

1 AN ACT

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

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

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

7 SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING
8 FLUIDS

9 Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC
10 FRACTURING FLUIDS. (a) The commission by rule shall:

11 (1) require an operator of a well on which a hydraulic
12 fracturing treatment is performed to:

13 (A) complete the form posted on the hydraulic
14 fracturing chemical registry Internet website of the Ground Water
15 Protection Council and the Interstate Oil and Gas Compact
16 Commission with regard to the well;

17 (B) include in the form completed under Paragraph
18 (A):

19 (i) the total volume of water used in the
20 hydraulic fracturing treatment; and

21 (ii) each chemical ingredient that is
22 subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2),
23 as provided by a service company or chemical supplier or by the
24 operator, if the operator provides its own chemical ingredients;

1 (C) post the completed form described by
2 Paragraph (A) on the website described by that paragraph or, if the
3 website is discontinued or permanently inoperable, post the
4 completed form on another publicly accessible Internet website
5 specified by the commission;

6 (D) submit the completed form described by
7 Paragraph (A) to the commission with the well completion report for
8 the well; and

9 (E) in addition to the completed form specified
10 in Paragraph (D), provide to the commission a list, to be made
11 available on a publicly accessible website, of all other chemical
12 ingredients not listed on the completed form that were
13 intentionally included and used for the purpose of creating a
14 hydraulic fracturing treatment for the well. The commission rule
15 shall ensure that an operator, service company, or supplier is not
16 responsible for disclosing ingredients that:

17 (i) were not purposely added to the
18 hydraulic fracturing treatment;

19 (ii) occur incidentally or are otherwise
20 unintentionally present in the treatment; or

21 (iii) in the case of the operator, are not
22 disclosed to the operator by a service company or supplier. The
23 commission rule shall not require that the ingredients be
24 identified based on the additive in which they are found or that the
25 concentration of such ingredients be provided;

26 (2) require a service company that performs a
27 hydraulic fracturing treatment on a well or a supplier of an

1 additive used in a hydraulic fracturing treatment on a well to
2 provide the operator of the well with the information necessary for
3 the operator to comply with Subdivision (1);

4 (3) prescribe a process by which an entity required to
5 comply with Subdivision (1) or (2) may withhold and declare certain
6 information as a trade secret for purposes of Section 552.110,
7 Government Code, including the identity and amount of the chemical
8 ingredient used in a hydraulic fracturing treatment;

9 (4) require a person who desires to challenge a claim
10 of entitlement to trade secret protection under Subdivision (3) to
11 file the challenge not later than the second anniversary of the date
12 the relevant well completion report is filed with the commission;

13 (5) limit the persons who may challenge a claim of
14 entitlement to trade secret protection under Subdivision (3) to:

15 (A) the landowner on whose property the relevant
16 well is located;

17 (B) a landowner who owns property adjacent to
18 property described by Paragraph (A); or

19 (C) a department or agency of this state with
20 jurisdiction over a matter to which the claimed trade secret is
21 relevant;

22 (6) require, in the event of a trade secret challenge,
23 that the commission promptly notify the service company performing
24 the hydraulic fracturing treatment on the relevant well, the
25 supplier of the additive or chemical ingredient for which the trade
26 secret claim is made, or any other owner of the trade secret being
27 challenged and provide the owner an opportunity to substantiate its

1 trade secret claim; and

2 (7) prescribe a process, consistent with 29 C.F.R.
3 Section 1910.1200, for an entity described by Subdivision (1) or
4 (2) to provide information, including information that is a trade
5 secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a
6 health professional or emergency responder who needs the
7 information in accordance with Subsection (i) of that section.

8 (b) The protection and challenge of trade secrets under this
9 section is governed by Chapter 552, Government Code.

10 SECTION 2. Subchapter S, Chapter 91, Natural Resources
11 Code, as added by this Act, applies only to a hydraulic fracturing
12 treatment performed on a well for which an initial drilling permit
13 is issued on or after the date the initial rules adopted by the
14 Railroad Commission of Texas under that subchapter take effect. A
15 hydraulic fracturing treatment performed on a well for which an
16 initial drilling permit is issued before the date the initial rules
17 take effect is governed by the law as it existed immediately before
18 the effective date of this Act, and that law is continued in effect
19 for that purpose.

20 SECTION 3. The Railroad Commission of Texas shall adopt
21 rules under Subchapter S, Chapter 91, Natural Resources Code, as
22 added by this Act, not later than July 1, 2012, with the exception
23 of those rules under Paragraph (E), which are to be adopted not
24 later than July 1, 2013.

25 SECTION 4. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 3328 was passed by the House on May 12, 2011, by the following vote: Yeas 133, Nays 12, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3328 on May 27, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3328 on May 29, 2011, by the following vote: Yeas 137, Nays 8, 2 present, not voting.

Chief Clerk of the House

H.B. No. 3328

I certify that H.B. No. 3328 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3328 on May 29, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor