

Singh, Angela K (DOA)

From: Colombie, Jody J (DOA)
Sent: Friday, April 05, 2013 9:21 AM
To: Singh, Angela K (DOA)
Subject: FW: AOGA's 4/4 Statement on the Record
Attachments: AOGA Testimony re AOGCC Hyd Frac Regs 04 04 13.pdf

From: Nikki Martin [<mailto:martin@aoga.org>]
Sent: Friday, April 05, 2013 9:01 AM
To: Colombie, Jody J (DOA)
Cc: Kara Moriarty
Subject: AOGA's 4/4 Statement on the Record

Hi Jody,

Please find attached a copy of Kara's testimony from yesterday's hearing. Please let me know if you have any questions. Thank you!

Nikki C. Martin

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ALASKA OIL AND GAS ASSOCIATION STATEMENT ON AOGCC'S PROPOSED HYDRAULIC FRACTURING REGULATIONS

April 4, 2013

Good Morning. For the record, my name is Kara Moriarty and I am the Executive Director of the Alaska Oil and Gas Association, commonly referred to as "AOGA". On behalf of the 15 members of AOGA, who account for the majority of oil and gas exploration, development, production, transportation and refining of oil and gas onshore and offshore in Alaska, I appreciate the opportunity to offer testimony on AOGCC's proposed regulation of hydraulic fracturing in revisions to 20 AAC 25.005 and 20 AAC 25.990 and the addition of proposed section 20 AAC 25.283. AOGA's members are supportive of hydraulic fracturing chemical disclosure and the increased transparency it will provide to Alaskans. And, thank you for extending the comment period from the original notice. We appreciated the extra time to fully review these draft regulations.

AOGA would like to take this opportunity to recognize the Commission's exemplary oversight of oil and natural gas production activities in Alaska. Under the Commission's record, hydraulic fracturing has been safely conducted to increase and enhance production of Alaska's oil and gas resources for decades without a single known incidence of freshwater contamination. As the Commission reported just under two years ago, "[i]n over fifty years of oil and gas production, Alaska has yet to suffer a single documented instance of subsurface damage to an underground source of drinking water."^{*}

With current regulations, our Cook Inlet and North Slope operators are already held to stringent well construction and mechanical integrity requirements designed to prevent contamination of fresh water.[†] In the past, the Commission has recognized that these "mechanical integrity requirements are

^{*} Alaska Oil and Gas Conservation Commission, Hydraulic Fracturing White Paper (April 6, 2011).

[†] See, e.g., 20 AAC 25.030 (a)(6), (b)(1) & (3), and (c)(3).

the primary means for protecting drinking water”^{*} and that current well construction standards “properly protect fresh drinking waters” in Alaska.[†] Current regulations also allow the Commission to require cement-bond logs to ensure sufficient cement surface casing. With over one-thousand wells hydraulically fractured in Alaska without incident, it is evident that the Commission’s current permitting regulations for the construction and design of all wells is, and continues to be, effective.

Let me reiterate AOGA’s support for the development and careful consideration of practical regulations that address public concerns while maintaining safe and reliable operations of Alaska’s oil and gas resources, that are used for the benefit of all Alaskans. As you know, we have submitted detailed written comments and suggested red-line revisions for your consideration that ensure public concerns are addressed with reasonable and effective regulation of hydraulic fracturing.

The Commission’s proposed regulations are the latest in a progression of various states’ efforts to address public concerns regarding hydraulic fracturing within their borders. There are significant differences between the proposed regulations before us today and those of the states who have adopted or proposed chemical disclosure regulations to date. By way of example, the State of California has also recently released draft hydraulic fracturing regulations. Both Alaska and California’s proposed regulations contain well construction and mechanical integrity requirements. The Commission’s proposed regulations differentiate from California and other states in that:

- Alaska would require pre-approval before conducting hydraulic fracturing activities;
- Alaska would require a more substantial preliminary investigation into other wells in the area and groundwater monitoring before and after hydraulic fracturing operations;
- Alaska would require direct notification to nearby land owners and well operators, including certification that a full copy of the application has been provided to owners and operators within one-quarter mile; and
- Alaska would provide no trade secret protection for proprietary information.

In my testimony today, I will highlight several of these differences and offer suggestions to make Alaska regulations consistent with many other states where my member companies operate.

* *Id.*

† Statement of AOGCC Commissioner Cathy Foerster, Interstate Oil & Gas Compact Commission, Regulatory Statements on Hydraulic Fracturing (June 2009).

Application & Pre-Approval Process

AOGA supports chemical disclosure and reasonable reporting requirements for hydraulic fracturing operations, but we believe the application for approval process outlined in 20 AAC 25.005 and 20 AAC 25.283(a) will result in unnecessary delay, potentially strain AOGCC staff resources, and in many instances, require information that is either premature or duplicative, and at an unnecessary level of detail.

For example, in subsection (a)(14), the Commission requests operators submit volumes and concentrations of chemical ingredients and additives that may be yet undetermined prior to the start of a hydraulic fracturing operation and subject to change during the course of the operation. As the Commission has observed in its own “white paper” on hydraulic fracturing from 2011, requiring this information in an application prior to hydraulic fracturing is premature because, and I quote: “Completion interval thickness, permeability and other characteristics that determine required fluid volumes generally are not known before the well is drilled.”^{*} Successful and safe hydraulic fracturing operations often require the operator’s ability to modify the hydraulic fracturing plan and to substitute fluids and agents once hydraulic fracturing begins. A post-fracturing report included in Form 10-404 details the actual characteristics of the job, including fluid volumes generally not known before the well is drilled.

In addition, the detailed casing and cementing information required of proposed sections 20 AAC 25.283(a)(6) and (7) is already provided or available to the Commission under current regulations under 20 AAC 25.030. Every operator is also currently required to install pressure measurement devices on every well and monitor those devices daily, making the proposed requirements in subsection (a)(9) unnecessarily duplicative.

AOGA’s members are also concerned that the volume of detailed applications required of the proposed regulations may overwhelm AOGCC staff, causing further delays to resource development projects critical to Alaska’s economic and energy needs. In addition to operations on the North Slope, hydraulic fracturing has also treated a variety of natural gas producing wells in the Cook Inlet basin for years. As with other petroleum producing areas in Alaska, previous Cook Inlet operators have

^{*} *Id.*

experienced great success using hydraulic fracturing operations safely. These operations have been used to increase production of natural gas in numerous wells supplying South Central natural gas utilities with no adverse impacts to groundwater.

Current plans for maintaining and increasing the natural gas supply to South Central Alaska involve operations in the Cook Inlet covered by these proposed regulations. It is imperative that AOGCC's proposed rulemaking results in regulations that- as the current administration has been stressing- are timely, efficient, and that provide certainty to the exploration and development of South Central Alaska's gas supply. In our red-line revisions submitted with our written comments, we suggest that many of the provisions of subsection (a) could be codified as rules or reporting requirements rather than required in an application for Commission approval prior to hydraulic fracturing. We respectfully request the Commission only implement regulations compatible with the high level of activity required to meet Cook Inlet natural gas supplies at a time when this production is critical.

We strongly urge the Commission to reconsider the additional application and pre-approval process for hydraulic fracturing operations. If after the Commission's careful consideration, the final promulgation of these regulations are adopted as drafted, we respectfully request an exception for hydraulic fracturing operations where there is no freshwater aquifer present within one-quarter mile or 1,000 vertical feet of the proposed wellbore trajectory, or as identified by the Commission as Freshwater Aquifer Exemption in 20 AAC 25.440.* An exception for these operations, where there is no threat to drinking or freshwater, would not defeat the Commission's purpose to provide disclosure in areas where contamination of freshwater might be a public concern. As the Commission has previously stated, there is no freshwater or drinking water present in the North Slope where the majority of hydraulic fracturing operations occur and, therefore, "freshwater is not a concern."*

Notice to Well Owners & Well Testing Requirements

AOGA supports providing notice of operations to landowners and surface owners within one-quarter mile of proposed hydraulic fracturing operations. Notice of the intended operations to the owners listed and a general description should, however, be sufficient to meet this requirement. Currently, the application required as proposed in 20 AAC 25.283 would be quite voluminous and technical in nature, likely including confidential geologic information. The public should be able to rely

* See, e.g., EPA's Aquifer exemptions for Class II injection activities, 40 CFR 147.102.

upon the Commission's expertise to regulate wellbore integrity and provide appropriate oversight that operators should not be required to submit details to a surface owner. The complete application could be made available to an interested landowner or surface owner by the Commission upon request. In addition, we request that the Commission adopt language clarifying that the operator must make good faith efforts to identify any water wells or freshwater present in the defined project area relying on publicly available records and notice to neighboring surface owners. Currently, Alaska does not have a database accessible that easily identifies all freshwater aquifers.

AOGA's members request the removal of the requirement to sample water wells within one-quarter mile of a hydraulic fracturing operation. Sampling of private water wells is impractical; it will pose unnecessary logistical, administrative and legal hurdles, including seeking the consent and cooperation of the private well owner. Many states with new hydraulic fracturing regulations[†] have decided not to require water sampling of personal drinking wells in regulation for these reasons.

Each test can add an awkward logistics problem in Alaska. For example, at times, it is difficult to fit large coolers of multiple 1L bottles of acidified water in air cargo on small planes and keep the samples from freezing. Several of the metals listed are complicated and expensive to test for and I understand that some chemical components listed in the Commission's proposed regulations may not even be used in fracturing operations.[‡]

While it may be costly, the problem with the well sampling requirements as written is in the indefinite amount of time that a well's production could be delayed while obtaining permission of each landowner or well required, in addition to the delay in turnaround and testing of the well samples. Analytica Group estimates that the holding time for the tests requested in the Commission's proposed regulations are in the 7 day or longer category. Often water sampling laboratories are not nearby to Alaska oil wells; as Analytica Group indicated in its response to the Commission's inquiry, some tests would need to be shipped to a lab in Colorado or sub-contracted to other approved laboratories,[§] likely causing additional delay.

* AOGCC 2011 White Paper on Hydraulic Fracturing.

† i.e., Texas

‡ For example, with the exception of calcium, barium, and possibly cadmium, none of the other metals listed in (a)(5) are used in hydraulic fracturing.

§ See Email from Chris Wallace, Sr. Petroleum Engineer, AOGCC, to Elizabeth Rensch, Business Development Manager, Analytica Group, dated January 23, 2013.

If the water sampling requirement stands, we respectfully suggest the Commission replace subsection (a)(5) with our suggested revised language that limits the number of water wells sampled in an area, before and after treatment, to no greater than four, removes some sampling requirements, and includes a liability provision regarding the use of sampling results. In addition, the suggested provision should be added to address and provide a waiver in a situation where access to test a private well is not granted by the well owner.

Chemical Disclosure & Reporting Requirements

The statute authorizing the Commission to regulate hydraulic fracturing proscribes that the Commission regulate hydraulic fracturing “to ensure protection of drinking water quality.”⁵ Throughout the Commission’s proposed regulations, information is required to be reported by stage, interval, or by well. If the overall objective of the Commission is, as we understand and support, public disclosure to alleviate any concerns relating to drinking water or fresh water contamination, the onerous nature of reporting stage by stage, or well by well, we do not believe this level of reporting will add anything to this objective and is unnecessary. We suggest and respectfully request that reporting and disclosure be instead required for each hydraulic fracturing treatment or for each pool, resulting in a more efficient and streamlined reporting process while maintaining the integrity of protecting drinking water quality.

Through the Commission’s efforts, we will have the opportunity to provide Alaskans information regarding hydraulic fracturing operations that will help dispel any misconceptions or false impressions regarding the safety and chemical makeup of materials used in hydraulic fracturing. Many of our members already voluntarily supply this information on the chemical disclosure registry, FracFocus, and we support the disclosure and reporting of materials pumped during hydraulic fracturing operations on this registry. However, to continue to foster technological advances in hydraulic fracturing- as in any other industry- innovators must have protection for the trade secrets they develop.

To use a well-known example, Coca-Cola Company has famously and successfully kept its formula for the world’s most popular soft drink a jealously guarded “trade secret” since its creation 125 years ago. Simply put, a trade secret is defined as any valuable business information that is not generally known and is subject to reasonable efforts to preserve confidentiality. The Coca-Cola secret

* AS 31.05.030(j)(2)(A)

formula easily qualifies as valuable business information, with the value being derived from the fact that it is secret. As with any trade secret, however, the Coca-Cola secret formula can only be a trade secret for so long as it is actually secret. For this reason, Coca-Cola Company hides its “secret formula” in a high-security vault in Atlanta and only 2 people at any given time are supposed to know the secret formula—which may or may not include coriander, nutmeg, orange and lemon oils. The revelation of this recipe—worth many billions of dollars—would be disastrous.

We understand that many in the public are concerned, and will likely testify today, regarding the health and safety of hydraulic fracturing chemicals. It is important to note that technological advancements in hydraulic fracturing have not only significantly increased and enhanced production, but have made it more environmentally sound, reducing water use as well as the use of biocides and chemicals. The technology that has made hydraulic fracturing more efficient and environmentally sound is the same technology these innovators are looking to protect. And just like Coca-Cola, our members’ service providers must protect this technology in order to retain its value. These technologies are highly proprietary and the result of years of expensive research and development efforts. Waiving intellectual property rights to these technologies in the Alaskan market may jeopardize the value of the rights globally, which means many suppliers may simply elect to withhold new products and best practices from the Alaskan market.

AOGA’s members have substantiated concerns that any requirement to force disclosure of this proprietary information, including product formulations, will create a disincentive for the service providers’ development and the best use of the best technologies in our state. For this reason, we suggest the required disclosure of concentrations and types of material pumped be consistent with the disclosures routinely submitted on FracFocus, and not require disclosure that would compromise proprietary information or otherwise expose trade secrets. Health, safety and environmental concerns can still be addressed without jeopardizing this information, just as Coca-Cola must disclose ingredients that may affect my health- including the nutritional information printed on the side of the soda can.

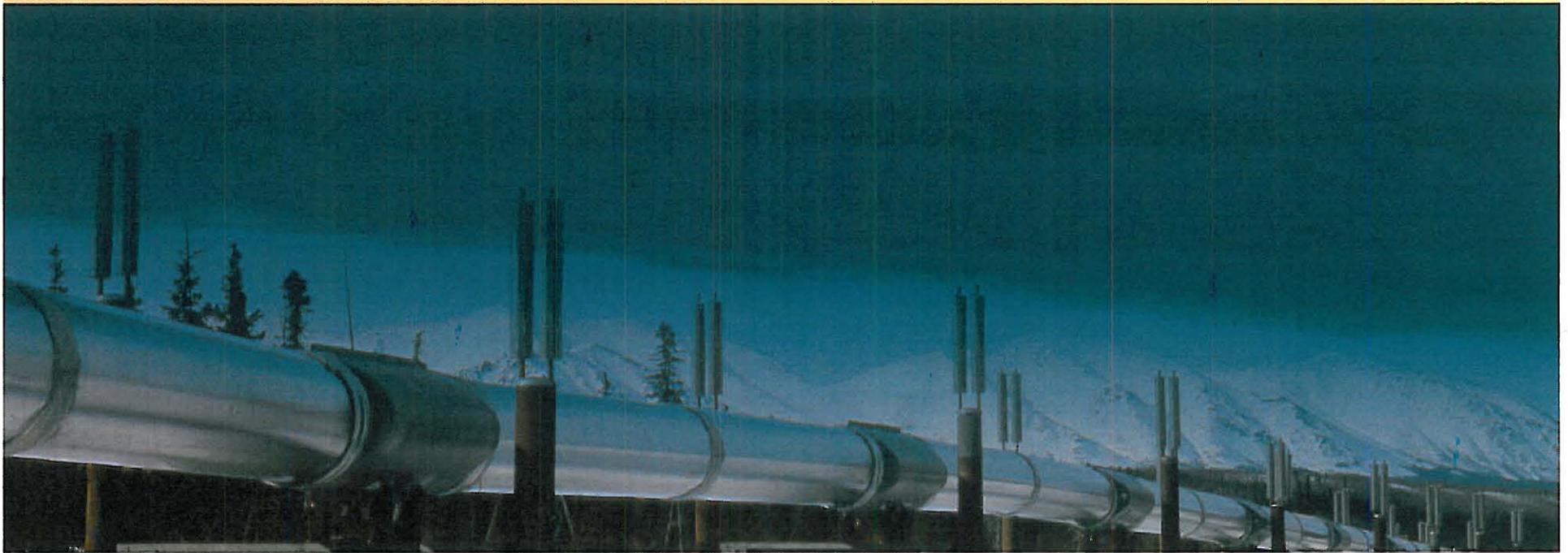
Accordingly, AOGA supports the full disclosure of trade secrets in the event of a health care emergency and as necessary for the Commission’s proper investigation of waste or spills. Currently, federal law requires Material Safety Data Sheets (MSDSs) to be available on location. These sheets list every chemical used in the hydraulic fracturing process and must be disclosed to the Commission if requested upon receipt of a written statement of medical need, or in the event of medical emergency, to a

health professional. We support the Commission's adoption of a similar provision as suggested in subsection (L) of our red-line revisions.

The requirements and processes for claiming trade secret protection should be clear and provide procedural certainty. The language suggested in enclosed subsections (l) and (m) require disclosure of such information to health care providers and emergency responders, as needed, in the event of a medical emergency. In addition, AOGA requests the adoption of subsections (n) and (o) providing for the disclosure of proprietary information to the Commission in order to investigate waste under AS 31.05.030 or a release under 20 AAC 25.205, and as necessary to enable the Alaska Department of Environmental Conservation to respond to a release.

In addition, we understand that unlike other state regulations regarding hydraulic fracturing, this Commission intends to only put the operator "on the hook" for the disclosure and reporting of its hydraulic fracturing operations, and AOGA is supportive of this notion. However, we do respectfully request the addition of subsection (j) requiring service providers and vendors furnish operators with the information required to be submitted pursuant to 20 AAC 25.283(h)(2). In addition, we request subsection (k) identifying disclosures not required, including chemicals not disclosed to the operator by the manufacturer, vendor, or service provider..

Thank you again for the opportunity to provide testimony today. Because of the high level of public interest in these proposed regulations and their potential impact on stakeholders, we respectfully request that as the Commission proceeds with this rulemaking, the Commission allow an additional public notice and comment period on any proposed revisions. We look forward to working with the Commission to develop final regulations that are reasonable and serve to assuage any future public concern without imposing unnecessary or duplicative restrictions and straining Commission resources.



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OIL & GAS:
FUELING
ALASKA'S
ECONOMY

AOGCC Proposed
Regulations regarding
Hydraulic Fracturing

April 4, 2013

Kara Moriarty, Executive Director

AOGA Member Companies

PIONEER
NATURAL RESOURCES ALASKA



Apache



Hilcorp Alaska, LLC

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TESORO



petroleum



FLINT HILL
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Alaska

Alyeska pipeline
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Hydraulic Fracturing in Alaska Is Conducted Safely

“In over fifty years of oil and gas production, Alaska has yet to suffer a single documented instance of subsurface damage to an underground source of drinking water.”

– AOGCC Hydraulic Fracturing White Paper, April 6, 2011

Hydraulic Fracturing in Alaska Is Conducted Safely

“Mechanical integrity requirements are the primary means for protecting drinking water.”

– AOGCC Hydraulic Fracturing White Paper, April 6, 2011

“Current well construction standards used in Alaska properly protect fresh drinking waters.”

– Statement of AOGCC Commissioner Cathy Foerster, Interstate Oil & Gas Compact Commission, Regulatory Statements on Hydraulic Fracturing, June 2009

Hydraulic Fracturing in Alaska Is Conducted Safely

AOGA supports practical regulations that address public concerns while maintaining safe and reliable operations of Alaska's oil and gas resources.

California Proposed Rule vs. Alaska Proposed Rule

AOGCC Proposed Regulations differ from California in that:

- Alaska would require pre-approval before conducting hydraulic fracturing activities;
- Alaska would require a more substantial preliminary investigation into other wells in the area and groundwater monitoring before and after hydraulic fracturing;
- Alaska would require direct notification to land owners and well operators, including certification that a full copy of the application has been provided to owners and operators within one-quarter mile; and
- Alaska would provide no trade secret protection.

Application and Pre-Approval Process

- *AOGA supports chemical disclosure and reasonable reporting requirements, but pre-approval will:*
 - result in unnecessary delay
 - potentially strain AOGCC staff resources
 - require premature & duplicative information
 - require an unnecessary level of detail

Application and Pre-Approval Process

- *AOGA requests regulations that are timely, efficient, and provide certainty to the development of Southcentral Alaska's gas supply*
- Hydraulic fracturing has increased production of natural gas in numerous wells supplying Southcentral natural gas utilities with no adverse impact to groundwater
- Current plans for maintaining and increasing natural gas supply to Southcentral include hydraulic fracturing operations in the Cook Inlet
- It is imperative regulations are compatible with the high level of activity required to meet Cook Inlet natural gas demands at a time when this production is critical

Application and Pre-Approval Process

- *AOGA requests an exception for hydraulic fracturing operations in areas:*

- 1) with no freshwater aquifers within ¼ mile or 1,000 vertical ft., or
- 2) located in a Freshwater Aquifer pursuant to 20 AAC 25.440.

“On the North Slope, Alaska’s most prolific oil and gas province, freshwater is not a concern.”

— AOGCC Hydraulic Fracturing White Paper, April 6, 2011

Notice to Well Owners & Well Testing Requirements

- *AOGA supports providing notice of operations to landowners and surface owners within ¼ mile.*
 - Notice of the intended operations only
 - Complete application could be made available upon request
 - Operator required to make good faith efforts to identify any water wells or freshwater present in the project area

Notice to Well Owners & Well Testing Requirements

- *AOGA requests the removal of water sampling requirements because:*
 - Sampling is impractical and poses unnecessary logistical, administrative and legal hurdles
 - Water sampling laboratories are not nearby
 - Could result in additional project delay

Chemical Disclosure & Reporting Requirements

- *AOGA supports reporting and disclosure for each hydraulic fracturing treatment or each pool instead of stage-by-stage or well-by-well*
- *AOGA supports hydraulic fracturing chemical disclosure and the increased transparency it will provide to Alaskans*
- *However, innovators must have protection for trade secrets to foster technological advances in hydraulic fracturing*

Chemical Disclosure & Reporting Requirements



- *Coca-Cola formula guarded for over 125 years as a “trade secret”*

- *Its value is derived from the fact that it is a “secret”*
- *AOGA supports disclosure consistent with FracFocus, providing for the protection of trade secrets*
- *Health, safety, and environmental concerns can still be addressed*
- *AOGA supports disclosure in the event of health care emergency, waste, or spill*

Hydraulic Fracturing in Alaska Is Conducted Safely

AOGA supports practical regulations that address public concerns while maintaining safe and reliable operations of Alaska's oil and gas resources.