



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.**

