

Amend CSSB 655 (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Subtitle B, Title 3, Natural Resources Code, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. REGULATION OF HYDRAULIC FRACTURING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.001. DEFINITIONS. In this chapter, 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) "Commission" means the Texas Oil and Gas Commission.

(6) "Hydraulic fracturing fluid" means the fluid used to perform a particular hydraulic fracturing treatment and includes the applicable base fluid and all additives.

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

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

(9) "Proppant" means sand or another natural or man-made inert material that is used in a hydraulic fracturing treatment to prevent artificially created or enhanced fractures

from closing once the treatment is completed.

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

(11) "Well" means a hydrocarbon production well.

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

Sec. 93.002. RULES. The commission shall adopt any rules necessary to carry out its powers and duties under this chapter.

Sec. 93.003. REPORT. Not later than January 1 of each year, the commission shall submit to the legislature a report concerning the effects of hydraulic fracturing treatments on environmental quality, including water quality. The report must address:

(1) the effects of hydraulic fracturing treatments on the quality of the water in aquifers;

(2) the total amount and types of chemicals used in hydraulic fracturing treatments;

(3) the geographic location of the wells on which hydraulic fracturing treatments are performed;

(4) the rates of asthma, including childhood asthma, in areas in which wells on which hydraulic fracturing treatments are performed and wastewater disposal sites associated with those wells are located;

(5) the routes used to transport to an injection site wastewater associated with wells on which hydraulic fracturing treatments are performed and the amount of any wastewater spilled along those routes; and

(6) the presence of any radioactivity or radioactive elements in wastewater associated with wells on which hydraulic fracturing treatments are performed.

[Sections 93.004-93.050 reserved for expansion]

SUBCHAPTER B. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING

FLUIDS

Sec. 93.051. INFORMATION SUBMITTED CONSIDERED PUBLIC

INFORMATION; POSTING ON INTERNET WEBSITE. Notwithstanding any other law, unless the information is entitled to be withheld as a trade secret under Section 93.052(b) or (c)(4) or 93.053(c), information submitted to the commission under Section 93.052 or 93.053 is public information, and the commission shall post the information on a publicly accessible Internet website.

Sec. 93.052. SERVICE COMPANY DISCLOSURES. (a) A person performing hydraulic fracturing treatments in this state shall disclose to the commission and maintain an updated master list of:

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

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

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

(b) Notwithstanding Subsection (a)(3), if the specific identity of any chemical constituent to be used in any hydraulic fracturing treatment in this state is entitled to be withheld as a trade secret pursuant to the criteria provided by 42 U.S.C. Section 11042(a)(2) and Section 93.055 of this chapter, the commission shall protect and hold confidential the identity of the chemical constituent and its associated CAS number. To qualify for trade secret protection, the person performing the hydraulic fracturing treatment must submit to the commission on an approved form a formal claim of entitlement to that protection in the manner required by Section 93.055.

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

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

(2) a list of all additives used in the hydraulic fracturing fluid, specified by general type, such as acid, biocide, breaker, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent,

proppant, scale inhibitor, and surfactant;

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

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

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

(d) Subsections (b) and (c)(4) do not authorize a person to withhold information that federal or state law, including this section, requires to be provided to any health care professional who needs the information for diagnostic or treatment purposes. A person performing a hydraulic fracturing treatment shall provide directly to a health care professional, immediately on request, all information required by the health care professional, including the percent by volume of the chemical constituents of the hydraulic fracturing fluid and their associated CAS numbers. In a case that is not a medical emergency, the health care professional must provide the person performing the hydraulic fracturing treatment a written statement of need for the information before the person is entitled to receive the information. In a medical emergency, the health care professional must provide the person performing the hydraulic fracturing treatment a written statement of need for the information as soon as circumstances permit.

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

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

Sec. 93.053. OPERATOR DISCLOSURES. (a) Following the completion of a hydraulic fracturing treatment on a well, the operator shall include in the well completion report, on a form approved by the commission:

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

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

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

(4) the information provided under Sections 93.052(c)(4) and (5) to the operator by the person who performed the hydraulic fracturing treatment; and

(5) if the operator caused any additives to be used during the hydraulic fracturing treatment that are not required to be disclosed under Section 93.052(c) to the operator by the person who performed the hydraulic fracturing treatment:

(A) a list of the additives used; and

(B) for each additive listed, the chemical constituents of the additive and their associated CAS numbers and the actual rate or concentration of each additive or chemical, expressed in the manner provided by Section 93.052(c).

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

(c) Notwithstanding Subsection (a)(5), if the specific identity of a chemical constituent contained in an additive is entitled to be withheld as a trade secret pursuant to the criteria provided by 42 U.S.C. Section 11042(a)(2) and Section 93.055 of this chapter, the commission shall protect and hold confidential the identity of the chemical constituent and its associated CAS number. To qualify for trade secret protection, the operator must submit to the commission on an approved form a formal claim of entitlement to that protection in the manner required by Section 93.055.

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

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

Sec. 93.054. USE OF SERVICES OF NONCOMPLYING SERVICE COMPANY PROHIBITED. An operator may not use the services of another person in performing a hydraulic fracturing treatment in this state unless the other person is in compliance with the requirements of

Section 93.052.

Sec. 93.055. TRADE SECRET PROTECTION. (a) A claim of entitlement to trade secret protection made under Section 93.052(b) or (c)(4) or 93.053(c) must include substantiating facts in the form of the information required by 40 C.F.R. Section 350.7(a). If requested by the trade secret claimant, the commission shall treat any such substantiating facts as confidential and may not disclose them to any third party or the public for any purpose. Until a final determination that the information is not entitled to trade secret protection is made under this section, the commission shall treat the information implicated by the claim of trade secret entitlement as a confidential trade secret, and the information is not subject to disclosure under Chapter 552, Government Code.

(b) The commission shall determine a claim of entitlement to trade secret protection made under Section 93.052(b) or (c)(4) or 93.053(c) to be sufficient if the information set forth in the claim supports all the conclusions set forth in 40 C.F.R. Section 350.13(a) and the supporting information is true. In making a determination as to a claim, the commission may require the trade secret claimant to submit additional supplemental information if the information is necessary for the commission to make its determination under this section. If requested by the trade secret claimant, the commission shall treat any supplemental information provided as confidential and may not disclose the information to any third party or the public for any purpose.

(c) If the commission determines a claim of entitlement to trade secret protection to be insufficient, the commission shall notify the trade secret claimant in writing of the determination by certified mail. Not later than the 15th day after the date the trade secret claimant receives notice of the determination, the claimant may request another review of the claim. The trade secret claimant must show good cause for the additional review. What constitutes good cause for purposes of this subsection is solely within the reasonable discretion of the commission and may include the availability of new supporting information or a good faith error or omission on the part of the trade secret claimant in the original claim. Not later than the 30th day after the date the

commission receives the request, the commission shall provide written notice to the trade secret claimant of the commission's acceptance or rejection of the request. If a trade secret claimant makes a request for review under this subsection, the commission shall treat the information implicated by the claim of trade secret entitlement as a confidential trade secret until the commission makes a determination with regard to the review request. If the commission rejects the review request, the commission shall continue to treat the information as a confidential trade secret until the earlier of the 30th day after the date the trade secret claimant receives notice that the commission has rejected the review request or the date the claimant withdraws the disclosure under Subsection (e).

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

(e) Not later than the 30th day after the date the trade secret claimant receives notification under Subsection (c) that the commission has rejected the claim of entitlement to trade secret protection or the date a final judgment affirming the commission's determination of the insufficiency of the claim is entered under Subsection (d), as applicable, and only to the extent that the relevant chemical constituent has not been used by or for the trade secret claimant in any hydraulic fracturing treatment in this state, the trade secret claimant may formally withdraw the

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

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

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

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

[Sections 93.056-93.100 reserved for expansion]

SUBCHAPTER C. USE OF TRACER SUBSTANCES IN HYDRAULIC FRACTURING TREATMENTS

Sec. 93.101. HYDRAULIC FRACTURING FLUID TRACER. (a) The commission shall adopt rules requiring a person who performs a hydraulic fracturing treatment on a well to include a tracer substance in the base stimulation fluid used to perform the treatment.

(b) Rules adopted under this section may specify the type of tracer substance a person is required to use in performing a hydraulic fracturing treatment, such as an isotope tracer or a color tracer, provided that:

(1) the tracer substance is traceable to a specific person after the tracer substance is used in a hydraulic fracturing treatment; and

(2) the commission has determined that the use of the tracer substance in a hydraulic fracturing treatment will not endanger the public health.

[Sections 93.102-93.150 reserved for expansion]

SUBCHAPTER D. PROTECTION OF GROUNDWATER AND SURFACE WATER

Sec. 93.151. RULES. The commission shall adopt rules concerning hydraulic fracturing treatments that ensure the protection of groundwater and surface water.

SECTION _____. Chapter 93, Natural Resources Code, as added by this Act, applies only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued on or after the effective date of this Act. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION _____. The Texas Oil and Gas Commission shall adopt rules under Chapter 93, Natural Resources Code, as added by this Act, not later than February 1, 2012.