

1 **ADD Title**

2 **REMOVE all Autoformatting/auto-number from rule**

3 SUBCHAPTER 05H—OIL AND GAS CONSERVATION

4  
5 SECTION .0XXX CHEMICAL DISCLOSURE

6  
7 **15A NCAC 05H .0XX1 CHEMICAL DISCLOSURE REQUIREMENTS**

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

14  
15 **15A NCAC 05H .0XX2 DEFINITIONS**

16 The terms used in this Subchapter shall have the definitions assigned by G.S. 113-389. In  
17 addition, the words defined in this Rule shall have the following meanings:

- 18 (1) "Additive" means any chemical substance or combination of substances,  
19 including a proppant, contained in a hydraulic fracturing fluid that is intentionally  
20 added to a base fluid whether or not the purpose of any such substance or  
21 combination of substances is to create fractures in a formation.
- 22 (2) "Adjacent property" means a tract of property next to the tract of property on  
23 which the subject wellhead is located, including a tract that meets only at a corner  
24 point.
- 25 (3) "API number" means a unique, permanent, numeric identifier assigned to each  
26 well drilled for oil or gas in North Carolina.
- 27 (4) "Chemical(s)" means any element, chemical compound, or mixture of elements or  
28 compounds that has its own specific name or identity such as a Chemical Abstract  
29 Service number, whether or not such chemical is subject to the requirements of 29  
30 CFR 1910.1200(g)(2)(2011).
- 31 (5) "Chemical Abstracts Service" means a division of the American Chemical  
32 Society.
- 33 (6) "Chemical Abstracts Service number or CAS number" means the unique  
34 identification number assigned to a chemical by the Chemical Abstracts Service.
- 35 (7) "Chemical Disclosure Registry" means the chemical registry website known as  
36 FracFocus developed by the Ground Water Protection Council and the Interstate  
37 Oil and Gas Compact Commission or any other publically accessible information  
38 website that is designated by the Commission.
- 39 (8) "Chemical family" means a group of chemicals that share similar chemical  
40 properties and have a common general name.
- 41 (9) "Chemical contained in an additive" "Director" shall mean the Director of the  
42 Division of Energy, Mineral, and Land Resources of the Department of  
43 Environment and Natural Resources.
- 44 (10) "Health Professional or" means a physician, physician's assistant, industrial  
45 hygienist, toxicologist, epidemiologist, nurse, nurse practitioner,

**Comment [AP1]:** This purpose statement is too broad for just the chemical disclosure rule. It applies more accurately to the Subchapter 05H and should not be set out here. Delete.

**Comment [AP2]:** Triggering event for rule should be determined in connection with new subchapter. Delete.

**Comment [AP3]:** We will maintain definitions in a single section, unless a definition is limited to a single rule or section. Final determination for a definition placement cannot be finalized until later.

**Comment [AP4]:** "Subchapter" refers to all 15A NCAC 05H rules. Section may be more appropriate depending on where in the

**Comment [AP5]:** Section?

**Comment [AP6]:** Should we use ingredient or substance? See potential conflict with (10)

**Comment [AP7]:** NOTE: Likely will need a definition for hydraulic fracturing and hydraulic fracturing treatment. Create a placeholder

**Comment [AP8]:** Deleted because redundant, per general advice from RRC staff

**Comment [AP9]:** Do we need to add a concept of "under separate ownership"?

**Comment [AP10]:** MEC does not have authority to determine how API numbers are assigned in the United States

**Comment [AP11]:** Question: Has PPDM adopted guidance on assignment of API numbers and do we need to write a rule to number wells (in most states the regulators assign well numbers)?

**Comment [AP12]:** Recommend flagging for Administration of Oil and Gas to determine assignment procedure

**Comment [AP13]:** Source of definition? Not sure we need to define word of common usage. No other environmental rule defines "chemical."

**Comment [AP14]:** As defined in other environmental rules: "means the Chemical Abstract Service registry number identifying a particular substance." See 15A NCAC 02Q .0703 and 02D. 1103 Recommend rewriting to be consistent with other rules.

**Comment [AP15]:** Define Commission

**Comment [AP16]:** Generally, standards are not appropriate for definitions. Not sure whether the RRC would view this as too vague and potential conflict with rule below. Recommend deleting.

**Comment [AP17]:** Note conflict with other use of "chemical contained in an additive." Recommend using "chemical" or "additive."

**Comment [AP18]:** Do we intend for this list to be limited or "such as?"

- 46 (11) “Emergency Responder” such as emergency medical technician, fire fighter, law  
47 officer, public works employee, emergency manager, fire marshal, HAZMAT  
48 coordinator, technical specialist, incident commander, fire chief, or member of  
49 State Emergency Management who needs information in order to provide medical  
50 or other health services to command, plan, respond or recover from an event  
51 where evacuation, decontamination, sheltering in-place, or other actions that are  
52 needed for a person exposed to a chemical contained in an additive.  
53 (12) “Landowner” means the owner of record of the real property on which the  
54 relevant wellhead is located.  
55 (13) “Service Company” means a company or person that performs hydraulic  
56 fracturing treatments on a well in this state.  
57 (14) “Total water of volume” means the total quantity of water from all sources used  
58 in the hydraulic fracturing treatment, including surface water, groundwater,  
59 produced water, reused water, reclaimed water or recycled water.  
60 (15) “Trade name” means the name given to an additive or a hydraulic fracturing fluid  
61 system under which that additive or hydraulic fracturing fluid system is sold or  
62 marketed.  
63 (16) “Trade secret” as defined in G.S. 66-152(3).  
64 (17) “Well completion report” means the report an well operator is required to file  
65 with the Department following the completion or recompletion of a well.  
66 (18) “Well Stimulation” means any process used to increase the production of an oil or  
67 gas well by improving the flow of hydrocarbons, such as, but not limited to,  
68 hydraulic fracturing.  
69 (19) “Vendor” means a company that sells or provides an additive for use in a  
70 hydraulic fracturing treatment.  
71

### 15A NCAC 05H .0XX3 REQUIRED DISCLOSURES

- 73 (a) A service company that performs any part of a hydraulic fracturing treatment and a  
74 vendor that provides hydraulic fracturing additives directly to the well operator for a hydraulic  
75 fracturing treatment shall, with the exception of information claimed to be a trade secret, furnish  
76 the well operator with the information required by paragraph (c) (1)-(17) of this rule as  
77 applicable, and with any other information needed for the well operator to comply with  
78 paragraph (c) of this rule. Such information shall be provided within 15 calendar days following  
79 the conclusion of the hydraulic fracturing treatment.  
80 (b) So that local emergency responders can plan and prepare for emergencies in areas where  
81 hydraulic fracturing is to be undertaken, well operators are required to notify the county  
82 emergency management office of the type of chemicals which are planned to be used in the  
83 hydraulic fracturing process. In rank order, this required disclosure will list the quantities of  
84 flammables, combustibles, corrosives, oxidizers, and toxic gases. This notification shall be  
85 given in written form no later than 30 calendar days prior to drilling a new well.  
86  
87 (c) Within 15 calendar days following the conclusion of a hydraulic fracturing treatment the  
88 well operator of the well must complete the Chemical Disclosure Registry form and upload the  
89 form on the Chemical Disclosure Registry and provide the Department with an electronically  
90 submitted report that includes the following information:  
91 (1) The well operator name;

**Comment [AP19]:** Break into 2 separate definitions?

**Comment [RC20]:** In 820

**Comment [AP21]:** Request is used in other contexts—not those defined here. Recommend relocating any definition needs to individual rules or deleting (don’t define usual terms).

**Comment [AP22]:** Term not used in Subchapter. “Total volume of water” is used, but is defined in the specific rule. Recommend deleting from definitions and adding “including surface, ground, produced, reused, reclaimed, or recycled water” to .0XX3(c) (10) (line 111 page 2).

**Comment [RC23]:** Remove definition and add into text section

**Comment [AP24]:** The definition is substantially the same as 66-152(3). The reference to 132-1.2 is vague or confusing. Recommend deleting definition and referencing 66-152(3) directly rather than expanding/restricting definition. “is as defined in G.S. 66-152(3).”

**Comment [AP25]:** Need a placeholder for a rule requiring a report. Flag for Administration of Oil and Gas.

**Comment [AP26]:** Definition needed?

**Comment [AP27]:** Need an internal reference to rule 05H .0XX5 to clarify that vendors/service companies must disclose trade secrets to the Department.

**Comment [AP28]:** Does this have a specific timeframe from which to measure?

**Comment [AP29]:** Replace with emergency responders? First responders is not defined.

**Comment [AP30]:** Question: Is this too vague? Do we mean volume?

**Comment [AP31]:** Do we mean commencement?

- 92 (2) The date the hydraulic fracturing treatment(s) began;
- 93 (3) The date of completion of the hydraulic fracturing treatment(s);
- 94 (4) The county in which the well is located;
- 95 (5) The API number for the well;
- 96 (6) The well name and number;
- 97 (7) The longitude and latitude of the wellhead (in decimal degrees);
- 98 (8) A certified directional survey of each horizontal well;
- 99 (9) The measured depth (MD) of the well and the true vertical depth (TVD) of the
- 100 well;
- 101 (10) The total volume of water used in the hydraulic fracturing treatment(s) of the
- 102 well, including the total volume of water reused from other hydraulic fracturing
- 103 treatment(s), or the type and total volume of the base fluid used in the hydraulic
- 104 fracturing treatment(s), if something other than water;
- 105 (11) The source(s) of water used in the hydraulic fracturing treatment(s) and the point
- 106 of withdrawal of the water used;
- 107 (12) The well that is the source of recycled fluid used or the centralized facility that is
- 108 the source of the recycled fluid;
- 109 (13) The trade name of each additive used in the hydraulic fracturing treatments
- 110 provided by the vendor or service provider, and a brief description of the intended
- 111 use or function of each additive in the hydraulic fracturing treatment(s);
- 112 (14) Each chemical contained in an additive used in the hydraulic fracturing
- 113 treatment(s) of the well and their CAS number(s), as provided by the chemical
- 114 vendor or service company or by the well operator, if the well operator provides
- 115 its own chemical contained in an additives, that were intentionally included in and
- 116 used for the purpose of creating the hydraulic fracturing treatments for the well;
- 117 (15) An indication of which chemicals are subject to the requirements of 29 CFR §
- 118 1910.1200 (g), which is incorporated by reference including subsequent
- 119 amendments and additions;
- 120 (16) The actual or maximum concentration of each chemical contained in an additive
- 121 listed pursuant to (14) of this paragraph in percent by mass; and
- 122 (17) The CAS number for each chemical contained in an additive listed.
- 123
- 124 (d) A vendor, service company, or well operator is not required to:
- 125 (1) Disclose chemicals that occur incidentally or are otherwise present in trace
- 126 amounts, may be the incidental result of a chemical reaction or process, or may be
- 127 constituents of naturally occurring materials that became part of the hydraulic
- 128 fracturing fluid; or
- 129 (2) Identify specific chemical contained in an additives and/or their CAS numbers
- 130 that are claimed as entitled to trade secret protection based on the additive in
- 131 which they are found or provide the concentration of such ingredients.
- 132
- 133 (e) If the Chemical Disclosure Registry known as FracFocus is temporarily inoperable, the
- 134 well operator of a well on which hydraulic fracturing treatment(s) were performed must supply
- 135 the Department with the information required by paragraph (c) of this Rule at the time the well
- 136 operator files the well completion report and must upload the information on the Chemical
- 137 Disclosure Registry Internet website when the website is again operable. If FracFocus is

**Comment [AP32]:** Conflict with line 111 and 121, use either "completion" or "conclusion."

**Comment [AP33]:** See Definitions: should be just vendor, not "chemical vendor"

**Comment [AP34]:** Too vague. Recommend "Identify chemicals that are . . ."

**Comment [AP35]:** In order to understand if you are subject to the referenced paragraph, you have to know all of the definitions, etc. that occur earlier in Section .1200.

**Comment [AP36]:** Possible need for a definition?

**Comment [AP37]:** Possible need for a definition?

**Comment [AP38]:** Potential conflict with .0XX5? Recommend adding in initial paragraph "A vendor, service company, or well operator is not required to disclose or identify the following in the Chemical Disclosure Registry, unless the North Carolina Business Court determines that the information would not be entitled to trade secret protection under G.S. 66-152(3) and G.S. 132-1.2." Then delete "disclose" and "identify."

**Comment [AP39]:** Timeframe needed?

138 discontinued or becomes permanently inoperable, the information required by this rule must be  
139 filed electronically as an attachment to the completion report for the well, which is posted, along  
140 with all attachments, on the Commission's Internet website, until the Commission amends this  
141 rule to specify another publicly accessible Internet website.

**Comment [AP40]:** Does the MEC need to amend rule to identify another registry? This statement is in conflict with the definition.

142  
143 (f) If the vendor, service company, or well operator claim that the specific identity and/or  
144 CAS number or amount of any additive or chemical contained in an additive used in the  
145 hydraulic fracturing treatment(s) is entitled to protection as trade secret information pursuant to  
146 G.S. 66-152(3) and G.S. 132-1.2, the well operator of the well must indicate on the Chemical  
147 Disclosure Registry form and in the electronic report submission to the Department that the  
148 additive or chemical contained in an additive is claimed to be entitled to trade secret protection.  
149 If a chemical contained in an additive name and/or CAS number is claimed to be entitled to trade  
150 secret protection, the well operator of the well on which the hydraulic fracturing treatment(s)  
151 were performed must provide the following information:

- 152 (1) The chemical family or other similar description associated with such chemical  
153 contained in an additive;
- 154 (2) The MSDS, which must disclose information concerning the properties and  
155 effects of the hazardous substance or hazardous mixture;
- 156 (3) The label and MSDS must show the chemical classification of the chemical that is  
157 being withheld as a trade secret and that a trade secret for a special hazardous  
158 substance is being claimed;
- 159 (4) The contact information, including the name, authorized representative, mailing  
160 address, and phone number of the business organization claiming entitlement to  
161 trade secret protection on Form X; and
- 162 (5) The contact information shall include the name and telephone number of an  
163 individual who has access to the trade secret information and who may be reached  
164 on a 24 hour basis.

**Comment [AP41]:** Not previously defined. Needs definition?

**Comment [AP42]:** Not previously defined. Needs definition?

**Comment [AP43]:** See line 189, This is not "information," but rather is a condition. Possible rewrite: "An indication on the label and MSDS of the chemical classification of the chemical that is being withheld as a trade secret and that a trade secret for a special hazardous substance is being claimed."

**Comment [AP44]:** Move into (4) for clarity?

165  
166 (g) Unless the information is entitled to protection as a trade secret pursuant to G.S. 66-  
167 152(3) and G.S. 132-1.2, information submitted to the Department or uploaded on the Chemical  
168 Disclosure Registry is public information.

**Comment [AP45]:** Changed for consistency

**Comment [AP46]:** NOTE: This simply restates the law. Consider deleting.

169  
170 (h) In addition to the other requirements of this section, if a service company or well operator  
171 seeking designation as an approved contractor by the Department seeks to perform hydraulic  
172 fracturing treatments in the state, the service company or well operator shall submit to the  
173 Department, along with its request for approved contractor designation, the following additional  
174 information:

**Comment [AP47]:** What is an approved contractor? Need a definition? Term only found in this section. Flag for Administration of Oil and Gas?

- 175 (1) A list of all base fluids that the service company or well operator expects to use in  
176 any hydraulic fracturing treatment performed in the state;
- 177 (2) A list of all additives that the service company or well operator expects to use in  
178 any hydraulic fracturing treatment performed in the state;
- 179 (3) A list of all chemicals, and their associated CAS numbers, the service company or  
180 well operator expects to use in any hydraulic fracturing treatment performed in  
181 the state; provided, however, that for those chemicals that are entitled to trade  
182 secret protection under 15A NCAC 05H .0XX3, unless the North Carolina  
183 Business Court determines that the information would not be entitled to trade

- 184 secret protection under G.S. 66-152(3) and G.S. 132-1.2, then the service  
185 company or well operator shall provide the chemical family or other similar  
186 description associated with such chemical contained in an additive.  
187 (4) Contact information for the authorized agent of the service company or vendor  
188 that can provide the Department or health professionals and emergency  
189 responders with the chemical information described in 15A NCAC 05H  
190 .0XX3(h)(3).  
191 (5) The service company or vendor shall provide updated information to the  
192 Department within 30 calendar days of the date any of the information described  
193 in 15A NCAC 05H .0XX3(h)(1-4) becomes inaccurate or incomplete.  
194

**Comment [AP48]:** Internally inconsistent. Page 4, line 180 states requirements apply to service company and well operator, as does rest of (h). Does (h) apply to service company, vendor, and well operator?

- 195 (i) The Department shall either approve or deny the application to be designated as an  
196 approved contractor. If the Department does not recommend approval, or denies the application,  
197 the applicant may request a hearing on its application. The Department shall post all information  
198 provided under 15A NCAC 05H .0XX3(h) to a publicly accessible website along with  
199 instructions for Health Professionals and Emergency Responders on how to obtain the chemical  
200 information described in 15A NCAC 05H .0XX3(b), including any such chemical information  
201 that qualifies for trade secret protection.  
202

**Comment [AP49]:** Remove and flag for Administration of Oil and Gas for Rule development.

**Comment [AP50]:** Break into separate subparagraph—not related to first two sentences.

#### 203 15A NCAC 05H .0XX4 DISCLOSURE TO HEALTH PROFESSIONALS AND 204 EMERGENCY RESPONDERS

**Comment [AP51]:** NOTE: Likely will need to redraft into 2 rules.

- 205 (a) Vendors, service companies, and well operators shall identify the specific identity and  
206 amount of any chemicals claimed to be a trade secret to any health professional or emergency  
207 responder who requests such information in writing if the health professional or emergency  
208 responder provides a written statement of need for the information and executes a confidentiality  
209 agreement, **Form X3**. The written statement of need shall be a statement that the health  
210 professional or emergency responder has a reasonable basis to believe that:

**Comment [AP52]:** Do we mean quantity? Should we use consistent terms?

**Comment [AP53]:** Ask rules codifier or RRC staff for capitalization guidance. This rule has many inconsistencies (in this subparagraph, for example, vendor, service companies, are not and Health Professionals are).

- 211 (1) The information is needed for purposes of diagnosis or treatment of an individual,  
212 (2) The individual being diagnosed or treated may have been exposed to the chemical  
213 concerned, and  
214 (3) Knowledge of the information will assist in such diagnosis or treatment.  
215

**Comment [AP54]:** These refer to health provider and no listing to emergency responder, see lines 283 for alternate language

- 216 (b) For emergency responders, the written statement of need must either conform to the  
217 statement of need criteria listed above, or be a statement that the emergency responder has a  
218 reasonable basis to believe that:

- 219 (1) The information is needed for the purpose of emergency management, coordination or  
220 response and recovery, following an emergency and  
221 (2) Knowledge of the information will assist in the response and recovery.

- 222 (c) The confidentiality agreement, **Form X3**, shall state that the health professional or  
223 emergency responder shall not use the information for purposes other than the health needs or  
224 emergency management coordination of response and recovery asserted in the statement of need,  
225 and that the health professional or emergency responder shall otherwise maintain the information  
226 as confidential. Where a health professional and emergency responder determines that a  
227 emergency exists and the specific identity and amount of any chemicals claimed to be a trade  
228 secret are necessary for emergency treatment, the vendor, service company, or well operator, as  
229 applicable, shall disclose as soon as possible but in no case later than 2 hours following a

**Comment [AP55]:** Does this exclude other emergency responders?

230 telephonic, written, or electronic request, the information to that health professional or  
231 emergency responder upon a verbal acknowledgement by the health professional or emergency  
232 responder that such information shall not be used for purposes other than the health needs or  
233 emergency management coordination of response and recovery asserted and that the health  
234 professional or emergency responder shall otherwise maintain the information as confidential.  
235 Only if the health professional or emergency responder cannot reach the vendor, service  
236 company or well operator, or if the vendor, service company or well operator refuses to provide  
237 information in its possession to the health professional or emergency responder, then, if a  
238 emergency exists, the Department shall provide the information directly to the health  
239 professional or emergency responder.

**Comment [AP56]:** Suggest adding "telephonic or written request" here

241 (d) The vendor, service company, or well operator, as applicable, may request a written  
242 statement of need, and a confidentiality agreement, Form X3, from all health professionals or  
243 emergency responder to whom information regarding the specific identity and amount of any  
244 chemicals claimed to be a trade secret was disclosed, as soon as circumstances permit.  
245 Information so disclosed to a health professional or emergency responder shall in no way be  
246 construed as publicly available.

**Comment [AP57]:** Does this exclude emergency responders?

247  
248 (d) Nothing in this Rule shall be construed to prohibit a health professional or emergency  
249 responder from disclosing information received under this 15A NCAC 05H .0XX4 to any person  
250 the health professional or emergency responder determines necessary in order to assist in the  
251 diagnosis or treatment of an individual, including, but not limited to, another health professional,  
252 emergency responder, or public health official. Nothing in this Rule shall be construed to  
253 prohibit a health professional or emergency responder from making any report required by law or  
254 by professional ethical standards. This Rule does not authorize a person to withhold information,  
255 including information that may qualify for trade secret protection under this Section, that state or  
256 federal law requires to be provided to any health professional or emergency responder. At the  
257 request of the vendor, service company, or well operator, the consulting health professionals and  
258 emergency responders, to whom information regarding the specific identity and concentration of  
259 the trade secret was supplied, must sign a confidentiality agreement, Form X3, as soon as  
260 circumstances permit.

**Comment [AP58]:** Likely question from the RRC, needs a limiting time frame.

**Comment [AP59]:** Likely question from RRC, needs a limiting time frame.

#### 262 **15A NCAC 05H .0XX5 TRADE SECRET PROTECTION**

263 (a) Vendors, service companies, and well operators are not required to disclose trade secrets,  
264 as defined by G. S. 66-152, to the chemical disclosure registry.

265  
266 (b) If the specific identity of a chemical, the concentration of a chemical, or both the specific  
267 identity and concentration of a chemical are claimed to be entitled to protection as a trade secret,  
268 the vendor, service company or well operator may withhold the specific identity, the  
269 concentration, or both the specific identity and concentration, of the chemical, as the case may  
270 be, from the information provided to the chemical disclosure registry. well operatorWell  
271 operators must provide the information required by Rule.0XX3 (f) of this Section.

272  
273 (c) In claiming trade secret protection under this Rule, a vendor or service company must  
274 submit to the Department, on a form designated by the Department, a claim of entitlement to  
275 trade secret protection, supplying the following information:

**Comment [AP60]:** Add placeholder for Form #?

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(1) The identity of the relevant chemical, including its associated CAS number, the concentration of the chemical, or both the identity and concentration of the chemical, as applicable;

(2) A written claim that such chemical identity, chemical concentration or both are entitled to trade secret protection, including substantiating facts in the form of the information required by 40 C.F.R. Section 350.7(a) and a certification by an owner, well operator or senior official with management responsibility that is substantially identical to the certification language provided in part 4 of the form at 40 C.F.R. Section 350.27; and

(3) Contact information including the claimant's name, and the name, mailing address and phone number for the claimant's authorized representative with respect to trade secret claims. If such contact information changes, the claimant shall immediately submit a new form to the Department with updated information.

(d) The Department shall protect and hold confidential the information provided to the Department pursuant to this section, including any substantiating facts provided pursuant to paragraph (c)(2) of this rule, unless and until the information is determined not to be entitled to trade secret protection. A claim of entitlement to trade secret protection must be submitted to the Department on or before the date the claimant is otherwise required to provide the relevant information to the well operator under subparagraphs (a) and (b).

(e) The Director or Director's 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 Department staff members to the extent that such disclosure is necessary to allow the Department staff members receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further.

(f) In addition, the Director may disclose such information to any member of the Commission, 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 Department 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.

**15A NCAC 05H .0XX6 TRADE SECRET CHALLENGE**

(a) A landowner, an owner of adjacent property, a lessee of any property on which a wellhead is located, any person having a legal interest in real property, or agency of this state having an interest that is or may be adversely affected by a product, fluid or substance or by a chemical in a product, fluid or substance may submit a request challenging a claim of entitlement to trade secret protection for any chemical contained in an additives and/or CAS numbers used in hydraulic fracturing treatment(s) of a well.

- Comment [AP61]:** Either list the requirements without reference to CFR or include phrase "which is incorporated by reference including subsequent amendments and editions,"
- Comment [RC62]:** Correct citation style for reference?
- Comment [AP63]:** Either list the requirements without reference to CFR and Department develops own form or include phrase "which is incorporated by reference including subsequent amendments and editions."
- Comment [AP64]:** Replace with "vendor's or well operator's name"
- Comment [AP65]:** Replace with "vendor's or well operator's" name
- Comment [AP66]:** Replace with "vendor or well operator"
- Comment [AP67]:** Changed for consistency with rest of rule
- Comment [AP68]:** Changed for consistency
- Comment [AP69]:** Deleted for clarity.
- Comment [AP70]:** Replace with vendor or well operator
- Comment [AP71]:** Unclear reference, which paragraphs?

- Comment [AP72]:** Do we mean the Division of Public Health? Or North Carolina Department of Health and Human Services?
- Comment [AP73]:** Capitalize?
- Comment [AP74]:** Do we mean the Environmental Health Section of the Division of Public Health?

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(b) A requestor, as defined in subparagraph (a) of this rule, must certify in writing to the Director, over the requestor's signature to the following:

- (1) The requestor's name, address, and daytime phone number;
- (2) The county in which the wellhead is located; and
- (3) The API number or other identifying information, such as field name, oil lease name and number, gas identification number, and well number.

(c) A requestor may use FORM X2 to provide written certification by paragraph (b) of this rule.

(d) If the Director determines that the certification is properly completed and signed, the Director will consider this sufficient for the purpose of forwarding the request to the North Carolina Business Court.

(e) Within 10 business days of receiving a request that complies with subparagraph (d) of this rule, the Director must:

- (1) Submit to North Carolina Business Court a request for decision regarding the challenge;
- (2) Notify the well 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
- (3) 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.

(f) If the North Carolina Business Court determines that the claim of entitlement to trade secret protection is valid, the owner of the claimed trade secret information shall not be required to disclose the trade secret information, subject to appeal.

(g) 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 Department 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 Department and the North Carolina Business Court a written notice withdrawing the request.

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 the North Carolina Court of Appeals.

(h) If the North Carolina Business Court determines that the withheld information would not be entitled to trade secret protection, the owner of the claimed trade secret information must

**Comment [AP75]:** What does this mean?

**Comment [AP76]:** Internally inconsistent. Usual use is subparagraph and refer to correct paragraph. Replace with subparagraph (d)?

**Comment [AP77]:** MEC does not have statutory authority to determine NC Business Court jurisdiction or procedure.

**Comment [AP78]:** Paragraph not clearly written and confusing. See deleted section to determine if complies with intent.

**Comment [AP79]:** Current appellate rules is 30 days not 10. To make change would require statutory change

**Comment [AP80]:** Does the MEC have the authority to set appeals to NC Court of Appeals?

367 disclose such information to the requestor as directed by the North Carolina Business Court or a  
368 court of proper jurisdiction on appeal.

**Comment [AP81]:** This entire paragraph is unreadable. Needs to be rewritten.