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Alaska Oil and Gas Association



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January 15, 2014

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: 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 provide the Alaska Oil and Gas Conservation Commission (“AOGCC” or “Commission”) with comments and suggestions relating to the proposed hydraulic fracturing regulations in revisions to 20 AAC 25.005—20 AAC 25.990 and the addition of 20 AAC 25.283 (“proposed regulations”). 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 previous comments and testimony have indicated, AOGA’s members remain supportive of reasonable hydraulic fracturing regulations and chemical disclosure and the increased transparency it will provide to Alaskans. Additionally, AOGA appreciates some of the revisions represented in the latest version of the proposed regulations, particularly as it relates to providing trade secret protection. However, as articulated below, AOGA urges the AOGCC to make further revisions to improve the proposed regulations.

As stated previously, AOGCC’s proposed regulations come at a time when a number of other States have begun to promulgate new regulations or modify existing regulations relating to hydraulic fracturing. The catalyst for these changes appear to be, in a large part, unsubstantiated public concerns. AOGA believes that a thorough review of relevant scientific studies and analysis should provide the AOGCC with the guidance necessary to create the proper scope and level of regulation. As a result, in addition to providing commentary relating to AOGA’s concerns as to the current version of the proposed regulations, AOGA will also take the opportunity to provide a brief discussion regarding the current status of scientific studies and analysis relating to the process of hydraulic fracturing. Absent further changes, the proposed regulations will result in substantial increases in cost to industry that would serve to merely address the misconceptions referenced

above, but would in reality, fail to provide any tangible benefits. Those increased costs could cause some wells, especially those in Cook Inlet, to be adversely affected, and thus frustrating the development of a resource that is important for overall production and vital to providing necessary natural gas for the residents of South-central Alaska. AOGA's specific concerns with AOGCC's proposed regulations echo some of its prior public comments and include issues addressed for the first time in this document.

I. Well Sampling Selection

As it pertains to the former category, AOGA would still propose the following alteration to 20 AAC 25.283(a)(4):

A plan for water sampling of up to four water wells selected by the operator to reasonably sample in various directions from available wells around and within a vertical quarter mile of the fracture initiation point and also one-quarter mile radius of the proposed wellbore trajectory is required. If there are no water wells located within a vertical quarter mile of the fracture initiation point, and one-quarter mile of the proposed well-bore trajectory, or if property owners do not grant permission for sampling, then this will be documented and submitted in the application, if an application is otherwise required.

These modifications should address the AOGCC and public concerns regarding which hydraulic fracturing operations are subject to these regulations and the manner in which operators will test the applicable wells. As noted in prior submissions and during testimony, the vast majority of fracturing operations in Alaska are conducted in reservoirs located well below any ground water aquifers. By excluding operations from the sampling requirement where the "fractures" are designed to occur more than one-quarter mile below or away from any water source, the AOGCC addresses potential public and health concerns without creating cumbersome and unnecessary burdens on industry. Ultimately, it should be the goal of the AOGCC to promulgate regulations that are narrowly tailored to its goal of protecting fresh water sources. As articulated in more detail below, fractures that occur at depths in excess of a quarter mile below or away from fresh water aquifers pose essentially no threat. Thus, it would be imprudent and unnecessarily cumbersome to attach the proposed sampling requirements to hydraulic fracture operations that occur more than one quarter mile from ground water aquifers.

II. FracFocus Reporting by Treatment

During a previous public hearing, Commissioner Norman inquired during AOGA's oral testimony, whether our members report to FracFocus "by treatment" or "by stage." In previous comments, we have recommended reporting "by treatment." Some operators may base their FracFocus reports on the "job tickets" provided from the service provider; 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 treatment" as dividing the volumes used in a treatment is arbitrary and is of no benefit.

Furthermore, AOGA reiterates that FracFocus, particularly the updated and improved second iteration, should meet the AOGCC's desire to gather and maintain the relevant information related to hydraulic fracturing operations. The AOGCC's proposed regulations appear to call for dual reporting. Having a separate and redundant State database could result in additional costs and burdens to both industry and the commission, while resulting in little, if any, additional value. FracFocus provides the State, the operator, and the public with a proven method of cataloguing hydraulic fracturing information. AOGA strongly urges the AOGCC to require reporting to FracFocus alone.

III. Surface Owner Participation

AOGA does appreciate AOGCC's alteration in the recently proposed regulations, at 20 AAC 25.283 (4)

“.... The operator shall detail the well selection process for identifying wells to sample. **If** surface owners do not grant permission for baseline sampling or disclosure of results, the operator shall document the reasonable and good faith efforts taken to secure such permission. Surface owners that deny permission for pre-fracture sampling or disclosure of results are not required to be included in post fracture water sampling as required by subsection (j).”

The idea that any surface owner can elect to not participate in the program is especially important, and this wording constitutes a crucial addition to the proposed regulations.

IV. Sampling Parameters –Methane Threshold

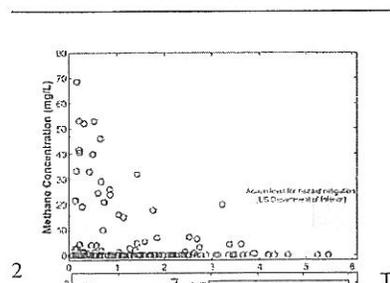
The AOGCC's proposed regulations relating to the sample parameters [20 AAC 25.283 (a)(4)] are arbitrary, as are the levels triggering notification, and as such, provide no benefit and only serve to unnecessarily alarm those who would be notified. The proposed regulations specify that a “methane concentration greater than of 1.0 mg/l” serves to trigger “gas compositional analysis and stable isotope analysis.” However, that concentration standard is within the statistical variation of methane levels in at least some natural gas producing regions even away from active gas wells. AOGA urges the AOGCC to carefully reconsider the prudence of establishing any methane action level without the appropriate study to determine background levels in the areas being regulated. The US Department of the Interior (“DOI”) in West Virginia appears to set action levels significantly higher than the 1.0 mg/l level, dictating that “[m]ethane concentrations less than 10mg/l require no action.”¹ AOGA recommends against setting such a threshold an order of magnitude lower than the DOI as a state action level. The proposed level falls within the statistical variation for an analytical method, and will inevitably lead to ongoing logistical and analytical

¹ <http://pubs.usgs.gov/fs/2006/3011/>

issues moving forward.² This issue is compounded further since a peer reviewed and Environmental Protection Agency (“EPA”) promulgated analytical method is not available that clearly defines scientific expectations and expected range of statistical variation for the analytical test.

Given those issues, AOGA urges the AOGCC to consider relevant scientific literature and studies in order to determine expected methane concentrations and the statistical variation of water sampling concentrations, and to refrain from adopting standards in the absence of the study necessary to develop specific standards. Results at the *Proceedings of the National Academy of Sciences* indicate that water sampling at residential wells not near active gas producing wells show average methane concentrations of 1.9 mg/L +/- 6.3 mg/l in the Catskill group and 1.5 mg/L +/- 3.0 in the Genesee group on samples collected in Pennsylvania and New York. In other words, methane concentrations in a typical fresh water aquifer may possess a statistical range of 0- 8.2 mg/L (1.9 +/-6.3) and this indicates an action level of 1.0 mg/L is excessively low.³

V. Sampling Parameters – EPA Approved Methods



2 The proposed methane concentration action level, 1.0 mg/L, seems to approach the statistical variation of methane analytical methods. Reviewing actual methane concentrations in this data set of 141 samples may be useful to determine the appropriate action level. These samples were all analyzed at one research quality laboratory and no EPA approved drinking water analytical method is cited or seems to be available. Page 2 does state: “Dissolved methane was detected in the drinking water of 82% of the houses sampled (115 of 141).” This indicates that a number of the data points at the bottom of this graph are likely in the range of 1.0 mg/L. Source of this graph: *Proceedings of the National Academy of Sciences*, <http://www.pnas.org/content/early/2013/06/19/1221635110.full.pdf+html>

³ Osborn et. al. as published in *Proceedings of the National Academy of Sciences*, <http://www.pnas.org/content/108/20/8172.long#F3>

Table 1. Mean values ± standard deviation of methane concentrations (as milligrams of CH₄ L⁻¹) and carbon isotope composition in methane in shallow groundwater δ¹³C-CH₄ sorted by aquifers and proximity to gas wells (active vs. nonactive) The variable *n* refers to the number of samples.

Water source, <i>n</i>	milligrams CH ₄ L ⁻¹	δ ¹³ C-CH ₄ , ‰
Nonactive Catskill, 5	1.9 ± 6.3	-52.5 ± 7.5
Active Catskill, 13	26.8 ± 30.3	-33.5 ± 3.5
Nonactive Genesee, 8	1.5 ± 3.0	-57.5 ± 9.5
Active Genesee, 1	0.3	-34.1
Active Lockhaven, 7	50.4 ± 36.1	-40.7 ± 6.7
Total active wells, 21	19.2	-37 ± 7
Total nonactive wells, 13	1.1	-54 ± 11

20 AAC 25.283 (a)(4) requires that “[c]urrent applicable EPA-approved sample custody and collection protocols and analytical methods for drinking water must be used and analyses must be performed by laboratories that maintain nationally accredited programs.” However, AOGA believes that at least four of the listed analytical tests mandated by the AOGCC cannot be reconciled with EPA approved methodology. Specifically, AOGA requests that the AOGCC collaborate with or inquire of the EPA regarding approved or promulgated drinking water methods for the following analytes: *bacteria presence* (iron related, sulfate reducing, slime forming); *radium* (measured by radium 226 and 228); *gas compositional analysis and stable isotope analysis of the methane* (carbon and hydrogen-12C, 13C, 1H, and 2H); and *Dissolved Methane, Dissolved Ethane, and Dissolved Propane*.

EPA drinking water approved methods will develop reproducible methods to determine analyte concentrations. These promulgated methods have defined levels of expected variability. For instance, an EPA promulgated method will likely state that results within 40% statistical difference are acceptable and meet the requirements of the method and quality guidelines of the laboratory. Other methods, including methods developed through research of a more academic nature may not deliver results that are reproducible and may not have withstood adequate peer review. Of further concern, regulations requiring the utilization of less established methods will frustrate attempts at consistent testing due to the lack of available testing facilities. That, in turn, might lead to samples from the same well resulting in different concentrations or testing results if a common analytical method is not approved and promulgated. AOGA urges the AOGCC not to rely on methods not fully accepted and published.

VI. Operator Notification

20 AAC 25.283 (A)(4)(a) requires that an “[o]perator must notify the commission and the surface owner within 24 hours if” one of four categories of potential contamination occurs. This particular provision raises several concerns. First, AOGA contends it is more practical to have an operator notify the commission, and then the commission provide notification to the surface owner. This approach is more prudent for a variety of reasons. It is almost certain that once a surface owner and drinking water well owner is notified, that surface owner will want to speak with someone at the commission or other State agency regarding potential ramifications and remedies. Publishing the regulations so that the commission provides surface owner notification would efficiently streamline this process. This modification will also allow for greater transparency, as the commission will have complete autonomy on the substance of the disclosure. Second, if the commission places the onus upon the operator to notify the surface owner, the commission will necessarily need to have someone available 365 days a year to field the inevitable surface owner inquiries that will follow the operator notification. Creating an in-depth protocol detailing the manner in which the commission will be prepared for such situations will be of great benefit to the public. AOGA hopes that all parties are clear that these proposed regulations will increase the staff time at the state agencies involved.

Finally, the proposed regulations describe the first notification trigger as when “the test results indicate thermogenic or a mixture of thermogenic and biogenic gas.” AOGA believes that particular “trigger” is ambiguous, and fails to establish the threshold level to prompt notification.

Given the short notification timelines, a definite number or ratio for defining when notification is required is needed, yet, to our knowledge, there are no studies able to provide any indication of what a realistic background concentration is for these analytes. Even test results indicating thermogenic and biogenic gas properties, since they are not clearly defined, make the required 24 hour notice of no benefit to anyone. Ambiguous and undefined 24 hour trigger notifications written in regulations will lead to continuous and contentious problems.

VII. "Privilege log"

In 20 AAC 25.283 (k), the regulations refer to a "privilege log." It is not clear from the entirety of the regulations, what that particular term refers to, or what properties -- legal, institutional, or otherwise -- it may possess. AOGA requests further clarification on the meaning of "privilege log."

For perspective, under the EPA's Freedom of Information Regulations, a request for disclosure of a document labeled as "confidential business information," prompts the EPA to provide the respective company the opportunity to submit written comments addressing several questions, including: (1) measures taken to guard against the undesired disclosure of the information to others; (2) the extent to which the information has been disclosed to others and the precautions taken regarding such disclosure; and (3) description of any harmful effects to the party's competitive position, whether this harm would be substantial, and explanation of the causal relationship between disclosure and such harmful effects.

VIII. Hydraulic Fracturing Studies

Government agencies and respected authorities have conducted a myriad of studies in an attempt to determine whether the practice of hydraulic fracturing poses any environmental threats. To put it simply, those studies have found that hydraulic fracturing, particularly as it is implemented in Alaska, does not pose any harm to the environment. AOGA will focus its comments below on studies conducted by the EPA, the Ground Water Protection Council ("GWPC") and the Interstate Oil & Gas Compact Commission ("IOGCC") as these studies provide a fair cross section, both geographically and temporally, but should hardly be considered exhaustive.

In 2004, the EPA completed an extensive survey of hydraulic fracturing practices and their effect on drinking water. The focus of that particular study was on extremely shallow methane wells, which stand in stark contrast to the depths of hydraulic fracturing in Alaska. The EPA study revealed that several factors (fluid recovery, the small amount of chemicals contained in fracture fluids, their dilution in water, and their absorption by rock formations) serve to mitigate the potential risks associated with hydraulic fracturing. Ultimately, the EPA concurred with the GWPC and the IOGCC in finding that the practice of hydraulic fracturing is environmentally safe. Of particular note, the EPA concluded that hydraulic fracturing does not create pathways for fluids to travel between rock formations to affect fresh water aquifers. In February, 2010, Steve Heare, then director of EPA's Drinking Water Protection division said, "I have no information that states

are not doing a good job already (of protecting water supplies).”⁴ Heare also reported that he had not seen any documented cases where hydraulic fracturing was contaminating water supplies.

In May, 2009, the U.S. Department of Energy and Ground Water Protection conducted a study and survey of State regulations relating to the oil industry. The GWPC surveyed relevant state regulatory agencies and were unable to find evidence of even one documented case of contaminated drinking water linked to hydraulic fracturing. The GWPC discussed the process of hydraulic fracturing and noted that critics of that process routinely highlight the theoretical possibility of the exposure of hydraulic fracturing additives while failing to consider the extreme unlikelihood of aquifer contamination. Citing two comparable studies, the GWPC found that depending upon the particular fracturing design and the specific formation dynamics involved, anywhere from 30-70% of fracturing fluids are safely returned to the surface through the well. The unrecovered treatment fluids are typically trapped in the geological formation through a variety of mechanisms, including pore storage and stranding, which result in effective isolation from ground water. The GWPC also noted that the risk of endangerment to ground water is further reduced by other physical factors such as the (1) implementation of state well construction requirements; (2) vertical distance between the fractured zone and ground water; (3) presence of other zones between the fractured zone and the deepest ground water zone that may readily accept fluid; and (4) presence of vertically impermeable formations between the fractured zone and the deepest ground water zone; which act as geologic barriers to fluid migration. Additionally, the utilization of proper surface fluid handling methods significantly decreases the likelihood of environmental harm or human exposure related to hydraulic fracturing fluids.

Furthermore, the GWPC referenced its 1998 survey of twenty-five state oil and gas regulatory agencies, which twenty-four state programs said they had not recorded any complaints of contamination to a underground sources of drinking water (“USDW”) that the agency could attribute to hydraulic fracturing of coalbed methane zones, which traditionally occur relatively close proximity to USDW’s. In the decade between studies, several citizens brought forth allegations that the practice of hydraulic fracturing had resulted in ground water contamination. The GWPC noted that the majority of those complaints related to hydraulic fracturing of coalbed methane zones. The GWPC observed that CBM wells are typically much shallower when compared to conventional oil and gas wells. The GWPC determined that, in general terms, the amount of vertical separation between an oil and gas producing formation and the deepest ground water zone in many parts of the country can be several thousand feet; while the separation of coalbed methane zones to ground water is sometimes only a few hundred feet or less. In some cases the coalbed methane zones themselves may qualify as USDWs. As noted above, EPA’s 2004 study found no confirmed cases of contamination from the relatively shallow hydraulic fracturing of CBM reservoirs. The GWPC found that the risk of fracture fluid intrusion into ground water from the hydraulic fracturing of deeper conventional and unconventional oil and gas zones should be considered very low. Specifically, the GWPC noted that hydraulic fracturing that occurs at more substantial depth poses virtually no threat to ground water, because: (1) there are frequently layers of rock between the fractured zone and ground water zones that are capable of accepting

⁴ In May 5, 1995, Carol M. Browner, then an EPA administrator and now energy adviser to President Obama, stated, “There is no evidence that the hydraulic fracturing at issue has resulted in any contamination or endangerment of underground sources of drinking water.”

fluid under pressure; which would lower the available fluid that could reach a ground water zone; (2) there are also frequently layers of rock between the fractured zone and ground water zone through which vertical flow is restricted; thus serving as a hydraulic barrier to fluid migration; (3) the use of advanced computer modeling in fracture design has increased the ability to predict the three dimensional geometry of fracturing; which lowers the likelihood of a fracture job extending into an unintended zone.

In 2009, the US House of Representatives tasked the Environmental Protection Agency (“EPA”) with conducting scientific research to examine the relationship between hydraulic fracturing and drinking water resources. In December, 2012, the EPA released a “Progress Report” outlining the preliminary findings of that study. The EPA designed the scope of the research around five parts of the hydraulic fracturing water cycle, and associated each cycle with a preliminary research question:

Water acquisition: What are the possible impacts of large volume water withdrawals from ground and surface waters on drinking water resources?

Chemical mixing: What are the possible impacts of hydraulic fracturing fluid surface spills on or near well pads on drinking water resources?

Well injection: What are the possible impacts of the injection and fracturing process on drinking water resources?

Flowback and produced water: What are the possible impacts of flowback and produced water surface spills on or near well pads on drinking water resources?

Wastewater treatment and waste disposal: What are the possible impacts of inadequate treatment of hydraulic fracturing wastewater on drinking water resources?

EPA’s “Progress Report” described 18 research projects and was organized according to five different types of research activities: analysis of existing data, scenario evaluations, laboratory studies, toxicity assessments, and case studies. EPA collected data from nine companies that hydraulically fractured a total of 24,925 wells between September 2009 and October 2010, 12,000 well-specific chemical disclosures on FracFocus, and well construction and hydraulic fracturing records provided by well operators for 333 oil and gas wells across the United States. As illustrated in Appendix A, the EPA, during their current analysis of the practice of hydraulic fracturing, has access to a myriad of relevant studies on the practice and utilization of hydraulic fracturing. The results of the EPA study are due to be released in 2014.

On the one hand, AOGA believes that the AOGCC would be prudent to wait for the results of the new EPA study so that both regulators and those within industry can properly determine which concerns, if any, are legitimate, and what regulations may be necessary and beneficial. However, although the results are not yet known, prior studies coupled with the questions posed in the ongoing EPA study should provide adequate guidance for the AOGCC. AOGA still believes in the importance of protecting Alaska’s fresh water resources, but believes that any regulations in

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January 15, 2014

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that vein should be narrowly tailored to address scientifically supported concerns. Unchanged, the current iteration of the AOGCC's proposed regulations do not meet that standard.

Sincerely,

A handwritten signature in black ink that reads "Kara Moriarty". The signature is written in a cursive style with a large, sweeping initial "K".

Kara Moriarty
Alaska Oil & Gas Association
President & CEO

Cc: Commissioner John Norman
Commissioner Dan Seamont
Governor Sean Parnell
Commissioner Joe Balash

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Appendix A

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