

Wyoming Court Finds Individual Ingredients of Hydraulic Fracturing Formulas Constitute Trade Secrets

Wyoming Court Finds Individual Ingredients of Hydraulic Fracturing Formulas Constitute Trade Secrets

Insight — 4/1/2013

by Tyler J. Garrett

On March 21, 2013, a Wyoming state district court affirmed a decision of the Supervisor of the Wyoming Oil and Gas Conservation Commission (OGCC) that individual ingredients of hydraulic fracturing formulas constitute trade secrets under the OGCC's well stimulation public disclosure rule and the Wyoming Public Records Act. Several groups had filed a petition contesting the Supervisor's decision to exempt such information from public disclosure due to their status as trade secrets. *Powder River Basin Resource Council v. Wyoming Oil and Gas Conservation Comm'n*, No. 94650-C (7th Dist., Natrona County, Wyoming). In their petition, the Powder River Basin Resource Council, Wyoming Outdoor Council, Earthworks, and OMB Watch requested disclosure of the fracking ingredients, alleging that the Supervisor unlawfully withheld this information based on applications that did not provide factual support for trade-secret status.

In affirming the OGCC Supervisor's decision to withhold fracking ingredient information he deemed to be trade secrets, the court found that: (1) the Supervisor acted reasonably when he established a policy for evaluating trade secret protection requests and that policy is in accordance with the Wyoming Public Records Act; and (2) the petitioners failed to demonstrate that the Supervisor did not properly follow Wyoming law in granting trade secret protection requests. In its decision, the court recognized the highly competitive nature of the hydraulic fracturing industry and that disclosure of individual fracking ingredients could enable a competitor to reverse engineer a company's chemical formulations. It also quoted the Supervisor's determination that "[t]he process from and prevention of reverse engineering through the deformation of chemical compounds is the protection that providers of chemical compounds used in well stimulation are seeking. Deformation or reverse engineering of chemical compounds would negatively impact those chemical providers."

Regarding the public policy arguments made by the parties, the Wyoming court said both sides' arguments had substantial merit but those "competing concerns are best addressed through legislative action, or

further rule promulgation and are not properly within the Court's purview." The OGCC chairman, Governor Matt Mead, commended the ruling. "This decision recognizes the importance of a state-based approach to regulating hydraulic fracturing — one that balances this important method for producing energy with environmental protection," he said through a spokesman.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.