

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2712 Session of 2020

INTRODUCED BY D. MILLER, ZABEL, YOUNGBLOOD, GALLOWAY, KINSEY, WEBSTER, HILL-EVANS, McCARTER, HOWARD, SCHLOSSBERG, McNEILL, DALEY, LEE, RABB, SANCHEZ, A. DAVIS, KENYATTA, FRANKEL, SHUSTERMAN, CIRESI AND DeLUCA, JULY 30, 2020

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, JULY 30, 2020

AN ACT

1 Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated
 2 Statutes, in development, further providing for hydraulic
 3 fracturing chemical disclosure requirements.

4 The General Assembly of the Commonwealth of Pennsylvania
 5 hereby enacts as follows:

6 Section 1. Section 3222.1 of Title 58 of the Pennsylvania
 7 Consolidated Statutes is amended to read:

8 § 3222.1. Hydraulic fracturing chemical disclosure
 9 requirements.

10 (a) Applicability.--This section applies to hydraulic
 11 fracturing of unconventional wells performed on or after the
 12 effective date of this section.

13 (b) Required disclosures.--

14 (1) [Except as provided under subsection (d), a] A
 15 service provider who performs any part of a hydraulic
 16 fracturing treatment and a vendor who provides hydraulic
 17 fracturing additives directly to the operator for a hydraulic

1 fracturing treatment shall furnish the operator with the
2 information required under paragraph (2) [not later than 60
3 days after the commencement of the hydraulic fracturing].

4 (2) [Within 60 days following the conclusion of
5 hydraulic fracturing, the] The operator of the well shall
6 complete the chemical disclosure registry form and post the
7 form on the chemical disclosure registry in accordance with
8 regulations promulgated under this chapter in a format that
9 does not link chemicals to their respective hydraulic
10 fracturing additive at least 14 days prior to the usage in
11 each stage of the unconventional oil and gas process,
12 including drilling.

13 [(3) If the vendor, service provider or operator claims
14 that the specific identity of a chemical or the concentration
15 of a chemical, or both, are a trade secret or confidential
16 proprietary information, the operator of the well must
17 indicate that on the chemical disclosure registry form, and
18 the vendor, service provider or operator shall submit a
19 signed written statement that the record contains a trade
20 secret or confidential proprietary information. If a chemical
21 is a trade secret, the operator shall include in the chemical
22 registry disclosure form the chemical family or similar
23 description associated with the chemical.

24 (4) At the time of claiming that any of the following
25 are entitled to protection under paragraph (3), a vendor,
26 service provider or operator shall file a signed written
27 statement that the record contains a trade secret or
28 confidential proprietary information:

29 (i) A hydraulic fracturing additive.

30 (ii) A chemical.

1 (iii) A concentration.

2 (iv) Any combination of subparagraphs (i), (ii) and
3 (iii).]

4 (5) [Unless the information is entitled to protection as
5 a trade secret or confidential proprietary information,
6 information] Information submitted to the department or
7 posted to the chemical disclosure registry shall be a public
8 record.

9 (6) By January 1, 2013, the department shall determine
10 whether the chemical disclosure registry allows the
11 department and the public to search and sort Pennsylvania
12 chemical disclosure information by geographic area, chemical
13 ingredient, chemical abstract service number, time period and
14 operator. If the department determines that there is no
15 reasonable assurance that the registry will allow for
16 searches by geographic area, chemical ingredient, chemical
17 abstract service number, time period and operator, at a date
18 acceptable to the department, the department shall
19 investigate the feasibility of making the information under
20 paragraph (2) available on the department's Internet website
21 in a manner that will allow the department and the public to
22 search and sort the information by geographic area, chemical
23 ingredient, chemical abstract service number, time period and
24 operator and shall report to the General Assembly whether
25 additional resources may be needed to implement the searches
26 and sorting.

27 (7) A vendor shall not be responsible for any inaccuracy
28 in information that is provided to the vendor by a third-
29 party manufacturer.

30 (8) A service provider shall not be responsible for any

1 inaccuracy in information that is provided to the service
2 provider by the vendor.

3 (9) An operator shall not be responsible for any
4 inaccuracy in information provided to the operator by the
5 vendor or service provider or manufacturer.

6 (10) A vendor, service company or operator shall
7 identify the specific identity and amount of any chemicals
8 [claimed to be a trade secret or confidential proprietary
9 information to any] within five days of a written request by
10 a health professional. [who requests the information in
11 writing if the health professional executes a confidentiality
12 agreement and provides a written statement of need for the
13 information indicating all of the following:

14 (i) The information is needed for the purpose of
15 diagnosis or treatment of an individual.

16 (ii) The individual being diagnosed or treated may
17 have been exposed to a hazardous chemical.

18 (iii) Knowledge of information will assist in the
19 diagnosis or treatment of an individual.]

20 (11) If a health professional determines that a medical
21 emergency exists and the specific identity and amount of any
22 chemicals claimed to be a trade secret or confidential
23 proprietary information are necessary for emergency
24 treatment, the vendor, service provider or operator shall
25 immediately disclose the information to the health
26 professional. [upon a verbal acknowledgment by the health
27 professional that the information may not be used for
28 purposes other than the health needs asserted and that the
29 health professional shall maintain the information as
30 confidential. The vendor, service provider or operator may

1 request, and the health professional shall provide upon
2 request, a written statement of need and a confidentiality
3 agreement from the health professional as soon as
4 circumstances permit, in conformance with regulations
5 promulgated under this chapter.]

6 (c) Disclosures not required.--Notwithstanding any other
7 provision of this chapter, a vendor, service provider or
8 operator shall not be required to do any of the following:

9 (1) Disclose chemicals that are not disclosed to it by
10 the manufacturer, vendor or service provider.

11 (2) Disclose chemicals that were not intentionally added
12 to the stimulation fluid.

13 (3) Disclose chemicals that occur incidentally or are
14 otherwise unintentionally present in trace amounts, may be
15 the incidental result of a chemical reaction or chemical
16 process or may be constituents of naturally occurring
17 materials that become part of a stimulation fluid.

18 [(d) Trade secrets and confidential proprietary
19 information.--

20 (1) Notwithstanding any other provision of this chapter,
21 a vendor, service company or operator shall not be required
22 to disclose trade secrets or confidential proprietary
23 information to the chemical disclosure registry.

24 (2) The following shall apply:

25 (i) If the specific identity of a chemical, the
26 concentration of a chemical or both the specific identity
27 and concentration of a chemical are claimed to be a trade
28 secret or confidential proprietary information, the
29 vendor, service provider or operator may withhold the
30 specific identity, the concentration, or both the

1 specific identity and concentration, of the chemical from
2 the information provided to the chemical disclosure
3 registry.

4 (ii) Nothing under this paragraph shall prohibit any
5 of the following from obtaining from a vendor, service
6 provider or operator information that may be needed to
7 respond to a spill or release:

8 (A) The department.

9 (B) A public health official.

10 (C) An emergency manager.

11 (D) A responder to a spill, release or a
12 complaint from a person who may have been directly
13 and adversely affected or aggrieved by the spill or
14 release.

15 (iii) Upon receipt of a written statement of need
16 for the information under subparagraph (ii), the
17 information shall be disclosed by the vendor, service
18 provider or operator to the requesting official or entity
19 authorized under subparagraph (ii) and shall not be a
20 public record.

21 (e) Disclosure prevented.--The department shall prevent
22 disclosure of trade secrets or confidential proprietary
23 information under this section pursuant to the requirements of
24 the Right-to-Know Law or other applicable State law.]

25 (e.1) Emergency response reporting.--Notwithstanding any
26 other provision of law, a vendor, service provider or operator
27 shall immediately disclose all information necessary to respond
28 to a spill or release to the following:

29 (1) The department.

30 (2) A public health official.

1 (3) An emergency manager.

2 (4) A responder to a spill, release or complaint from a
3 person that may have been directly and adversely affected or
4 aggrieved by the spill or release.

5 (f) Well reporting.--Notwithstanding any other provision of
6 law, nothing in this section shall be construed to reduce or
7 modify the disclosure requirements for conventional well
8 operators contained in 25 Pa. Code Ch. 78 Subch. E (relating to
9 well reporting).

10 Section 2. This act shall take effect in 60 days.