

**MONTANA BOARD OF OIL AND GAS CONSERVATION
2535 ST. JOHNS AVENUE
BILLINGS, MONTANA 59102**

REQUEST FOR TRADE SECRET EXEMPTION GUIDELINES

I. Introduction

82-10-603, MCA, requires an Owner, Operator, or service company proposing to conduct well stimulation in Montana 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," as defined in 30-14-402, MCA, the administrator 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 BOGC 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 BOGC 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, including any hazardous component listed on a MSDS as defined in 50-78-102, MCA; 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 BOGC 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

If you believe that disclosing the complete composition of the fracturing fluid, including a specific ingredients identity, concentrations, or both, will, if disclosed, reveal information entitled to protection as trade secrets as defined in 30-14-402, MCA, that should be exempt from public disclosure, the owner, operator, or service company may request that the administrator withhold the information. Accordingly, you must clearly label what information you seek to have withheld, including any supporting documents submitted with you 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" as defined

under 30-14-402, MCA, 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 BOGC determines that the specific information at issue satisfies the MCA 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, 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, has the identity of the ingredient, its concentration, or both, as appropriate, been publicly disclosed:
 - a. Pursuant to any federal or state law or regulation?
 - b. In professional trade publications?
 - c. Through any other media or publications available to the public or your competing oil and gas operators, or service companies?

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, concentrations, or both, as appropriate, are known within the company? 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 federal or state entity determined that the ingredient, concentrations, or both, as appropriate, is not entitled to protection from public disclosure? If so, provide a copy of the agency's determination, along with any explanation as to why the Board 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 Board's determination.
4. How is the identity of the ingredient, concentrations, or both, as appropriate, commercially valuable to the owner, operator, or service company? In answering this question, please describe why the ingredient, concentrations, or both, as appropriate, is not common knowledge in the industry, including any novel or unusual aspects of the ingredient in this application.
5. Describe the ease or difficulty with which the complete composition of the fracturing fluid, including the ingredient identity, concentrations, or both, as appropriate, could be

determined from public disclosure. Specifically, explain why use of the “systems approach” format would not adequately protect your proprietary interest.

Based on the information supplied, within five (5) days of receiving the information, the administrator will determine whether the information at issue is exempt from the disclosure required in 82-10-603, MCA.

In the event that the administrator determines that ingredient identity, concentrations, or both, as appropriate, are exempt from disclosure, the administrator shall:

1. Post the information required in accordance with [section 2] to the BOGC website or to a website hosted by a nonprofit organization dedicated to ground water protection with member consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or their successors and redact the specific information about the ingredient identity, concentrations, or both, as appropriate, that the administrator has determined may be withheld from public disclosure.
2. Make available to the public the chemical family name in lieu of a specific chemical compound name and number for any ingredient, concentration, or both, as appropriate, that is being withheld.
3. Maintain the unredacted version of the information in the BOGC’s confidential files.

IV. Required Updating

In addition, in the even that confidentiality protection is granted, the owner, operator, or service company shall every three (3) years provide an updated statement attesting that the ingredient, concentrations, or both, as appropriate, at issue have not been disclosed to the public in any other forum.

V. Appeal Process

If an owner, operator, or service company disagrees with a determination by the administrator that certain material will not be maintained as confidential, the owner, operator, or service company may file a declaratory judgement action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, operator, or service company wishes the information to enjoy confidential status. The Board must be served in the action and may intervene as a party. Information submitted to the board administrator by an owner, operator, or service company and contested may only be publicly disclosed after a determination is made by a court of competent jurisdiction.

VI. Applicable Statues and Rules

- A. 30-14-402, MCA
- B. 82-10-6, MCA