

**RESPONSES FROM CHAIRMAN BARRY SMITHERMAN  
RAILROAD COMMISSION OF TEXAS**

**Senate Committee on Energy and Natural Resources  
Full Committee Forum on Environmental Impacts of Shale Gas Development and Best Practices  
May 23<sup>rd</sup>, 2013**

**Questions for the Record from Chairman Wyden:**

**Disclosure**

- 1. Should the public have information on the chemicals being used before the fracking takes place? I understand that the chemicals necessary may need to be adjusted during the fracking operation, but couldn't companies provide their best information on what they plan to use, and then modify the report after the fact?**

The Railroad Commission's Statewide Rule 29 (Hydraulic Fracturing Chemical Disclosure Requirements) requires suppliers and service companies (the companies that perform hydraulic fracturing for a well operator) to provide the following to well operators:

- (1) Supplier and service company disclosures.

(A) As soon as possible, but not later than 15 days following the completion of hydraulic fracturing treatment(s) on a well, the supplier or the service company must provide to the operator of the well the following information concerning each chemical ingredient intentionally added to the hydraulic fracturing fluid:

- (i) each additive used in the hydraulic fracturing fluid and the trade name, supplier, and a brief description of the intended use or function of each additive in the hydraulic fracturing treatment;
- (ii) each chemical ingredient subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2);
- (iii) all other chemical ingredients not submitted under subparagraph (A) of this paragraph that were intentionally included in, and used for the purpose of creating, hydraulic fracturing treatment(s) for the well;
- (iv) the actual or maximum concentration of each chemical ingredient listed under clause (i) or clause (ii) of this subparagraph in percent by mass; and
- (v) the CAS number for each chemical ingredient, if applicable.

(B) The supplier or service company must provide the operator of the well a written statement that the specific identity and/or CAS number or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment(s) of the operator's well is claimed to be entitled to protection as trade secret information pursuant to Texas Government Code, Chapter 552. If the chemical ingredient name and/or CAS number is claimed as trade secret information, the supplier or service company making the claim must provide:

- (i) the supplier's or service company's contact information, including the name, authorized representative, mailing address, and telephone number; and
- (ii) the chemical family, unless providing the chemical family would disclose information protected as a trade secret.

## **FRACFOCUS**

- 1. I have several questions about FracFocus, but let me first say that I think the effort that has been put together to date is a constructive one. I know that many states and the BLM are relying on FracFocus as a vehicle for public disclosure. Because it plays such a central role in the fracking discussion, I would like to explore ways of further supporting it and improving it. One of the concerns I have heard about FracFocus is that there is no oversight to make sure that the information that is reported by the companies is correct. Is it possible to put in place a system for checking the accuracy of what is reported? I think this is important if the public is relying on the information.**

The Railroad Commission's frac disclosure rule, Statewide Rule (SWR) 29, requires well operators to upload to Frac Focus their disclosure information on or before the date that the company submits its well completion report to the Railroad Commission in accordance with Rule 16 (16 Texas Administrative Code §3.16). Rule 16 requires the operator of a well to file a well completion report with the Commission within 30 days after completion of a well or within 90 days after the date on which a drilling operation is completed, whichever is earlier. SWR 29, Hydraulic Fracturing Chemical Disclosure Requirement, requires that the operator must upload the required chemical disclosure information to [FracFocus.org](http://FracFocus.org) on or before the date the well completion report for a well on which a hydraulic fracturing treatment(s) was/were conducted is submitted to the Commission in accordance with Rule 16.

Questions were added to the Railroad Commission's Online Completion System to prompt operators to upload the chemical disclosure information on FracFocus. Specifically, operators are asked if their well was hydraulically fractured and, if they answer is yes, they are then asked if they have uploaded the required information to FracFocus.

Currently, Commission staff is auditing well completion reports to determine compliance with Statewide Rule 29. If RRC staff finds noncompliance, staff will take enforcement action, which could be in the form of a seal of a well or severance of a lease or, in grievous cases, legal enforcement action.

Late last year, Ground Water Protection Council (GWPC) & Interstate Oil & Gas Compact Commission (IOGCC) enhanced and converted the Frac Focus system into a searchable database, known as FracFocus 2.0. This enhanced system is a database rather than a collection of PDF files and will allow regulatory agencies to better access the data in FracFocus to ensure compliance with each state's reporting rules. The states – through GWPC and IOGCC – continue to have discussions on enhancements, including queries, to streamline state enforcement of chemical disclosure regulations.

All oil and gas operators must comply with all RRC rules and regulations, including Rule 29, Hydraulic Fracturing Chemical Disclosure Requirement. Failure to do so can result in a violation of Commission rules and appropriate action will be taken.

- 2. False reporting: Under Federal law, making a false certification to the Federal government is a criminal offense. Are there any legal repercussions resulting from false certifications on the FracFocus site?**

There are penalties for violating the Railroad Commission's SWR 29 (Hydraulic Fracturing Chemical Disclosure Requirement): See language from the rule below:

Penalties. A violation of this section may subject a person to any penalty or remedy specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) for violation of this section.

- 3. Identity of Chemicals: I have also heard complaints that it is difficult to determine what chemicals are used in fracking, even when disclosure is made on FracFocus. I am told that this is the case because there is no standardized way of reporting the chemicals. Would it make sense to require the use of Chemical Abstract Service (CAS) numbers for the chemicals, as the proposed BLM regulation does?**

The Commission's SWR 29, (Hydraulic Fracturing Chemical Disclosure Requirement) requires:

(B) The supplier or service company must provide the operator of the well a written statement that the specific identity and/or CAS number or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment(s) of the operator's well is claimed to be entitled to protection as trade secret information pursuant to Texas Government Code, Chapter 552. If the chemical ingredient name and/or CAS number is claimed as trade secret information, the supplier or service company making the claim must provide:

(i) the supplier's or service company's contact information, including the name, authorized representative, mailing address, and telephone number; and

(ii) the chemical family, unless providing the chemical family would disclose information protected as a trade secret.

- 4. Funding: Who funds FracFocus currently? How much does it cost to maintain the site annually?**

- 5. Data Retention: How long is the data retained on the FracFocus site?**

- 6. Aggregation of Data: What could make FracFocus more "user friendly"? Is there a way to modify the site to facilitate the aggregation of data and further analysis of what chemicals are used where?**

The FracFocus website was originally designed as a voluntary disclosure site for operators amid growing calls for increased public disclosure of fracturing chemicals. The original PDF filing and records system for FracFocus 1.0 was the quickest way to get the information out to the public. However, in response to requests from states, late last year Ground Water Protection Council (GWPC) & Interstate Oil & Gas Compact Commission (IOGCC) enhanced and converted the Frac Focus system into a searchable database, known as FracFocus 2.0. This enhanced system is a database rather than a collection of PDF files and will allow each state's regulatory agencies to better access the data in FracFocus to ensure compliance with reporting rules. Each of the

regulatory states – through GWPC and IOGCC – continue to have discussions on enhancements to Frac Focus, including queries, to streamline state enforcement of chemical disclosure regulations.

## **Flaring**

- 1. What would be the best way to encourage a phase out of flaring of natural gas? I understand there will always be a need for some flaring for safety reasons or otherwise, but what would be a reasonable timeline to achieve a goal of minimal flaring across the country?**
- 2. Flaring rates in Texas and Alaska are close to zero. What is the law in Texas in regard to flaring? What makes the Bakken so different that flaring is so much more prevalent?**

Texas Railroad Commission Oil and Gas Statewide Rule 32 deals with the issue of venting and flaring. SWR 32 requires that ALL gas be used for its intended purpose, sold or lease use. SWR 32 provides for temporary flaring when necessary, and in some cases permanent flaring. The need to flare is a function of infrastructure or lack thereof. In Texas, pipeline construction lags the drilling pace and thus creates a need for some flaring. Pipeline construction is moving at a rapid pace to get gas to market but the large oil discoveries/development in the Eagle Ford and the Permian Basin have created the need to flare casing head gas. The Bakken is another large oil play includes the production of casinghead gas, and a lack of pipeline infrastructure leads to flaring, so that oil production can continue.

- 3. What could be done at the federal level to help reduce the amount of natural gas being flared in the Bakken and elsewhere? If the regulatory or incentive structure isn't changed, will the amount of flared gas drop on its own, and if so how quickly?**
- 4. Alaska addresses flaring with financial penalties. North Dakota has taken a different approach by providing incentives. What about combining these two approaches to have a combination of financial carrots and sticks to reduce or eliminate flaring?**

The oil and gas rules in Texas provide for penalty action should operators flare without a permit. Most operators, when first notified that they are flaring without a permit, immediately apply for temporary exceptions to flare.

At the Chairman's request, please feel free to submit any additional comments on the environmental impacts of shale gas development and best practices to the committee.