



**MDE Maryland Department of the Environment**

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# Trade Secrets Update

**Marcellus Shale Safe Drilling Commission  
Advisory Commission**

**March 10, 2014  
Presented by Brigid Kenney**





# Disclaimer

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- This presentation
  - Is for informational purposes only and not for the purpose of providing legal advice
  - Does not cover the topic comprehensively
  - Is not a complete description of the laws and regulations covered
  - The information provided and statements made do not reflect the opinions or positions of the State or any agency or employee of the State, or of the Attorney General.





# Since February 10, 2014 Meeting

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- At the suggestion of public commenters, reviewed
  - Alaska
  - California
  - Illinois
- Reviewed SEAB Task Force Report on FracFocus 2.0 (February 24, 2014)





# Alaska – January 2014 Proposed Rule

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- Requires disclosure to Alaska of all chemicals by CAS number, concentration in each additive and concentration in fracturing fluid
- Requires reporting to FracFocus
- Trade secret information shall be separately filed in an envelope marked confidential along with the legal basis for the claim
- If a Public Records Act request is made, party claiming confidentiality shall be notified and shall send a privilege log for inclusion with produced records
- Claim can be challenged in Superior Court





# California -- Interim regulations – 1/1/14

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- Provide a complete list of chemical names, CAS numbers, and estimated concentrations of every chemical constituent
- If the supplier claims a trade secret, he must provide substitute information for public disclosure: a list, in any order, of the chemical constituents of the additive, including CAS number
- List posted on online registry





## California – Disclosure SB 4

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- The Division of Oil, Gas and Geothermal Resources determines whether the trade secret claim has been substantiated
- If a member of the public requests the record, the Division notifies the holder of the trade secret; if the holder does not obtain a court order, the Division will disclose in 60 days.
- Exceptions for health professionals





# California – Exceptions for Health Professionals

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- A health professional in the event of an emergency or to diagnose or treat a patient.
- A public health professional upon statement of need
- The health professional may share the information as professionally necessary
- Written confidentiality agreement shall not be required





# Illinois – Proposed Regulations

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- Permittee or contractor must maintain and disclose to the agency separate and up-to-date master lists of the base fluid, all hydraulic fracturing additives and all chemicals and associated CAS numbers
- If trade secrecy is claimed, submit 2 lists, one with trade secret information redacted; if agency determines claim is justified, information will be protected







# Illinois – Health professionals

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- Disclosure permitted for the limited purpose of determining what health care services are necessary for the treatment of an affected patient
- In an emergency, upon oral request of health professional, immediate disclosure by the agency or the trade secret holder. Followed later by written request.
- In non-emergency, upon written request
- Health professional may share information as may be professionally necessary, but must disclose to the holder of the trade secret the names of all those health professionals
- Confidentiality agreement may be requested from each health professional





# SEAB Task Force Report

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- Recommendations for chemical disclosure
  - No trade secret recognized unless documented and attested to
  - Report the complete list of chemicals by their CAS numbers and quantities added
  - Report a complete list of products without linking to the list of chemicals
  - Establish standards for recognizing trade secrets and procedure for challenging





# Maryland Strawman

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- Permittee or supplier must provide MDE a complete list of chemical names, CAS numbers, and concentrations of every chemical constituent used in HVHF
- If the supplier claims a trade secret, he must
  - Substantiate and attest to claim
  - Provide substitute information for public disclosure: a list, in any order, of the chemical constituents, including CAS numbers





# Maryland Strawman – Patient Care

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- Upon request, disclose to health professional for purposes of diagnosing or treating a patient
- Information shall be used only for that purpose
- Health professional may share the information as professionally necessary
- Disclosure may be conditioned on promise to sign confidentiality agreement later





# Maryland Strawman – Public Health

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- Upon written request and statement of need, disclose to health professional, toxicologist, or epidemiologist who is employed in the field of public health
- Health professional may share the information as professionally necessary
- Disclosure may be conditioned on signing a confidentiality agreement





# Comments/Discussion

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