September 10, 2012

Via Regulations.gov Web Form

Bureau of Land Management
Regulatory Affairs
20 M Street, SE
Washington, DC 20003

Re: Comments on Proposed Oil and Gas Rules Governing Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands

Dear Regulatory Affairs Staff:

The Environmental Defense Fund (EDF) appreciates the opportunity to comment on the proposed rule to regulate hydraulic fracturing on public land and Indian land, published in the Federal Register on May 11, 2012, modifying 43 CFR Part 3160. These comments focus on the well integrity and chemical disclosure provisions in the proposed rule. In addition, we encourage the Department to give careful consideration to the comments filed in this docket on these subjects by the Natural Resources Defense Council and allied groups.

EDF applauds the BLM for addressing several important issues in this rulemaking. The proposals are clearly intended to make substantial progress. While we would prefer a broader scope (for example, we would like to see the agency take a proactive approach to monitoring and reducing fugitive air emissions from wells and associated equipment on BLM lands), these comments are limited to issues raised by the proposal itself. We hope additional important matters will be addressed in other rulemakings in the near future.

Well Integrity:

I. Well Construction

When finalizing the proposed well construction proposals, EDF believes it is critically important for BLM to explain how its rules will assure that operators achieve each of seven well construction performance objectives. Moreover, since it is possible in many cases to meet a given objective in more than one way, we also ask that the agency explain why it believes its particular approaches are optimal. The seven essential objectives for well construction are:

1. Isolate protected groundwater zones.
2. Support effective well control.

3. Isolate corrosive zones.
4. Isolate flow zones capable of over-pressurizing the surface casing annulus or adversely affecting the cement job.
5. Isolate potentially productive zones including the target reservoir.
6. Isolate other protected mineral resources and, if applicable.
7. Address drilling hazards such as mine or solution voids, if applicable.

In the course of explaining how the final rules achieve these objectives, we believe it is important for BLM to consider and articulate how the needs and challenges differ for different casing strings. In addition, we ask that BLM ensure that the rules are flexible enough to meet variable conditions from site to site.

In the event that BLM cannot convincingly demonstrate that the rules will satisfy these objectives under a variety of conditions, we encourage the agency to modify the proposals prior to adoption in order to achieve all of these ends.

II. Oversight of Hydraulic Fracturing Treatment

When finalizing the rules that provide for oversight of the hydraulic fracturing process, it is critical that BLM explain how the rules will assure that completions meet four performance objectives. As is the case with well construction, it is important that BLM explain at the same time how the rules will be able to be adapted to varying circumstances where appropriate. Furthermore, in the event it cannot be demonstrated that the rules will meet these objectives, we believe it is important that the rules be modified before they are adopted. The four essential objectives for oversight of the hydraulic fracturing process are:

1. Protected water is not contaminated by pumped fluids or surface releases.
2. Pumped fluids are directed into the permitted target reservoir and effectively confined.
3. Wellbore integrity is monitored and maintained throughout the stimulation operation.
4. Integrity failures are addressed and corrective actions affirmed by test prior to commencement of hydraulic fracturing operations.

Disclosure of Well Stimulation Fluid Chemicals:

EDF commends BLM for including chemical disclosure policy in the proposed rule. It seems clear to us that the agency has gone to lengths to learn from the experience of the states. What follows are brief notes and recommendations intended to help BLM synch up its proposal with the states and make improvements in areas where state policies can be improved. On the latter, we would draw your attention in particular to our comments on trade secrets. The acceptance and success of BLM's disclosure rule will depend heavily on whether the agency adds much-

needed improvements to its proposal regarding trade secrets. We would also draw your attention in particular to our comments on master lists, which is our recommended approach to addressing the need for prospective disclosures.

1. Applicability.

We commend BLM for requiring disclosure of the chemical constituents in "stimulation fluids," rather than just hydraulic fracturing fluids. This more comprehensive approach is likely to be particularly important in the West, where constraints on water availability create an incentive to develop alternative stimulation techniques.

2. Information regarding water supply. 3162.3-3(c)(3) and (g)(1).

We commend BLM for proposing to require key information regarding the water sources for stimulation activities. We note that, in addition to specifications about water sources, access routes, etc., it may be prudent to also require operators to report the times of year at which they propose to withdraw specified volumes so that permitting officers and other interested parties are better able to assess potential impacts to instream flows, riparian habitats and other user groups. In addition to requiring reporting of such information prior to well stimulation, operators should be required to report actual water withdrawals – including the dates during which specific volumes are withdrawn – on their Subsequent Report Sundry Notice forms.

3. Specification of base fluids. 3162.3-3(g)(2).

While we believe this is the intent of the rule, for better clarity we recommend amending this subsection to read, "The type and total volume of the base fluid used." We likewise recommend that BLM clearly require operators to report volumes of produced water that are recycled and used as base fluid in well stimulation. Such information is critical to tracking water use on a lifecycle basis, as was recommended by the shale gas subcommittee of Secretary of Energy Advisory Board.

4. Information regarding chemical additive products. 3162.3-3(g)(4).

In order to be consistent with several state policies, as well as the format used by Frac Focus, we recommend requiring that the information reported under this subsection also include the names of vendors supplying additive products.

5. Information regarding chemical constituents. 3162.3-3(g)(5).

We commend BLM for requiring identification by CAS number of each chemical constituent contained in a stimulation fluid. We note, however, that BLM should also clearly require that chemicals be identified by their common names, consistent with state policies. We further commend BLM for requiring disclosure of chemical concentrations, expressed as a percentage of the total stimulation fluid. In order for regulators, emergency responders, medical professionals and the public to better understand well development activities and their potential risks, information about concentrations is critical. We also note that by requiring chemical concentrations to be expressed as a percentage of the total stimulation fluid, rather than as a percentage of additive products, concerns about reverse engineering of proprietary formulas can be allayed and, thus, claims for trade secret protection should be reduced.

6. Trade secret information. 3162.3-3(h).

The issue of trade secret protections has proven to be the most controversial aspect of chemical disclosure policies adopted by the states. And in fact, public skepticism over the legitimacy of trade secret claims threatens to undermine one of the core motivations behind developing disclosure policies in the first place – that is, to help people better understand industry operations and environmental risks, and to help win back a sorely eroded public trust. To that end, we strongly recommend that BLM improve its proposed rule language regarding trade secret information, which we find to be vague and inadequate.

While protection of legitimate trade secrets is important to private sector innovation, the public interest in disclosure is compelling. In its initial report, the shale gas subcommittee of the Secretary of Energy Advisory Board said it believed that "public confidence in the safety of fracturing would be significantly improved by complete disclosure and that the barrier to shield chemicals based on trade secret should be set very high."[1]

Of the states that have adopted chemical disclosure policies, none has tackled the trade secrets issue in a fully adequate way. Federal law, however, *does* provide a robust model for handling trade secret assertions and trade secret challenges. Section 350 of the Emergency Planning and Community Right-to-Know Act provides a clear model for BLM to follow. Specifically, BLM should, at a minimum, amend the proposed rule to require that when an operator claims trade secret protection for a chemical identity, the operator must submit a written claim that such chemical identity is entitled to trade secret protection, including substantiating facts in the form of the information required under 40 C.F.R. Section 350.7(a). The operator should also be required to submit a certification from an owner, operator or senior official with management responsibility that is substantially identical to the certification language provided in part 4 of the form at 40 C.F.R. Section 350.27.

[1] SEAB Shale Gas Production Subcommittee Ninety-Day Report, Aug. 11, 2011, at 24, *available at* http://www.shalegas.energy.gov/resources/081111_90_day_report.pdf

The proposed rule should also clearly establish a broad right to challenge trade secret claims, noting that the interest being addressed by the rule is one of providing broad public access to information. The proposed rule should likewise establish a clear process for adjudicating trade secret challenges. To that end, the proposed rule should specify that, upon being challenged, a claim of trade secret protection shall only be upheld if the claim satisfies the requirements of 40 C.F.R. Section 350.12(a).

Finally, the proposed rule should include language to ensure that medical professionals can obtain quick, unfettered access to trade secret information if they believe it may be necessary for diagnosis or treatment of an individual who may have been exposed to stimulation fluid chemicals. The language should clearly state that, in emergency situations, the information must be provided immediately upon verbal request by the medical professional. If the proposed rule provides for confidentiality agreements in cases where trade secret information is given to medical professionals, it should make clear that nothing in those agreements may prohibit a medical professional from sharing the information with another health professional, a patient or a public health official or from making any report required by law or by professional ethical standards.

7. Master Lists.

Numerous stakeholders have called for disclosure of stimulation fluid chemicals prior to stimulation activities, noting that such information can be used by landowners who may wish to conduct baseline water quality sampling prior to well development and that such information is needed by regulators in order to assess and mitigate risk. We agree that chemical information should be provided prior to well development in order to address these needs and believe the most efficient and effective method for doing so would be to require operators and service companies to supply BLM with master lists of chemicals proposed to be used in the coming year. This information should be broken down by geographic region, by both state and target formation. The rule should require that if a chemical is used that was not identified on an annual prospective master list, the master list should be immediately updated. Finally, operators should be required to provide a master list of chemicals *actually* used in the preceding year – again, specified by state and target formation – and should include total volumes used for each chemical. Master lists should be made available on a publicly accessible website that allows user to search and sort information.

8. Public reporting of chemical disclosures.

In order to be responsive to the public interest, provisions will need to be added to the proposed rule to ensure that chemical information provided to BLM is made available to the public in

useful, user-friendly formats on a publicly accessible website. We understand that BLM is considering using Frac Focus as the platform for public reporting of chemical disclosures under this rule. We would note, however, that the current version of Frac Focus has only rudimentary and limited search functions and doesn't allow for cross-sorting information at all. The operators of Frac Focus – GWPC and IOGCC – are working to add search and sort functions to the registry; and because we are optimistic that these improvements will be made, we are comfortable recommending that BLM adopt the use of Frac Focus as a requirement under the rule. We recommend, however, that the rule include language such as that found in the Colorado and Pennsylvania disclosure policies, stating that continued use of Frac Focus is contingent on the registry operators adding capabilities for searching and sorting data by chemical name, CAS number, operator, geographic region, dates of stimulation, and so on.[2] The rule should also stipulate that such improvements must be made by a date certain. If those improvements are not made, the rule should commit BLM to creating or designating an alternative disclosure platform that meets these criteria.

Once again, we appreciate the Bureau's efforts and the opportunity to comment on the proposed rules.

Respectfully submitted,

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[2] See COGCC Rule 205A(b)(3) and 58 Pa. C.S. § 3222.1(b)(6).