

ESSENTIAL ELEMENTS TO IMPROVE DISCLOSURE OF CHEMICALS USED IN OIL AND GAS OPERATIONS

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The use of chemicals is an important and potentially dangerous part of oil and gas production. Some of the chemicals used in drilling, hydraulic fracturing (“fracking”), and other types of extraction are toxic. Others may be toxic, but we cannot know; their identities are withheld from the public as trade secrets. Due to public concern about the potentially grave threats to human health associated with some of these chemicals, 29 oil- and gas-producing states have adopted requirements that oil and gas companies publicly disclose the chemicals used in fracking. While these rules provide the public with more information than was available previously, they contain significant gaps that prevent full identification of these chemicals and their associated health and environmental risks.

The stakes are high. In 2020, the Office of Pennsylvania’s Attorney General released a report based on a criminal grand jury investigation of unconventional oil and gas drilling impacts in the state. Drawing on testimony from over 70 households, the grand jury found that

Many of those living in close proximity to a well pad began to become chronically, and inexplicably, sick....Families went to their doctors for answers, but the doctors didn’t know what to do. The unconventional oil and gas companies would not even identify the chemicals they were using, so that they could be studied; the companies said the compounds were “trade secrets” and “proprietary information.” The absence of information created roadblocks to effective medical treatment. One family was told that doctors would discuss their hypotheses, but only if the information never left the room.¹

In light of the risks, residents, health professionals and policymakers have a powerful interest in improving rules requiring chemical disclosure for oil and gas operations. This document highlights *five key reforms that are necessary to improve oil and gas chemical disclosure*. These reforms, all of which have been written into law in at least one U.S. state, greatly increase the public’s right to know what chemicals may contaminate their land, water or air and damage their health, livestock, crops and/or property value. At the same time, the rules provide fair protection for the trade secrets of commercial chemical products.

1. Disclosure of all Oil and Gas Chemicals

Chemical disclosure rules should require disclosure of all chemicals used in oil and gas wells, not just those used in fracking. In May 2022, Colorado’s General Assembly passed first-in-the-nation legislation that would require such disclosure.² Ohio requires disclosure of fracking chemicals³ and those used in the first stage of the drilling that precedes fracking.⁴

2. No Use of Trade Secrets for Individual Chemicals

While most state rules requiring public disclosure of fracking chemicals allow oil and gas companies to withhold individual chemical identities as confidential business information or trade secrets,⁵ California enacted rules that require public disclosure of these identities while continuing to allow trade secret protection for the precise formulas of products composed of a mix of multiple chemicals.⁶ Colorado passed a bill in May 2022 that would institute a similar standard. These rules echo

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the recommendations issued in 2014 by an advisory panel to the U.S. Department of Energy.⁷

3. Disclosure by Chemical Manufacturers

State rules should require disclosure on the part of chemical manufacturers, the companies that know best what chemicals compose the products being used. Instead, the rules typically require disclosure from companies further down the supply chain, such as vendors and well operators. Evidence shows that chemical manufacturers do not disclose all of their chemicals to these companies, thus preempting full disclosure to the public.⁸ In May 2022, Colorado passed legislation that would for the first time require chemical manufacturers to disclose chemical information if it is not available from operators and vendors.⁹

4. Disclosure Prior to Downhole Operations

States should require disclosure of chemicals prior to their use in oil and gas extraction. This provision would allow people to know what chemicals they might later be exposed to and would enable baseline (pre-drilling) sampling of local water supplies for the specific chemicals to be used – sampling that could establish oil and gas operations' accountability if those chemicals were later detected. Yet only a few states require disclosure of chemicals used in fracking before fracking operations begin including California,¹⁰ West Virginia (for some wells),¹¹ and Wyoming.¹² Arkansas requires such disclosure, although it is unclear whether it is to the public or only to the state.¹³

5. Disclosure to a Searchable Database

Oil and gas chemical information should be disclosed to a publicly accessible database that is searchable by various key words including individual chemicals. The public should also be able to download the information in an electronic, delimited format so that people can conduct customized searches. California requires disclosure to a state-run database,¹⁴ and legislation passed by Colorado would create a similar requirement.¹⁵ Many states require disclosure to FracFocus, an electronic database that is run by non-governmental organizations. It provides searchable data, but the data is riddled with misspellings of chemical names and other inaccuracies that make searches challenging.

PSR calls on policymakers across the nation to enact these reforms, drawing on existing state laws as models that will help them protect the health and wellbeing of the people of their own states while allowing oil and gas companies to protect trade secret chemical formulas.



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