

October 14, 2013

VIA EMAIL

Commissioner Cathy P. Foerster
Alaska Oil & Gas Conservation Commission
333 West 7th Avenue
Anchorage, Alaska 99501

Re: NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE ALASKA OIL AND GAS CONSERVATION COMMISSION
DATED AUGUST 7, 2013

Dear Commissioner Foerster:

We, the undersigned law professors who teach and write about intellectual property and trade secrets, write in support of the Alaska Oil and Gas Conservation Commission (“AOGCC”) proposed hydraulic fracturing (“fracking”) regulations that would provide for the disclosure of information that might in other contexts be deemed trade secrets that cannot be disclosed to the public, under proposed regulations 20 ACC 25.283(a)(14) and (h). As in the attached April 1, 2013 letter, we take no position on whether fracking should be conducted in the State of Alaska or whether there are any environmental, health or safety risks (“EHS”) associated with such behavior. Rather, we write for one purpose: to endorse the AOGCC’s efforts to access the alleged trade secret information that it needs to make an intelligent assessment of the existence of such risks.

Since the letter that several law professors submitted to the AOGCC on April 1, 2013, incorporated herein, we remain concerned that the fracking industry has opposed the reasonable efforts of regulators throughout the country to have access to information about the exact chemical composition of fracking fluids. Such access should not only be uncontroversial, as trade secret information is shared with regulators at all levels of government and in a range of industries, but should be standard operating procedure for any regulatory entity charged with stewarding our nation’s natural resources. To deny regulators and the public access to such information is to prevent an evidenced-based analysis of the EHS impacts, if any, of fracking. It is, in sum, an effort to render the regulation of fracking as a game based upon guesswork and supposition rather than hard data. Moreover, we believe that the alleged competitive harm associated with the possible disclosure of these trade secrets (if they qualify, in fact, as trade secrets) to the public is at best overstated, and at worst reflects a skewed placement of commercial interests over the broad interests of the public in transparency, accountability and safe environmental management.

The AOGCC is to be commended for resisting these efforts. The proposed regulations continue to allow the AOGCC access to the specific chemical composition of fracking fluid. Indeed, by requiring that such information be shared in advance of the commencement of operations, the AOGCC’s proposed regulations hew closely to what should be the goal of modern environmental regulation: evidence-based assessment of EHS risks and expert decision-making. As such, we write in enthusiastic support of the proposed regulations.

For further information, questions or correspondence, please contact David S. Levine at dlevine3@elon.edu or Mary Lyndon at lyndonm@stjohns.edu.

Respectfully submitted,¹

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¹ Affiliations are listed for identification purposes only.