

By: Keffer

H.B. No. 3328

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 91, Natural Resources Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS

Sec. 91.851. DEFINITIONS. In this subchapter, unless the context otherwise requires:

(1) "Additive" means any substance or combination of substances found in a hydraulic fracturing fluid, including a proppant, that is added to a base fluid in the context of a hydraulic fracturing treatment.

(2) "Base fluid" means the base fluid type, such as water or nitrogen foam, used in a particular hydraulic fracturing treatment.

(3) "Chemical Abstracts Service" or "CAS" means the chemical registry that is the authoritative collection of disclosed chemical substance information.

(4) "Chemical constituent" means a discrete chemical with its own specific name or identity, such as a CAS number, that is contained in an additive.

(5) "Hydraulic fracturing fluid" means the fluid used

1 to perform a particular hydraulic fracturing treatment and includes  
2 the applicable base fluid and all additives.

3 (6) "Hydraulic fracturing treatment" means the  
4 stimulation of a well by the forceful application of hydraulic  
5 fracturing fluid into the relevant geological formation for the  
6 purpose of creating fractures in the formation in order to  
7 facilitate production of hydrocarbons.

8 (7) "Operator" means the person authorized to conduct  
9 operations on a well.

10 (8) "Proppant" means sand or another natural or  
11 man-made inert material that is used in a hydraulic fracturing  
12 treatment to prevent artificially created or enhanced fractures  
13 from closing once the treatment is completed.

14 (9) "Trade secret" means any confidential formula,  
15 pattern, process, device, information, or compilation of  
16 information that is used in a person's business and that gives the  
17 person an opportunity to obtain an advantage over competitors that  
18 do not know or use it.

19 (10) "Well" means a hydrocarbon production well.

20 (11) "Well completion report" means the report an  
21 operator is required to file with the commission following the  
22 completion or recompletion of a well, if applicable.

23 Sec. 91.852. INFORMATION SUBMITTED CONSIDERED PUBLIC  
24 INFORMATION; POSTING ON INTERNET WEBSITE. Notwithstanding any  
25 other law, unless the information is entitled to be withheld as a  
26 trade secret under Section 91.853(b) or (c)(4) or 91.854(c),  
27 information submitted to the commission under Section 91.853 or

1 91.854 is public information, and the commission shall post the  
2 information on a publicly accessible Internet website.

3 Sec. 91.853. SERVICE COMPANY DISCLOSURES. (a) A person  
4 performing hydraulic fracturing treatments in this state shall  
5 disclose to the commission and maintain an updated master list of:

6 (1) all base fluids to be used by the person during any  
7 hydraulic fracturing treatment in this state;

8 (2) all additives to be used by the person during any  
9 hydraulic fracturing treatment in this state; and

10 (3) all chemical constituents to be used by the person  
11 in any hydraulic fracturing treatment in this state and their  
12 associated CAS numbers.

13 (b) Notwithstanding Subsection (a)(3), if the specific  
14 identity of any chemical constituent to be used in any hydraulic  
15 fracturing treatment in this state is entitled to be withheld as a  
16 trade secret pursuant to the criteria provided by 42 U.S.C. Section  
17 11042(a)(2) and Section 91.856 of this chapter, the commission  
18 shall protect and hold confidential the identity of the chemical  
19 constituent and its associated CAS number. To qualify for trade  
20 secret protection, the person performing the hydraulic fracturing  
21 treatment must submit to the commission on an approved form a formal  
22 claim of entitlement to that protection in the manner required by  
23 Section 91.856.

24 (c) A person performing hydraulic fracturing treatments in  
25 this state shall provide to the operator of each well for which the  
26 person performs a hydraulic fracturing treatment:

27 (1) the maximum pump pressure measured at the surface

1 and the type and volume of base fluid used in each stage of the  
2 hydraulic fracturing treatment;

3 (2) a list of all additives used in the hydraulic  
4 fracturing fluid, specified by general type, such as acid, biocide,  
5 breaker, corrosion inhibitor, crosslinker, demulsifier, friction  
6 reducer, gel, iron control, oxygen scavenger, pH adjusting agent,  
7 proppant, scale inhibitor, and surfactant;

8 (3) for each additive type listed under Subdivision  
9 (2), the specific name of the additive used and the actual rate or  
10 concentration of each additive, expressed as pounds per thousand  
11 gallons or gallons per thousand gallons and expressed as a  
12 percentage by volume of the total hydraulic fracturing fluid used;

13 (4) a list of all the chemical constituents used in the  
14 hydraulic fracturing fluid and their associated CAS numbers, except  
15 to the extent that the specific identity of any chemical  
16 constituent is entitled to be withheld as a trade secret as provided  
17 by Subsection (b); and

18 (5) for each chemical constituent identified under  
19 Subdivision (4), the actual rate or concentration of each chemical,  
20 expressed as pounds per thousand gallons or gallons per thousand  
21 gallons and expressed as a percentage by volume of the total  
22 hydraulic fracturing fluid used.

23 (d) Subsections (b) and (c)(4) do not authorize a person to  
24 withhold information that federal or state law, including this  
25 section, requires to be provided to any health care professional  
26 who needs the information for diagnostic or treatment purposes. A  
27 person performing a hydraulic fracturing treatment shall provide

1 directly to a health care professional, immediately on request, all  
2 information required by the health care professional, including the  
3 percent by volume of the chemical constituents of the hydraulic  
4 fracturing fluid and their associated CAS numbers. In a case that  
5 is not a medical emergency, the health care professional must  
6 provide the person performing the hydraulic fracturing treatment a  
7 written statement of need for the information before the person is  
8 entitled to receive the information. In a medical emergency, the  
9 health care professional must provide the person performing the  
10 hydraulic fracturing treatment a written statement of need for the  
11 information as soon as circumstances permit.

12 (e) A health care professional to whom information is  
13 disclosed under Subsection (d) shall hold the information  
14 confidential, except that the health care professional may, for  
15 diagnostic or treatment purposes, disclose information provided  
16 under that subsection to another health care professional, a  
17 laboratory, or a third-party testing firm. A health care  
18 professional, laboratory, or third-party testing firm to which  
19 information is disclosed by another health care professional under  
20 this subsection shall hold the information confidential.

21 Sec. 91.854. OPERATOR DISCLOSURES. (a) Following the  
22 completion of a hydraulic fracturing treatment on a well, the  
23 operator shall include in the well completion report, on a form  
24 approved by the commission:

25 (1) the maximum pump pressure measured at the surface  
26 and the type and volume of base fluid used in each stage of the  
27 hydraulic fracturing treatment;

1           (2) a list of all additives used in the hydraulic  
2 fracturing treatment, specified by general type, such as acid,  
3 biocide, breaker, corrosion inhibitor, crosslinker, demulsifier,  
4 friction reducer, gel, iron control, oxygen scavenger, pH adjusting  
5 agent, proppant, scale inhibitor, and surfactant;

6           (3) for each additive type listed under Subdivision  
7 (2), the specific name of the additive used and the actual rate or  
8 concentration of each additive, expressed as pounds per thousand  
9 gallons or gallons per thousand gallons and expressed as a  
10 percentage by volume of the total hydraulic fracturing fluid used;

11           (4) the information provided under Sections  
12 91.853(c)(4) and (5) to the operator by the person who performed the  
13 hydraulic fracturing treatment; and

14           (5) if the operator caused any additives to be used  
15 during the hydraulic fracturing treatment that are not required to  
16 be disclosed under Section 91.853(c) to the operator by the person  
17 who performed the hydraulic fracturing treatment:

18                   (A) a list of the additives used; and

19                   (B) for each additive listed, the chemical  
20 constituents of the additive and their associated CAS numbers and  
21 the actual rate or concentration of each additive or chemical,  
22 expressed in the manner provided by Section 91.853(c).

23           (b) The operator may supply field service company tickets,  
24 excluding pricing information, and reports regarding the hydraulic  
25 fracturing treatment, as used in the normal course of business, to  
26 satisfy some or all of the requirements of Subsection (a).

27           (c) Notwithstanding Subsection (a)(5), if the specific

1 identity of a chemical constituent contained in an additive is  
2 entitled to be withheld as a trade secret pursuant to the criteria  
3 provided by 42 U.S.C. Section 11042(a)(2) and Section 91.856 of  
4 this chapter, the commission shall protect and hold confidential  
5 the identity of the chemical constituent and its associated CAS  
6 number. To qualify for trade secret protection, the operator must  
7 submit to the commission on an approved form a formal claim of  
8 entitlement to that protection in the manner required by Section  
9 91.856.

10 (d) Subsection (c) does not authorize an operator to  
11 withhold information that federal or state law, including this  
12 section, requires to be provided to any health care professional  
13 who needs the information for diagnostic or treatment purposes. An  
14 operator shall provide directly to a health care professional,  
15 immediately on request, all information required by the health care  
16 professional, including the percent by volume of the chemical  
17 constituents of the hydraulic fracturing fluid and their associated  
18 CAS numbers. In a case that is not a medical emergency, the health  
19 care professional must provide the operator a written statement of  
20 need for the information before the person is entitled to receive  
21 the information. In a medical emergency, the health care  
22 professional must provide the operator a written statement of need  
23 for the information as soon as circumstances permit.

24 (e) A health care professional to whom information is  
25 disclosed under Subsection (d) shall hold the information  
26 confidential, except that the health care professional may, for  
27 diagnostic or treatment purposes, disclose information provided

1 under that subsection to another health care professional, a  
2 laboratory, or a third-party testing firm. A health care  
3 professional, laboratory, or third-party testing firm to which  
4 information is disclosed by another health care professional under  
5 this subsection shall hold the information confidential.

6 Sec. 91.855. USE OF SERVICES OF NONCOMPLYING SERVICE  
7 COMPANY PROHIBITED. An operator may not use the services of another  
8 person in performing a hydraulic fracturing treatment in this state  
9 unless the other person is in compliance with the requirements of  
10 Section 91.853.

11 Sec. 91.856. TRADE SECRET PROTECTION. (a) A claim of  
12 entitlement to trade secret protection made under Section 91.853(b)  
13 or (c)(4) or 91.854(c) must include substantiating facts in the  
14 form of the information required by 40 C.F.R. Section 350.7(a). If  
15 requested by the trade secret claimant, the commission shall treat  
16 any such substantiating facts as confidential and may not disclose  
17 them to any third party or the public for any purpose. Until a final  
18 determination that the information is not entitled to trade secret  
19 protection is made under this section, the commission shall treat  
20 the information implicated by the claim of trade secret entitlement  
21 as a confidential trade secret, and the information is not subject  
22 to disclosure under Chapter 552, Government Code.

23 (b) The commission shall determine a claim of entitlement to  
24 trade secret protection made under Section 91.853(b) or (c)(4) or  
25 91.854(c) to be sufficient if the information set forth in the claim  
26 supports all the conclusions set forth in 40 C.F.R. Section  
27 350.13(a) and the supporting information is true. In making a



1 determination as to a claim, the commission may require the trade  
2 secret claimant to submit additional supplemental information if  
3 the information is necessary for the commission to make its  
4 determination under this section. If requested by the trade secret  
5 claimant, the commission shall treat any supplemental information  
6 provided as confidential and may not disclose the information to  
7 any third party or the public for any purpose.

8 (c) If the commission determines a claim of entitlement to  
9 trade secret protection to be insufficient, the commission shall  
10 notify the trade secret claimant in writing of the determination by  
11 certified mail. Not later than the 15th day after the date the  
12 trade secret claimant receives notice of the determination, the  
13 claimant may request another review of the claim. The trade secret  
14 claimant must show good cause for the additional review. What  
15 constitutes good cause for purposes of this subsection is solely  
16 within the reasonable discretion of the commission and may include  
17 the availability of new supporting information or a good faith  
18 error or omission on the part of the trade secret claimant in the  
19 original claim. Not later than the 30th day after the date the  
20 commission receives the request, the commission shall provide  
21 written notice to the trade secret claimant of the commission's  
22 acceptance or rejection of the request. If a trade secret claimant  
23 makes a request for review under this subsection, the commission  
24 shall treat the information implicated by the claim of trade secret  
25 entitlement as a confidential trade secret until the commission  
26 makes a determination with regard to the review request. If the  
27 commission rejects the review request, the commission shall

1 continue to treat the information as a confidential trade secret  
2 until the earlier of the 30th day after the date the trade secret  
3 claimant receives notice that the commission has rejected the  
4 review request or the date the claimant withdraws the disclosure  
5 under Subsection (e).

6 (d) Not later than the 30th day after the date the trade  
7 secret claimant receives notice from the commission that the  
8 commission has rejected the claim of entitlement to trade secret  
9 protection, the claimant may appeal the determination by filing a  
10 petition in a district court of Travis County. If a trade secret  
11 claimant files an appeal under this subsection, the commission  
12 shall treat the information implicated by the claim of trade secret  
13 entitlement as a confidential trade secret until the appeal is  
14 resolved. If the resolution of the appeal affirms the commission's  
15 determination of the insufficiency of the claim, the commission  
16 shall continue to treat the information as a confidential trade  
17 secret until the earlier of the 30th day after the date the trade  
18 secret claimant receives notice that the appeal has been resolved  
19 or the date the claimant withdraws the disclosure under Subsection  
20 (e).

21 (e) Not later than the 30th day after the date the trade  
22 secret claimant receives notification under Subsection (c) that the  
23 commission has rejected the claim of entitlement to trade secret  
24 protection or the date a final judgment affirming the commission's  
25 determination of the insufficiency of the claim is entered under  
26 Subsection (d), as applicable, and only to the extent that the  
27 relevant chemical constituent has not been used by or for the trade

1 secret claimant in any hydraulic fracturing treatment in this  
2 state, the trade secret claimant may formally withdraw the  
3 disclosure of a chemical constituent by notifying the commission of  
4 its intent to withdraw the disclosure. If the trade secret claimant  
5 withdraws the disclosure of a chemical constituent, the commission  
6 shall protect and hold confidential the identity of the chemical  
7 constituent and any corresponding CAS number, and the information  
8 is not subject to disclosure under Chapter 552, Government Code.  
9 After the withdrawal, the chemical constituent may not be used by or  
10 for the trade secret claimant in any hydraulic fracturing treatment  
11 in this state unless the trade secret claimant satisfies the  
12 requirements of this chapter relating to the disclosure of  
13 information regarding the chemical constituent.

14 (f) Notwithstanding any other provision of this section,  
15 the commission may:

16 (1) disclose information otherwise subject to trade  
17 secret protection under this section to a third-party testing firm  
18 in connection with the investigation of a claim of contamination of  
19 surface water or groundwater if the firm agrees in writing to keep  
20 the information confidential; and

21 (2) use the results of a test conducted by a  
22 third-party testing firm in connection with an investigation  
23 described by Subdivision (1) in any manner the commission considers  
24 necessary to protect public health and the environment.

25 SECTION 2. Subchapter S, Chapter 91, Natural Resources  
26 Code, as added by this Act, applies only to a hydraulic fracturing  
27 treatment performed on a well for which an initial drilling permit

1 is issued on or after the effective date of this Act. A hydraulic  
2 fracturing treatment performed on a well for which an initial  
3 drilling permit is issued before the effective date of this Act is  
4 governed by the law as it existed immediately before the effective  
5 date of this Act, and that law is continued in effect for that  
6 purpose.

7 SECTION 3. This Act takes effect September 1, 2011.