

15A NCAC 05D.0XXX Chemical Disclosure Requirements (01/21/2013 version)

(a) The rules in this section establish requirements and procedures for permitting, constructing, operating, monitoring, reporting, and abandoning wells in the process of obtaining oil and/or natural gas from the subsurface while ensuring the protection of public health, safety, and welfare, including the environment and wildlife resources (G. S. §113-391). The provisions of this Rule shall apply to all new wells for which an initial drilling permit is issued on or after the effective date of this Rule.

(b) Definitions- The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "Accredited laboratory" means the North Carolina State Laboratory of Public Health certified by the US Environmental Protection Agency or a laboratory certified by the Certification Section of the North Carolina Public Health Laboratory pursuant to 10A NCAC 42D to perform tests to determine the presence of coliform bacteria or the chemical constituents to be tested.
- (2) "Additive" mean any chemical substance or combination of substances, including a proppant, contained in a hydraulic fracturing fluid that is intentionally added to a base fluid for a specific purpose whether or not the purpose of any such substance or combination of substances is to create fractures in a formation.
- (3) "Adjacent property" means a tract of property next to the tract of property on which the subject wellhead is located, including a tract that meets only at a corner point.
- (4) "API number" means a unique, permanent, numeric identifier assigned to each well drilled for oil or gas in the United States.
- (5) "Base fluid" -- As defined in G. S. §113-389.
- (6) "Chemical(s)" means Any element, chemical compound, or mixture of elements or compounds that has its own specific name or identity such as a chemical abstract service number, whether or not such chemical is subject to the requirements of 29 Code of Federal Regulations 1910.1200(g)(2)(2011).
- (7) "Chemical Abstracts Service" means the division of the American Chemical Society that is the globally recognized authority for information on chemical substances.
- (8) "Chemical Abstracts Service number or CAS number" means the unique identification number assigned to a chemical by the Chemical Abstracts Service.
- (9) "Chemical Disclosure Registry" means the chemical registry website known as FracFocus developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. If such website becomes permanently inoperable, then chemical disclosure registry shall mean any other publically accessible information website that is designated by the Commission.
- (10) "Chemical family" means a group of chemical ingredients that share similar chemical properties and have a common general name.
- (11) "Chemical ingredient" means a discrete chemical constituent with its own specific name or identity, such as a CAS number, that is contained in an additive.
- (12) "Health professional or emergency responder" means A physician, physician's assistant, industrial hygienist, toxicologist, epidemiologist, nurse, nurse practitioner, or emergency responder who needs information in order to provide medical or other health services to a person exposed to a chemical ingredient.
- (13) "Hydraulic Fracturing Additive"-- As defined in G. S. §113-389.
- (14) "Hydraulic fracturing fluid"-- As defined in G. S. §113-389.
- (15) "Hydraulic fracturing treatment" means As defined in G. S. §113-389.fractures in a target geologic formation to enhance production of oil and/or natural gas.
- (16) "Landowner" means the person listed on the applicable county appraisal roll as owning the real property on which the relevant wellhead is located.
- (17) "Operator"-- As defined in G. S. §113-389.
- (18) "Person"-- As defined in G. S. §113-389.
- (19) "Proppant"-- As defined in G. S. §113-389.
- (20) "Request" means a telephonic request for information that will be followed by a written statement.
- (21) "Requestor" means a person who is eligible to request information claimed to be entitled to trade secret protection.
- (22) "Service Company" means a person that performs hydraulic fracturing treatments on a well in this state.

- (23) “Supplier” means a company that sells or provides an additive for use in a hydraulic fracturing treatment.
- (24) “Total water volume--The total quantity of water from all sources used in the hydraulic fracturing treatment, including surface water, groundwater, produced water or recycled water.
- (25) “Trade name” means the name given to an additive or a hydraulic fracturing fluid system under which that additive or hydraulic fracturing fluid system is sold or marketed.
- (26) “Trade secret” means any formula, pattern, device, or compilation of information that is used in a person’s business, and that gives the person an opportunity to obtain an advantage over competitors who do not know or use it in accordance with G.S. 66-152(3) and G.S. 132-1.2.
- (27) “Water Supply-- As defined in G. S. §113-389.
- (28) “Well completion report” means the report an operator is required to file with the Commission following the completion or recompletion of a well.
- (29) “Well Stimulation” means any process used to increase the production of an oil or gas well by improving flow of hydrocarbons, such as, but not limited to, hydraulic fracturing.

(c)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 05D.0XXX Section (c)(2)(A)(ix-xiv) as applicable, and with any other information needed for the operator to comply with subsection 05D.0XXX Section (c)(2). Such information shall be provided as soon as possible within 30 (*TX=15, Ark= 30 Days?*) 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 (*TX=On or before the date the well completion report for a well on which hydraulic fracturing treatment(s) was/were conducted is submitted to the Commission in accordance with §3.16(b) of this title*) the operator of the well must complete the Chemical Disclosure Registry form and upload the form on the Chemical Disclosure Registry and provide the Commission with a copy, including:
 - (i) The operator name;
 - (ii) The date of completion of the hydraulic fracturing treatment(s);
 - (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 (in decimal degrees);
 - (vii) The direction and total length of each horizontal well
 - (viii) The total vertical depth of the well;
 - (ix) the total volume of water used in the hydraulic fracturing treatment(s) of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment(s), if something other than water;
 - (x) each additive used in the hydraulic fracturing treatments and the trade name, supplier, and a brief description of the intended use or function of each additive in the hydraulic fracturing treatment(s);
 - (xi) Each chemical ingredient used in the hydraulic fracturing treatment(s) of the well that is subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2), as provided by the chemical supplier or service company or by the operator, if the operator provides its own chemical ingredients;
 - (xii) The actual or maximum concentration of each chemical ingredient listed under clause (xi) of this subparagraph in percent by mass;
 - (xiii) The CAS number for each chemical ingredient listed, if applicable; and
 - (xiv) a supplemental list of all chemicals and their respective CAS numbers, not subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2), that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatments for the well.

(B) If the Chemical Disclosure Registry known as FracFocus is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment(s) were performed must supply the Commission with the required information with the well completion report and must upload the information on the FracFocus Internet website when the website is again operable. If the Chemical Registry known as FracFocus is discontinued or becomes permanently inoperable, the information required by this rule must be filed as an attachment to the completion report for the well, which is posted, along with all attachments, on the Commission's Internet website, until the Commission amends this rule to specify another publicly accessible Internet website.

(C) If the supplier, service company, or operator claim that the specific identity and/or CAS number or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment(s) is entitled to protection as trade secret information pursuant to G.S. 66-152(3) and G.S. 132-1.2, the operator of the well must indicate on the Chemical Disclosure Registry form or the supplemental list that the additive or chemical ingredient is claimed to be entitled to trade secret protection. If a chemical ingredient name and/or CAS number is claimed to be entitled to trade secret protection, the chemical family or other similar description associated with such chemical ingredient must be provided. The operator of the well on which the hydraulic fracturing treatment(s) were performed must provide the contact information, including the name, authorized representative, mailing address, and phone number of the business organization claiming entitlement to trade secret protection on **Form X**.

(D) Unless the information is entitled to protection as a trade secret under G.S. 66-152(3) and G.S. 132-1.2, information submitted to the Commission or uploaded on the Chemical Disclosure Registry is public information.

- (d) Disclosures not required- A supplier, service company, 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;
 - (3) disclose chemicals that occur incidentally or are otherwise present in trace amounts, may be the incidental result of a chemical reaction or process, or may be constituents of naturally occurring materials that became part of the hydraulic fracturing fluid; or
 - (4) identify specific chemical ingredients and/or their CAS numbers that are claimed as entitled to trade secret protection based on the additive in which they are found or provide the concentration of such ingredients, unless the Office of the Attorney General, or a court of proper jurisdiction on appeal of a determination by the Office of the Attorney General, determines that the information would not be entitled to trade secret protection under G.S. 66-152(3) and G.S. 132-1.2.

(e) Trade Secret Protection

****ASSUMPTION- There will be an official trade secret protection/confidentiality form to be provided to the Department with pertinent information (see 05D.0XXX Section c.2.C) ****

- (1) Vendors, service companies, and operators are not required to disclose trade secrets, as defined by G. S. 66-152, 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 05D.0XXX Section c.2.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 a request 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. On request 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.

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 Department of Public Health 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 Department of Public Health director of environmental programs shall at all times be considered confidential and shall not be construed as publicly available. The Department of Public Health director of environmental programs, or his or her designee, may disclose such information to Department of Public Health staff members under the same terms and conditions as apply to the director.

(f) Trade Secret Challenge

- (1) The following persons may submit a request challenging a claim of entitlement to trade protection for any chemical ingredients and/or CAS numbers used in hydraulic fracturing treatment(s) of a well:
 - (A) The landowner whose property the relevant wellhead is located;
 - (B) The landowner who owns real property adjacent to property described in subparagraph (A); or
 - (C) A Department or Agency of this state with jurisdiction over a matter to which the claimed trade secret information is relevant.
- (2) A requestor must certify in writing to the Director, over the requestor's signature to the following:
 - (A) The requestor's name, address, and daytime phone number;
 - (B) if the requestor is a landowner, a statement that the requestor is listed on the county appraisal roll as owning the property on which the relevant wellhead is located or is listed on the county appraisal roll as owning property adjacent to the property on which the relevant wellhead is located;
 - (C) The county in which the wellhead is located; and
 - (D) The API number or other identifying information, such as field name, oil lease name and number, gas identification number, and well number.
- (3) A requestor may use the format as seen in **FORM X2** to provide written certification by paragraph (2) of this subsection.
- (4) A requestor must file a request no later than 24 months from the date the operator filed the well completion report for the well on which the hydraulic fracturing treatment(s) were performed. A landowner who owned the property on which the wellhead is located, or owned adjacent property, on or after the date the operator filed with the Commission the completion report for the subject well may challenge a claim of entitlement to trade secret protection within that 24-month period only. The Commission will determine whether or not the request has been received within the allowed 24-month period.
- (5) If the Commission determines that the request has been received within the allowed 24-month period and the certification is properly completed and signed, the Commission will consider this sufficient for the purpose of forwarding the request to the North Carolina Business Court.
- (6) Within 10 business days of receiving a request that complies with paragraph (2) of this subsection, the director must:
 - (A) Submit to North Carolina Business Court a request for decision regarding the challenge;
 - (B) Notify the operator of the subject well and the owner of the claimed trade secret information of the submission of the request to the North Carolina Business Court and of the requirement that the owner of the claimed trade secret information submit directly to the North Carolina Business Court, the claimed trade secret information, clearly marked "confidential," submitted under seal; and
 - (C) Inform the owner of the claimed trade secret information of the opportunity to substantiate to the North Carolina Business Court, its claim of entitlement of trade secret protection.
- (7) If the North Carolina Business Court determines that the claim of entitlement to trade secret protection is valid, if the information had been provided to the Commission, the owner of the claimed trade secret information shall not be required to disclose the trade secret information, subject to appeal.
- (8) The request shall be deemed withdrawn if, prior to the determination of the North Carolina Business Court on the validity of the trade secret claim, the owner of the claimed trade secret information provides confirmation to the Commission and the North Carolina Business Court that the owner of the claimed trade secret information has voluntarily provided the information that is the subject of the request to the requestor subject to a claim of trade secret protection, or the requestor submits to the Commission and the North Carolina Business Court a written notice withdrawing the request.

(9) A final determination by the North Carolina Business Court regarding the challenge to the claim of entitlement of trade secret protection of any withheld information may be appealed within 10 business days to a district court of the North Carolina Business Court.

(10) If the North Carolina Business Court, or a court of proper jurisdiction on appeal of a determination by the North Carolina Business Court, determines that the withheld information would not be entitled to trade secret protection, if the information had been provided to the Commission, the owner of the claimed trade secret information must disclose such information to the requestor as directed by the North Carolina Business Court or a court of proper jurisdiction on appeal.

(g) 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 X3**. 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 X3**, 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.