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Railroad Commission of Texas Finalizes Hydraulic Fracturing Disclosure Regulations

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

On December 13, 2011, the Railroad Commission of Texas ("Commission") finalized regulations requiring oil and gas operators to publicly disclose chemicals used in hydraulic fracturing treatments ("fracking"). Please [CLICK HERE](#) for the full text of the adopted regulations. The regulations will apply to hydraulically fractured wells which receive initial drilling permits on or after February 1, 2012. Coincidentally, on the same day the Railroad Commission finalized these regulations, Colorado also finalized regulations requiring disclosure of fracking chemicals.

Statutory Authorization

The Texas regulations directly implement Texas HB 3328. Passed by the Texas legislature earlier this year, HB 3328 was among the first legislation in the country to mandate the disclosure of chemicals used in fracking. Please [CLICK HERE](#) for additional information regarding HB 3328.

Disclosure Requirements

The operator of a well where hydraulic fracturing is conducted must disclose the location of the well, the depth of the well, and the total volume of water used in the well. The operator must also disclose the name, supplier, and a brief description of each additive used in the fracking operation at that well, each chemical ingredient included on OSHA's Material Safety Data Sheets (MSDS), and a supplemental list of all chemicals not subject to MSDS requirements. The operator is required to disclose the actual or maximum concentrations of each chemical ingredient on the MSDS. Suppliers of the frack fluid or service companies involved in fracking a well must provide additive, chemical, and other ingredient information necessary to complete this disclosure.

Operator disclosures must be posted on the Chemical Disclosure Registry found at FracFocus.org. Currently, many operators are voluntarily posting chemical and additive information on the FracFocus website.

Trade Secret Protections

The regulation specifically allows for suppliers, service companies, and/or operators to avail themselves of trade secret protections, potentially allowing them to withhold disclosure of certain chemical ingredients. The supplier, service company, and/or operator must affirmatively claim this protection, but the protection can be challenged by certain individuals and entities. Only the landowners where the well is located, landowners of adjacent properties, or a department or state agency with jurisdiction over a matter where the trade secret claim is relevant may challenge the trade secret

claim. Challenges to trade secret claims are initially decided by the Office of the Attorney General, whose decisions may be challenged in the District Court of Travis County.

The Commission kept the trade secret exception narrow in the rulemaking process. While commenters requested that the Commission revise the meaning of trade secret information to include proprietary or confidential business information, the Commission found that the addition of those terms would make the scope of the definition broader than was intended by HB 3328. The Commission similarly kept the list of individuals and entities who can challenge trade secret claims narrow. For instance, the Commission rejected a commenter's request that municipalities be able to challenge these claims, although the Commission noted that municipalities will typically fall under the category of "adjacent land owner" given the municipalities' adjoining public rights of way.

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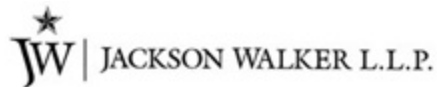
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