

## Singh, Angela K (DOA)

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**From:** Colombie, Jody J (DOA)  
**Sent:** Friday, January 10, 2014 11:19 AM  
**To:** Singh, Angela K (DOA)  
**Subject:** Fwd: Halliburton's comments on AOGCC's proposed hydraulic fracturing regulations  
**Attachments:** image001.jpg; ATT00001.htm; Halliburton 1-10-2014 Comments.pdf; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Cutler, Louisiana W." <[louisiana.cutler@klgates.com](mailto:louisiana.cutler@klgates.com)>  
**Date:** January 10, 2014 at 10:33:50 AM AKST  
**To:** "[jody.colombie@alaska.gov](mailto:jody.colombie@alaska.gov)" <[jody.colombie@alaska.gov](mailto:jody.colombie@alaska.gov)>, "Fisher, Samantha J (DOA) ([samantha.fisher@alaska.gov](mailto:samantha.fisher@alaska.gov))" <[samantha.carlisle@alaska.gov](mailto:samantha.carlisle@alaska.gov)>  
**Cc:** "Parsi, John" <[John.Parsi@klgates.com](mailto:John.Parsi@klgates.com)>  
**Subject:** Halliburton's comments on AOGCC's proposed hydraulic fracturing regulations

Please find attached Halliburton's comments on proposed regulations published by the AOGCC on November 4, 2014.

Thanks.

Louann



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January 10, 2014

Louisiana W. Cutler  
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**Via E-Docket**

Commissioner Cathy Foerster, Chair  
Commissioner John Norman  
Commissioner Dan Seamount  
Alaska Oil and Gas Conservation Commission  
333 West 7th Avenue Suite 100  
Anchorage, Alaska 99501

Re: *Halliburton's written comments on proposed changes to Title 20, Chapter 25 of the Alaska Administrative Code (hydraulic fracturing) issued November 4, 2014*

Dear Commissioners:

Halliburton appreciates the recognition in the above referenced draft regulations that some of the information that is requested to be filed with the Commission constitutes trade secrets. We further appreciate the recognition that filing parties may file such information separately with the Commission. See proposed 20 AAC 25.283(k).

We have one further suggestion for the language of the proposed regulations. We respectfully request that the Commission reconsider its decision not to include the trade secret definition that we previously requested. That definition would read:

(74) "Trade Secret" means any formula, pattern, device, or compilation of information that is used in a person's business, and that gives the person an opportunity to obtain an advantage over competitors. The six factors considered in determining whether information qualifies as a trade secret, in accordance with the definition of "trade secret" in the Restatement of Torts, Comment B to Section 757 (1939), as discussed in *Powercorp Alaska, LLC v. Alaska Energy Authority*, 209 P.3d 1173 (Alaska 2012) include:

(A) the extent to which the information is known outside of the company;

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- (B) the extent to which it is known by employees and others involved in the company's business;
- (C) the extent of measures taken by the company to guard the secrecy of the information;
- (D) the value of the information to the company and its competitors;
- (E) the amount of effort or money expended by the company in developing the information; and
- (F) the ease or difficulty with which the information could be properly acquired or duplicated by others.

The above definition is from the Restatement of Torts and Alaska case law construing what constitutes a trade secret under the Alaska Uniform Trade Secrets Act. We continue to believe that it is necessary to expressly provide for a definition of "trade secret" in AOGCC's regulations because the Alaska Uniform Trade Secrets Act does not apply directly to AOGCC.

Further, we suggest that after final regulations have been adopted, Commission staff consider the procedures that will be followed to address any Public Records Act ("PRA") requests that the Commission receives for information filed under proposed 20 AAC 25.283(k). We would welcome the opportunity to meet with the Commission and/or staff to develop the procedures. For example, as you know, AOGCC has ten working days to respond to a PRA request unless one of the criteria provided for in 2 AAC 96.325(d) or (e) are met for a ten working day extension or the requester agrees to a longer extension under 2 AAC 96.325(g). To meet the regulatory deadline, it would be prudent to have a protocol in place for filing parties to assist the Commission in responding to a PRA request. It will be imperative that the Commission request the privilege log called for in proposed 20 AAC 25.283(k) from the filing party as soon as possible after receiving the request. Additionally, it would be helpful if the filing party has an understanding of what information should be provided in the privilege log. We are unaware of any Alaska statutes, regulations, or case law which specifically address the information that should be contained in such a privilege log in the PRA context. We will therefore look to Alaska R. Civ. Proc. 26(b)(5) for guidance:

*(5) Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged

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or protected, will enable other parties to assess the applicability of the privilege or protection.

Knowing in advance what the expectations are for the privilege log process will facilitate prompt responses to any PRA requests and will ultimately benefit the Commission and the requester, as well as the filing party. There will likely be other procedural issues that will arise as well -- particularly if an appeal is filed in Superior Court as contemplated in proposed 20 AAC 25.283(k) -- and addressing them in advance would benefit all parties.

We look forward to working with the Commission to implement the regulations.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Louisiana W. Cutler".

Louisiana W. Cutler  
Alaska Bar No. 9106028