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Alaska Oil and Gas Conservation Commission
333 W. 7th Avenue, Suite 100
Anchorage, AK 99501

Re: Second Round Public Comment
Concerning Changes to Title 20, Chapter 25 of the AAC
With Regard to Hydraulic Fracturing

Dear Commissioners:

ConocoPhillips, in a letter dated April 1, 2013, previously submitted comments on the proposed hydraulic fracturing regulations. More recently, the AOGCC has issued a second public notice, with revised draft regulations, and invited additional public comment. ConocoPhillips appreciates this new opportunity to provide a second round of comments. We see some improvements in this revised draft, and we recognize that some of our initial comments were accepted by the Commission. We also see some ways in which this draft represents a step backward, and we identify those areas below. We also take this opportunity to attempt to better explain our rationale for previous comments that are not reflected in this second draft. We still see significant opportunity to improve these regulations so that they reflect the best, most reasonable standards for protecting public health and the environment without imposing undue burdens on the production of Alaska's oil and gas resources. Also, we commend the AOGCC for addressing this issue proactively.

Industry Standards

We note that the regulations do not recognize API documents HF1, HF2, HF3, Standard 65 Part 2, RP 51R, or the current draft of the API recommended practice for hydraulic fracturing. We recommend these standards to the AOGCC as reflections of well-considered, balanced standards and we would welcome their incorporation by reference. However, our comments below are based solely on the most recent draft proposed by the AOGCC.

Proposed Changes to 20 AAC 25.005, Permit to Drill, and .280, Workover Operations

The initial draft proposed to amend 20 AAC 25.005 and 20 AAC 25.280, but the second draft does not. ConocoPhillips interprets this to mean that the AOGCC has reconsidered the need to amend those regulations, and decided instead solely to adopt a new regulation at 20 AAC 25.283, and to add new definitions to 20 AAC 25.990. ConocoPhillips supports this more streamlined approach. There is no need to identify potential future fracturing operations in connection with drilling permits or workover permits. All regulatory issues can be efficiently addressed in connection with an application for approval of a fracturing operation.

Proposed New Regulation: 20 AAC 25.283. Hydraulic Fracturing.

Proposed Section 283(a).

Paragraph (1) would require an affidavit showing that landowners and others have been provided “notice of operations,” but it does not specify the information that must be provided. This is an improvement over the previous draft, which required a “complete copy” of the application. We think a further improvement would be to specify that providing a copy of the AOGCC form, without supporting documentation, would be sufficient notice.

The AOGCC did not accept our comment opposing the requirement for an affidavit in paragraph (1), and we continue to oppose this requirement as an unnecessarily rigorous form of providing information. Even so, this is something that operators can comply with.

Paragraph (1) has also been changed to apply to landowners within a ½ mile radius rather than a ¼ mile radius. This is a significant increase in the scope of application of this requirement, and it is unnecessary. This change represents a step backwards in the proposed regulations. Typical fracturing operations in Alaska result in fluids being placed up to about 327 feet from the well. Thus, the ¼ mile (1320 feet) radius is already quite conservative. Increasing the radius expands the scope of application dramatically, but does not substantially increase the likelihood of notifying potentially affected landowners. We oppose this increase in scope, and ask AOGCC to revert to the ¼ mile radius.

Our view of the radius applies also to paragraphs (2), (3), (11), (12), and (13). In some of those paragraphs, the revised draft added a ½ mile radius to a requirement that previously had no express area limitation. We support the addition of an area limitation, which provides clarity and therefore promotes compliance. But in all cases we believe a ¼ mile radius is more than sufficient, and a ½ mile radius is excessive.

We reiterate our comment that notice should be required only for landowners, surface owners, and operators who have an interest on record in the DNR recorders’ office. Otherwise, operators cannot know for sure that they have complied with the regulation. For operators to comply with the affidavit requirement, it must be clearly definable and verifiable.

Paragraphs (2) and (3) are unchanged from the original draft. We see significant risk to operations in these paragraphs because there is no authoritative database in Alaska that identifies water wells and freshwater aquifers. The only known source of information on water well locations is the Department of Natural Resource's Well Log Tracking System, but the information on this system appears to be incomplete and does not contain wells that are not registered. Unlike in other states, where government agencies have mapped out freshwater aquifers, there is no known source of information on freshwater aquifer locations throughout Alaska. Thus, this paragraph would impose on operators a duty to collect and submit information that may not be reasonably available. Also, as explained in our prior comments, the information, even if it were available, would not serve any clear purpose. ConocoPhillips recommends rejection of these paragraphs in the final rule. Alternatively, ConocoPhillips requests that this section be limited in scope to hydraulic fracturing that is proposed to occur at shallow depths. ConocoPhillips believes there may be other methods to exclude certain wells from some part of the new regulations without loss of safety whether it be a depth cutoff, vertical separation to fresh water drinking aquifers, or proximity to population.

The sampling requirement of Paragraph (5) is not expressly limited to any particular wells, and we are puzzled about why the AOGCC has elected not to limit the scope of this regulation to registered drinking water wells within a ¼ mile radius. The scope of application of this requirement should be clarified. ConocoPhillips is also concerned about how it can get access to private property in which such wells might be located, and how access or other difficulties might affect our ability to comply within the time limits imposed in the paragraph. We foresee potential problems with compliance that are beyond the control of an operator, and seek recognition in the regulations that such problems would not be held against an operator that demonstrates diligence in attempts to comply with these sampling requirements. In the absence of EPA accredited labs in Alaska, for example, we are unsure that the time frames for compliance are feasible and we believe the costs of compliance even under good circumstances may be extraordinarily high.

Paragraphs (6) and (7) have not changed from the original draft. These regulations are unduly vague about what "casing and cementing information" is required, and what "supporting information" is required for an assessment. If the commission intends to require cement bond logs for every cemented casing string, as the regulation might be construed, ConocoPhillips would strongly object. Hydraulic testing of the surface casing string, and confirming that cement has properly returned to surface, ought to be deemed adequate information for purposes of ensuring well integrity. To rectify the significant ambiguity that remains in this draft of the regulations, we strongly recommend that the Commission eliminate the phrase "including cement evaluation logs and other evaluation logs approved by the commission" from paragraph (7). Alternatively the commission could define acceptable information for surface, intermediate, and production casing and liners independently rather than grouping them into one requirement.

Paragraph (11) has been modified to include a ½ mile radius limitation. We support a limitation, but recommend that it be ¼ mile. ConocoPhillips continues to recommend that this paragraph be modified to require only information that is known or reasonably available to the operator.

The AOGCC rejected ConocoPhillips' recommendation to adopt a depth limitation, so that paragraphs (1) – (5) and (11) would apply only to hydraulic fracturing that is proposed to occur at shallow depths. We reiterate this recommendation. The concern about potential migration issues associated with hydraulic fracturing appears to be related to “unconventional” wells, which are shallower and lack the sealing interval that typically defines a conventional oil or gas well. A properly designed and implemented hydraulic fracture poses no significant threat to freshwater aquifers, but we recognize a potential public concern with fracturing at shallower depths in unconventional wells. Measures taken to address that concern, however, should not unnecessarily burden the hydraulic fracturing of deeper, conventional wells. Most hydraulic fracturing in Alaska occurs below 2,500 feet, and in fact 2,500 represents the maximum depth at which surface casing is typically set. Therefore, ConocoPhillips recommends the adoption of a 2,500 true vertical depth threshold, below which a proposed hydraulic fracture would be exempt from paragraphs (1) – (5) and (11) unless the AOGCC specifically requires the information for a particular well.

Proposed Section 283(e).

The AOGCC thus far has rejected ConocoPhillips' request to clarify subsection (e). This language is written in the passive voice and does not clearly state what an operator must do, or avoid doing, to comply with this regulation. The regulation is written as if it applies to fluids in a reservoir, rather than to an operator. We recommend that the Commission reconsider the intent behind this regulation and seek a clearer standard to adopt into regulation.

Proposed Section 283(f) and (g).

We recognize that the AOGCC accepted our comments on pressure monitoring, and we think this has improved these subsections of the regulation.

Proposed Section 283(h).

Proposed subsection (h) retains the 30-day time period, rather than the 60-day time period recommended by ConocoPhillips. We reiterate our request for a more reasonable 60-day period.

Proposed subsection (i).

If subsections (h) and (i) remain as drafted, operators will be required to submit the same information four separate ways. This is unnecessarily redundant and burdensome. We recommend subsection (i) be modified to address this excessive regulation.

Proposed subsection (j).

ConocoPhillips sees merits in the addition of subsection (j), and we support its inclusion in the final regulations. However, we do not see a discretionary variance procedure as an adequate substitute for regulations that are appropriately limited and clear in the first instance. We think the AOGCC ought to have flexibility to address unique situations, both to be more restrictive and

to be more permissive as particular facts warrant. The variance process ought not to be considered a justification for adopting unnecessarily restrictive regulations of general application.

Confidentiality

The revised draft still does not address confidentiality. If the AOGCC expects to require seismic or similar information about faults and fractures under subsection (a)(13), for example, the AOGCC should provide clear assurance that the confidentiality of such information will be protected.

Conclusion

ConocoPhillips supports the AOGCC's efforts to proactively address the regulation of hydraulic fracturing in Alaska, and we appreciate both the positive changes made in the most recent draft and the opportunity to provide additional comments. As described above and in our prior comments, we believe the regulations should be more clear and specific in many instances, and less onerous in some instances. We believe some of these requirements should apply only to shallow depths, or otherwise differentiate those cases where the risk of harm is negligible but the burden of compliance is high and current regulations have proven adequate.

Sincerely,



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