

1 3. "CHEMICAL ABSTRACTS SERVICE" OR "CAS" MEANS THE CHEMICAL REGISTRY
2 THAT IS THE AUTHORITATIVE COLLECTION OF DISCLOSED CHEMICAL SUBSTANCE
3 INFORMATION.

4 4. "CHEMICAL CONSTITUENT" MEANS A DISCRETE CHEMICAL WITH ITS OWN
5 SPECIFIC NAME OR IDENTITY, SUCH AS A CAS NUMBER, THAT IS CONTAINED IN AN
6 ADDITIVE.

7 5. "HYDRAULIC FRACTURING FLUID" MEANS THE FLUID USED TO PERFORM A
8 PARTICULAR HYDRAULIC FRACTURING TREATMENT AND INCLUDES THE APPLICABLE
9 BASE FLUID AND ALL ADDITIVES.

10 6. "HYDRAULIC FRACTURING TREATMENT" MEANS THE STIMULATION OF A WELL BY
11 THE FORCEFUL APPLICATION OF HYDRAULIC FRACTURING FLUID INTO THE RELEVANT
12 GEOLOGICAL FORMATION FOR THE PURPOSE OF CREATING FRACTURES IN THE FORMA-
13 TION IN ORDER TO FACILITATE PRODUCTION OF HYDROCARBONS.

14 7. "OPERATOR" MEANS THE PERSON OR ENTITY AUTHORIZED TO CONDUCT OPER-
15 ATIONS ON A WELL.

16 8. "PROPPANT" MEANS SAND OR ANOTHER NATURAL OR MAN-MADE INERT MATERIAL
17 THAT IS USED IN A HYDRAULIC FRACTURING TREATMENT TO PREVENT ARTIFICIALLY
18 CREATED OR ENHANCED FRACTURES FROM CLOSING ONCE THE TREATMENT IS
19 COMPLETED.

20 9. "TRADE SECRET" MEANS ANY CONFIDENTIAL FORMULA, PATTERN, PROCESS,
21 DEVICE, INFORMATION OR COMPILATION OF INFORMATION THAT IS USED IN A
22 PERSON'S OR ENTITY'S BUSINESS AND THAT GIVES SUCH PERSON OR ENTITY AN
23 OPPORTUNITY TO OBTAIN AN ADVANTAGE OVER COMPETITORS THAT DO NOT KNOW OR
24 USE IT.

25 10. "WELL" MEANS A HYDROCARBON PRODUCTION WELL.

26 11. "WELL COMPLETION REPORT" MEANS THE REPORT AN OPERATOR IS REQUIRED
27 TO FILE WITH THE COMMISSION FOLLOWING THE COMPLETION OR RECOMPLETION OF
28 A WELL, IF APPLICABLE.

29 S 23-1503. INFORMATION SUBMITTED CONSIDERED PUBLIC; POSTING ON INTERNET
30 WEBSITE.

31 NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, UNLESS THE INFORMATION IS
32 OTHERWISE AUTHORIZED TO BE WITHHELD AS A TRADE SECRET PURSUANT TO THIS
33 TITLE, INFORMATION SUBMITTED TO THE DEPARTMENT PURSUANT TO SECTION
34 23-1505 OR 23-1507 OF THIS TITLE IS PUBLIC INFORMATION, AND THE DEPART-
35 MENT SHALL POST THE INFORMATION ON ITS PUBLICLY ACCESSIBLE INTERNET
36 WEBSITE.

37 S 23-1505. SERVICE COMPANY DISCLOSURES.

38 1. AN OPERATOR WHICH AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT
39 HYDRAULIC FRACTURING TREATMENTS UPON ANY OF SUCH OPERATOR'S WELLS IN
40 THIS STATE SHALL DISCLOSE TO THE DEPARTMENT AND MAINTAIN AN UPDATED
41 MASTER LIST OF:

42 A. ALL BASE FLUIDS TO BE USED BY SUCH PERSON OR ENTITY DURING ANY
43 HYDRAULIC FRACTURING TREATMENT IN THIS STATE;

44 B. ALL ADDITIVES TO BE USED BY SUCH PERSON OR ENTITY DURING ANY
45 HYDRAULIC FRACTURING TREATMENT IN THIS STATE; AND

46 C. ALL CHEMICAL CONSTITUENTS TO BE USED BY SUCH PERSON OR ENTITY IN
47 ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE AND THEIR ASSOCIATED
48 CAS NUMBERS.

49 2. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH C OF SUBDIVISION ONE OF
50 THIS SECTION, IF THE SPECIFIC IDENTIFY OF ANY CHEMICAL CONSTITUENT TO BE
51 USED IN ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE IS ENTITLED TO
52 BE WITHHELD AS A TRADE SECRET PURSUANT TO THE CRITERIA PROVIDED BY 42
53 U.S.C. SECTION 11042(A)(2) AND SECTION 23-1511 OF THIS TITLE, THE
54 DEPARTMENT SHALL PROTECT AND HOLD CONFIDENTIAL THE IDENTITY OF THE CHEM-
55 ICAL CONSTITUENT AND ITS ASSOCIATED CAS NUMBER. TO QUALIFY FOR TRADE
56 SECRET PROTECTION, THE PERSON PERFORMING THE HYDRAULIC FRACTURING TREAT-

MENT MUST SUBMIT TO THE DEPARTMENT ON AN APPROVED FORM A FORMAL CLAIM OF ENTITLEMENT TO THAT PROTECTION IN THE MANNER REQUIRED BY SECTION 23-1511 OF THIS TITLE.

3. A PERSON OR ENTITY PERFORMING HYDRAULIC FRACTURING TREATMENTS IN THIS STATE SHALL PROVIDE TO THE OPERATOR OF EACH WELL FOR WHICH THE PERSON OR ENTITY PERFORMS A HYDRAULIC FRACTURING TREATMENT:

A. THE MAXIMUM PUMP PRESSURE MEASURED AT THE SURFACE AND THE TYPE AND VOLUME OF BASE FLUID USED IN EACH STAGE OF THE HYDRAULIC FRACTURING TREATMENT;

B. A LIST OF ALL ADDITIVES USED IN THE HYDRAULIC FRACTURING FLUID, SPECIFIED BY GENERAL TYPE, SUCH AS ACID, BIOCIDES, BREAKER, CORROSION INHIBITOR, CROSSLINKER, DEMULSIFIER, FRICTION REDUCER, GEL, IRON CONTROL, OXYGEN SCAVENGER, PH ADJUSTING AGENT, PROPPANT, SCALE INHIBITOR AND SURFACTANT;

C. FOR EACH ADDITIVE TYPE LISTED UNDER PARAGRAPH B OF THIS SUBDIVISION, THE SPECIFIC NAME OF THE ADDITIVE USED AND THE ACTUAL RATE OR CONCENTRATION OF EACH ADDITIVE, EXPRESSED AS POUNDS PER THOUSAND GALLONS OR GALLONS PER THOUSAND GALLONS AND EXPRESSED AS A PERCENTAGE BY VOLUME OF THE TOTAL HYDRAULIC FRACTURING FLUID USED;

D. A LIST OF ALL THE CHEMICAL CONSTITUENTS USED IN THE HYDRAULIC FRACTURING FLUID AND THEIR ASSOCIATED CAS NUMBERS, EXCEPT TO THE EXTENT THAT THE SPECIFIC IDENTITY OF ANY CHEMICAL CONSTITUENT IS ENTITLED TO BE WITHHELD AS A TRADE SECRET AS PROVIDED BY SUBDIVISION TWO OF THIS SECTION; AND

E. FOR EACH CHEMICAL CONSTITUENT IDENTIFIED UNDER PARAGRAPH D OF THIS SUBDIVISION, THE ACTUAL RATE OR CONCENTRATION OF EACH CHEMICAL, EXPRESSED AS POUNDS PER THOUSAND GALLONS OR GALLONS PER THOUSAND GALLONS AND EXPRESSED AS A PERCENTAGE BY VOLUME OF THE TOTAL HYDRAULIC FRACTURING FLUID USED.

4. THE PROVISIONS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION SHALL NOT BE DEEMED TO AUTHORIZE ANY OPERATOR, PERSON OR ENTITY TO WITHHOLD INFORMATION THAT FEDERAL OR STATE LAW, INCLUDING THIS SECTION, REQUIRES TO BE PROVIDED TO ANY HEALTH CARE PROFESSIONAL WHO NEEDS THE INFORMATION FOR DIAGNOSTIC OR TREATMENT PURPOSES. THE OPERATOR AND PERSON OR ENTITY PERFORMING A HYDRAULIC FRACTURING TREATMENT SHALL PROVIDE DIRECTLY TO A HEALTH CARE PROFESSIONAL, IMMEDIATELY IN REQUEST, ALL INFORMATION REQUIRED BY THE HEALTH CARE PROFESSIONAL, INCLUDING THE PERCENT BY VOLUME OF THE CHEMICAL CONSTITUENTS OF THE HYDRAULIC FRACTURING FLUID AND THEIR ASSOCIATED CAS NUMBERS. IN A CASE THAT IS NOT A MEDICAL EMERGENCY, THE HEALTH CARE PROFESSIONAL SHALL PROVIDE THE OPERATOR AND THE PERSON OR ENTITY PERFORMING THE HYDRAULIC FRACTURING TREATMENT A WRITTEN STATEMENT OF NEED FOR THE INFORMATION BEFORE THE HEALTH CARE PROFESSIONAL IS ENTITLED TO RECEIVE THE INFORMATION. IN A MEDICAL EMERGENCY, THE HEALTH CARE PROFESSIONAL SHALL PROVIDE THE OPERATOR AND THE PERSON OR ENTITY PERFORMING THE HYDRAULIC FRACTURING TREATMENT A WRITTEN STATEMENT OF NEED FOR THE INFORMATION AS SOON AS CIRCUMSTANCES PERMIT.

5. A HEALTH CARE PROFESSIONAL TO WHOM INFORMATION IS DISCLOSED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION SHALL HOLD THE INFORMATION CONFIDENTIAL, EXCEPT THAT THE HEALTH CARE PROFESSIONAL MAY, FOR DIAGNOSTIC OR TREATMENT PURPOSES, DISCLOSE SUCH INFORMATION TO ANOTHER HEALTH CARE PROFESSIONAL, A LABORATORY OR A THIRD-PARTY TESTING FIRM. A HEALTH CARE PROFESSIONAL, LABORATORY OR THIRD-PARTY TESTING FIRM TO WHICH INFORMATION IS DISCLOSED BY ANOTHER HEALTH CARE PROFESSIONAL SHALL HOLD SUCH INFORMATION CONFIDENTIAL.

S 23-1507. OPERATOR DISCLOSURES.

1 1. FOLLOWING THE COMPLETION OF A HYDRAULIC FRACTURING TREATMENT ON A
2 WELL, THE OPERATOR SHALL INCLUDE IN THE WELL COMPLETION REPORT, ON A
3 FORM APPROVED BY THE DEPARTMENT:

4 A. THE MAXIMUM PUMP PRESSURE MEASURED AT THE SURFACE AND THE TYPE AND
5 VOLUME OF BASE FLUID USED IN EACH STAGE OF THE HYDRAULIC FRACTURING
6 TREATMENT;

7 B. A LIST OF ALL ADDITIVES USED IN THE HYDRAULIC FRACTURING TREATMENT,
8 SPECIFIED BY GENERAL TYPE, SUCH AS ACID, BIOCIDES, BREAKERS, CORROSION
9 INHIBITORS, CROSSLINKERS, DEMULSIFIERS, FRICTION REDUCERS, GELS, IRON
10 CONTROL, OXYGEN SCAVENGERS, PH ADJUSTING AGENTS, PROPPANTS, SCALE INHIBITORS
11 AND SURFACTANTS;

12 C. FOR EACH ADDITIVE TYPE LISTED UNDER PARAGRAPH B OF THIS SUBDIVI-
13 SION, THE SPECIFIC NAME OF THE ADDITIVE USED AND THE ACTUAL RATE OR
14 CONCENTRATION OF EACH ADDITIVE, EXPRESSED AS POUNDS PER THOUSAND GALLONS
15 OR GALLONS PER THOUSAND GALLONS AND EXPRESSED AS A PERCENTAGE BY VOLUME
16 OF THE TOTAL HYDRAULIC FRACTURING FLUID USED;

17 D. THE INFORMATION PROVIDED PURSUANT TO SUBDIVISION THREE OF SECTION
18 23-1505 OF THIS TITLE TO THE OPERATOR BY THE PERSON OR ENTITY WHO
19 PERFORMED THE HYDRAULIC FRACTURING TREATMENT; AND

20 E. IF THE OPERATOR CAUSED ANY ADDITIVES TO BE USED DURING THE HYDRAU-
21 LIC FRACTURING TREATMENT THAT ARE NOT REQUIRED TO BE DISCLOSED PURSUANT
22 TO SUBDIVISION THREE OF SECTION 23-1505 OF THIS TITLE TO THE OPERATOR BY
23 THE PERSON OR ENTITY WHO PERFORMED THE HYDRAULIC FRACTURING TREATMENT:

24 (1) A LIST OF THE ADDITIVES USED; AND

25 (2) FOR EACH ADDITIVE LISTED, THE CHEMICAL CONSTITUENTS OF THE ADDI-
26 TIVE AND THEIR ASSOCIATED CAS NUMBERS AND THE ACTUAL RATE OR CONCEN-
27 TRATION OF EACH ADDITIVE OR CHEMICAL, EXPRESSED IN THE MANNER PROVIDED
28 PURSUANT TO SUBDIVISION THREE OF SECTION 23-1505 OF THIS TITLE.

29 2. THE OPERATOR MAY SUPPLY FIELD SERVICE COMPANY TICKETS, EXCLUDING
30 PRICING INFORMATION, AND REPORTS REGARDING THE HYDRAULIC FRACTURING
31 TREATMENT, AS USED IN THE NORMAL COURSE OF BUSINESS, TO SATISFY SOME OR
32 ALL OF THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION.

33 3. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH E OF SUBDIVISION ONE OF
34 THIS SECTION, IF THE SPECIFIC IDENTITY OF A CHEMICAL CONSTITUENT
35 CONTAINED IN AN ADDITIVE IS ENTITLED TO BE WITHHELD AS A TRADE SECRET
36 PURSUANT TO THE CRITERIA PROVIDED BY 42 U.S.C. SECTION 11042(A)(2) AND
37 SECTION 23-1511 OF THIS TITLE, THE DEPARTMENT SHALL PROTECT AND HOLD
38 CONFIDENTIAL THE IDENTITY OF THE CHEMICAL CONSTITUENT AND ITS ASSOCIATED
39 CAS NUMBER. TO QUALIFY FOR TRADE SECRET PROTECTION, THE OPERATOR SHALL
40 SUBMIT TO THE DEPARTMENT ON AN APPROVED FORM A FORMAL CLAIM OF ENTITLE-
41 MENT TO THAT PROTECTION IN THE MANNER REQUIRED BY SECTION 23-1511 OF
42 THIS TITLE.

43 4. THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION SHALL NOT BE
44 DEEMED TO AUTHORIZE AN OPERATOR TO WITHHOLD INFORMATION THAT FEDERAL OR
45 STATE LAW, INCLUDING THIS SECTION, REQUIRES TO BE PROVIDED TO ANY HEALTH
46 CARE PROFESSIONAL WHO NEEDS THE INFORMATION FOR DIAGNOSTIC OR TREATMENT
47 PROPOSES. AN OPERATOR SHALL PROVIDE DIRECTLY TO A HEALTH CARE PROFES-
48 SIONAL, IMMEDIATELY ON REQUEST, ALL INFORMATION REQUIRED BY THE HEALTH
49 CARE PROFESSIONAL, INCLUDING THE PERCENT BY VOLUME OF THE CHEMICAL
50 CONSTITUENTS OF THE HYDRAULIC FRACTURING FLUID AND THEIR ASSOCIATED CAS
51 NUMBERS. IN A CASE THAT IS NOT A MEDICAL EMERGENCY, THE HEALTH CARE
52 PROFESSIONAL SHALL PROVIDE THE OPERATOR A WRITTEN STATEMENT OF NEED FOR
53 THE INFORMATION BEFORE THE PERSON IS ENTITLED TO RECEIVE THE INFORMA-
54 TION. IN A MEDICAL EMERGENCY, THE HEALTH CARE PROFESSIONAL SHALL PROVIDE
55 THE OPERATOR A WRITTEN STATEMENT OF NEED FOR THE INFORMATION AS SOON AS
56 CIRCUMSTANCES PERMIT.

1 5. A HEALTH CARE PROFESSIONAL TO WHOM INFORMATION IS DISCLOSED PURSU-
2 ANT TO SUBDIVISION FOUR OF THIS SECTION SHALL HOLD THE INFORMATION
3 CONFIDENTIAL, EXCEPT THAT THE HEALTH CARE PROFESSIONAL MAY, FOR DIAGNOS-
4 TIC OR TREATMENT PROPOSES, DISCLOSE SUCH INFORMATION TO ANOTHER HEALTH
5 CARE PROFESSIONAL, A LABORATORY OR A THIRD-PARTY TESTING FIRM. A HEALTH
6 CARE PROFESSIONAL, LABORATORY OR THIRD-PARTY TESTING FIRM TO WHICH SUCH
7 INFORMATION IS DISCLOSED BY ANOTHER HEALTH CARE PROFESSIONAL SHALL HOLD
8 THE INFORMATION CONFIDENTIAL.

9 S 23-1509. USE OF SERVICES OF NONCOMPLYING SERVICE COMPANY PROHIBITED.

10 AN OPERATOR SHALL NOT USE THE SERVICES OF ANOTHER PERSON OR ENTITY IN
11 PERFORMING A HYDRAULIC FRACTURING TREATMENT IN THIS STATE UNLESS THE
12 OTHER PERSON OR ENTITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION
13 23-1505 OF THIS TITLE.

14 S 23-1511. TRADE SECRET PROTECTION.

15 1. A CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION PURSUANT TO THIS
16 TITLE SHALL INCLUDE SUBSTANTIATING FACTS IN THE FORM OF THE INFORMATION
17 REQUIRED BY 40 C.F.R. SECTION 350.7(A). IF REQUESTED BY THE TRADE SECRET
18 CLAIMANT, THE DEPARTMENT SHALL TREAT ANY SUCH SUBSTANTIATING FACTS AS
19 CONFIDENTIAL AND SHALL NOT DISCLOSE THEM TO ANY THIRD PARTY OR THE
20 PUBLIC FOR ANY PURPOSE. UNTIL A FINAL DETERMINATION THAT THE INFORMATION
21 IS NOT ENTITLED TO TRADE SECRET PROTECTION IS MADE UNDER THIS SECTION,
22 THE DEPARTMENT SHALL TREAT THE INFORMATION IMPLICATED BY THE CLAIM OF
23 TRADE SECRET ENTITLEMENT AS A CONFIDENTIAL TRADE SECRET, AND THE INFOR-
24 MATION IS NOT SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF THE
25 PUBLIC OFFICERS LAW.

26 2. THE COMMISSION SHALL DETERMINE A CLAIM OF ENTITLEMENT TO TRADE
27 SECRET PROTECTION MADE PURSUANT TO THIS TITLE TO BE SUFFICIENT IF THE
28 INFORMATION SET FORTH IN THE CLAIM SUPPORTS ALL THE CONCLUSIONS SET
29 FORTH IN 40 C.F.R. SECTION 350.13(A) AND THE SUPPORTING INFORMATION IS
30 TRUE. IN MAKING A DETERMINATION AS TO A CLAIM, THE DEPARTMENT MAY
31 REQUIRE THE TRADE SECRET CLAIMANT TO SUBMIT ADDITIONAL SUPPLEMENTAL
32 INFORMATION IF THE INFORMATION IS NECESSARY FOR THE DEPARTMENT TO MAKE
33 ITS DETERMINATION UNDER THIS SECTION. IF REQUESTED BY THE TRADE SECRET
34 CLAIMANT, THE DEPARTMENT SHALL TREAT ANY SUPPLEMENTAL INFORMATION
35 PROVIDED AS CONFIDENTIAL AND MAY NOT DISCLOSE THE INFORMATION TO ANY
36 THIRD PARTY OR THE PUBLIC FOR ANY PURPOSE.

37 3. IF THE DEPARTMENT DETERMINES A CLAIM OF ENTITLEMENT TO TRADE SECRET
38 PROTECTION TO BE INSUFFICIENT, THE DEPARTMENT SHALL NOTIFY THE TRADE
39 SECRET CLAIMANT IN WRITING OF THE DETERMINATION BY CERTIFIED MAIL. NOT
40 LATER THAN THE FIFTEENTH DAY AFTER THE DATE THE TRADE SECRET CLAIMANT
41 RECEIVES NOTICE OF THE DETERMINATION, THE CLAIMANT MAY REQUEST ANOTHER
42 REVIEW OF THE CLAIM. THE TRADE SECRET CLAIMANT MUST SHOW GOOD CAUSE FOR
43 THE ADDITIONAL REVIEW. WHAT CONSTITUTES GOOD CAUSE FOR PURPOSES OF THIS
44 SUBDIVISION IS SOLELY WITHIN THE REASONABLE DISCRETION OF THE DEPARTMENT
45 AND MAY INCLUDE THE AVAILABILITY OF NEW SUPPORTING INFORMATION OR A GOOD
46 FAITH ERROR OR OMISSION ON THE PART OF THE TRADE SECRET CLAIMANT IN THE
47 ORIGINAL CLAIM. NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE
48 DEPARTMENT RECEIVES THE REQUEST, THE DEPARTMENT SHALL PROVIDE WRITTEN
49 NOTICE TO THE TRADE SECRET CLAIMANT OF THE DEPARTMENT'S ACCEPTANCE OR
50 REJECTION OF THE REQUEST. IF A TRADE SECRET CLAIMANT MAKES A REQUEST FOR
51 REVIEW UNDER THIS SUBDIVISION, THE DEPARTMENT SHALL TREAT THE INFORMA-
52 TION IMPLICATED BY THE CLAIM OF TRADE SECRET ENTITLEMENT AS A CONFIDEN-
53 TIAL TRADE SECRET UNTIL THE DEPARTMENT MAKES A DETERMINATION WITH REGARD
54 TO THE REVIEW REQUEST. IF THE DEPARTMENT REJECTS THE REVIEW REQUEST, THE
55 DEPARTMENT SHALL CONTINUE TO TREAT THE INFORMATION AS A CONFIDENTIAL
56 TRADE SECRET UNTIL THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE THE

TRADE SECRET CLAIMANT RECEIVES NOTICE THAT THE DEPARTMENT HAS REJECTED THE REVIEW REQUEST OR THE DATE THE CLAIMANT WITHDRAWS THE DISCLOSURE PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

4. NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE TRADE SECRET CLAIMANT RECEIVES NOTICE FROM THE DEPARTMENT THAT THE DEPARTMENT HAS REJECTED THE CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION, THE CLAIMANT MAY COMMENCE AN ACTION PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. IF A TRADE SECRET CLAIMANT COMMENCES SUCH AN ACTION, THE DEPARTMENT SHALL TREAT THE INFORMATION IMPLICATED BY THE CLAIM OF TRADE SECRET ENTITLEMENT AS A CONFIDENTIAL TRADE SECRET UNTIL SUCH ACTION AND ALL APPEALS THEREOF ARE RESOLVED. IF THE ACTION AFFIRMS THE DEPARTMENT'S DETERMINATION OF THE INSUFFICIENCY OF THE CLAIM, THE DEPARTMENT SHALL CONTINUE TO TREAT THE INFORMATION AS A CONFIDENTIAL TRADE SECRET UNTIL THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE THE TRADE SECRET CLAIMANT RECEIVES NOTICE THAT THE ACTION HAS BEEN RESOLVED OR THE DATE THE CLAIMANT WITHDRAWS THE DISCLOSURE PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

5. NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE TRADE SECRET CLAIMANT RECEIVES NOTIFICATION THAT THE DEPARTMENT HAS REJECTED THE CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION OR THE DATE A FINAL JUDGMENT AFFIRMING THE DEPARTMENT'S DETERMINATION OF THE INSUFFICIENCY OF THE CLAIM IS ENTERED, AS APPLICABLE, AND ONLY TO THE EXTENT THAT THE RELEVANT CHEMICAL CONSTITUENT HAS NOT BEEN USED BY OR FOR THE TRADE SECRET CLAIMANT IN ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE, THE TRADE SECRET CLAIMANT MAY FORMALLY WITHDRAW THE DISCLOSURE OF A CHEMICAL CONSTITUENT BY NOTIFYING THE DEPARTMENT OF ITS INTENT TO WITHDRAW THE DISCLOSURE. IF THE TRADE SECRET CLAIMANT WITHDRAWS THE DISCLOSURE OF A CHEMICAL CONSTITUENT, THE DEPARTMENT SHALL PROTECT AND HOLD CONFIDENTIAL THE IDENTITY OF THE CHEMICAL CONSTITUENT AND ANY CORRESPONDING CAS NUMBER, AND THE INFORMATION IS NOT SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW. AFTER THE WITHDRAWAL, THE CHEMICAL CONSTITUENT SHALL NOT BE USED BY OR FOR THE TRADE SECRET CLAIMANT IN ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE UNLESS THE TRADE SECRET CLAIMANT SATISFIES THE REQUIREMENTS OF THIS TITLE RELATING TO THE DISCLOSURE OF INFORMATION REGARDING THE CHEMICAL CONSTITUENT.

6. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT MAY:

A. DISCLOSE INFORMATION OTHERWISE SUBJECT TO TRADE SECRET PROTECTION UNDER THIS SECTION TO A THIRD-PARTY TESTING FIRM IN CONNECTION WITH THE INVESTIGATION OF A CLAIM OF CONTAMINATION OF SURFACE WATER OR GROUNDWATER IF THE FIRM AGREES IN WRITING TO KEEP THE INFORMATION CONFIDENTIAL; AND

B. USE THE RESULTS OF A TEST CONDUCTED BY A THIRD-PARTY TESTING FIRM IN CONNECTION WITH AN INVESTIGATION DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION IN ANY MANNER THE DEPARTMENT CONSIDERS NECESSARY TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT.

TITLE 16

REGULATION OF HYDRAULIC FRACTURING

SECTION 23-1601. DEFINITIONS.

23-1603. CONCESSION OF LIABILITY.

23-1605. AGREEMENTS WITH REAL PROPERTY OWNERS.

23-1607. DAMAGES.

S 23-1601. DEFINITIONS.

AS USED IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1 1. "HYDRAULIC FRACTURING" MEANS THE USE OF CHEMICALS, WATER AND OTHER
2 SUBSTANCES INJECTED OR PUMPED INTO A NATURAL GAS WELL TO STIMULATE THE
3 EXTRACTION OF NATURAL GAS.

4 2. "PRODUCER" MEANS ANY INDIVIDUAL OR ENTITY ENGAGED IN THE DRILLING
5 FOR OR EXTRACTION OF NATURAL GAS THROUGH THE UTILIZATION OF HYDRAULIC
6 FRACTURING.

7 S 23-1603. CONCESSION OF LIABILITY.

8 1. EVERY PRODUCER, PRIOR TO THE ISSUANCE OF ANY PERMIT, PURSUANT TO
9 THIS ARTICLE, TO ENGAGE IN HYDRAULIC FRACTURING, SHALL EXECUTE AND
10 DELIVER TO THE DEPARTMENT A CONCESSION OF LIABILITY AND WAIVER OF ALL
11 DEFENSES ARISING OUT OF ANY CAUSE OF ACTION RELATED TO PROPERTY,
12 PERSONAL AND WRONGFUL DEATH DAMAGES ALLEGED TO HAVE BEEN CAUSED BY
13 HYDRAULIC FRACTURING CONDUCTED BY SUCH PRODUCER. SUCH CONCESSION AND
14 WAIVER SHALL BE EXECUTED IN SUCH FORM AND MANNER AS SHALL BE DETERMINED
15 BY THE ATTORNEY GENERAL, AND SHALL PROVIDE FOR STRICT LIABILITY TO THE
16 PEOPLE OF THE STATE OF NEW YORK AND EVERY PERSON WITHIN THE STATE FOR
17 ANY AND ALL DAMAGES ARISING FROM THE CONDUCTING OF HYDRAULIC FRACTURING
18 WITHIN THIS STATE.

19 2. EVERY PRODUCER WHICH ENTERS INTO AN AGREEMENT WITH AN OWNER OF REAL
20 PROPERTY IN THIS STATE WHICH PROVIDES FOR THE LEASE, LICENSE OR GRANT
21 OF AUTHORITY TO CONDUCT HYDRAULIC FRACTURING UPON SUCH REAL PROPERTY,
22 SHALL INCLUDE A COPY OF ITS CONCESSION OF LIABILITY EXECUTED PURSUANT
23 TO SUBDIVISION ONE OF THIS SECTION AND A SIMILAR CONCESSION OF LIABILITY
24 EXECUTED IN FAVOR OF THE REAL PROPERTY OWNER. SUCH CONCESSION OF LIABIL-
25 ITY IN FAVOR OF A REAL PROPERTY OWNER SHALL BE IN SUCH FORM AS SHALL BE
26 DETERMINED BY THE ATTORNEY GENERAL.

27 S 23-1605. AGREEMENTS WITH REAL PROPERTY OWNERS.

28 1. NO AGREEMENT FOR THE LEASE, LICENSE OR GRANT OF AUTHORITY TO
29 CONDUCT HYDRAULIC FRACTURING UPON REAL PROPERTY IN THIS STATE, SHALL BE
30 EXECUTED UNTIL THREE INDEPENDENT APPRAISALS OF THE VALUE OF SUCH REAL
31 PROPERTY HAVE BEEN CONDUCTED. SUCH APPRAISALS SHALL BE CONDUCTED AT THE
32 EXPENSE OF THE PRODUCER BY APPRAISERS SELECTED BY THE REAL PROPERTY
33 OWNER. UPON COMPLETION OF SUCH APPRAISALS A COPY OF EACH APPRAISAL SHALL
34 BE PROVIDED TO THE REAL PROPERTY OWNER, THE PRODUCER AND THE DEPARTMENT,
35 AND SHALL BE ATTACHED TO EVERY AGREEMENT PROVIDING FOR HYDRAULIC FRAC-
36 TURING UPON SUCH REAL PROPERTY.

37 2. NO AGREEMENT FOR THE LEASE, LICENSE OR GRANT OF AUTHORITY TO
38 CONDUCT HYDRAULIC FRACTURING UPON REAL PROPERTY IN THIS STATE, SHALL BE
39 EXECUTED UNTIL THE DEPARTMENT SHALL HAVE CONDUCTED WATER AND SOIL
40 CONTAMINATION TESTING UPON SUCH REAL PROPERTY FOR THE PRESENCE OF
41 HYDRAULIC FRACTURING FLUIDS. A REPORT OF THE RESULTS OF SUCH TESTING
42 SHALL BE PROVIDED TO BOTH THE REAL PROPERTY OWNER AND THE PRODUCER.

43 3. EACH PRODUCER SHALL INCLUDE IN EVERY AGREEMENT IT ENTERS INTO WITH
44 THE OWNER OF REAL PROPERTY IN THIS STATE FOR THE LEASE, LICENSE OR GRANT
45 OF AUTHORITY TO CONDUCT HYDRAULIC FRACTURING UPON SUCH REAL PROPERTY:

46 A. A STATEMENT OF THE FINANCIAL, HEALTH AND ENVIRONMENTAL RISKS POSED
47 BY OR POTENTIALLY POSED BY CONDUCT OF HYDRAULIC FRACTURING. SUCH STATE-
48 MENT SHALL BE JOINTLY DEVELOPED AND PERIODICALLY UPDATED BY THE COMMIS-
49 SIONER, THE ATTORNEY GENERAL AND THE COMMISSIONER OF HEALTH;

50 B. A STATEMENT OF THE RISKS OF GROUND SOIL AND GROUND WATER CONTAM-
51 INATION POSED BY OR POTENTIALLY POSED BY THE CONDUCT OF HYDRAULIC FRAC-
52 TURING;

53 C. A STATEMENT OF THE HEALTH RISKS POSED BY SPILLS OF AND CONTAM-
54 INATION BY HYDRAULIC FRACTURING FLUIDS; AND

D. A STATEMENT OF THE PRODUCER'S STRICT LIABILITY FOR ANY AND ALL DAMAGES RESULTING FROM THE CONDUCTING OF HYDRAULIC FRACTURING, AND THE DAMAGES THAT WILL BE AWARDED THEREFOR PURSUANT TO THIS TITLE. S 23-1607. DAMAGES.

1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON THE CONTAMINATION OF GROUND SOIL AND/OR GROUND WATER BY ANY PRODUCER, SUCH PRODUCER SHALL BE LIABLE FOR THE FOLLOWING DAMAGES:

A. TO THE AFFECTED REAL PROPERTY OWNER, AN AMOUNT EQUAL TO ONE HUNDRED FIFTY PERCENT OF THE REAL PROPERTY VALUE, AS DETERMINED PURSUANT TO SUBDIVISION ONE OF SECTION 23-1605 OF THIS TITLE, AND THE FULL COST OF REMEDIATING THE CONTAMINATED GROUND SOIL AND GROUND WATER; AND

B. TO ANY PERSON AFFECTED BY SUCH CONTAMINATION, AN AMOUNT EQUAL TO THE COST OF THE DIAGNOSIS, TREATMENT, MONITORING AND CARE OF SUCH PERSON, FOR LIFE, RELATED TO ANY DISEASE OR CONDITION ARISING OUT OF SUCH CONTAMINATION.

2. UNDER NO CIRCUMSTANCES SHALL ANY AMOUNT OF DAMAGES AWARDED OR PAID PURSUANT TO THIS SECTION BE DEEMED TO BE INCOME TO ANY PERSON. ALL SUCH DAMAGES SHALL BE REIMBURSEMENT FOR LOSSES ACTUALLY INCURRED BY THE RECIPIENT THEREOF.

S 2. Subdivision 9 of section 8-0109 of the environmental conservation law, as added by chapter 219 of the laws of 1990, is amended to read as follows:

9. An environmental impact statement shall be prepared for any action found to have a significant impact on the special groundwater protection area, as defined in section 55-0107 of this chapter OR FOR ANY NATURAL GAS OR OIL DRILLING INVOLVING THE USE OF HYDRAULIC FRACTURING FLUID. Such statement shall meet the requirements of the most detailed environmental impact statement required by this section or by any such rule or regulation promulgated pursuant to this section.

S 3. Subdivision 2 of section 23-0303 of the environmental conservation law is REPEALED and a new subdivision 2 is added to read as follows:

2. FOR THE PURPOSES STATED HEREIN, THIS SECTION SHALL SUPERSEDE ALL OTHER STATE AND LOCAL LAWS RELATING TO THE OIL, GAS AND SOLUTION MINING INDUSTRIES; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT ANY LOCAL GOVERNMENT FROM:

A. ENACTING OR ENFORCING LOCAL LAWS OR ORDINANCES OF GENERAL APPLICABILITY, EXCEPT THAT SUCH LOCAL LAWS OR ORDINANCES SHALL NOT REGULATE OIL, GAS AND SOLUTION MINING REGULATED BY STATE STATUTE, REGULATION OR PERMIT; OR

B. ENACTING OR ENFORCING LOCAL ZONING ORDINANCES OR LAWS WHICH DETERMINE PERMISSIBLE USES IN ZONING DISTRICTS. WHERE OIL, GAS AND SOLUTION MINING IS DESIGNATED A PERMISSIBLE USE IN A ZONING DISTRICT AND ALLOWED BY SPECIAL USE PERMIT, CONDITIONS PLACED ON SUCH SPECIAL USE PERMITS SHALL BE LIMITED TO THE FOLLOWING:

(I) INGRESS AND EGRESS TO PUBLIC THOROUGHFARES CONTROLLED BY THE LOCAL GOVERNMENT;

(II) ROUTING OF DRILLING AND DRILLING-RELATED TRANSPORT VEHICLES ON ROADS CONTROLLED BY THE LOCAL GOVERNMENT;

(III) REQUIREMENTS AND CONDITIONS AS SPECIFIED IN THE PERMIT ISSUED BY THE DEPARTMENT CONCERNING SETBACK FROM PROPERTY BOUNDARIES AND PUBLIC THOROUGHFARE RIGHTS-OF-WAY, NATURAL OR MAN-MADE BARRIERS TO RESTRICT ACCESS, IF REQUIRED, DUST CONTROL AND HOURS OF OPERATION; AND

(IV) CONFORMANCE TO ROAD CONSTRUCTION STANDARDS AS MAY BE OTHERWISE PROVIDED FOR BY LOCAL LAW; OR

1 C. ENACTING OR ENFORCING LOCAL LAWS OR ORDINANCES REGULATING OIL, GAS
2 AND SOLUTION MINING NOT REQUIRED TO BE PERMITTED BY THE STATE.

3 S 4. This act shall take effect on the first of June next succeeding
4 the date on which it shall have become a law; provided, that the
5 provisions of title 16 of article 23 of the environmental conservation
6 law, as added by section one of this act, shall apply to every lease,
7 license and grant of authority to conduct hydraulic fracturing which is
8 in effect on or after such effective date; and provided, further that,
9 effective immediately, any actions necessary to implement the provisions
10 of this act on its effective date are authorized and directed to be
11 completed on or before such date.