) The fracturing fluid disclosure required by subsection (1) must include:

(a) except as provided in [section 3], the chemical compound name and the chemical abstracts service registry number of the ingredients, including any hazardous component listed on a material safety data sheet as defined in 50-78-102, the product name, and the type of additives used; and

(b) the proposed rate or concentration for each ingredient or additive, which may be expressed as percent by weight, percent by volume, parts per million, or parts per billion.

(3) Except as provided in [section 3(4)(b)], the administrator shall post the information submitted pursuant to subsection (2) to the board of oil and gas conservation's website or to a website established for education and disclosure of fracturing fluids hosted by a nonprofit organization dedicated to ground water protection with members consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or their successors.

(4) For the purposes of this part the following definitions apply:

(a) "Administrator" means the administrator of the division of oil and gas conservation.

(b) "Fracturing" means the introduction of fluid that may carry in suspension a propping agent under pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the well bore.

(c) "Systems approach" means the reporting of the identity of chemicals separately from the additive products they go into or the reporting of fracturing chemicals without attribution to the specific products in the fracturing fluid.

Section 3. Confidentiality request for trade secrets. (1) (a) If the owner or operator or service company providing fracturing services for a well believes that disclosing the complete composition of the fracturing fluid, including a specific ingredient's identity, concentrations, or both required in accordance with [section 2(2)], will, if disclosed, reveal information entitled to protection as trade secrets as defined in 30-14-402 that should be exempt from public disclosure, the owner, operator, or service company may request that the administrator withhold the information.

(b) When an owner, operator, or service company requests that information be withheld, the department

shall charge a fee of no more than \$25 per ingredient or concentration for the request.

(2) To meet the requirement of subsection (1), the owner, operator, or service company shall provide the administrator with information demonstrating all of the following:

(a) that the ingredient identity, concentrations, or both, as appropriate, have not appeared in a public source or been publicly disclosed:

(i) pursuant to a federal or state law or regulation;

(ii) in a professional trade publication; or

(iii) through any other media or publication available to the public or competing oil and gas owners, operators, or service companies;

(b) to what extent the identity of the ingredient, its concentrations, or both, as appropriate, are known within a company and how the information is housed in the company and what steps employees, officers, agents, and directors take to prevent disclosure of the information;

(c) whether any other federal or state entity has determined that the ingredient identity, concentrations, or both, as appropriate, are not entitled to protection from public disclosure. A copy of the regulatory entity's determination, along with any explanation as to why the administrator should not make a similar determination, must be provided. Any information concerning prior requests for confidentiality that an owner, operator, or service company determines to be relevant also must be provided to the administrator;

(d) how the identity of the ingredient, its concentrations, or both, as appropriate, are commercially valuable to the owner, operator, or service company. A description of why the use of the ingredient, its concentrations, or both, as appropriate, is not common knowledge in the industry, including any novel or unusual aspects about the ingredient, must be provided.

(e) the ease or difficulty with which the complete composition of the fracturing fluid, including the ingredient identity, concentrations, or both, as appropriate, could be determined because of public disclosure. The information must explain why a systems approach format would not adequately protect a proprietary interest.

(3) An owner, operator, or service company shall provide the administrator with a description of the investigation completed by the owner, operator, or service company to meet the requirements of subsection (2).

(4) (a) Within 5 days of receiving the information provided in accordance with subsection (2), the administrator shall determine whether an owner, operator, or service company must disclose the ingredient identity, concentrations, or both, as appropriate.

(b) If the administrator determines disclosure of the ingredient identity, concentrations, or both, as appropriate, is not required, the administrator shall:

(i) post the information required in accordance with [section 2] to the board of oil and gas conservation's website or to a website hosted by a nonprofit organization dedicated to ground water protection with members consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or their successors and redact the specific information about the ingredient identity, concentrations, or both, as appropriate, that the administrator has determined may be withheld from public disclosure in accordance with this section;

(ii) make available to the public the chemical family name in lieu of a specific chemical compound name and number for any ingredient, concentration, or both, as appropriate, that is being withheld; and

(iii) maintain the unredacted version of the information in the board of oil and gas conservation's confidential files.

(5) If the administrator makes a determination in accordance with subsection (4)(b) that information must be withheld from public disclosure, the owner, operator, or service company shall every 3 years update the information required in accordance with subsection (2) to confirm that the ingredient identity, concentrations, or both, as appropriate, have not been disclosed to the public in another forum.

(6) If an owner, operator, or service company disagrees with a determination by the administrator in accordance with subsections (1) through (5) that certain material will not be maintained as confidential, the owner, operator, or service company may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, operator, or service company wishes the information to enjoy confidential status. The board must be served in the action and may intervene as a party. Information submitted to the board or administrator by an owner, operator, or service company and contested in accordance with this subsection may only be publicly disclosed after a determination is made by a court of competent jurisdiction. Information submitted in accordance with [section 2] must be treated in accordance with [sections 1 and 2] and this section.

Section 4. Board to amend rules. The board of oil and gas conservation shall amend ARM 36.22.608, 36.22.1015, and 36.22.1016 as needed to comply with the requirements of [sections 1 through 3].

Section 5. Section 82-11-117, MCA, is amended to read:

"82-11-117. Confidentiality of records. (1) ~~Any~~ Except as provided in subsection (4), any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. ~~However, any~~ Except as provided in subsection (4), information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner, ~~or operator,~~ or service company disagrees with a determination by the board in accordance with this section or by the administrator in accordance with [sections 1 through 3] that certain material will not be maintained as confidential, the owner, ~~or operator,~~ or service company may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, ~~or operator,~~ or service company wishes the information to enjoy confidential status. The ~~department board~~ must be served in the action and may intervene as a party. Information submitted to the board or administrator by an owner, operator, or service company and contested in accordance with this subsection may only be publicly disclosed after a determination is made by a court of competent jurisdiction.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Information submitted in accordance with [section 2] must be treated in accordance with [sections 1 through 3].

~~(4)(5)~~ Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters under this chapter or [sections 1 through 3] may not be considered confidential.

~~(5)(6)~~ The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section."

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 82, chapter 10, part 1, and the provisions of Title 82, chapter 10, part 1, apply to [sections 1 through 3].

- END -

I hereby certify that the within bill,
SB 0299, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2017.

SENATE BILL NO. 299

INTRODUCED BY T. RICHMOND, P. CONNELL

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