

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 877

Introduced by Wallman, 30; Haar, 21.

Read first time January 06, 2012

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to oil and gas; to amend section 57-905, Reissue
2 Revised Statutes of Nebraska; to provide for disclosure
3 of information relating to hydraulic fracturing
4 treatments as prescribed; to provide duties for the
5 Nebraska Oil and Gas Conservation Commission; to
6 harmonize provisions; to provide an operative date; and
7 to repeal the original section.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The owner or operator of a well on which a
2 hydraulic fracturing treatment is performed shall provide the
3 composition of the hydraulic fracturing fluids used in such treatment
4 to the Nebraska Oil and Gas Conservation Commission. The commission
5 shall provide a form for such purpose, which form shall include:

6 (a) The total volume of water used in the hydraulic
7 fracturing treatment; and

8 (b) Each chemical ingredient that is subject to the
9 requirements of 29 C.F.R. section 1910.1200(g)(2), as provided by a
10 service company or chemical supplier or by the operator if the
11 operator provides its own chemical ingredients.

12 (2) The owner or operator shall submit the completed form
13 to the commission which shall post the completed form on its web
14 site.

15 (3) The owner or operator shall also provide to the
16 commission a list, to be posted on the commission's web site, of all
17 other chemical ingredients not listed on the form completed under
18 subsection (1) of this section that were intentionally included and
19 used for the purpose of creating a hydraulic fracturing treatment for
20 the well. The commission shall ensure that an owner, an operator, a
21 service company, or a supplier is not responsible for disclosing
22 ingredients that:

23 (a) Were not purposely added to the hydraulic fracturing
24 treatment;

25 (b) Occur incidentally or are otherwise unintentionally

1 present in the treatment; or

2 (c) In the case of the owner or operator, are not
3 disclosed to the owner or operator by a service company or supplier.
4 The ingredients need not be identified based on the additive in which
5 they are found, and the concentration of such ingredients need not be
6 provided.

7 Sec. 2. A service company that performs a hydraulic
8 fracturing treatment on a well or a supplier of an additive used in a
9 hydraulic fracturing treatment on a well shall provide the owner or
10 operator of the well with the information necessary to comply with
11 section 1 of this act.

12 Sec. 3. The Nebraska Oil and Gas Conservation Commission
13 shall prescribe a process by which an entity required to comply with
14 section 1 or 2 of this act may withhold and declare certain
15 information as a trade secret for purposes of the Trade Secrets Act,
16 including, but not limited to, the identity and amount of the
17 chemical ingredient used in a hydraulic fracturing treatment.

18 Sec. 4. (1) The following may challenge a claim of
19 entitlement to trade secret protection under section 3 of this act:

20 (a) The landowner on whose property the well is located;

21 (b) A landowner who owns property adjacent to property on
22 which the well is located; or

23 (c) A department or agency of this state with
24 jurisdiction over a matter to which the claimed trade secret is
25 relevant.

1 (2) A person who desires to challenge a claim of
2 entitlement to trade secret protection under section 3 of this act
3 shall file the challenge not later than two years after the date the
4 relevant well completion report is filed with the commission.

5 (3) In the event of a trade secret challenge, the
6 Nebraska Oil and Gas Conservation Commission shall:

7 (a) Promptly notify the service company performing the
8 hydraulic fracturing treatment, the supplier of the additive or
9 chemical ingredient for which the trade secret claim is made, or any
10 other owner of the trade secret being challenged and provide the
11 owner an opportunity to substantiate its trade secret claim; and

12 (b) Prescribe a process consistent with 29 C.F.R. section
13 1910.1200 for an entity described in section 3 of this act to provide
14 information, including information that is a trade secret as defined
15 by Appendix D to 29 C.F.R. section 1910.1200, to a health
16 professional or emergency responder who needs the information.

17 Sec. 5. The Nebraska Oil and Gas Conservation Commission
18 may adopt and promulgate rules and regulations to carry out sections
19 1 to 4 of this act.

20 Sec. 6. Sections 1 to 4 of this act apply to hydraulic
21 fracturing treatment performed on wells for which an initial drilling
22 permit is issued on or after the operative date of this act.

23 Sec. 7. Section 57-905, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 57-905 (1) The commission shall have jurisdiction and

1 authority over all persons and property, public and private,
2 necessary to enforce effectively the provisions of sections 57-901 to
3 57-921.

4 (2) The commission shall have authority, and it is its
5 duty, to make such investigations as it deems proper to determine
6 whether waste exists or is imminent or whether other facts exist
7 which justify action by the commission.

8 (3) The commission shall have authority to require: (a)
9 Identification of ownership of oil or gas wells, producing leases,
10 tanks, plants, structures, and facilities for the production of oil
11 and gas; (b) the making and filing of directional surveys, and
12 reports on well location, drilling, and production within six months
13 after the completion or abandonment of the well; (c) the drilling,
14 casing, operating, and plugging of wells in such manner as to prevent
15 the escape of oil or gas out of one stratum into another, the
16 intrusion of water into oil or gas strata, the pollution of fresh
17 water supplies by oil, gas, or salt water, and to prevent blowouts,
18 cave-ins, seepages, and fires; (d) the furnishing of a reasonable
19 bond with good and sufficient surety, conditioned for the performance
20 of the duty to comply with all the provisions of the laws of the
21 State of Nebraska and the rules, regulations, and orders of the
22 commission; (e) that the production from wells be separated into
23 gaseous and liquid hydrocarbons, and that each be accurately
24 measured; (f) the operation of wells with efficient gas-oil and
25 water-oil ratios, and to fix these ratios; (g) metering or other

1 measuring of oil, gas, or product in pipelines or gathering systems;
2 (h) that every person who produces or purchases oil or gas in this
3 state shall keep and maintain or cause to be kept and maintained for
4 a five-year period complete and accurate records of the quantities
5 thereof, which records shall be available for examination by the
6 commission or its agents at all reasonable times, and that every such
7 person file with the commission such reports as it may reasonably
8 prescribe with respect to such oil or gas or the products thereof;
9 and (i) that upon written request of any person, geologic
10 information, well logs, drilling samples, and other proprietary
11 information filed with the commission in compliance with sections
12 57-901 to 57-921, or any rule, regulation, or order of the
13 commission, may be held confidential for a period of not more than
14 twelve months.

15 (4) The commission shall have authority in order to
16 prevent waste, to regulate: (a) The drilling, producing and plugging
17 of wells, or test holes, and all other operations for the production
18 of oil or gas; (b) the shooting and chemical treatment of wells; (c)
19 the spacing of wells; (d) operations to increase ultimate recovery
20 such as, but without limitation, the cycling of gas, the maintenance
21 of pressure, and the introduction of gas, water, or other substances
22 into producing formations; and (e) disposal of oilfield wastes,
23 including salt water.

24 (5) The commission shall not have authority to limit the
25 production of oil or gas, or both, from any pool or field except to

1 prevent waste therein.

2 (6) The commission shall have authority to classify wells
3 as oil or gas wells for purposes material to the interpretation or
4 enforcement of the provisions of sections 57-901 to 57-921.

5 (7) The commission shall have authority to promulgate and
6 to enforce rules, regulations, and orders to effectuate the purposes
7 and the intent of sections 57-901 to 57-921.

8 (8) The commission, with the approval of the Governor,
9 shall have authority to establish and maintain its principal office
10 and its books, papers, and records at such place in the state as it
11 shall determine. The commission shall not have authority to purchase
12 its principal office quarters.

13 (9) The commission shall have authority to require that
14 all wells drilled for oil and gas shall be adequately logged with
15 mechanical-electrical logging devices, and to require the filing of
16 logs.

17 (10) The commission shall have the authority to regulate
18 the drilling and plugging of seismic and stratigraphic tests in oil
19 and gas exploration holes.

20 (11) The commission shall have the authority to act as
21 the state jurisdictional agency pursuant to the Natural Gas Policy
22 Act, Public Law 95-621, 92 Stat. 3350.

23 (12) The commission shall have the authority to carry out
24 sections 1 to 5 of this act.

25 ~~(12)-(13)~~ The commission shall have the authority to have

1 one or more examiners, who are employees of the commission, conduct
2 any of its hearings, investigations, and examinations authorized by
3 sections 57-901 to 57-921. Such examiner may exercise the
4 commission's powers including, but not limited to, the taking of
5 evidence and testimony under oath, resolving questions of fact and
6 questions of law, and the entering of an order. Such order shall be
7 entered in the commission's order journal. Any person having an
8 interest in property affected by an order issued by an examiner and
9 who is dissatisfied with such order may appeal to the commission by
10 filing a petition on appeal to the commission within fifteen days of
11 the entering of the examiner's order. Such person shall provide
12 notice to all interested persons by personal service or registered or
13 certified United States mail with return receipt, requiring such
14 parties to answer within fifteen days from the date of service. Upon
15 appeal, the commission shall hear the case de novo on the record and
16 shall not be bound by any conclusions of the examiner. The commission
17 shall hold a hearing on the appeal within forty-five days of the
18 filing of an appeal to the commission and issue its order within
19 fifteen days after the hearing. The commission shall review all
20 orders issued by an examiner that are not appealed and issue an order
21 concerning the examiner's order within sixty days after the
22 examiner's order. The commission shall adopt, amend, or reject the
23 examiner's order. Any order of an examiner which is not appealed to
24 the commission and which the commission adopts shall not be
25 appealable to the district court unless the commission adopts an

1 order before the end of the time for appeal to the commission.

2 Sec. 8. This act becomes operative on [XXX date].

3 Sec. 9. Original section 57-905, Reissue Revised Statutes
4 of Nebraska, is repealed.