ADD Title
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SUBCHAPTER 05H—OIL AND GAS CONSERVATION

SECTION .0XXX CHEMICAL DISCLOSURE

15A NCAC 05H .0XX1 CHEMICAL DISCLOSURE REQUIREMENTS

~~These rules 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.~~

15A NCAC 05H .0XX2 DEFINITIONS

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

~~(1) "Accredited laboratory" means the North Carolina State Laboratory of Public Health certified by the United States 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)~~(1) "Additive" means 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)~~(2) "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)~~(3) "API number" means a unique, permanent, numeric identifier assigned to each well drilled for oil or gas in ~~the United States~~North Carolina.

~~(5)~~(4) "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 CFR 1910.1200(g)(2)(2011).

~~(6)~~(5) "Chemical Abstracts Service" means ~~the~~ a division of the American Chemical Society. ~~that is the globally recognized authority for information on chemical substances.~~

~~(7)~~(6) "Chemical Abstracts Service number or CAS number" means the unique identification number assigned to a chemical by the Chemical Abstracts Service.

~~(8)~~(7) "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~~or any other publically accessible information website that is designated by the Commission.

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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]: Not used in Chemical disclosure rule. Delete Accredited laboratory definition.

Comment [AP7]: Note overlapping terms "chemical constituent, chemical, chemical substance, chemical contained in an additive" lacks clarity. Recommend simplifying to one or two.

Comment [AP8]: As worded puts the onus to determine which chemical constituents to be tested on the laboratory. Recommend rewriting as "or other chemicals required to be tested by this Subchapter."

Comment [AP9]: Should we use ingredient or substance? See potential conflict with (10)

Comment [AP10]: NOTE: Likely will need a definition for hydraulic fracturing and hydraulic fracturing treatment. Create a placeholder

Comment [AP11]: Deleted because redundant, per general advice from RRC staff

Comment [AP12]: Do we need to add a concept of "under separate ownership"?

Comment [AP13]: MEC does not have authority to determine how API numbers are assigned in the United States

Comment [AP14]: Question: Has PPDM adopted guidance on assignment of API numbers ...

Comment [AP15]: Recommend flagging for Administration of Oil and Gas to determine ...

Comment [AP16]: Source of definition? Not sure we need to define word of common usage. ...

Comment [AP17]: Necessary descriptor?

Comment [AP18]: As defined in other environmental rules: "means the Chemical Abstra ...

Comment [AP19]: Define Commission

Comment [AP20]: Generally, standards are not appropriate for definitions. Not sure whether the ...

~~(9)~~(8) "Chemical family" means a group of chemicals ~~ingredients~~ that share similar chemical properties and have a common general name.

~~(10)~~ "~~Chemical ingredient~~Chemical contained in an additive" ~~means a discrete chemical constituent with its own specific name or identity, such as a CAS number, that is contained in an additive.~~

~~(11)~~(9) "Director" shall mean the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources.

(10) "Health Professional or ~~Emergency Responder~~" means a physician, physician's assistant, industrial hygienist, toxicologist, epidemiologist, nurse, nurse practitioner, ~~or~~

~~(12)~~(11) "Emergency Responder"~~emergency responder,~~ such as emergency medical technician, fire fighter, law officer, public works employee, emergency manager, fire marshal, HAZMAT coordinator, technical specialist, incident commander, fire chief, or member of State Emergency Management who needs information in order to provide medical or other health services to command, plan, respond or recover from an event where evacuation, decontamination, sheltering in-place, or other actions that are needed for a person exposed to a ~~chemical ingredient~~chemical contained in an additive.

~~(13)~~(12) "Landowner" means the ~~person~~ owner of record of the~~listed on the applicable county appraisal roll~~ ~~as owning the~~ real property on which the relevant wellhead is located.

~~(14)~~ "~~Request" means a telephonic request for information that will be followed by a written statement.~~

~~(15)~~ "~~Requestor" means a person who is eligible to request information claimed to be entitled to trade secret protection.~~

~~(16)~~(13) "Service Company" means a company or person that performs hydraulic fracturing treatments on a well in this state.

~~(17)~~(14) "Total water of volume" means the total quantity of water from all sources used in the hydraulic fracturing treatment, including surface water, groundwater, produced water, reused water, reclaimed water or recycled water.

~~(18)~~(15) "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.

~~(19)~~(16) "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~~as defined in G.S. 66-152(3)~~ and G.S. 132-1.2~~.

~~(20)~~(17) "Well completion report" means the report an ~~operator~~well operator is required to file with the Department following the completion or recompletion of a well.

~~(21)~~(18) "Well Stimulation" means any process used to increase the production of an oil or gas well by improving the flow of hydrocarbons, such as, but not limited to, hydraulic fracturing.

~~(22)~~(19) "Vendor" means a company that sells or provides an additive for use in a hydraulic fracturing treatment.

Comment [AP21]: Note conflict with other use of "chemical contained in an additive." REcommend using "chemical" or "additive."

Comment [AP22]: Consistent use of chemical substance, ingredient?

Comment [AP23]: Break into 2 separate definitions?

Comment [AP24]: Do we intend for this list to be limited or "such as?"

Comment [AP25]: Break into 2 separate definitions?

Comment [AP26]: Correct term? Should it be "listed by the real property appraisal division of the applicable county?"

Comment [RC27]: In 820

Comment [AP28]: 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 [AP29]: 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 [RC30]: Remove definition and add into text section

Comment [AP31]: 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 [AP32]: Need a placeholder for a rule requiring a report. Flag for Administration of Oil and Gas.

15A NCAC 05H .0XX3 REQUIRED DISCLOSURES

(a) A service company that performs any part of a hydraulic fracturing treatment and a vendor that provides hydraulic fracturing additives directly to the ~~operator~~well operator for a hydraulic fracturing treatment shall, with the exception of information claimed to be a trade secret, furnish the ~~operator~~well operator with the information required by ~~subsection~~ paragraph ~~05H .0XX3 Section~~ (c) (1)-(17) of this rule as applicable, and with any other information needed for the ~~operator~~well operator to comply with paragraph ~~subsection 05H .0XX3 Section~~ (c) of this rule. Such information shall be provided within 15 calendar days following the conclusion of the hydraulic fracturing treatment.

(b) So that local ~~first~~ emergency responders can plan and prepare for emergencies in areas where hydraulic fracturing is to be undertaken, ~~operator~~well operators ~~and service providers~~ are required to notify the county emergency management office of the ~~quantity and~~ type of chemicals which are planned to be used in the hydraulic fracturing process. In rank order, this required disclosure will list the quantities of flammables, combustibles, corrosives, oxidizers, and toxic gases. This notification shall be given in written form no later than 30 calendar days prior to drilling a new well.

(c) Within 15 calendar days following the conclusion of a hydraulic fracturing treatment the ~~operator~~well operator of the well must complete the Chemical Disclosure Registry form and upload the form on the Chemical Disclosure Registry and provide the Department with an electronically submitted report that includes the following information:

(1) The ~~operator~~well operator name;
(2) The date the hydraulic fracturing treatment(s) began;
(3) The date of completion of the hydraulic fracturing treatment(s);
(4) The county in which the well is located;
(5) The API number for the well;
(6) The well name and number;
(7) The longitude and latitude of the wellhead (in decimal degrees);
(8) A certified directional survey of each horizontal well;
(9) The measured depth (MD) of the well and the true vertical depth (TVD) of the well;
(10) The total volume of water used in the hydraulic fracturing treatment(s) of the well, including the total volume of water reused from other hydraulic fracturing treatment(s), or the type and total volume of the base fluid used in the hydraulic fracturing treatment(s), if something other than water;
(11) The source(s) of water used in the hydraulic fracturing treatment(s) and the point of withdrawal of the water used;
(12) The well that is the source of recycled fluid used or the centralized facility that is the source of the recycled fluid;
(13) The trade name of each additive used in the hydraulic fracturing treatments provided by the vendor or service provider, and a brief description of the intended use or function of each additive in the hydraulic fracturing treatment(s);
(14) Each ~~chemical ingredient~~chemical contained in an additive used in the hydraulic fracturing treatment(s) of the well and their CAS number(s), as provided by the chemical vendor or service company or by the ~~operator~~well operator, if the ~~operator~~well operator provides its own ~~chemical ingredient~~chemical contained in

Comment [AP33]: Definition needed?

Comment [AP34]: Need an internal reference to rule 05H. 0XX5 to clarify that vendors/service companies must disclose trade secrets to the Department.

Comment [AP35]: Does this have a specific timeframe from which to measure?

Comment [AP36]: Replace with emergency responders? First responders is not defined.

Comment [AP37]: Service provider not defined. Replace with service company.

Comment [AP38]: Question: Is this too vague? Do we mean volume?

Comment [AP39]: Do we mean commencement?

Comment [AP40]: Conflict with line 111 and 121, use either "completion" or "conclusion."

Comment [AP41]: See Definitions: should be just vendor, not "chemical vendor"

an additives, that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatments for the well;

(15) An indication of which chemicals are subject to the requirements of 29 CFR ~~Part~~ ~~§~~ 1910.1200 (g)~~(g)(2)~~, which is incorporated by reference including subsequent amendments and additions;

(16) The actual or maximum concentration of each ~~chemical ingredient~~chemical contained in an additive listed ~~under clause~~ pursuant to (14) of this ~~sub~~paragraph in percent by mass; and

(17) The CAS number for each ~~chemical ingredient~~chemical contained in an additive listed.

(d) A vendor, service company, or ~~operator~~well operator is not required to:

(1) 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

(2) Identify specific ~~chemical ingredient~~chemical contained in an additives 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 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~~.

(e) If the Chemical Disclosure Registry known as FracFocus is temporarily inoperable, the ~~operator~~well operator of a well on which hydraulic fracturing treatment(s) were performed must supply the Department with the ~~required~~ information required by paragraph (c) of this Rule at the time the ~~operator~~well operator files the ~~with the~~ well completion report and must upload the information on the ~~FracFocus~~ Chemical Disclosure Registry 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 electronically 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.

(f) If the vendor, service company, or ~~operator~~well operator claim that the specific identity and/or CAS number or amount of any additive or ~~chemical ingredient~~chemical contained in an additive 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~~well operator of the well must indicate on the Chemical Disclosure Registry form and in the electronic report submission to the Department that the additive or ~~chemical ingredient~~chemical contained in an additive is claimed to be entitled to trade secret protection. If a ~~chemical ingredient~~chemical contained in an additive name and/or CAS number is claimed to be entitled to trade secret protection, the ~~operator~~well operator of the well on which the hydraulic fracturing treatment(s) were performed must provide the following information:

(1) The chemical family or other similar description associated with such ~~chemical ingredient~~chemical contained in an additive;

Comment [AP42]: Too vague. Recommend "Identify chemicals that are . . . "

Comment [AP43]: 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 [AP44]: Possible need for a definition?

Comment [AP45]: Possible need for a definition?

Comment [AP46]: Potential conflict with .0XX5? Recommend adding in initial paragraph "A vendor, service company, or well operator is not require 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 [AP47]: Timeframe needed?

Comment [AP48]: Does the MEC need to amend rule to identify another registry? This statement is in conflict with the definition.

(2) The MSDS, which must disclose information concerning the properties and effects of the hazardous substance or hazardous mixture;

(3) The label and MSDS must show 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; ~~and~~

(4) 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; and~~.~~

(5) The contact information shall include the name and telephone number of an individual who has access to the trade secret information and who may be reached on a 24 hour basis.

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

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

(1) A list of all base fluids that the service company or ~~operator~~well operator expects to use in any hydraulic fracturing treatment performed in the state;

(2) A list of all additives that the service company or ~~operator~~well operator expects to use in any hydraulic fracturing treatment performed in the state;

(3) A list of all chemicals, and their associated CAS numbers, the service company or ~~operator~~well operator expects to use in any hydraulic fracturing treatment performed in the state; provided, however, that for those chemicals that are entitled to trade secret protection under 15A NCAC 05H .0XX3, 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 the service company or ~~operator~~well operator shall provide the chemical family or other similar description associated with such ~~chemical ingredient~~chemical contained in an additive.

(4) Contact information for the authorized agent of the service company or vendor that can provide the Department or h~~H~~ealth p~~P~~rofessionals and e~~E~~mergency r~~R~~esponders with the chemical information described in 15A NCAC 05H .0XX3(h)(3).

(5) The service company or vendor shall provide updated information to the Department within 30 calendar days of the date any of the information described in 15A NCAC 05H .0XX3(h)(1-4) becomes inaccurate or incomplete.

(i) The Department shall either approve or deny the application to be designated as an approved contractor. If the Department does not recommend approval, or denies the application, the applicant may request a hearing on its application. The Department shall post all information provided under 15A NCAC 05H .0XX3(h) to a publicly accessible website along with

Comment [AP49]: Not previously defined. Needs definition?

Comment [AP50]: Not previously defined. Needs definition?

Comment [AP51]: 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 bing claimed."

Comment [AP52]: Move into (4) for clarity?

Comment [AP53]: Changed for consistency

Comment [AP54]: NOTE: This simply restates the law. Consider deleting.

Comment [AP55]: What is an approved contractor? Need a definition? Term only found in this section. Flag for Administration of Oil and Gas?

Comment [AP56]: 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?

Comment [AP57]: Remove and flag for Administration of Oil and Gas for Rule development.

instructions for Health Professionals and Emergency Responders on how to obtain the chemical information described in 15A NCAC 05H .0XX3(b), including any such chemical information that qualifies for trade secret protection.

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

(a) Vendors, service companies, and ~~operator~~well operators shall identify the specific identity and amount of any chemicals claimed to be a trade secret to any ~~Health~~ health p~~P~~rofessional or e~~E~~mergency r~~R~~esponder who requests such information in writing if the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder 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 h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder 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.
~~(3)~~

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

(1) The information is needed for the purpose of emergency management, coordination or response and recovery, following an emergency and

(2) Knowledge of the information will assist in the response and recovery.

~~(b)~~(c) The confidentiality agreement, **Form X3**, shall state that the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder shall not use the information for purposes other than the health needs or emergency management coordination of response and recovery asserted in the statement of need, and that the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder shall otherwise maintain the information as confidential. Where a h~~H~~ealth p~~P~~rofessional and e~~E~~mergency r~~R~~esponder 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 company, or ~~operator~~well operator, as applicable, shall disclose as soon as possible but in no case later than 2 hours following ~~the request~~a telephonic, written, or electronic request, the information to that h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder upon a verbal acknowledgement by the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder that such information shall not be used for purposes other than the health needs or emergency management coordination of response and recovery asserted and that the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder shall otherwise maintain the information as confidential. Only if the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder cannot reach the vendor, service company or ~~operator~~well operator, or if the vendor, service company or ~~operator~~well operator refuses to provide information in its possession to the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder, then, if a ~~medical~~ emergency exists, the Department shall provide the information directly to the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder.

Comment [AP58]: Break into separate subparagraph—not related to first two sentences.

Comment [AP59]: NOTE: Likely will need to redraft into 2 rules.

Comment [AP60]: Do we mean quantity? Should we use consistent terms?

Comment [AP61]: 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).

Comment [AP62]: These refer to health provider and no listing to emergency responder , see lines 283 for alternate language

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Comment [AP63]: Does this exclude other emergency responders?

Comment [AP64]: Suggest adding "telephonic or written request" here

Comment [AP65]: Does this exclude emergency responders?

~~(c)~~(d) The vendor, service company, or ~~operator~~well operator, as applicable, may request a written statement of need, and a confidentiality agreement, Form X3, from all h~~H~~ealth p~~P~~rofessionals or e~~E~~mergency r~~R~~esponder 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 h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder shall in no way be construed as publicly available.

(d) Nothing in this ~~15A NCAC 05H .0XX4~~Rule shall be construed to prohibit a ~~Health~~ health p~~P~~rofessional or e~~E~~mergency r~~R~~esponder from disclosing information received under this 15A NCAC 05H .0XX4 to any person the h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder determines necessary in order to assist in the diagnosis or treatment of an individual, including, but not limited to, another h~~H~~ealth p~~P~~rofessional, e~~E~~mergency r~~R~~esponder, or public health official. Nothing in this ~~15A NCAC 05H .0XX4~~Rule shall be construed to prohibit a ~~Health~~ health p~~P~~rofessional or e~~E~~mergency r~~R~~esponder from making any report required by law or by professional ethical standards. This ~~rule~~ Rule does not authorize a person to withhold information, including information that may qualify for trade secret protection under ~~15A NCAC 05H .0XX5~~this Section, that state or federal law requires to be provided to any h~~H~~ealth p~~P~~rofessional or e~~E~~mergency r~~R~~esponder. At the request of the vendor, service company, or ~~operator~~well operator~~-~~, the consulting ~~physicians, and professionals~~health professionals and emergency responders, to whom ~~-~~information regarding the specific identity and concentration of the trade secret was supplied, must sign a confidentiality agreement, Form X3, as soon as circumstances permit.

15A NCAC 05H .0XX5 TRADE SECRET PROTECTION

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

(b) 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 company or ~~operator~~well 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, operator~~well operator~~s~~~~Operator~~Well operators must provide the information required by Rule ~~15A NCAC 05H~~ .0XX3 (f) of this Section.

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

(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, ~~operator~~well operator or senior official with management responsibility that is

Comment [AP66]: Likely question from the RRC, needs a limiting time frame.

Comment [AP67]: For clarity, can we use "health professional or emergency responder?"

Comment [AP68]: Likely question from RRC, needs a limiting time frame.

Comment [AP69]: Add placeholder for Form #?

Comment [AP70]: Either list the requirements without reference to CFR or include phrase "which is incorporated by reference including subsequent amendments and editions,"

Comment [RC71]: Correct citation style for reference?

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 ~~under~~ pursuant to this section, including any substantiating facts provided ~~under~~ pursuant to ~~Sub~~paragraph (c)(2) of this rule~~above~~, unless and until the information is determined not to be entitled to trade secret protection ~~under this section~~. 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 ~~operator~~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~~er~~, 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 l~~L~~andowner, an owner of a~~A~~djacent p~~P~~roperty, 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 ~~component~~ in a product, fluid or substance may submit a request challenging a claim of entitlement to trade secret protection for any ~~chemical ingredient~~chemical contained in an additives and/or CAS numbers used in hydraulic fracturing treatment(s) of a well.~~:~~

(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.

Comment [AP72]: 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 [AP73]: Replace with "vendor's or well operator's name"

Comment [AP74]: Replace with "vendor's or well operator's" name

Comment [AP75]: Replace with "vendor or well operator"

Comment [AP76]: Changed for consistency with rest of rule

Comment [AP77]: Changed for consistency

Comment [AP78]: Deleted for clarity.

Comment [AP79]: Replace with vendor or well operator

Comment [AP80]: Unclear reference, which paragraphs?

Comment [AP81]: Do we mean the Division of Public Health? Or North Carolina Department of Health and Human Services?

Comment [AP82]: Capitalize?

Comment [AP83]: Do we mean the Environmental Health Section of the Division of Public Health?

Comment [AP84]: What does this mean?

(c) A requestor may use ~~the format as seen in~~ FORM X2 to provide written certification by paragraph (b) of this ~~subsection~~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 ~~paragraph (2)~~subparaph (d) of this ~~subsection~~rule, the Director must:

(1) Submit to North Carolina Business Court a request for decision regarding the challenge;

(2) Notify the ~~operator~~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, ~~if the information had been provided to~~ 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 ~~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 Director,~~ 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.

Comment [AP85]: Internally inconsistent. Usual use is subparagraph and refer to correct paragraph. Replace with subparagraph (d)?

Comment [AP86]: Consistent use of section, subsection, subparagraph. Replace with rule?

Comment [AP87]: MEC does not have statutory authority to determine NC Business Court jurisdiction or procedure.

Comment [AP88]: Paragraph not clearly written and confusing. See deleted section to determine if complies with intent.

Comment [AP89]: Current appellate rules is 30 days not 10. To make change would require statutory change

Comment [AP90]: Does the MEC have the authority to set appeals to NC Court of Appeals?

Comment [AP91]: Lacks clarity. Needs to be rewritten.

Comment [AP92]: This entire paragraph is unreadable. Needs to be rewritten.