

1 **ADD Title**

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

3 SUBCHAPTER 05H—OIL AND GAS CONSERVATION

4 SECTION .0XXX CHEMICAL DISCLOSURE

5
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) "Accredited laboratory" means the North Carolina State Laboratory of Public
19 Health certified by the United States Environmental Protection Agency or a
20 laboratory certified by the Certification Section of the North Carolina Public
21 Health Laboratory pursuant to 10A NCAC 42D to perform tests to determine the
22 presence of coliform bacteria or the chemical constituents to be tested.
23 (2) "Additive" means any chemical substance or combination of substances,
24 including a proppant, contained in a hydraulic fracturing fluid that is intentionally
25 added to a base fluid ~~for a specific purpose~~ whether or not the purpose of any such
26 substance or combination of substances is to create fractures in a formation.
27 (3) "Adjacent property" means a tract of property next to the tract of property on
28 which the subject wellhead is located, including a tract that meets only at a corner
29 point.
30 (4) "API number" means a unique, permanent, numeric identifier assigned to each
31 well drilled for oil or gas in ~~the United States~~ North Carolina.
32 (5) "Chemical(s)" means any element, chemical compound, or mixture of elements or
33 compounds that has its own specific name or identity such as a Chemical Abstract
34 Service number, whether or not such chemical is subject to the requirements of 29
35 CFR 1910.1200(g)(2)(2011).
36 (6) "Chemical Abstracts Service" means ~~the a~~ division of the American Chemical
37 Society ~~that is the globally recognized authority for information on chemical~~
38 ~~substances.~~
39 (7) "Chemical Abstracts Service number or CAS number" means the unique
40 identification number assigned to a chemical by the Chemical Abstracts Service.
41 (8) "Chemical Disclosure Registry" means the chemical registry website known as
42 FracFocus developed by the Ground Water Protection Council and the Interstate
43 Oil and Gas Compact Commission ~~if such website becomes permanently~~
44 ~~inoperable, then chemical disclosure registry shall mean~~ or any other publically
45 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 ingredient" 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 Abstr ...

Comment [AP19]: Define Commission

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

- 46 | (9) “Chemical family” means a group of ~~chemicals~~ ~~ingredients~~ that share similar
47 chemical properties and have a common general name.
- 48 (10) “Chemical ingredient” means a discrete chemical constituent with its own specific
49 name or identity, such as a CAS number, that is contained in an additive.
- 50 (11) “Director” shall mean the Director of the Division of Energy, Mineral, and Land
51 Resources of the Department of Environment and Natural Resources.
- 52 (12) “Health Professional or Emergency Responder” means a physician, physician’s
53 assistant, industrial hygienist, toxicologist, epidemiologist, nurse, nurse
54 practitioner, or emergency responder, such as emergency medical technician, fire
55 fighter, law officer, public works employee, emergency manager, fire marshal,
56 HAZMAT coordinator, technical specialist, incident commander, fire chief, or
57 member of State Emergency Management who needs information in order to
58 provide medical or other health services to command, plan, respond or recover
59 from an event where evacuation, decontamination, sheltering in-place, or other
60 actions are needed for a person exposed to a chemical ingredient.
- 61 (13) “Landowner” means the person listed on the applicable county appraisal roll as
62 owning the real property on which the relevant wellhead is located.
- 63 (14) “Request” means a telephonic request for information that will be followed by a
64 written statement.
- 65 (15) “Requestor” means a person who is eligible to request information claimed to be
66 entitled to trade secret protection.
- 67 (16) “Service Company” means a company or person that performs hydraulic
68 fracturing treatments on a well in this state.
- 69 (17) “Total water volume” means the total quantity of water from all sources used in
70 the hydraulic fracturing treatment, including surface water, groundwater,
71 produced water, reused water, reclaimed water or recycled water.
- 72 (18) “Trade name” means the name given to an additive or a hydraulic fracturing fluid
73 system under which that additive or hydraulic fracturing fluid system is sold or
74 marketed.
- 75 (19) “Trade secret” means any formula, pattern, device, or compilation of information
76 that is used in a person's business, and that gives the person an opportunity to
77 obtain an advantage over competitors who do not know or use it in accordance
78 with G.S. 66-152(3) and G.S. 132-1.2.
- 79 (20) “Well completion report” means the report an operator is required to file with the
80 Department following the completion or recompletion of a well.
- 81 (21) “Well Stimulation” means any process used to increase the production of an oil or
82 gas well by improving the flow of hydrocarbons, such as, but not limited to,
83 hydraulic fracturing.
- 84 (22) “Vendor” means a company that sells or provides an additive for use in a
85 hydraulic fracturing treatment.

Comment [AP21]: Note conflict with other use of “chemical ingredient.” 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]: Correct term? Should it be “listed by the real property appraisal division of the applicable county?”

Comment [AP26]: 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 [AP27]: 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 [AP28]: 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 [AP29]: Need a placeholder for a rule requiring a report. Flag for Administration of Oil and Gas.

Comment [AP30]: Definition needed?

87 **15A NCAC 05H .0XX3 REQUIRED DISCLOSURES**

88 (a) A service company that performs any part of a hydraulic fracturing treatment and a
89 vendor that provides hydraulic fracturing additives directly to the operator for a hydraulic
90 fracturing treatment shall, with the exception of information claimed to be a trade secret, furnish
91 the operator with the information required by ~~subsection-paragraph 05H .0XX3 Section~~ (c) (1)-

92 | (17) of this rule as applicable, and with any other information needed for the operator to comply
93 | with ~~paragraph subsection 05H.0XX3 Section (c) of this rule.~~ Such information shall be
94 | provided within 15 calendar days following the conclusion of the hydraulic fracturing treatment.

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

102 |
103 | (c) Within 15 calendar days following the conclusion of a hydraulic fracturing treatment the
104 | operator of the well must complete the Chemical Disclosure Registry form and upload the form
105 | on the Chemical Disclosure Registry and provide the Department with an electronically
106 | submitted report that includes the following information:

- 107 | (1) The operator name;
- 108 | (2) The date the hydraulic fracturing treatment(s) began;
- 109 | (3) The date of completion of the hydraulic fracturing treatment(s);
- 110 | (4) The county in which the well is located;
- 111 | (5) The API number for the well;
- 112 | (6) The well name and number;
- 113 | (7) The longitude and latitude of the wellhead (in decimal degrees);
- 114 | (8) A certified directional survey of each horizontal well;
- 115 | (9) The measured depth (MD) of the well and the true vertical depth (TVD) of the
116 | well;
- 117 | (10) The total volume of water used in the hydraulic fracturing treatment(s) of the
118 | well, including the total volume of water reused from other hydraulic fracturing
119 | treatment(s), or the type and total volume of the base fluid used in the hydraulic
120 | fracturing treatment(s), if something other than water;
- 121 | (11) The source(s) of water used in the hydraulic fracturing treatment(s) and the point
122 | of withdrawal of the water used;
- 123 | (12) The well that is the source of recycled fluid used or the centralized facility that is
124 | the source of the recycled fluid;
- 125 | (13) The trade name of each additive used in the hydraulic fracturing treatments
126 | provided by the vendor or service provider, and a brief description of the intended
127 | use or function of each additive in the hydraulic fracturing treatment(s);
- 128 | (14) Each chemical ingredient used in the hydraulic fracturing treatment(s) of the well
129 | and their CAS number(s), as provided by the chemical vendor or service company
130 | or by the operator, if the operator provides its own chemical ingredients, that were
131 | intentionally included in and used for the purpose of creating the hydraulic
132 | fracturing treatments for the well;
- 133 | (15) An indication of which chemicals are subject to the requirements of 29 CFR Part
134 | § 1910.1200 (g)(2), which is incorporated by reference including subsequent
135 | amendments and additions;
- 136 | (16) The actual or maximum concentration of each chemical ingredient listed under
137 | ~~clause pursuant to~~ (14) of this subparagraph in percent by mass; and

Comment [AP31]: Need an internal reference to rule 05H. 0XX5 to clarify that vendors/service companies must disclose trade secrets to the Department.

Comment [AP32]: Does this have a specific timeframe from which to measure?

Comment [AP33]: Replace with emergency responders? First responders is not defined.

Comment [AP34]: Service provider not defined. Replace with service company.

Comment [AP35]: Question: Is this too vague? Do we mean volume?

Comment [AP36]: Do we mean commencement?

Comment [AP37]: Conflict with line 111 and 121, use either "completion" or "conclusion."

Comment [AP38]: See Definitions: should be just vendor, not "chemical vendor"

Comment [AP39]: Too vague. Recommend "Identify chemicals that are . . ."

Comment [AP40]: 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.

- 138 (17) The CAS number for each chemical ingredient listed.
139
- 140 (d) A vendor, service company, or operator is not required to:
- 141 (1) Disclose chemicals that occur incidentally or are otherwise present in trace
142 amounts, may be the incidental result of a chemical reaction or process, or may be
143 constituents of naturally occurring materials that became part of the hydraulic
144 fracturing fluid; or
- 145 (2) Identify specific chemical ingredients and/or their CAS numbers that are claimed
146 as entitled to trade secret protection based on the additive in which they are found
147 or provide the concentration of such ingredients, ~~unless the North Carolina~~
148 ~~Business Court determines that the information would not be entitled to trade~~
149 ~~secret protection under G.S. 66-152(3) and G.S. 132-1.2.~~
- 150
- 151 (e) If the Chemical Disclosure Registry known as FracFocus is temporarily inoperable, the
152 operator of a well on which hydraulic fracturing treatment(s) were performed must supply the
153 Department with the ~~required~~ information required by paragraph (c) of this Rule at the time the
154 operator files the with the well completion report and must upload the information on the
155 ~~FracFocus Chemical Disclosure Registry~~ Internet website when the website is again operable. If
156 ~~the Chemical Registry known as~~ FracFocus is discontinued or becomes permanently inoperable,
157 the information required by this rule must be filed electronically as an attachment to the
158 completion report for the well, which is posted, along with all attachments, on the Commission's
159 Internet website, until the Commission amends this rule to specify another publicly accessible
160 Internet website.
- 161
- 162 (f) If the vendor, service company, or operator claim that the specific identity and/or CAS
163 number or amount of any additive or chemical ingredient used in the hydraulic fracturing
164 treatment(s) is entitled to protection as trade secret information pursuant to G.S. 66-152(3) and
165 G.S. 132-1.2, the operator of the well must indicate on the Chemical Disclosure Registry form
166 and in the electronic report submission to the Department that the additive or chemical ingredient
167 is claimed to be entitled to trade secret protection. If a chemical ingredient name and/or CAS
168 number is claimed to be entitled to trade secret protection, the operator of the well on which the
169 hydraulic fracturing treatment(s) were performed must provide the following information:
- 170 (1) The chemical family or other similar description associated with such chemical
171 ingredient;
- 172 (2) The MSDS, which must disclose information concerning the properties and
173 effects of the hazardous substance or hazardous mixture;
- 174 (3) The label and MSDS must show the chemical classification of the chemical that is
175 being withheld as a trade secret and that a trade secret for a special hazardous
176 substance is being claimed; and
- 177 (4) The contact information, including the name, authorized representative, mailing
178 address, and phone number of the business organization claiming entitlement to
179 trade secret protection on Form X; and-
- 180 (5) The contact information shall include the name and telephone number of an
181 individual who has access to the trade secret information and who may be reached
182 on a 24 hour basis.
183

Comment [AP41]: Possible need for a definition?

Comment [AP42]: Possible need for a definition?

Comment [AP43]: Potential conflict with .0XX5? Recommend adding in initial paragraph "A vendor, service company, or 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 [AP44]: Timeframe needed?

Comment [AP45]: Does the MEC need to amend rule to identify another registry? This statement is in conflict with the definition.

Comment [AP46]: Not previously defined. Needs definition?

Comment [AP47]: Not previously defined. Needs definition?

Comment [AP48]: 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 [AP49]: Move into (4) for clarity?

184 (g) Unless the information is entitled to protection as a trade secret under pursuant to G.S.
185 66-152(3) and G.S. 132-1.2, information submitted to the Department or uploaded on the
186 Chemical Disclosure Registry is public information.

Comment [AP50]: Changed for consistency

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

Comment [AP51]: NOTE: This simply restates the law. Consider deleting.

Comment [AP52]: What is an approved contractor? Need a definition? Term only found in this section. Flag for Administration of Oil and Gas?

- 193 (1) A list of all base fluids that the service company or operator expects to use in any
194 hydraulic fracturing treatment performed in the state;
- 195 (2) A list of all additives that the service company or operator expects to use in any
196 hydraulic fracturing treatment performed in the state;
- 197 (3) A list of all chemicals, and their associated CAS numbers, the service company or
198 operator expects to use in any hydraulic fracturing treatment performed in the
199 state; provided, however, that for those chemicals that are entitled to trade secret
200 protection under 15A NCAC 05H .0XX3, unless the North Carolina Business
201 Court determines that the information would not be entitled to trade secret
202 protection under G.S. 66-152(3) and G.S. 132-1.2, then the service company or
203 operator shall provide the chemical family or other similar description associated
204 with such chemical ingredient.
- 205 (4) Contact information for the authorized agent of the service company or vendor
206 that can provide the Department or hHealth pProfessionals and eEmergency
207 rResponders with the chemical information described in 15A NCAC 05H
208 .0XX3(h)(3).
- 209 (5) The service company or vendor shall provide updated information to the
210 Department within 30 calendar days of the date any of the information described
211 in 15A NCAC 05H .0XX3(h)(1-4) becomes inaccurate or incomplete.

Comment [AP53]: Internally inconsistent. Page 4, line 180 states requirements apply to service company and operator, as does rest of (h). Does (h) apply to service company, vendor, and operator?

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

Comment [AP54]: Remove and flag for Administration of Oil and Gas for Rule development.

Comment [AP55]: Break into separate subparagraph—not related to first two sentences.

221 15A NCAC 05H .0XX4 DISCLOSURE TO HEALTH PROFESSIONALS AND 222 EMERGENCY RESPONDERS

223 (a) Vendors, service companies, and operators shall identify the specific identity and amount
224 of any chemicals claimed to be a trade secret to any Health health pProfessional or eEmergency
225 rResponder who requests such information in writing if the hHealth pProfessional or
226 eEmergency rResponder provides a written statement of need for the information and executes a
227 confidentiality agreement, Form X3. The written statement of need shall be a statement that the
228 hHealth pProfessional or eEmergency rResponder has a reasonable basis to believe that:

Comment [AP56]: NOTE: Likely will need to redraft into 2 rules.

Comment [AP57]: Do we mean quantity? Should we use consistent terms?

Comment [AP58]: 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).

- 229 (1) The information is needed for purposes of diagnosis or treatment of an individual,

- 230 (2) The individual being diagnosed or treated may have been exposed to the chemical
- 231 concerned, and
- 232 (3) Knowledge of the information will assist in such diagnosis or treatment.

Comment [AP59]: These refer to health provider and no listing to emergency responder , see lines 283 for alternate language

234 (b) The confidentiality agreement, **Form X3**, shall state that the **hHealth pProfessional** or
 235 **eEmergency rResponder** shall not use the information for purposes other than the health needs or
 236 emergency management coordination of response and recovery asserted in the statement of need,
 237 and that the **hHealth pProfessional** or **eEmergency rResponder** shall otherwise maintain the
 238 information as confidential. Where a **hHealth pProfessional** and **eEmergency rResponder**
 239 determines that a **medical emergency** exists and the specific identity and amount of any
 240 chemicals claimed to be a trade secret are necessary for emergency treatment, the vendor, service
 241 company, or operator, as applicable, shall disclose as soon as possible but in no case later than 2
 242 hours following **the request**, the information to that **hHealth pProfessional** or **eEmergency**
 243 **rResponder** upon a verbal acknowledgement by the **hHealth pProfessional** or **eEmergency**
 244 **rResponder** that such information shall not be used for purposes other than the health needs or
 245 emergency management coordination of response and recovery asserted and that the **hHealth**
 246 **pProfessional** or **eEmergency rResponder** shall otherwise maintain the information as
 247 confidential. Only if the **hHealth pProfessional** or **eEmergency rResponder** cannot reach the
 248 vendor, service company or operator, or if the vendor, service company or operator refuses to
 249 provide information in its possession to the **hHealth pProfessional** or **eEmergency rResponder**,
 250 then, if a **medical emergency** exists, the Department shall provide the information directly to the
 251 **hHealth pProfessional** or **eEmergency rResponder**.

Comment [AP60]: Does this exclude other emergency responders?

Comment [AP61]: Suggest adding "telephonic or written request" here

Comment [AP62]: Does this exclude emergency responders?

252
 253 (c) The vendor, service company, or operator, as applicable, may request a written statement
 254 of need, and a confidentiality agreement, Form X3, from all **hHealth pProfessionals** or
 255 **eEmergency rResponder** to whom information regarding the specific identity and amount of any
 256 chemicals claimed to be a trade secret was disclosed, **as soon as circumstances permit**.
 257 Information so disclosed to a **hHealth pProfessional** or **eEmergency rResponder** shall in no way
 258 be construed as publicly available.

Comment [AP63]: Likely question from the RRC, needs a limiting time frame.

259
 260 (d) Nothing in this ~~15A NCAC 05H .0XX4~~**Rule** shall be construed to prohibit a **Health**
 261 **health pProfessional** or **eEmergency rResponder** from disclosing information received under this
 262 15A NCAC 05H .0XX4 to any person the **hHealth pProfessional** or **eEmergency rResponder**
 263 determines necessary in order to assist in the diagnosis or treatment of an individual, including,
 264 but not limited to, another **hHealth pProfessional**, **eEmergency rResponder**, or public health
 265 official. Nothing in this ~~15A NCAC 05H .0XX4~~**Rule** shall be construed to prohibit a **Health**
 266 **health pProfessional** or **eEmergency rResponder** from making any report required by law or by
 267 professional ethical standards. This ~~rule~~**Rule** does not authorize a person to withhold
 268 information, including information that may qualify for trade secret protection under ~~15A NCAC~~
 269 ~~05H .0XX5~~**this Section**, that state or federal law requires to be provided to any **hHealth**
 270 **pProfessional** or **eEmergency rResponder**. At the request of the vendor, service company, or
 271 operator, the **consulting physicians, and professionals**, to whom **information** regarding the
 272 specific identity and concentration of the trade secret was supplied, must sign a confidentiality
 273 agreement, Form X3, **as soon as circumstances permit**.

Comment [AP64]: For clarity, can we use "health professional or emergency responder?"

Comment [AP65]: Likely question from RRC, needs a limiting time frame.

274 **15A NCAC 05H .0XX5 TRADE SECRET PROTECTION**

- 276 (a) Vendors, service companies, and operators are not required to disclose trade secrets, as
277 defined by G. S. 66-152, to the chemical disclosure registry.
278
- 279 (b) If the specific identity of a chemical, the concentration of a chemical, or both the specific
280 identity and concentration of a chemical are claimed to be entitled to protection as a trade secret,
281 the vendor, service company or operator may withhold the specific identity, the concentration, or
282 both the specific identity and concentration, of the chemical, as the case may be, from the
283 information provided to the chemical disclosure registry. ~~Provided, however, operators~~ Operators
284 must provide the information required by ~~Rule 15A-NCAC 05H.0XX3~~ (f) of this Section.
285
- 286 (c) In claiming trade secret protection under this ~~section~~ Rule, a vendor or service company
287 must submit to the Department, on a ~~form~~ designated by the Department, a claim of entitlement
288 to trade secret protection, supplying the following information:
289
- 290 (1) The identity of the relevant chemical, including its associated CAS number, the
291 concentration of the chemical, or both the identity and concentration of the chemical, as
292 applicable;
293 (2) A written claim that such chemical identity, chemical concentration or both are
294 entitled to trade secret protection, including substantiating facts in the form of the
295 information required by 40 C.F.R. Section 350.7(a) and a certification by an owner,
296 operator or senior official with management responsibility that is substantially identical
297 to the certification language provided in part 4 of the form at 40 C.F.R. Section 350.27;
298 and
299 (3) Contact information including the claimant's name, and the name, mailing
300 address and phone number for the claimant's authorized representative with respect to
301 trade secret claims. If such contact information changes, the claimant shall immediately
302 submit a new form to the Department with updated information.
303
- 304 (d) The Department shall protect and hold confidential the information provided to the
305 Department ~~under pursuant to~~ this section, including any substantiating facts provided ~~under~~
306 ~~pursuant to~~ Subparagraph (c)(2) of this rule above, unless and until the information is determined
307 not to be entitled to trade secret protection ~~under this section~~. A claim of entitlement to trade
308 secret protection must be submitted to the Department on or before the date the claimant is
309 otherwise required to provide the relevant information to the operator under subparagraphs (a)
310 and (b).
311
- 312 (e) The Director or Director's designee may disclose information regarding the specific
313 identity of a chemical, the concentration of a chemical, or both the specific identity and
314 concentration of a chemical claimed to be a trade secret to additional Department staff members
315 to the extent that such disclosure is necessary to allow the Department staff members receiving
316 the information to assist in responding to the spill, release, or complaint, provided that such
317 individuals shall not disseminate the information further.
318
- 319 (f) In addition, the Director may disclose such information to any member of the
320 Commissioner, the relevant county public health director or emergency manager, or to the
321 Department of Public Health director of environmental programs upon request by that individual.

Comment [AP66]: Add placeholder for Form #?

Comment [AP67]: Either list the requirements without reference to CFR or include phrase "which is incorporated by reference including subsequent amendments and editions,"

Comment [AP68]: 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 [AP69]: Replace with "vendor's or operator's name"

Comment [AP70]: Replace with "vendor's or operator's" name

Comment [AP71]: Replace with "vendor or operator"

Comment [AP72]: Changed for consistency with rest of rule

Comment [AP73]: Changed for consistency

Comment [AP74]: Deleted for clarity.

Comment [AP75]: Replace with vendor or operator

Comment [AP76]: Unclear reference, which paragraphs?

Comment [AP77]: Do we mean the Division of Public Health? Or North Carolina Department of Health and Human Services?

Comment [AP78]: Capitalize?

Comment [AP79]: Do we mean the Environmental Health Section of the Division of Public Health?

322 Any information so disclosed to the Director, a Department staff member, a Commissioner, a
323 county public health director or emergency manager, or to the Department of Public Health
324 director of environmental programs shall at all times be considered confidential and shall not be
325 construed as publicly available. The Department of Public Health director of environmental
326 programs, or his or her designee, may disclose such information to Department of Public Health
327 staff members under the same terms and conditions as apply to the director.
328

329 **15A NCAC 05H .0XX6 TRADE SECRET CHALLENGE**

330 (a) A ~~l~~andowner, an owner of ~~a~~Adjacent ~~p~~Property, a lessee of any property on which a
331 wellhead is located, any person having a legal interest in real property, or agency of this state
332 having an interest that is or may be adversely affected by a product, fluid or substance or by a
333 chemical component in a product, fluid or substance may submit a request challenging a claim of
334 entitlement to trade ~~secret~~ protection for any chemical ingredients and/or CAS numbers used in
335 hydraulic fracturing treatment(s) of a well.~~;~~
336

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

- 339 (1) The requestor's name, address, and daytime phone number;
340 (2) The county in which the wellhead is located; and
341 (3) The API number or other identifying information, such as field name, oil lease
342 name and number, gas identification number, and well number.
343

344 (c) A requestor may use ~~the format as seen in~~ FORM X2 to provide written certification by
345 paragraph (b) of this ~~subsection~~rule.
346

347
348 (d) If the Director determines that the certification is properly completed and signed, the
349 Director will consider this sufficient for the purpose of forwarding the request to the North
350 Carolina Business Court.
351

352 (e) Within 10 business days of receiving a request that complies with ~~paragraph~~
353 ~~(2)subparagraph (d)~~ of this ~~subsection~~rule, the Director must:

- 354 (1) Submit to North Carolina Business Court a request for decision regarding the challenge;
355 (2) Notify the operator of the subject well and the owner of the claimed trade secret
356 information of the submission of the request to the North Carolina Business Court and of
357 the requirement that the owner of the claimed trade secret information submit directly to
358 the North Carolina Business Court, the claimed trade secret information, clearly marked
359 "confidential," submitted under seal; and
360 (3) Inform the owner of the claimed trade secret information of the opportunity to
361 substantiate to the North Carolina Business Court, its claim of entitlement of trade secret
362 protection.
363

364 (f) If the North Carolina Business Court determines that the claim of entitlement to trade
365 secret protection is valid, ~~if the information had been provided to~~ the owner of the claimed trade
366 secret information shall not be required to disclose the trade secret information, subject to appeal.
367

Comment [AP80]: What does this mean?

Comment [AP81]: Internally inconsistent. Usual use is subparagraph and refer to correct paragraph. Replace with subparagraph (d)?

Comment [AP82]: Consistent use of section, subsection, subparagraph. Replace with rule?

Comment [AP83]: MEC does not have statutory authority to determine NC Business Court jurisdiction or procedure.

Comment [AP84]: Paragraph not clearly written and confusing. See deleted section to determine if complies with intent.

368 (g) The request shall be deemed withdrawn if, prior to the determination of the North
369 Carolina Business Court on the validity of the trade secret claim, the owner of the claimed trade
370 secret information provides confirmation to the Department and the North Carolina Business
371 Court that the owner of the claimed trade secret information has voluntarily provided the
372 information that is the subject of the request to the requestor subject to a claim of trade secret
373 protection, or the requestor submits to the Department and the North Carolina Business Court a
374 written notice withdrawing the request.
375

376 A final determination by the North Carolina Business Court regarding the challenge to the claim
377 of entitlement of trade secret protection of any withheld information may be appealed within 10
378 business days to the North Carolina Court of Appeals.
379

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

Comment [AP85]: Current appellate rules is 30 days not 10. To make change would require statutory change

Comment [AP86]: Does the MEC have the authority to set appeals to NC Court of Appeals?

Comment [AP87]: Lacks clarity. Needs to be rewritten.

Comment [AP88]: This entire paragraph is unreadable. Needs to be rewritten.