

Chorus of operators calling for frac fluid disclosure grows

BY JOHN-LAURENT TRONCH | April 26, 2010

When the nation's largest oil and gas exploration and production company offered its support for making the chemicals used in hydraulic fracturing public, concerned U.S. residents who want transparency got perhaps their biggest boost from a somewhat unlikely source.

In a U.S. Securities and Exchange Commission filing, Irving-based ExxonMobil Corp. said it would support the disclosure of chemicals used in hydraulic fracturing. Hydraulic fracturing, or fracing for short, is the injection of millions of gallons of water, sand and chemicals – so far not publicly disclosed by oilfield services companies – into the ground to break up porous shale and allow for enhanced recovery of natural gas and oil.

“ExxonMobil supports the disclosure of the identity of the ingredients being used in fracturing fluids at each site,” according to the April 13 filing. “While we understand the intellectual property concerns of service companies when it comes to disclosing the proprietary formulations in their exact amounts, we believe the concerns of community members can be alleviated by the disclosure of all ingredients used in these fluids.”

The company's stance is seen as a move aimed at curbing possible federal regulation of fracing, which so far has been overseen by state agencies, such as the Railroad Commission of Texas. ExxonMobil's statement also echoes similar stands by two other companies: Chesapeake Energy Corp. and Range Resources Corp., whose top executives last year offered their support for disclosure.

Although several big names support disclosure, transparency isn't their decision to make. The oilfield services companies perform the process for the operators, and therefore must choose to make the chemicals public information, which isn't likely.

“I think generally the industry is not opposed to disclosing the information,” said Fort Worth oil and gas attorney John Thompson, a partner at Cantey Hanger LLP; however, the services companies are a different matter. “I think they would have a claim that it's proprietary information and keep it confidential.”

The top three firms – Halliburton, Schlumberger and BJ Services Co. – either did not return multiple requests for comment by the Business Press' time of publication or skirted the question of whether they would consider disclosing the chemicals used.

ExxonMobil can't force services companies to disclose, said Lisa K. Vaughn, a partner in the Fort Worth office of Shannon, Gracey, Rattliff & Miller LLP, “but as they and the other bigwigs of the world put more pressure on the suppliers to disclose that might lead the,” push

Operators “are beginning to feel legislative pressure against their potential environmental contaminants,” she added; and there might be a card up the operators' collective sleeve, so to speak: “If they all said we're not buying frac fluid from anybody who refuses to say what's in it, that would have a market effect.”

Couldn't companies patent their recipes?

“It can be hard to get intellectual property protection for the recipes they're using because those recipes can change day to day, week to week (and) site to site due to all these different variables,” she said.

Although companies claim their specific formulas are trade secrets, operators have sought to dispel concerns by shedding some light on the process; for example, Chesapeake Energy created a Web site, hydraulicfracturing.com, that reveals some of the chemicals – though not the amounts in which they're used.

“What is not fully disclosed are the specific quantities of each chemical used in the blending of frac mixtures on location. That varies, well-by-well, and is proprietary to the service providers,” according to a company spokesman. “We have encouraged the providers to be more transparent with this information but we respect that they are in a highly competitive industry and have trade secrets to protect.”

[...]

Not all operators support disclosure

While some companies have offered their support for disclosure, EOG Resources Inc. will not. A March 25 proxy statement includes a proposal, expected to be put forth April 28 at the company's annual meeting by a group of stockholders owning about 245,000 shares, that calls for a study into using “less toxic fracturing fluids, recycling or reuse of waste fluids and other structural or procedural strategies to reduce fracturing hazards.”

EOG Resources' Board of Directors opposes the proposal, calling the process “a well-established reservoir stimulation technique” that poses “minimal impact to the environment and to human health.” The board recommends shareholders vote against the proposal. (An EOG Resources spokeswoman said the company would not provide further comment.)

A virtually identical proposal in ExxonMobil's proxy statement, submitted by San Francisco's The Park Foundation, also will receive a no vote by the company's board of directors; however, as previously noted, ExxonMobil does support disclosure.