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Wyoming, Halliburton agree to greater fracking disclosure

13 hours ago • [By BENJAMIN STORROW Star-Tribune staff writer](#)

A drilling rig at work on a new well site Monday, Sept. 8, 2014 in the Jonah Field near Pinedale. A legal settlement means the public will have greater access to information about the chemicals used in fracking.

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A legal settlement reached by environmental groups, Wyoming regulators and the oil services giant Halliburton will make it harder for companies to withhold information from the public about the chemicals used in fracking.

Environmentalists hailed the deal as a "groundbreaking reform," saying it will provide more information to the public about potentially harmful chemicals being used on frack jobs near homes, schools and businesses. State officials and industry representatives had argued the information should remain confidential. Companies would be put at competitive disadvantage relative to their competitors if the chemicals were disclosed publicly, they argued.

Both struck a different tone Monday. Gov. Matt Mead, in a statement, said the settlement was evidence of the state's commitment of balancing energy development with environmental protections. An industry representative characterized it as a minor change, one which would supplement Wyoming's current public disclosure law relating to fracking.

The deal brought to a close a years-long legal debate, which at one point reached the state Supreme Court.

Under the agreement, the Wyoming Oil and Gas Conservation Commission will be required to implement a review process that effectively makes it more difficult for a company to claim fracking chemicals are exempt from public information requests. The burden of proof will be on firms to show a chemical qualifies as a trade secret, a legal designation afforded to companies in order to protect valuable technology from competitors. And it requires firms resubmit applications for 128 chemicals, which had previously been granted trade-secret status by the state and challenged in court by environmentalists. Halliburton, which intervened in the case on Wyoming's behalf and helped negotiate the settlement, will resubmit applications covering 24 chemicals.

Wyoming regulators previously rubber-stamped industry's trade secret requests, said Katherine O'Brien, an attorney for Earthjustice, an environmental group that helped litigate the case.

"There was no real standard governing the commission's review" of trade secrets, she said. "What the reforms required by the settlement will ensure is that the commission has the information it needs to separate legitimate trade secret claims from illegitimate ones."

In 2010, Wyoming became the first state to require companies disclose the chemicals used in fracking to regulators. But state officials argued that information did not have to be released to the public.

John Robitaille, vice president of the Petroleum Association of Wyoming, said the agreement appeared to clarify the existing rule. The Petroleum Association is industry's top lobbying group in the state but was not party to the lawsuit. Halliburton did not respond to request for comment.

The more information companies can share publicly without compromising their competitive position, the better, Robitaille said.

"Whenever a question is answered by 'I can't tell you', it is going to raise concerns whether it is legitimate or not," he said. "That was part of the reasoning behind the rule that is currently in place. It was to show everyone there were no chemicals to fear, so here they are."

Hydraulic fracturing, as fracking is officially known, is the process of injecting a combination of water, sand and chemicals into a rock formation at high pressure, breaking open the rock and releasing the oil and gas inside. The practice has been critical in fueling the recent resurgence of the American oil and gas sector, but has attracted widespread criticism from environmental groups, who said frack fluids contain chemicals dangerous to public health.

The Powder River Basin Resource Council, Wyoming Outdoor Council, Earthworks and the Center for Effective Government filed a series of public information requests in 2012 seeking information on the chemicals contained in frack fluids. State regulators rejected their argument, saying such chemicals were protected from disclosure as trade secrets.

Natrona County District Court Judge Catherine Wilking sided with the state in a subsequent court case, but [her decision was overturned last year by the Wyoming Supreme Court](#). The high court ruled regulators never provided an explanation for rejecting the public information requests, as required by law. The justices sent the case back to district court to resolve the question of what constituted a trade secret.

Monday's settlement represented the culmination of that process. The deal requires Wyoming regulators ask a series of specific questions of companies seeking trade secret designations. Firms will be required to say whether a chemical has been disclosed elsewhere, detail their efforts to protect its

confidentiality, address the compound's uniqueness among chemicals used by industry and explain why its disclosure would enable other companies to deduce the firm's wider fracking formula.

The agreement requires the new standard be implemented by Thursday. Companies that are granted trade secret exemptions later challenged in court will be given 90 days to resubmit applications for those chemicals. The commission will be given another 90 days to rule on whether those chemicals qualify as trade secrets.

Environmentalists said it is now up to the Oil and Gas Conservation Commission to effectively implement the agreement.

"It is a little unclear if the commission has the time and resources to do that properly," said Shannon Anderson, a lawyer for the Powder River Basin Resource Council. "We hope they do, but they have a lot on their plate."

State officials sought to assuage those concerns. The new guidelines provide clarity to the Oil and Gas Conservation Commission and will not be difficult to implement, said Tom Kropatch, deputy oil and gas supervisor.

"It allows the companies to request a trade secret where they feel they are entitled to one," he said. "It also gives the commission staff what we need to do that and make sure we're in compliance with the trade secret laws in Wyoming. Everyone came together and agreed this is something everyone could live with."

Mead [praised the district court when it sided with the state in 2013](#), saying the original law achieved the goal of balancing environmental protection with energy development. Following announcement of the settlement Monday, Mead said the state would continue to work toward that balance.

"Wyoming will implement these guidelines, and it will allow public access to important information and where appropriate, will protect trade secrets," the governor said in a written statement.

Until recently, industry generally resisted efforts to disclose information on the chemicals used in fracking, saying they were not harmful. Then, last spring, the oil services firm Baker Hughes announced it would publicize all the ingredients used in its frack jobs. The firm followed through and began disclosing the information in October. Yet the future of Baker Hughes' disclosure plans were clouded in November, when Halliburton announced it was buying its competitor for \$34.6 billion. Halliburton has fought to keep fracking chemicals confidential.

The settlement represents one more step in the trend toward greater transparency, said O'Brien, the Earthjustice lawyer. Some states like New York have moved to ban fracking in recent years. Others have sought to regulate it by requiring more information be shared with the public. Wyoming's efforts

implementing the agreement will go a long way towards determining if the latter model works, she said.

"I'd say this is a groundbreaking reform," O'Brien said. "Wyoming was the first state to require disclosure. Many states have looked to Wyoming as a model for their own disclosure rules."

It is reasonable to expect they may do so again, she said.

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