

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE) CAUSE NO. 1R
RULES OF THE OIL & GAS)
CONSERVATION COMMISSION OF THE) DOCKET NO. 1112-RM-04
STATE OF COLORADO TO CONSIDER)
HYDRAULIC FRACTURING DISCLOSURE)
RULES

REPORT OF THE COMMISSION AND FIRST PREHEARING ORDER

This cause came on for a Special Meeting before the Colorado Oil and Gas Conservation Commission ("COGCC") on October 25, 2011 at 9:00 a.m. in Suite 801, The Chancery Building, 1120 Lincoln Street, Denver, Colorado 80203. The COGCC convened the meeting to consider whether to initiate a rulemaking regarding the public disclosure of hydraulic fracturing chemicals.

FINDINGS

1. Hydraulic fracturing is the process of creating small cracks, or fractures, in underground geological formations to allow oil or natural gas to flow into the wellbore and thereby increase production. To fracture the formation, special fracturing fluids are injected down the well bore and into the formation. These fluids typically consist of water, sand, and chemical additives.

2. Members of the public have expressed interest in learning the identity of chemicals in hydraulic fracturing fluids. Many oil and gas operators are voluntarily providing such information through the fracfocus.org website, and several other states have adopted or are adopting regulations on this topic.

ORDER

1. Pursuant to C.R.S. § 34-60-105 and COGCC Rule 529.a, the COGCC hereby authorizes and instructs the COGCC Staff to initiate a rulemaking for purposes of adopting rules governing the public disclosure of hydraulic fracturing chemicals, including notification of hydraulic fracturing operations.

2. The COGCC adopts the following procedures for the conduct of its rulemaking hearing. This prehearing order supersedes Rule 529 where the provisions of the Rule are inconsistent with this order.

3. **Publication of Proposed Rules.** The proposed rules will be posted on the Commission's website <http://cogcc.state.co.us/> and filed with the Colorado Secretary of State for publication in the *Colorado Register* on November 10, 2011.

4. **Appointment of Hearing Officer.** The Commission has appointed Commissioner W. Perry Pearce to serve as hearing officer for this rulemaking to address prehearing matters.

5. **Party Status.** To participate in this rulemaking as a party, a person or organization must file a written request for party status with the Commission that shall include the following information: (1) name of the applicant and their representative (if different); (2) the street address, electronic mail address, and telephone and facsimile numbers of the applicant or their representative; and (3) a brief summary of any policy, factual, or legal issues the applicant has with the proposed regulations as of the time of filing the application for party status. Applications for party status must be filed with the Commission by 5:00 p.m. on November 17, 2011, in the manner set out in this prehearing order. The hearing officer will review the requests for party status and applicants will be notified of his decision. The Commission staff will compile a list of all parties, their street addresses and electronic mail addresses and post it on the Commission website.

6. **Filing and Service Requirements.** All required documents must be received by those entities required to be served as set out below by 5:00 p.m. on the day they are due. All filings must be served on the Commission in hard copy and electronic copy as follows: hard copies for the Commission - the original and 13 copies delivered to Peter Gowen, Acting Hearing Manager, Docket No. 1112-RM-04, Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203; and an electronic copy, preferably in portable document format (*pdf*), to marc.fine@state.co.us for posting to the Commission website. A hard copy must also be delivered to Jake Matter, Colorado Department of Law, 1525 Sherman Street, 7th Floor, Denver, Colorado, 80203. Copies to parties may be served by hard copy or electronic mail. The party service list will be posted on the Commission's website.

7. **Public Participation.** The Commission encourages the public to participate in the rulemaking hearing by commenting on the proposed regulations. Persons who do not desire party status, but would like to participate in the rulemaking process, will be able to make their views known to the Commission either by submitting comments in writing in advance of or at the rulemaking hearing, or by speaking during the public comment period allotted during the hearing. Depending on the number of people seeking to make oral comments at the hearing, the COGCC may need to limit such comments. Therefore, the Commission encourages the public to submit written comments by the deadline stated in this Order. Organized groups of individuals are urged to identify one spokesperson. Speakers are asked to be as concise as possible, and to avoid repeating comments made by others. If members of the public desire to have the Commission review written material, such documents should be filed with the Commission by November 23, 2011.

8. **Prehearing Statements.** Each party must file and serve, in the manner set forth in this order, a prehearing statement by November 23, 2011. Parties' prehearing statements: shall be limited to 15 pages, excluding exhibits; shall succinctly summarize the factual and legal issues that arise from the rulemaking proposal, and what position is being taken on each such issue and the basis for that position; shall attach copies of all exhibits to be introduced, and shall list all witnesses to be called.

9. **Alternate Proposals.** Any party may also file an alternate proposal. Alternate proposals must be filed and served by November 23, 2011. An alternate proposal must be within the scope of the notice of rulemaking filed by the Commission with the Secretary of State. An alternate proposal must include the text of the proposed rule and a proposed statement of basis and purpose.

10. **Prehearing Conference.** A prehearing conference will be held on November 29, 2011 from 9:00 a.m. to 10:30 a.m. The conference will take place at the Commission's offices at 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203. Attendance at the prehearing conference is mandatory for anyone requesting party status. Failure to participate in person will result in loss of party status, except for good cause as determined by the hearing officer. The goals of the prehearing conference include: allocating hearing time; identifying contested matters and issues to be raised at the hearing; and identifying witnesses and exhibits to be presented by the parties and the staff. The parties and the staff should make known at the prehearing conference any objections to the procedures or evidence that may be used at the hearing.

11. A second prehearing order will be prepared at the direction of the hearing officer based upon the prehearing conference. The order will specify the order of presentations and the time allotted for such presentations, including a time limit for public comment. The order will also specify any procedural rulings made by the hearing officer. The hearing officer may also make procedural decisions, outside the prehearing conference, reflected in an order.

12. **Rulemaking Hearing.** On December 5, 2011, the Commission will commence the rulemaking hearing. During this portion of the hearing, the Commission will accept party and staff testimony and public comment, admit exhibits, and conduct deliberations concerning the proposed regulations. The rulemaking hearing may be continued as necessary.

13. **Order of Presentation.** Subject to the terms of the prehearing order, the rulemaking hearing generally will involve:

- a. Opening the hearing and disposing of any procedural issues not resolved by the hearing officer, e.g., prehearing motions, remaining party status issues, late filings. The Commission at this time should entertain whether any apparent, potential, or actual conflicts of interest exist.
- b. Presentation by the staff describing the background and basis for the proposed regulations or other matters specified in the prehearing order, or presentation of comments that are offered as staff for the benefit of the Commission, in the discretion of the Commission.
- c. Entertain public comment on the proposed regulations.
- d. Presentations by parties as specified in the prehearing order.
- e. Rebuttal or closing statements as may be provided for in the discretion of the Commission.

14. **Witness Presentations.** The Commission encourages the general public and party witnesses to make plain, brief and simple statements of their positions.

15. **Role of the Commission Staff.** The Commission staff shall act as staff to the Commission in any rulemaking hearing, and is not a formal party. In fulfilling its role as staff, the Commission staff may, among other things, present evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, and make recommendations to the Commission.

16. **Cross Examination and Objections.** Where the Commission allows participation as a party, a party may make objections, and all witnesses shall be subject to cross examination by or on behalf of persons who have party status, the Commission, and the Commission staff and counsel. Any witnesses whose oral and/or written testimony a party wishes to have as part of the record shall be available for cross examination at the rulemaking hearing. Cross examination time will be deducted from a party's total time allotment for presentation of its positions. Cross examination should be utilized in a limited manner as it is not an effective mechanism for presenting information to the Commission. The presiding Commissioner may also limit cross examination to promote an efficient and focused hearing.

IN THE NAME OF THE STATE OF
COLORADO OIL AND GAS CONSERVATION
COMMISSION OF THE STATE OF
COLORADO

By  _____
Peter J. Gowen, Acting Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
October 25, 2011
303-894-2100