

Denali Citizens Council



Advocating for Denali's Wilderness, Wildlife and Way of life.

January 10, 2014

Via E-Mail to:

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Re: Supplemental Comments on Proposed Changes to AOGCC Regulations
Related to Hydraulic Fracturing in Alaska

Dear Commissioners and Ms. Colombie:

Thank you for the opportunity to comment on the Alaska Oil and Gas Conservation Commission's November 1, 2013 revisions to its regulations related to hydraulic fracturing. On behalf of the Denali Citizens Council (DCC) board and members, I submit these comments as a supplement to comments previously submitted by Besseney & Van Tuyn, L.L.C. on behalf of DCC, dated April 1, 2013, and submitted by DCC on August 5, 2013, as well as the comments submitted jointly by The Wilderness Society and other organizations (referred to as joint comments in this supplement) on April 1, 2013, August 5, 2013 and during the current round of public comment.

DCC has closely tracked regulations related to oil and gas exploration since shallow gas exploration in the Healy Basin was first proposed. The Healy Basin Gas Exploration License surrounds the largest community in the Denali Borough (Healy), and underlies several subdivisions and remote residential areas. The license area also contains lands, including the Stampede Townships, which have long been recognized by the state, residents, and visitors as valuable for recreation and wildlife habitat. Many of our members live within the Healy Basin license area, and we hope the Commission considers our comments carefully in determining how to best protect our shared freshwater resources.

DCC is disappointed to see the addition of exemptions for Trade Secrets, and the weakening of provisions related to water quality testing. While we appreciate the Commission's efforts to develop regulations that address public input, we hope that the final regulations demonstrate prudent consideration of human and environmental health and well-being.

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Comprehensive Public Disclosure is Necessary to Protect Public Interests

Whether or not directly notified, people who reside near to where hydraulic fracturing operations are proposed must have access to information on chemical components of hydraulic fracturing fluid and other information provided on Forms 10-403 and 10-404. Again, we encourage AOGCC to publish the information from these forms, at a minimum, on the Alaska Online Public Notice System, and preferably (as previous comments have outlined in detail) in a user friendly, searchable database developed by the Commission. Baseline water quality and chemical disclosure¹ is particularly critical for nearby residents (see also concerns below regarding post-fracturing water quality testing, which we feel strongly should also be made available to the public). Freeze-protect fluids can also lead to negative impacts on both human and environmental health, and should be publicly disclosed when use is intended, and should also be tested for in water wells (pre- and post hydraulic fracturing operations) whenever used.

As we have pointed out in earlier comments, without full disclosure of potential contaminants, there is little opportunity for nearby landowners to conclusively show that contamination originated from hydraulic fracturing operations. Alaskan citizens, including for example those of us residing within the Healy Basin Gas Exploration License Area, have a right to know what is being pumped into the ground below our homes and freshwater water supplies. If the Commission will not make operators accountable to Alaska's residents, emergency responders and healthcare providers must be provided with the information needed to ensure proper diagnosis and treatment in the case of contamination.

To help the public understand this increasingly complicated web of waivers and disclosure exemptions, please address (whether at the hearing or as a separate public notice) how the provisions of AS 31.05.035 apply to these proposed regulations, and how they relate and overlap with the waivers, variances, and trade secret exemptions included in these proposed regulations. We are particularly concerned that statutory language on proprietary confidentiality (found in AS 31.05.035), combined with the allowed waivers or variances² and the newly added Trade Secret provisions³, will nullify any benefit disclosure could have to protect public interests. To fully protect public interests (including human and environmental health and safety), operators must be accountable to the public through disclosure to the public. Trade secrets and other such exemptions are inappropriate when public resources and human health are at stake. We refer to the joint comments on the current proposed regulations (particularly concerning trade secrets), and to comments we have submitted previously (regarding proprietary information, waivers and variances) for more details.

¹ 20 AAC 25.283 (a)(4) and 20 AAC 25.283 (a)(12)

² Added to 20 AAC 25.283 (j) in second draft, carried through in (l) in third (current) draft

³ 20 AAC 25.283 (k)

Lastly, we continue to encourage AOGCC to incorporate interagency consultation in the permitting process, as well as appropriate Borough, City and tribal government authorities.

Freshwater Resources Need Stronger Safeguards

We are deeply disappointed that requirements for water quality testing after hydraulic fracturing activities have been conducted is no longer mandatory. This weakens drinking water protections, and limits the state's ability to respond quickly in the case of contamination. Water quality testing both pre- and post-fracturing ensures that the operator is accountable for monitoring whether contamination has occurred, and takes the onerous financial burden of extensive water quality testing off landowners and freshwater users.

We strongly support the new requirement that operators must notify the Commission and surface owner within 24 hours if methane concentration increases between sampling periods.⁴ Unfortunately, unless the Commission requires post-fracturing data, this requirement holds little meaning. At a minimum water quality data post-hydraulic fracturing must be mandatory in areas with concentrated residential uses, and areas of valuable wildlife habitat.

The latest draft regulations delete reference to dedicated timelines for water quality testing. Without dedicated timelines, water quality testing done before or after hydraulic fracturing may not accurately reflect baseline and post-fracturing water quality. We urge the Commission to return to mandatory post-fracturing water quality testing, and require that testing be done no more than 90 days before and within 90 days after hydraulic fracturing operations.

DCC supports the more expansive area proposed for identification of water well penetrations, by including the area within ½ mile of the fracturing interval⁵. Considering that fractures may serve as conduits for freshwater contamination, we would strongly support using this expanded area (distance from the fracturing and/or confining zones⁶) for the identification and description of freshwater aquifers as well⁷. Minimally, to ensure adequate information to protect freshwater resources, it would be appropriate to identify and describe freshwater aquifers surrounding the wellbore trajectory, not simply at the well's surface location.⁸

⁴ 20 AAC 25.283 (a)(4)(B)

⁵ 20 AAC 25.283 (a)(2)

⁶ distance from confining zone used in 20 AAC 25.283 (a)(10) and 20 AAC 25.283 (a)(11)

⁷ 20 AAC 25.283 (a)(3)

⁸ 20 AAC 25.283 (a)(3). In the second draft of proposed regulations, freshwater aquifer identification and geologic description was included in two different

We continue to encourage the Commission to include requirements for water quality testing of surface waters, particularly in current and potential future residential areas and areas important for wildlife habitat and recreation.

Health Impacts Must be Thoroughly Assessed

Because of the potential for negative human health impacts from hydraulic fracturing operations to human health, DCC asks again that the state require formal Health Impact Assessments for, at a minimum, all hydraulic fracturing activities that are proposed in or near areas of concentrated residential use. Particularly considering the legislature's relatively recent actions to encourage gas exploration in close proximity to the state's population centers⁹, and the existence of numerous Exploration Licenses that include and surround residential areas (including the Healy Basin Gas Exploration License) this is particularly critical.

Thank you again for the opportunity to comment on these proposed regulations, and for your consideration of our comments. Considering that communities in the Healy Basin will likely see some gas exploration near homes and in surrounding natural areas that are highly valued, we feel that it is critical for the Commission to do as much as possible to ensure that there is adequate information about fracturing operations to ensure that the best interests of residents are met. If you have any questions, please contact Charlie Loeb, President, DCC (charlie@denalicitizens.org, 907-733-6300) or Hannah Ragland, Board of Directors, DCC (hbragland@hotmail.com, 907-687-2403).

Sincerely,
Hannah Ragland

sections, (a)(3) and (a)(11). Only the geologic description (a)(11) referenced the well trajectory. Combined in the most recent draft, neither the identification or geologic description reference the well trajectory (a)(3).

⁹ Legislative action on financial incentives for exploration within defined radius of population centers.