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FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING

October 19, 2012

TO: Board of Oil, Gas & Mining

FROM: John R. Baza, Director *JB*
Steve Schneider, Administrative Services & Policy Coordinator

SUBJECT: Status of Proposed Rule R649-3-39: Hydraulic Fracturing
Docket 2012-033, Cause No. RO&G-2012-02

Subsequent to the Board's hearing on September 26, 2012 on the proposed hydraulic fracturing rule, public comments were accepted through October 15, 2012 in accordance with the timeframe published in the Utah State Bulletin. Only Devon Energy Corporation (Devon) provided written comment via a letter received on October 12, 2012. Devon supports the use of the Fracfocus website and supports the existing rules being referenced rather than restated. Devon also provided a comment to edit a proposed rule sentence which existed in the August 15, 2012 draft to the Informal Rules Review Group, but this item was not included in the August 28, 2012 Notice of Agency Action rule, thus this added comment is not applicable.

There are several options for the Board to consider in this rulemaking matter:

- A. The Board may approve the rulemaking as proposed in the Notice of Agency Action. Seven days will have passed since the end of the October 15th comment period, thus the Board could approve the proposed rule on October 24, 2012. This action would be the most expedient. Furthermore, the Board would determine the effective date of the approved rule that cannot be less than seven days after the end of rule publication or more than 120 days after the commencement of rule publication – meaning an effective date in this case between October 24th and January 13, 2013.
- B. The Board may decide to have the Division file a Change in Proposed Rule (CPR) in eRules by October 31, 2012 with the removal of the rule restatements within R649-3-39(2) and R649-3-39(3). This CPR would open a new comment period commencing November 15, 2012 and ending December 17, 2012. Again, the Board would determine the effective date of the revised rule in accordance with the previously state time frames – meaning an effective date between December 24, 2012 and March 15, 2013.



October 19, 2012

Subject: Proposed Rule R649-3-39

- C. The Board may also decide to have the Division file a CPR in eRules if an additional provision is desired to identify procedures in case the Fracfocus website does not exist. Potential wording for the Board to consider at R649-3-39(1.2): “If www.fracfocus.org ceases to exist, a substitute may be approved by the Division until the rule is amended by the Board.” The timing of this change would be the same as the prior option.
- D. The Board could consider alternatives for their approval date in accordance with options B and C. The Board could await a decision on approval of the desired changes until the January 23, 2013 hearing. Alternatively, the Board may choose to take action on December 5, 2012 to review any comments as of that date, commit to consider comments received by December 17, 2012, and approve the recommended CPR with an effective date as previously stated. The Board still has the additional options to reconsider the rule or to make additional changes prior to the effective date that they have set. In other words, the effective date as established by decision of the Board is fixed unless the Board takes further action.

Note: As previously stated, the Board has substantial flexibility in setting an effective date for any of the proposed options. The Division would recommend an effective date as of the first of a month to ease implementation and visibility by operators.

The Division will be available to discuss these options or any Board questions on October 24, 2012.

cc: Lee Peacock, Utah Petroleum Association
Lowell Braxton, Western Energy Alliance
Randy Bolles, Devon Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing STAFF MEMO for Docket No. 2012-033, Cause No. RO&G-2012-02 to be mailed via Email this 19th day of October, 2012, to the following:

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