

Singh, Angela K (DOA)

From: Colombie, Jody J (DOA)
Sent: Thursday, April 18, 2013 3:11 PM
To: Singh, Angela K (DOA)
Subject: FW: AOGA Supplemental Comments on Proposed AOGCC Hydraulic Fracturing Regulations
Attachments: AOGA Supplemental Comments on Proposed Hydraulic Fracturing Regs 04 18 12.pdf

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From: Kara Moriarty [<mailto:moriarty@aoga.org>]
Sent: Thursday, April 18, 2013 3:10 PM
To: Colombie, Jody J (DOA)
Cc: Seamount, Dan T (DOA); Norman, John K (DOA); Foerster, Catherine P (DOA)
Subject: AOGA Supplemental Comments on Proposed AOGCC Hydraulic Fracturing Regulations

Jody:

Please find AOGA's supplemental comments to AOGCC's proposed hydraulic fracturing regulations.
If you have any questions, please let me know.

Thank you,
Kara

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Email: moriarty@aoga.org
Kara Moriarty, Executive Director

April 18, 2013

Commissioner Cathy P. Foerster, Chair
Alaska Oil & Gas Conservation Commission
333 W. 7th Avenue, Suite 100
Anchorage, AK 99501
Submitted by E-Mail to: jody.colombie@alaska.gov

Re: Supplemental Comments on Proposed
Revisions to 20 AAC 25.005, 20 AAC 25.280,
20 AAC 25.990 and proposed addition of 20 AAC
25.283 – Regulation of Hydraulic Fracturing
Operations

Dear Commissioner Foerster:

Thank you for the opportunity to supplement our comments on the Alaska Oil and Gas Conservation Commission's ("AOGCC" or "Commission") proposed regulation of hydraulic fracturing in revisions to 20 AAC 25.005—20 AAC 25.990 and the addition of 20 AAC 25.283. The 15 members of the Alaska Oil and Gas Association ("AOGA") account for the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in Alaska. As our testimony at the April 4th public hearing indicated, AOGA's members are supportive of reasonable hydraulic fracturing chemical disclosure and the increased transparency it will provide to Alaskans. During the hearing, the Commission and others offering testimony had questions or comments relating to several issues we raised in our comments, including the proposed pre-approval and application process, water well sampling requirements, the applicability of the requested exception for operations not located in or near freshwater, and current methods of reporting to FracFocus. We appreciate the opportunity to clarify our position with these supplemental comments.

1. Proposed Application and Approval Process

AOGA supports the chemical disclosure and reporting requirements for hydraulic fracturing operations, but we continue to believe that the application for approval process outlined in the proposed regulations will result in unnecessary delay and in many instances, require information that is either premature or duplicative, and at an unnecessary level of detail. In our red-line

revisions previously submitted, we have suggested that many of the provisions in proposed 20 AAC 25.283(a) could be codified as rules or requirements rather than required in an application for Commission approval that might cause further delays to resource development projects critical to Alaska's economic and energy needs. During the April 1 public hearing, however, the Commission referred to the proposed application process as "no more than a staple" to the hydraulic fracturing models operators already supply the Commission. We disagree with this assertion, and we strongly urge the Commission to reconsider the application and approval process.

As we have previously commented, some hydraulic fracturing operations do not require an Application for Sundry Approval (form 10-403) because those Conservation Orders which reference the "Sundry Matrix" specifically allow hydraulic fracturing to be undertaken without a Sundry Application.¹ For those operations that fall under the Sundry Matrix, all the information required in a Sundry application by the proposed regulations is incremental to the information normally submitted.

For some new wells, AOGCC has stipulated the submittal of a Sundry application for hydraulic fracturing treatments in approved Permits to Drill; however, there has not been a set list or clear indication of information required in the application. At most, applications submitted pursuant to the stipulations have included a summary of the planned work, an assessment of cement bonding of the production casing, tube and annulus pressure test data, detailed fracturing treatment procedures, and tubing movement calculations. While this included information corresponds to the application requirements the Commission proposes in 20 AAC 25.283 (a)(7), (8), and (14), it has been historically presented in much less detail than required of these proposed sections. Moreover, the additional requirements in 20 AAC 25.283(a)(1) through (a)(6), (a)(9), (a)(10) – (a)(13), and (a)(15) are above and beyond the information AOGCC has previously required in stipulations to drill permits.

With the exception of the affidavit requirements in subsection (a)(1), most of the additional information cited in the proposed regulations will not be difficult to generate in areas where there are no freshwater aquifers or wells present. However, it will take significantly more time to gather, prepare and format the information from various sources for each required item in the Sundry application. Individual items are not normally generated in a consistent format that would be appropriate for submittal to the Commission. For example, the verification of the various pressure ratings of the wellbore, wellhead, and BOPE components is commonly tabulated in an engineer's spreadsheet and is not currently formatted to easily transmit or communicate the detailed results to AOGCC. Our members are concerned that the processing of the applications with this level of detail will also result in unnecessary delays resulting in rig down time.

In addition, AOGA remains concerned about the additional burden on operations in the Cook Inlet which are critical to maintaining and increasing the natural gas supply to South Central

¹ See, e.g., C.O. 556, "Wellwork Operations and Sundry Notice/Reporting Requirements for Pools Subject to Sundry Waiver Rules," dated July 15, 2005.

Alaska. It is imperative that AOGCC's proposed rulemaking results in regulations that are timely, efficient, and that provide certainty to the process for the exploration and development of South Central Alaska's gas supply. The Commission's timely processing of applications is crucial to maintaining project schedules. For this reason, AOGA requests AOGCC consider regulations that allow a project schedule feasible to obtain timely approval for hydraulic fracturing operations in areas where freshwater is present, including defined timelines for water sampling and public notification schedules, as described more thoroughly below.

2. Proposed Water Sampling and Notification Requirements

In wells that are near freshwater sources, AOGA supports providing notice of operations to landowners and surface owners within one-quarter mile of the trajectory of the well with the planned hydraulic fracturing operations. In testimony and comments previously submitted, however, we have emphasized the cost, legal and logistical challenges associated with water well sampling, and we still believe those challenges are a valid concern. The possibility for landowners or surface owners to deny or delay access to water wells by withholding their consent and cooperation under the proposed regulations is of particular concern to our members. The well sampling requirement will also likely cause additional delay where operators intend to drill a new well, but cannot begin a fracturing operation until water well owners are notified and access is negotiated in order to sample water wells. Commissioner Norman inquired at the hearing whether the pre-fracture and follow-up well sampling requirements in the proposed regulations would be beneficial to protect operators from later contamination allegations from land or surface owners. We do not believe water sampling of all water wells near wells to be hydraulically fractured, as proposed by the Commission, will be efficient to achieve this end.

For this reason, we continue to request the requirement for well sampling in subsection (a)(5) be removed or, alternatively, the Commission adopt our suggested revised language submitted in our previous comments for proposed subsection (a)(5) to reduce some of the logistical and legal challenges posed by the proposed regulations. Our suggested revised language provides an operator the ability to obtain a waiver in a situation where access to test a private well is not granted by the well owner. In addition, AOGA's suggested provision 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.

Alternatively, AOGA's suggested wording could be revised to require water sampling in the project area if a land or surface owner gives positive approval that they would like their water well tested, and the owner responds to requests for sampling and access within a defined time limit, as proposed below. In addition, we suggest a secondary "pool" application for zones of sampling at areas with more frequent fracturing activities.

a. Proposed notification to well owners

Under AOGA's proposed revisions to the draft regulations, land and surface owners near the treatment well in an area with a freshwater aquifer will receive notice of operations. Pursuant to proposed subsection (a)(2), notice could be provided to water well owners that (a) hold a

documented Alaska Department of Natural Resources Water Right, (b) own a water well documented in the ADNR well log tracking system, WELTS, or (c) are listed in similar public records. In order to facilitate water well sampling, this notice should include contact information so the owner of any drinking water well who is also a surface or landowner can contact the operator to arrange for sampling and well access. AOGA proposes that operators only be required, however, to complete pre-fracturing sampling on wells with owners who reply to notice of operations and provide access within well-defined deadlines in the regulations. In the notice of operations, owners could be notified of plans for sampling and should be required to reply within 14 days in order to have their well sampled, providing a defined 30 day window to allow access to the well for sampling. Requiring positive notification from the water well owner to conduct water well sampling will alleviate concerns of select Alaska water well owners who may have a well not fully entered into regulatory programs such as ADNR well log tracking and similar programs, and concerns that some owners may not wish to enter the public record as having a drinking water well.

Without these defined guidelines to provide access to wells, the requirement for pre-fracturing well sampling will likely impact the timing of the proposed hydraulic fracturing treatment and resulting production. We also continue to request that AOGCC adopt language clarifying that the operator must make good faith efforts to identify any water wells in the defined project area relying on publicly available records and notice to neighboring surface owners.

To our knowledge, there is no other state that requires full sampling of all drinking water wells within one-quarter mile of fracturing activities, and therefore, other state regulations cannot be used as a model to address the logistical and legal hurdles the proposed regulations pose. AOGA, therefore, requests that in promulgating the proposed regulations, AOGCC define and clarify:

- 1) the ownership of a water well to identify who has the authority to grant permission to proceed and provide access for well sampling;
- 2) what happens if a person renting property wants results of water well sampling, but the owner of the property does not grant permission and access; and
- 3) what happens if there is not a unanimous decision at a community water well where several homeowners draw water from one drinking water source.
- 4) how to address seasonally operated water wells in remote locations, where access is limited.

AOGA also respectfully requests that AOGCC ensure there is opportunity in the regulations for a well owner to opt out of the well sampling program and define who will have access to the sampling information. Disclosure and possible publication of pre-fracturing water well results will likely be of concern to some Alaska well owners, and especially owners concerned about arsenic concentrations in residential wells. AOGA requests these clarifications be made prior to the promulgation of final hydraulic fracturing regulations.

b. Proposed Alternative for Well Sampling by Pool

AOGA has requested in previous comments and presented testimony that reporting and disclosures, and applications for Sundry approval, be allowed on a pool basis, resulting in a more efficient and streamlined reporting process while maintaining the integrity of protecting drinking water quality. To that end, AOGA suggests that well sampling be allowed consistent with hydraulic fracturing operations by pool. In addition, owners of water wells within a pool with multiple proposed hydraulic fracturing treatments may wish to enter in to a sampling program, but not necessarily desire to have a series of “pre-fracturing” and “post fracturing” samples collected within 90 days of each and every treatment. Alternatively, a well owner might wish to have samples collected before the first treatment and after the first treatment, but only annually thereafter until hydraulic fracturing operations are complete.

Under this proposed alternative, the operator would notify each water well owner within one-quarter mile of the field/pool boundary, as proposed above. Upon receiving permission to access the well and sample from the water well owner, the operator would sample the well prior to initialization of the fracturing treatment. The operator would then again sample the well after completion of the hydraulic fracturing treatment, and continue sampling once annually until after the hydraulic fracturing operations, according to the Sundry approval, are complete.

3. Requested Exception for Operations not near Freshwater

During AOGA’s public testimony, the Commission questioned the applicability of our requested exception for operations not located near freshwater aquifers. As we have proposed in our red-line revisions in 20 AAC 25.283(a), the exception for hydraulic fracturing operations where there is no freshwater aquifer present within one-quarter mile or 1,000 vertical feet of a proposed wellbore trajectory, or is located in a Freshwater Aquifer Exemption pursuant to 20 AAC 25.440, is applicable to subsection (a) and these operations would therefore be exempt from the Application for Sundry Approval process and its requirements outlined in 20 AAC 25.283(a)(1) – (a)(15). 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. If the Commission is also concerned about the protection of correlative rights, the exception could be limited to areas more than 500 feet from the property line or boundary of the affected area of a pool. The exclusion for areas at least 500 feet from a pool’s boundary is consistent with 20 AAC 25.055(a)(1) and many pool conservation orders relating to well spacing to protect correlative rights.

As AOGCC 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.”² Consistent with current Conservation Orders and the Sundry Matrix, operations meeting the “freshwater exception” should only be required to submit a Report of Sundry Well Operations and report hydraulic fracturing chemical disclosures to FracFocus.

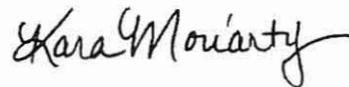
² *Supra*, n.1.

4. Reporting to FracFocus

Finally, Commissioner Norman inquired at the end of AOGA's oral testimony, whether our members report to FracFocus "by treatment" or "by stage." In previous comments, we have recommended reporting "by treatment." The term "stage," is not defined and can have several meanings in hydraulic fracturing operations: a step change in fluid properties or proppant concentration within a single interval treatment, or one of several separate interval treatments during a multi-stage treatment that initiate new fractures sequentially from different locations within the wellbore. Some operators base their FracFocus reports on the "job tickets" provided from the service provider; so sometimes, the operations reported are single interval treatments and other times, in multi-stage treatments, the job ticket will include several stages reported to FracFocus. AOGA continues to recommend reporting and disclosure by "by treatment."

Thank you again for opportunity to provide additional comment. If you have any questions, please do not hesitate to contact me. We look forward to continuing to work with the Commission on this issue.

Sincerely,



KARA MORIARTY
Executive Director

Cc: Commissioner John Norman
Commissioner Dan Seamont
Governor Sean Parnell
Commissioner Dan Sullivan