

- SUBJECT:** Disclosure of the composition of hydraulic fracturing fluids
- COMMITTEE:** Energy Resources — committee substitute recommended
- VOTE:** 6 ayes — Keffer, Crownover, Carter, C. Howard, Lozano, Strama
2 nays — Craddick, J. Davis
1 absent — Sheffield
- WITNESSES:** For — Scott Anderson, Environmental Defense Fund; Mark Boling, Southwestern Energy Company; Cyrus Reed, Lone Star Chapter, Sierra Club; David Weinberg, Texas League of Conservation Voters;
(*Registered, but did not testify:* Jim Allison, Pecan Valley Groundwater Conservation District; Kip Averitt, Talisman Energy; Gary Compton, Pioneer Natural Resources; Tommy Foltz, Petrohawk Energy Corporation; Dan Hinkle, El Paso; Joshua Houston, Texas Impact; James Mann, Texas Pipeline Association; Luke Metzger, Environment Texas; Joe Morris, Aqua Water Supply Corporation; Annalisa Peace, Greater Edwards Aquifer Alliance; Matt Phillips, The Nature Conservancy of Texas; David Power, Public Citizen, Inc.; Robin Schneider, Texas Campaign for the Environment; Ben Shepperd, Permian Basin Petroleum Association; Terry Simpson, San Patricio County and County Judges and Comm. Assn.; William Stout, Greater Edwards Aquifer Alliance; Matthew Thompson, Apache Corporation)
- Against — (*Registered, but did not testify:* Reagan Herod, FracTech Services, LLC; Mike Watts, Halliburton)
- On — Teddy Carter, Texas Independent Producers and Royalty Owners Association; Deb Hastings, Texas Oil and Gas Association; Bill Stevens, Texas Alliance of Energy Producers
- BACKGROUND:** Hydraulic fracturing, commonly called “fracking,” is a natural gas drilling method in which a well is drilled vertically more than a mile deep and then extended horizontally into the targeted rock formation. Fracturing fluids, consisting of water, sand, and chemical additives, are pumped at extremely high pressure down the wellbore. The fracturing fluids flow through perforated sections of the wellbore and into the surrounding formation,

fracturing the rock and injecting sand into the cracks to hold them open. This process is repeated multiple times to reach maximum areas of the wellbore. The water pressure then is reduced and fluids are returned up the wellbore for disposal or for treatment and reuse, leaving the sand in place to prop open the cracks and allow the gas to flow and be collected at the surface.

Increased use of hydraulic fracturing in shale gas production, including in the Barnett Shale in the Dallas/Fort Worth area, have corresponded with heightened concerns about potential groundwater contamination near shale gas fields.

A list of chemicals used in the fracking process is required to be provided to each site for the benefit of employees and emergency first responders, as required by the federal Occupational Health and Safety Administration (OSHA).

DIGEST:

CSHB 3328 would require well operators using hydraulic fracturing treatments to disclose the chemicals used in the treatments.

The Railroad Commission (RRC) would be required, by rule, to require an operator of a well undergoing hydraulic fracturing treatment to complete a form posted on the hydraulic fracturing chemical registry website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. Information on the form would have to include the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient used in it, regardless of whether the ingredient was to be listed on a Material Safety Data Sheet under the federal Occupational Health and Safety Act (OSHA).

The operator would have to post the completed form on the website or on another publicly accessible website if it was discontinued or inoperable. The operator would be required to submit the completed form to the RRC with the well completion report.

The RRC also would be required to adopt rules to prescribe a process by which an operator or service company could designate certain information, including the identity and amount of a chemical ingredient used in a hydraulic fracturing treatment, as a trade secret not subject to public information or, if that section was repealed, as a trade secret under the federal Emergency Planning and Community Right-To-Know-Act.

The rules would have to prescribe an efficient process for an operator or service company to provide information, including information that was a trade secret, to a health professional or emergency responder who needed it.

A person wishing to challenge a claim of entitlement to trade secret protection would have to file the challenge by the second anniversary of the date the well completion report was filed with the RRC.

Those who could challenge a claim of entitlement to trade secret protection would be limited to the landowner on whose property the relevant well was located, a landowner who owned property adjacent to the well, or a department or agency of Texas.

The RRC would be required to adopt rules by January 1, 2012. Disclosure of composition of hydraulic fracturing fluids would apply only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit was issued on or after the date the initial rules adopted by the RRC took effect.

CSHB 3328 would take effect September 1, 2011.

**SUPPORTERS
SAY:**

Despite the obvious economic benefits and potential to reduce dependence on foreign sources of oil, the safety of hydraulic fracturing has recently been called into question. There are concerns that hydraulic fracturing poses a threat to Texas water supplies. Although there have been no documented cases of groundwater pollution attributed to hydraulic fracturing in Texas or any other state, misconceptions and suspicions have arisen due to the limited public understanding of the science of hydraulic fracturing and the little transparency required of the industry regarding the practice.

Although a list of chemicals used in fracking is required to be provided at each site for the benefit of employees and emergency first responders, this list is not inclusive or specific. The chemical additives used in fracturing fluids are not fully disclosed to the public, but instead remain proprietary trade secrets. Some of the additives are toxic. Even a small amount of a toxic substance would be unacceptable if leaked into a drinking water supply. Current oversight is inadequate to protect water sources from the effects of hydraulic fracturing. CSHB 3328 would be a step toward transparency by requiring the full, public disclosure of the chemical

composition of hydraulic fracturing fluids on a well-by-well basis. The bill also would protect confidential business information while still disclosing the information needed for research, regulatory investigations, and medical treatment.

CSHB 3328 would provide trade secret protection by allowing operators, service companies, and suppliers to withhold the chemical name and amount used of chemicals that they considered trade secrets. However, the bill would allow for a landowner on whose property the well was located, a landowner who owned adjacent property, and a department or agency of the state to challenge a claim of a trade secret.

The natural gas industry currently is being painted as a bad actor by broad-brush attacks. Basic regulations, like disclosure, would provide insulation for responsible companies from the actions of those who may not have the best interest of the broader industry or public in mind. CSHB 3328 would strike a balance between creating a sustainable market for business and ensuring the health and safety of the public.

OPPONENTS
SAY:

While full disclosure of chemicals used in fracking is important for the public good, there is concern that operators, service companies or suppliers would be held responsible for not disclosing ingredients that were not purposely added to the hydraulic fracturing treatment or that occurred incidentally. For example, if an operator used a water supply that had been treated, trace amounts of those chemicals possibly could be found in the fracking mixture, but were not officially disclosed because they were not intended to be a part of the fracking mixture.

OTHER
OPPONENTS
SAY:

CSHB 3328 is unnecessary. Hydraulic fracturing has occurred safely for more than 60 years with no incidence of groundwater contamination directly attributable to this process. Also, the chemicals used in fracking a well make up less than 1 percent of the fracturing fluid. The risk of groundwater contamination from fracking is extremely remote, especially in areas like the Barnett Shale, where more than a mile of dense rock separates shallow freshwater aquifers from petroleum deposits. The geology in Texas, combined with safeguards required by the RRC, which regulates oil and gas exploration and production in Texas, would prevent water used in hydraulic fracturing from migrating to a water table.

NOTES:

A floor amendment may be offered that would ensure that an operator, service company or supplier would not be responsible for disclosing ingredients that were not purposely added to the hydraulic fracturing treatment.

According to the fiscal note, the RRC is expected to require additional staff time to review completion forms, to flag those forms on which an operator indicated a trade secret, and to coordinate with the public that may be affected by the enactment of CSHB 3328. The estimate assumes that the costs would not be minimal, but could be absorbed using existing agency resources.

A similar bill, SB 1930 by Nelson, was referred to the Senate Natural Resources Committee on May 9.