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Texas Legislature Passes Groundbreaking Hydraulic Fracturing Disclosure Bill

By [Leonard Dougal](#) and [Jacob Arechiga](#)

On May 31, 2011, the Texas Legislature adopted new legislation, HB 3328, requiring oil and gas operators to publicly disclose the specific chemicals used in the hydraulic fracturing ("fracking") process. The bill is expected to be signed into law by Governor Rick Perry, making Texas one of the first states to mandate public disclosure of chemicals used in fracking.

Two Paths for Disclosure

HB 3328 sets up two paths for disclosure. First, for chemicals subject to OSHA's requirements for Material Safety Data Sheets (MSDS), the well operator must post the list of chemical ingredients on the internet website maintained by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission (now found at Fracfocus.org), and also file the list of chemicals with the Railroad Commission of Texas ("Railroad Commission") with the well completion report. Additionally, the total volume of water used to hydraulically fracture a well must be posted and filed with the Railroad Commission.

Second, those non-MSDS chemical ingredients that were intentionally included and used for the purpose of hydraulic fracturing are to be provided to the Railroad Commission, to be made available on a public website. Ingredients that are not purposely added, occur incidentally, or in the case of the well operator, are not disclosed by the service company or supplier do not need to be disclosed.

Significantly, the legislation does not require disclosure of the specific quantities of the hydraulic fracturing chemicals, nor does it require information about the techniques or staging of chemicals used in a fracturing treatment.

Trade Secret Protections

The legislation contemplates that certain hydraulic fracturing chemicals may be claimed as a trade secret, and if so claimed would be subject to the existing information disclosure process set up by the Public Information Act. However, only landowners where the well is located, landowners of adjacent property, or state departments/agencies with jurisdiction may challenge a trade secret claim. The bill also requires the disclosure of chemical information, including the trade secret information consistent with OSHA specified protections, to a health professional or emergency responder who needs the information for medical treatment.

Next Steps and Rulemaking

HB 3328 awaits action by Governor Perry and, unless vetoed, will become law with an effective date of September 1, 2011. The Railroad Commission will have until July 1, 2012, to adopt

regulations for the legislation, including details for the MSDS chemical disclosures. Regulations addressing the non-MSDS and trade secret aspects must be adopted by July 1, 2013. The disclosure obligation will first apply to wells that receive a drilling permit after the effective date of the rules adopted by the Railroad Commission.

For additional information, please contact any of the following:

Leonard Dougal at 512.236.2233 or ldougal@jw.com
Jacob Arechiga at 512.236.2049 or jarechiga@jw.com

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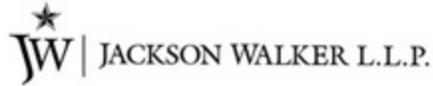
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