

Goal-Oriented Design for State Disclosure Rules

Policymaker Summary of: Kate Konschnik, [Goal-Oriented Disclosure Design for Shale Oil and Gas Development](#), 54 NATURAL RESOURCES JOURNAL 2 (Fall 2014)

Key Takeaway: Disclosure regimes are not an end to themselves, but a means to achieving particular policy goals. Regulators can craft more effective hydraulic fracture chemical (HFC) disclosure regimes – including what they want disclosed, when, and how – with those goals in mind.

Background: From about 2010, some lawmakers and members of the public began advocating for more information about HFC. As of April 2016, 26 states have issued HFC disclosure requirements, making this the most widespread type of state disclosure requirement for unconventional oil and gas production.

Issue: Regulators must determine what level of regulation will address public health and environmental risks. To do this effectively, they need information. Despite a proliferation of HFC disclosure rules, significant knowledge gaps remain, raising questions about these disclosure laws as drafted. In addition, states have not adequately considered the policy goals they hope to achieve through disclosure.

Recommendations: Thoughtful regulatory design takes more work up front, but pays dividends down the line. Under a goal-oriented approach to disclosure design:

- Drafters begin by specifying one or more **desired policy goals**. Different goals may suggest different requirements. The state will need to determine which goal should drive the rule's design, or whether multiple goals may be accommodated.
- Drafters then identify the **target audience** of the information, for each goal.
- Finally, drafters consider **feedback loops** – what format and delivery systems should be used to share information with target audiences in the most effective and efficient way.

Using this general framework (goal: target audience: feedback loop), states can then think through the design elements that will be most useful, in three categories:

1. Timing of disclosures

- ✓ Does the regulator want the ability to approve/disapprove certain chemicals, or to set bonding based in part on the relative risk of a proposed combination of HFC?
- ✓ When does each target audience need the information, to act on it?

2. Substance of disclosures

- ✓ What information does the target audience need?
- ✓ Would it be useful to link to other datasets to supplement or place data in context?
- ✓ What units of measurements should be used?
- ✓ Is it necessary to know the ingredients in each HFC additive, or just to have a master list of all HFC used (this is know as the “systems approach” to reporting)?
- ✓ Should the target audience have access to proprietary information, and under what circumstances?

3. Channels for disclosures

- ✓ Is the information available online?
- ✓ Where does the target audience usually go to find information?
- ✓ Are there regulatory requirements or designations that could trigger reporting to a trusted target audience source (i.e. SEC filings)?

For instance, if regulators want to make sure HFC disclosures facilitate prompt, safe responses to fires, explosions, and HFC releases, the HFC disclosure rule should:

- **Collect HFC information before well completion.** Many disclosure regimes require disclosure after completion. If there is an incident during drilling or completion, first responders and the public may not have relevant information.
- **Expand disclosure requirements to include all substances injected into a well,** rather than limiting disclosure to “hazardous” chemicals under the federal OSHA, as some regimes do.
- **Require operators to provide information quickly to first responders, or maintain complete files of a well’s HFC information – including proprietary information – to share with first responders as necessary.** Most states place the burden on medical personnel to request the information from multiple companies to respond to a well fire or treat exposure injuries.
- **Provide HFC lists electronically to first responders and to poison control centers,** to ensure effective uptake of the information to this target audience. Existing rules often to do not consider how to transmit relevant information in an emergency situation.