

## 2016 Rulemaking Petition re: Well Stimulation Fluids – Guidance on Board Motion

“A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision.” § 2-4-315, MCA.

To assist the Board with fulfilling the statutory requirement, support staff provides conceptual language for motions regarding the petition. The Board and its members are not limited to considering only the language drafted or only the reasons provided below for reaching its decision.

*Either*

**I move that the board initiate rulemaking**, as requested in the petition, for the following reasons:  
(identify all that apply, adding or amending as necessary)

1. The issues presented in the petition for rulemaking should be reexamined in consideration of the efficacy of the current hydraulic fracturing rules.
2. The issues presented in the petition for rulemaking are supported by evidence that the Board’s current hydraulic fracturing rules have contributed to environmental damage or health and safety issues.
3. The issues presented in the petition are of significant interest to the public and warrant formal consideration through rulemaking.

*Or*

**I move that the board deny the rulemaking petition** for the following reasons:  
(identify all that apply, adding or amending as necessary)

1. The current well stimulation rules and public participation in the authorization of hydraulic fracturing are currently being reviewed by the Montana Supreme Court in *CCRC v. Board of Oil and Gas Conservation*, case number DA 15-0613. The decision of the court may determine future rulemaking action by the Board.
2. The Board has initiated rulemaking to establish a drilling notice requirement for owners of nearby, occupied structures. This expanded notice facilitates additional participation by those owners potentially impacted by drilling and completion operations and provides a hearing process for an owner to appear and comment on proposed activities. At the time of that hearing, interested persons can request stipulations specific to the proposed well site.
3. Federal trade secrets law changed in May 2016 and may impact state trade secret regulation. It is premature to undertake rulemaking until the impact of these changes on state regulatory authority is understood.
4. State trade secrets law has not changed since the adoption of the current hydraulic fracturing rules in 2011.
5. The issues presented in the petition for rulemaking were addressed when the current hydraulic fracturing rules were adopted in 2011.
6. The issues presented in the petition for rulemaking are not supported by evidence that the Board’s current hydraulic fracturing rules have contributed to environmental damage or health and safety issues.
7. Changes to state law could be considered during the 2017 biennial legislative session, which begins in less than four months, as it was with HB 243 (2015). It is premature to undertake rulemaking until the impact of possible changes of state regulatory authority is understood.