



April 29, 2024

The Honorable Jeanne McNeill
PA House of Representatives
219 Irvis Office Building
P.O. Box 202133
Harrisburg, PA 17120-2133

On behalf of the Marcellus Shale Coalition (MSC), I write to share with you serious concerns regarding House Bill 1943, relating to chemical disclosure during the unconventional natural gas development process.

First and foremost, it is an often-repeated MYTH that chemicals used in hydraulic fracturing are not disclosed. To the contrary, Act 13 of 2012 requires **ALL** chemicals utilized in the hydraulic fracturing process, including any that are protected from public disclosure because of their trade secret/proprietary nature, to be disclosed to the Pennsylvania Department of Environmental Protection (PA DEP). Furthermore, all disclosure reports are posted online with the DEP and separately on www.fracfocus.org.

And while this bill purports to address a recommendation raised in a 2020 Grand Jury Report, it is important to know that the DEP itself called that report factually inaccurate and "*a disservice to the citizens of the Commonwealth.*"

With that in context, on April 9, 2024, House Bill 1943 was amended and reported out of the House Environmental Resources and Energy Committee. The MSC sent the attached memo to Committee members opposing the bill and the amendment. Much like the bill itself, the MSC was given no opportunity to review and provide meaningful input on the amendment, which was shared with us just hours before the Committee meeting.

While we have significant policy concerns with the underlying intent of House Bill 1943, some of which I have shared above, I write to express specific concerns with the current language in the amended version of the bill. For example:

- While Section 3222.2 (b) purports to protect "*the trade name of a chemical product used in downhole operations...*", this protection is eviscerated by subsection (c), which states that notwithstanding any law to the contrary (which, ironically, includes subsection (b)), PA DEP shall include the trade "*name and chemical abstract service number*" of all chemicals used in downhole operations and "*may not deem the names or chemical abstract service number... as a trade secret or as proprietary information...*".

These two subsections are clearly in contradiction with one another, despite claims otherwise.

- While publicly you have stated¹ that the intent of the bill is to require disclosure “14 days prior to any use at any stage of the fracking process, including drilling,” as amended, HB 1943 requires an operator to file a report with the PA DEP “**at least 30 days prior to the commencement of downhole operations.**” (Emphasis added.)
- The report required under this bill is to contain a litany of information, including “*all chemicals to be used in downhole operations.*” “Downhole operations” is defined as “*oil and gas production operations that are conducted underground, including drilling and hydraulic fracturing.*”

The legislation does not state that the 30-day disclosure requirement is tied to any specific step in the well development process in which they might be used. Rather, it is a blanket requirement that “*all chemicals*” used in any downhole operation must be reported “*at least 30 days prior to the commencement of downhole operations.*” (Emphasis added). As drilling is always the commencement of downhole operations, under HB 1943 drilling becomes the anchor point at which 30-day disclosure must occur.

Not only is this language poorly written, but it demonstrates a lack of understanding of oil and gas operations. It is not uncommon, due to a variety of reasons (i.e. efficiencies of various oil and gas operations, or permit delays affecting related pipeline infrastructure, etc.), for a significant period of time to pass between the initial drilling of a top hole and the actual stimulation of a well (perhaps 18-24 months or more). As such, it is not reasonable to presume that an operator is able to identify each and every additive that might be utilized at some point in the distant future. In fact, the operator may not have even identified a specific service vendor that it will utilize for well completion of a particular well.

- HB 1943 creates a new section (3222.2) within the Oil and Gas Act (58 Pa.C.S.). However, it does not modify the existing post-completion disclosure requirements found in the Oil and Gas Act, specifically sections 3222 and 3222.1. If section 3222.2 is enacted, there seems no logical purpose for sections 3222 and 3222.1 to remain.

Ironically, sections 3222 and 3222.1 retain the right of an operator to designate certain information as trade secret and proprietary information. This creates an absurdity in the law whereby pre-drilling disclosure is not afforded these legal protections, but post-completion disclosure is.

- Section 3222.2 (e) is as confusing as it is unnecessary. Under the most liberal reading of this subsection, it may be interpreted as authorizing either the

¹ *Lehigh Valley Lawmaker Wants More Fracking Fluid Info – April 13, 2024*
<https://www.lehighvalleylive.com/news/2024/04/lehigh-valley-lawmaker-wants-more-fracking-fluid-info-pennsylvania-legislative-roundup.html>

Environmental Quality Board to promulgate regulations or a local government to require chemical disclosure that go beyond the stipulations contained in the Oil and Gas Act. This limitless approach will lead to a patchwork of differing and unworkable requirements, particularly at the local government level, that contradict the benefits of Pennsylvania's current law: a statewide, uniform reporting requirement, with information submitted in a consistent and predictable manner, and housed for public disclosure in a central database.

Existing Disclosure Requirements

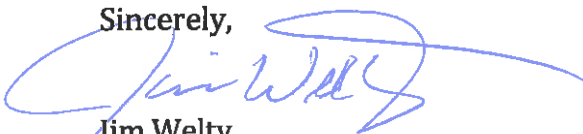
It is important to underscore that in addition to the current disclosure requirements of Act 13 discussed above, Pennsylvania operators also include information on chemicals that may be used on site as part of their Preparedness, Prevention and Contingency (PPC) plans. These plans have always been available to the PA DEP, and in January of this year, PA DEP began the practice of requesting these plans prior to drilling for posting on its publicly available website.

Additionally, Pennsylvania law provides for significant protections for the environment under multiple laws, regulations, permit authorization packages and technical guidance documents. Many of these are designed to protect ground and surface water, including the most stringent setback requirements among the top natural gas producing states.²

Disclosure is important and provided for under existing law. But so too is the important protection of trade secrets, which are part of legitimate business practices in a competitive market. These protections are afforded across all sectors of our economy, and they are balanced by ensuring that regulators and others, like health professionals who may need access to such information, have it.

Pennsylvania's current law continues to work well as it has for over a decade. House Bill 1943 is confusing, unnecessary, and counterproductive to ensuring continued technological advancements in the industry. Despite requests otherwise, amendments can't improve upon misguided and misinformed public policy. For these reasons, the MSC opposes this legislation.

Sincerely,



Jim Welty
Vice President, Government Affairs

Attachment

² 58 Pa.C.S. §3218 – Protection of Water Supplies



MEMORANDUM

TO: House Environmental Resources and Energy Committee
FROM: Jim Welty, Vice President, Government Affairs
DATE: April 8, 2024
RE: MSC Opposition to HB 1943

On behalf of the Marcellus Shale Coalition (MSC), I write in opposition to HB 1943 and **urge a no vote on this legislation and its accompanying amendment (A03928).**

HB 1943 (Relating to Hydraulic Fracturing Chemical Disclosure)

HB 1943 amends the PA Oil and Gas Act (Act 13 of 2012) to remove specific references in law which recognizes the right of companies to protect trade secret and confidential and proprietary information from public disclosure. The legislation also alters the timing of submission of currently disclosed information to PA DEP.

We understand that a gut-and-replace amendment (A03928) has been prepared for consideration by the Committee. Please consider the following points regarding the proposed amendment and underlying HB 1943:

- To be clear, the PA DEP already has access to all chemicals utilized in the hydraulic fracturing process, including any that are protected from public disclosure because of their trade secret/proprietary nature. It is unclear what problem or concern this legislation and amendment are attempting to address.
- Current law includes specific disclosure as part of the well completion report, submitted within 60 days of completing and stimulating a well. Disclosure reports are posted online, both on the PA DEP website and at www.fracfocus.org.
- Current reporting practices and regulatory standards require the name and identification of any additives (and the amounts) utilized as part of the completion report and afford appropriate protection of trade secret and proprietary information.
- As drafted, the amendment requires an operator to submit a list of any chemicals that may be used for hydraulic fracturing operations at least 30 days prior to commencing drilling. It is not uncommon for a significant amount of time to pass (18-24 months in some cases) between drilling a well and stimulating it via hydraulic fracturing to place it into production.

It is unreasonable to require an operator to know this far in advance what additives might be used in a stimulation process two years down the road – particularly since the operator most likely has not yet contracted with the particular service company that would perform the actual well stimulation.

- The amendment is contradictory. While Section 3222.2(b) (Pg. 1 lines 27-28) purports to protect trade names of chemical products, subsection (c) then states that the Department *shall include* the trade name of all chemicals on its public website and may not deem such names as a trade secret under the Right to Know Law (Pg. 1, lines 33-34 and Pg. 2, lines 1-7).
- The amendment creates an absurdity within the law by removing the proprietary/trade secret protections currently afforded in the law as it relates to *pre-activity disclosure* yet retains the

proprietary/trade secret protections extended to the well completion report and FracFocus disclosure that are found in 25 Pa.C.S. Sections 3222 and 3222.1.

- Removing trade secret protections places Pennsylvania companies at a competitive disadvantage. For example, we are aware of operators that use specific stimulation vendors because they employ environmentally-friendly, green additives. Under this legislation, the vendor loses their competitive advantage, and the impetus to encourage innovation is lost.
- Each well stimulation job is unique. It is not practical to determine what exact additives may be utilized until a service provider has been contracted and reviews the specific job. Additionally, such well stimulation jobs often require last minute adjustments that may be precluded because a certain, critical additive was not included on the pre-disclosure list.
- Conversely, the alternative is for an operator to simply submit a list of all chemicals utilized within the industry, even though only a minimal number are actually used on each site, in an effort to cover all bases. This will result in significant over-reporting issues and serve no value to anyone. PA DEP already maintains a comprehensive, non-operator-specific list of all such chemicals which might be utilized on its public website.
- Subsection (e) of the amendment appears to implicitly authorize local governments to collect chemical disclosure information irrespective of any limitations imposed by state law. In doing so, any protections for trade secret or proprietary information that may be found in state law are effectively null and void. This will lead to a total lack of uniformity regarding public disclosure and create a patchwork of potentially hundreds of differing reporting standards, which is a disservice not only to the business community, but also to local residents.
- Negating the trade secret or confidential and proprietary information protections under the existing Oil and Gas Act runs contrary to the intent of Pennsylvania's Right to Know Law (Act 3 of 2008). This Act provides for the protection of confidential and proprietary or trade secret information from public record disclosure.
- In addition to state law protections afforded to confidential and proprietary and trade secret information, federal law also affords protections. Specifically, statutes and regulations found in 29 CFR (related to Occupational Safety and Health Administration) and regulations promulgated at 40 CFR under the Emergency Planning and Community Right to Know Act provide protections against the disclosure of trade secret and confidential and proprietary information.
- It is important to note that the same statutes which afford protection for trade secret and confidential and proprietary information also require disclosure of the "properties and effects" of any chemicals and requires chemical identity disclosure to health professionals and employees (in addition to regulators, such as PA DEP).

For these reasons, we urge you to vote NO on the amendment to HB1943 and the underlying bill.

