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AOGCC



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February 14, 2013

VIA FACSIMILE

Cathy P. Foerster, Chair, Commissioner
Alaska Oil and Gas Conservation Commission
333 W. 7th Avenue, Suite 100
Anchorage, AK 99501

Re: Proposed regulation changes to Title 20, Chapter 25 of the Alaska Administrative Code, specifically concerning hydraulic fracturing

Dear Commissioner Foerster:

Burleson LLP ("Burleson") appreciates the opportunity to submit the following comments for consideration by the Alaska Oil and Gas Conservation Commission (AOGCC).

On December 20, 2012, the AOGCC gave notice of the proposed adoption of regulation changes in Title 20, Chapter 25 of the Alaska Administrative Code, concerning hydraulic fracturing, specifically amending 20 AAC 25.005, 20 AAC 25.280 and 20 AAC 25.990, and adding a new section concerning hydraulic fracturing, being 20 AAC 25.283 ("Proposed Regulation"). Hydraulic fracturing operations are vital to unlocking America's oil and natural gas reserves contained in unconventional reservoirs and providing the significant economic benefits derived from such production. Burleson applauds the AOGCC's efforts to provide a comprehensive set of regulations for hydraulic fracturing, where before only a patchwork of separate rules existed. We join the AOGCC in promoting the safe exploration and production of Alaska's natural resources.

Concerning the disclosure of fluid ingredients used in hydraulic stimulation activities, the Proposed Regulation requires that well operators submit to the AOGCC:

- (1) a description of the hydraulic fracturing fluid pumped;
- (2) the chemical ingredient name and Chemical Abstracts Service (CAS) Registry number for each ingredient used;
- (3) each chemical ingredient used that is subject the Materials Safety Data Sheets (MSDS) provisions of 29 CFR 1910.1200(g) *et seq.*, as provided by the chemical supplier, service company or operator; and,

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- (4) a supplemental list of those chemical ingredients used in hydraulic fracturing that are not subject to the foregoing MSDS provisions.

The Proposed Regulation embraces the key components of effective, safety-driven disclosure regulations in other producing states. *See e.g.* 16 TEXAS ADMIN. CODE § 3.29 *et seq.* (2012) (Texas' fluid disclosure regulation); WYO. ADMIN. CODE OIL GEN. Ch. 3, § 45 *et seq.* (2012) (Wyoming's fluid disclosure regulation); and N.D. ADMIN. CODE § 43-02-03-27.1 (2012) (North Dakota's fluid disclosure regulation).

However, unlike other producing states, the Proposed Regulation offers no protection against the disclosure of trade secrets and proprietary information. Burleson understands that the AOGCC omitted such protection by design in order to cultivate a discussion on the subject of trade secrets during this public comment period, and, we are pleased to contribute to this discussion.

Shale Reserves in Alaska's North Slope Region

On February 24, 2012, The United States Geological Survey (USGS), National Oil and Gas Assessment Project, released its first study of shale-based oil and natural gas resources in Alaska's North Slope region ("*USGS Study*"). David W. Houseknecht *et al.*, *Assessment of Potential Oil and Gas Resources in Source Rocks of the Alaska North Slope, 2012: USGS Fact Sheet 2012-2013* (February 24, 2012). The *USGS Study* specifically examined the Shublik, Brookian and Kingak shale formations, with the Shublik and Brookian formations being composed of brittle rock types susceptible to fractures, and the Kingak formation being composed of mostly clay shale. *USGS Study* at 1. The North Slope's shale formations are assessed to contain the following technically recoverable resources: (a) up to 2 billion barrels of oil, equally distributed across the Shublik and Brookian formations; (b) up to 80 trillion cubic feet of natural gas, concentrated in the Shublik formation; and (c) up to 500 million barrels of natural gas liquids, concentrated in the Shublik formation. *USGS Study* at 2.

An earlier resource evaluation by the Alaska Department of Natural Resources, Division of Oil and Gas, draws particular comparisons between the Shublik formation and the prolific Bakken and Eagle Ford shale formations ("*Alaska DNR Evaluation*"). Paul L. Decker, "Source-Reservoired Oil Resources, Alaskan North Slope" at 27-32, 46 (September 15, 2011), compiled from various sources.¹ The Shublik, Bakken and Eagle Ford formations share analogous lithology (physical rock characteristics) and brittleness factors. *Alaska DNR Evaluation* at 46.

With the vast majority of the North Slope shale formations' technically recoverable reserves being contained the brittle Shublik and Brookian formations, these reserves are excellent candidates for enhanced recovery techniques including hydraulic stimulation.

¹ Mr. Decker, a petroleum geologist with the Alaska Department of Natural Resources, Division of Oil and Gas, is also credited with providing input for the *USGS Study*.

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Regional Economic and Employment Benefits Derived from Hydraulic Fracturing

Hydraulic fracturing is essential to the effective recovery of oil, natural gas and natural gas liquids in shale formations such as those found in the North Slope. Due to low permeability, shale formations generally require hydraulic fracturing in order to obtain commercial levels of production. International Energy Agency, *Golden Rules for a Golden Age of Gas: World Energy Outlook Special Report on Unconventional Gas at 22 et seq.* (November 12, 2012).

The application of safe, effective hydraulic fracturing has translated into jobs and local, regional and state dollars for the areas surrounding the Bakken and Eagle Ford shale plays. The U.S. Chamber of Commerce's 2012 *Enterprising States* study ranks North Dakota, fueled by the Bakken shale boom, first in the nation in long-term job growth, short-term job growth, gross state product growth and per capita income growth ("*U.S. Chamber Study*"). U.S. Chamber of Commerce; Praxis Strategy Group and Joel Kotkin, *Enterprising States: Policies that Produce at 69* (June 2012). North Dakota's gross state product grew by 7.1% in 2012, over 2011; compared to 2.9% growth for the United States gross domestic product. *U.S. Chamber Study* at 32. Additionally, North Dakota's State Tax Commissioner reported the collection of \$1.676 billion in oil taxes for fiscal year 2012, up 71.4% from \$977.8 million in fiscal year 2011. Cory Fong, "North Dakota Taxation: An Overview of Major State and Local Taxes in North Dakota" at 3 (January 9, 2013).

In October 2012, the University of Texas San Antonio, citing the Workforce Commission of Texas, published a workforce analysis and economic study of 14 counties with active drilling in the Eagle Ford formation, estimating that 38,000 full-time jobs; \$10.5 billion in gross regional product; \$211 million in local government revenue; and \$312 million in state revenue were directly or indirectly attributable to exploration and production in the Eagle Ford shale ("*UTSA Study*"). The University of Texas at San Antonio, Center for Community and Business Research, Institute for Economic Development, *Eagle Ford Shale Economic Impact for Counties with Active Drilling* at 6 (October 2012). By 2021, Eagle Ford shale exploration and production will be accountable for 82,600 full-time jobs; \$34 billion in gross regional product; \$888 million in local government revenue; and \$1.6 billion in state revenue. *UTSA Study* at 6.

Importance of Trade Secrets Protection for Development of Alaska's Oil and Natural Gas

For centuries, America's court systems, legislatures and regulatory agencies have adhered to the Blackstone-Locke theory of property: that individuals are entitled to the rewards of their own "labor and invention." 2 W. Blackstone Commentaries at 405, referring to J. Locke, *The Second Treatise of Civil Government*, Ch. 5 *et seq.* In Alaska, America's great bastion of individualism, the case is no different. Article I, Section 1.1 of the Alaska Constitution states that individuals have a fundamental right to "life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry..." ALASKA CONST. Art. 1, § 1.1.

Alaska has also adopted the Uniform Trade Secrets Act, with the Alaska statute defining a trade secret as property that

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(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

ALASKA STAT. §45.50.940(3) (2011).

In the case of hydraulic fracturing, the formulas and proprietary ingredients used therein constitute trade secrets under Alaska law, and under the laws of all states which have adopted the Uniform Trade Secrets Act. This is the principal reason why other producing states have enacted hydraulic fracturing regulations that protect this proprietary information, and thereby protect the investment and innovation of well operators, service companies, and ingredient manufacturers and suppliers. Alaska's adoption of regulations that omit such protections would have a chilling effect on the development of the North Slope's shale-based resources.

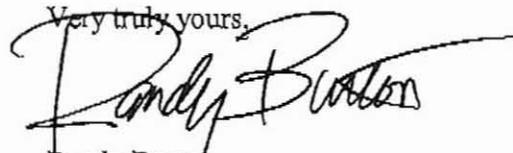
Lack of Trade Secrets Protection Inhibits Alaska's Production of Shale-based Resources

Governor John Hickenlooper (D--Colorado) recently testified before the Senate Committee on Energy and Natural Resources that he drank Halliburton's CleanStim hydraulic fracturing fluid, in order to demonstrate its safety. But perhaps a more relevant portion of his testimony concerned the ongoing protection of trade secrets in Colorado, a state with several active shale plays. Governor Hickenlooper stated why Colorado affords trade secrets protection to oil and gas producers, fracturing contractors and suppliers: "[i]f we were overly zealous in forcing them to disclose what they had created, they wouldn't bring it into our state. It was an alignment of self-interest to make sure we had a regulatory environment where they could protect their investments and their intellectual property, but at the same time be sufficiently transparent." *Opportunities and Challenges Associated with American's Natural Gas Resources: Hearing Before the S. Comm. on Energy and Natural Resources, 113th Congr. (not yet printed) (2013) (Response of Gov. John W. Hickenlooper, Colorado, to question of Sen. Al Franken, Member, S. Comm. on Energy and Natural Resources).*

As Alaska builds comprehensive regulations for hydraulic fracturing activities, we ask the AOGCC to look at the full effect of such regulations. Alaska has bountiful shale-based oil and natural gas resources capable of generating energy-centric economic and employment growth for the state. Hydraulic fracturing is the lynchpin to unlocking and recovering these resources, but, hydraulic fracturing is only practical in a regulatory environment which allows for the protection of trade secrets and proprietary information. If Alaska adopts regulations that afford no such protection, it would deviate from the path other states have successfully taken for the development of their unconventional reservoirs and likely result in keeping Alaska's shale-based resources locked underground.

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Burleson respectfully submits the foregoing for the AOGCC's consideration and would welcome the opportunity to further discuss its comments with the AOGCC.

Very truly yours,

Randy Burton