

WYOMING OIL AND GAS CONSERVATION COMMISSION
Office of State Oil and Gas Supervisor
PO Box 2640
Casper WY 82602

WOGCC Trade Secret/CCI Guidelines

I. Introduction

WOGCC Rule Chapter 3, Section 45, requires an Owner, Operator, or service company proposing to conduct well stimulation in Wyoming to submit detailed information about the proposed stimulation fluid(s). If an Owner/Operator or service company demonstrates that specific information about the stimulation fluid's ingredients constitutes "trade secrets, privileged information [or] confidential commercial, financial, geological or geophysical data" as those terms are defined under Wyo. Stat. Ann. § 16-4-203(d)(v), the Wyoming Public Records Act (WPRA), the Supervisor will withhold that information from public disclosure. The company requesting confidentiality must provide adequate documentation justifying any confidentiality request, consistent with the policies below. The WOGCC will make the final administrative decision on all confidentiality requests and reserves the right to request additional substantiating information from the company requesting confidentiality, as needed.

II. Format

The WOGCC will accept disclosure of well stimulation fluid ingredient information in two formats: 1) a list of each chemical additive identified by product name and additive type (e.g., acid, biocide, breaker, crosslinker) with the proposed rate or concentration for the additive and for each additive the chemical compound name and the Chemical Abstracts Service (CAS) number for each ingredient in the additive; or 2) use of a "systems approach" format that does not link individual ingredients to the fluid additives of which they are a part, *i.e.*, by submitting a list of all chemical compound names and associated CAS numbers for the ingredients in the proposed stimulation fluid—organized alphabetically or by relative concentration—separately from the list of additive types (e.g., acid, biocide, breaker). The WOGCC will also accept a format that combines elements of these two approaches, *e.g.*, a format that lists some but not all of the ingredients separately from the additives in which they are found.

III. Requirements for Substantiating Confidentiality Requests for Trade Secrets or Confidential Commercial Information.

If you believe that disclosure of the identity of an ingredient in an additive (including the chemical compound name and CAS number) will reveal trade secrets or confidential commercial information which should be exempt from public disclosure, you may request that the WOGCC Supervisor withhold specific information from public disclosure pursuant to Chapter 3, Section 45(f) and the Wyoming Public Records Act, W.S. 16-4-2013(d). The WOGCC has a duty to provide interested members of the public copies of documents submitted by Owners/Operators and/or service companies unless the WOGCC determines that the information is exempt from disclosure under the Wyoming Public Records Act. Accordingly, you must clearly label what information you seek to have withheld, including any supporting documents submitted with your

confidentiality request.

If you believe that any of the information you are submitting to substantiate your confidentiality request is itself exempt from public disclosure because it constitutes “trade secrets, privileged information [or] confidential commercial, financial, geological or geophysical data” as those terms are defined under Wyo. Stat. Ann. § 16-4-203(d)(v), the Wyoming Public Records Act (WPRA), you should submit a second version of the relevant document(s) that redacts the specific information that you believe should be withheld from public disclosure. If the WOGCC determines that the specific information at issue satisfies the WPRA standards for confidentiality protection, it will post only the redacted version of the relevant document(s) on its public website and maintain the unredacted version in its confidential files.

To demonstrate that the information for which confidentiality is sought constitutes trade secrets or confidential commercial information, you must respond to the following questions and provide the information specified and any supporting documentation (such as previous confidentiality determinations):

1. To your knowledge, does the ingredient identity for which you seek confidentiality protection and its use in an additive of the type at issue in your request (e.g., surfactant, biocide, breaker) appear in any public source? In answering this question, please describe the following:
 - a. Has the identity of the ingredient (including the chemical compound name and CAS number) and its use in an additive of the type at issue in your request (e.g., surfactant, biocide, breaker) been previously disclosed via the FracFocus database by you or, to your knowledge, anyone else?
 - b. Has the identity of the ingredient and its use in an additive of the type at issue in your request (e.g., surfactant, biocide, breaker) been publicly disclosed by you or, to your knowledge, anyone else
 - i. pursuant to any federal, state, or local law or regulation?
 - ii. in professional trade publications?
 - iii. through any other media or publications available to the public or your competitors?

In responding to these questions, you must take steps that are reasonable and appropriate under the circumstances to determine the knowledge of relevant individuals within the company. You must provide a description of the investigation you undertook to respond to these questions.

2. To what extent is the identity of the ingredient (including its use in the additive) known within the company and what steps have you taken to safeguard the information? Please describe in detail how this information is housed in your company and what steps your employees, officers, agents, and directors take to prevent disclosure of the information to parties outside of your company.
3. Has any other regulatory body (federal, state, tribal, or local) determined that the ingredient identity (including its use in the additive) is not entitled to protection from public disclosure as a trade secret or confidential commercial information? If so, provide a copy of the agency's determination, along with any explanation as to why the Commission should not make a similar determination. Provide any other information concerning prior requests for confidentiality and/or regulatory body determinations you believe is relevant to the Commission's determination.
4. How is the identity of the ingredient commercially valuable to the company? In answering this question, please describe why the use of the ingredient in the type of additive is not common knowledge in the industry, including any novel or unusual aspects of the chemical or the use of the chemical in this application. Also provide any description of the efforts undertaken in developing the product you believe is relevant.
5. Describe the ease or difficulty with which the formula for the additive product could be determined from public disclosure of the ingredient identity. Specifically, explain why use of the "systems approach" format would not adequately protect your proprietary interest.

Based on the information supplied, and such other information as the WOGCC Supervisor may request, the Supervisor will determine whether the information at issue is exempt from disclosure under the WOGCC rules and the WPRA. In making this determination, the Supervisor may consult relevant external sources of information, including the FracFocus database.

In the event that the Supervisor determines that specific chemical compound information and associated CAS number(s) are exempt from disclosure, the Supervisor will make available to the public the chemical family name in lieu of the specific chemical compound name and CAS number.

IV. Required Updating

In addition, in the event that confidentiality protection is granted, you must submit to the WOGCC Supervisor every three (3) years an updated statement attesting that the chemical compound information and CAS number(s) at issue have not been disclosed to the public in any other forum and provide any new information in your possession that is relevant to the confidentiality claim.

V. Applicable Statutes and Rules

- A. OGCC Rules and Regulations, Chapter 3, Section 45(d)

(d) The Owner or Operator shall provide detailed information to the Supervisor as to the base stimulation fluid source. The Owner or Operator or service company shall provide to the Supervisor, for each stage of the well stimulation program, the chemical additives, compounds and concentrations or rates proposed to be mixed and injected, including:

- (i) Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant);
- (ii) The chemical compound name and Chemical Abstracts Service (CAS) number shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is aluminum persulfate, or the proppant is silica or quartz sand, and so on for each additive used);
- (iii) The proposed rate or concentration for each additive shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion);
- (iv) The Owner or Operator or service company may also provide a copy of the contractor's proposed well stimulation program design including the above detail;
- (v) The Supervisor may request additional information under this subsection prior to the approval of the Application for Permit to Drill (Form 1) or of the Sundry Notice (Form 4);
- (vi) The Supervisor retains discretion to request from the Owner or Operator and/or the service company, the formulary disclosure for the chemical compounds used in the well stimulation(s).

(e) The Owner or Operator shall provide a detailed description of the proposed well stimulation design, which shall include:

- (i) The anticipated surface treating pressure range;
- (ii) The maximum injection treating pressure;
- (iii) The estimated or calculated fracture length and fracture height.

(f) Upon prior request via Application for Permit to Drill (Form 1), and/or a comprehensive drilling/completion/recompletion plan, or by Well Completion Report (Form 3), or by Sundry Notice (Form 4), and/or by written letter to the Supervisor justifying and documenting the nature and extent of the proprietary information, confidentiality protection shall be provided consistent with WYO. STAT. ANN. § 16-4-203(d)(v) of the Wyoming Public Records Act for the following records: "trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person."

B. Wyoming Public Records Act

§ 16-4-202. Right of inspection; rules and regulations; unavailability

(a) All public records shall be open for inspection by any person at reasonable times, during business hours of the state entity or political subdivision, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

§ 16-4-203. Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions

(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) The inspection would be contrary to any state statute;

(ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

* * * * *

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

* * * * *

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person . . .

C. Case law

Under the WPRA, a trade secret is defined as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort, with a direct relationship between the trade secret and the productive process.” *Powder River Basin Res. Council v. Wyo. Oil & Gas Conservation Comm’n*, 2014 WY 37, ¶ 43, 320 P.3d 222 (2014). Information qualifies as confidential commercial information if its disclosure is likely “(1) to impair the government’s future ability to obtain necessary information; or (2) to cause substantial harm to the competitive position of the persons providing the information.” *Sublette Cnty. Rural Health Care Dist. v. Miley*, 941 P.2d 1101, 1102 (Wyo. 1997) (citation omitted).