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Counsel for Petitioners, applications for Pro Hac Vice pending

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF WYOMING,
IN AND FOR THE COUNTY OF NATRONA

<p>POWDER RIVER BASIN RESOURCE COUNCIL, WYOMING OUTDOOR COUNCIL, EARTHWORKS, and OMB WATCH,</p> <p>Petitioners,</p> <p>v.</p> <p>WYOMING OIL AND GAS CONSERVATION COMMISSION,</p> <p>Respondent.</p>	<p>Docket No. Judge:</p> <p>PETITION FOR REVIEW OF ADMINISTRATIVE ACTION; COMPLAINT FOR DECLARATORY RELIEF</p>
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INTRODUCTION

1. Powder River Basin Resource Council, Wyoming Outdoor Council, Earthworks, and OMB Watch (“Petitioners”) hereby petition the Court, pursuant to W.R.A.P. 12, for judicial review of Wyoming Oil and Gas Commission’s (“WOGCC”) partial denial of a request made by Petitioners pursuant to the Public Records Act, Wyo. Stat. § 16-4-201 *et seq.*, related to documents submitted to WOGCC by manufacturers of products and chemicals used in the industrial process of hydraulic fracturing.¹ WOGCC attempted to justify its failure to disclose certain documents and information based on unsupported and overly broad claims of trade secret or confidential commercial information status for hydraulic fracturing products and chemicals. Because WOGCC was required to produce these documents under the Public Records Act, Wyo. Stat. § 16-4-203, and WOGCC’s Rules, Wyo. Admin. Code OIL GEN Ch. 3 § 45, its partial denial of Petitioners’ request was arbitrary, capricious, an abuse of discretion, and not in accordance with the law. See Wyo. Stat. § 16-3-114(c)(ii)(A).

JURISDICTION AND VENUE

2. This Court has jurisdiction to hear Petitioners’ Petition for Review of WOGCC’s final administrative action, dated February 24, 2012, pursuant to Wyoming’s Administrative Procedure Act, Wyo. Stat. § 16-3-114, and W.R.A.P. 12.

3. Venue in Natrona County is proper pursuant to the Public Records Act,

¹ Petitioners specifically challenge WOGCC’s denial of access to requested documents submitted to WOGCC by Baker Hughes and its predecessor BJ Services Company; CESI Chemical; Champion Technologies; Core Laboratories; Halliburton Energy Services, Inc.; NALCO Company; SNF, Inc.; and Weatherford International.

Wyo. Stat. § 16-4-203(f), because the documents sought are located in Natrona County.

FACTUAL AND LEGAL BACKGROUND

4. Wyoming requires an owner or operator of an oil or gas well that will be hydraulically fractured to provide to WOGCC “detailed information” about the products and chemicals used, including the identities of all chemical additives and compounds.

Wyo. Admin. Code OIL GEN Ch. 3 § 45.

5. Under Wyoming’s Public Records Act, the information supplied to WOGCC by oil and gas well operators are public records that must be made available for public inspection except in certain narrowly defined circumstances. Wyo. Stat. § 16-4-202(a); see Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 794 (Wyo. 1983) (recognizing liberal construction in favor of disclosure). One exception from disclosure is allowed for trade secrets and confidential commercial information. Wyo. Stat. § 16-4-203(d)(v). To the extent that it is consistent with this exception, owners and operators of oil and gas wells may request that certain hydraulic fracturing product information be kept confidential. Wyo. Admin. Code OIL GEN Ch. 3 § 45(f).

6. On November 15, 2011, Petitioners submitted a request under the Public Records Act to WOGCC seeking access to records regarding the identity of hydraulic fracturing chemicals used in Wyoming and the applicability of disclosure exemptions. See Exhibit A.

7. Petitioners sought disclosure of the entire documents or, alternatively, disclosure of redacted versions of the documents with the information disclosing trade secrets or confidential commercial information redacted. See Exhibit A.

8. On January 10, 2012, WOGCC provided some of the requested documents to Petitioners but declined to disclose “those chemical formulations designated ‘trade secrets.’” Exhibit B. WOGCC noted that it approved fifty trade secret or confidential commercial information exemptions in 2010 and 2011. The documents provided by WOGCC included original trade secret or confidential commercial information claims submitted by hydraulic fracturing product manufacturers. Many of these claims were insufficiently justified and/or sought confidentiality for information that is not within the proper scope of Wyoming’s trade secret or confidential commercial information exceptions. Nonetheless, WOGCC approved nearly all such claims.

9. WOGCC’s January 10, 2012, response to Petitioners’ request also stated that “the submitted Chemical Abstract Services (CAS) numbers are not considered confidential.” Exhibit B. However, some documents disclosed by WOGCC in its response to Petitioners’ request and on its website did not disclose CAS numbers.

10. Petitioners submitted another request to WOGCC on January 12, 2012, seeking disclosure of all CAS numbers associated with WOGCC’s fifty trade secret or confidential commercial information exemption approvals. See Exhibit C.

11. On January 20, 2012, WOGCC responded that certain CAS numbers are withheld from public disclosure because they constitute trade secrets or confidential commercial information, reversing its prior position that CAS numbers are not considered confidential. See Exhibit D.

12. On February 8, 2012, Petitioners requested a new determination on their public records request and provided WOGCC with additional information regarding the

proper breadth of trade secret and confidential commercial information exemptions from disclosure and the countervailing need for maximum public disclosure. See Exhibit E.

13. WOGCC responded on February 24, 2012, by reaffirming its original partial denial of Petitioners' request. See Exhibit F. Petitioners are challenging the February 24, 2012, decision on the basis of the record that was before WOGCC.

LEGAL CLAIMS

14. WOGCC unlawfully withheld from disclosure as trade secrets or confidential commercial information the identities of hydraulic fracturing chemicals and products based on applications by Baker Hughes and its predecessor BJ Services Company; CESI Chemical; Champion Technologies; Core Laboratories; Halliburton Energy Services, Inc.; NALCO Company; SNF, Inc.; and Weatherford International that did not provide factual support for the trade secret or confidential commercial information status of the chemicals and products. See Wyo. Stat. §§ 16-3-114(c)(ii)(A), 16-4-202, 16-4-203(d)(v); Wyo. Admin. Code OIL GEN Ch. 3 § 45.

15. WOGCC further withheld information about all the components within a hydraulic fracturing product instead of withholding from disclosure only the identities or descriptions of components that qualify as trade secrets or confidential commercial information, thus allowing exemptions from disclosure that are unlawfully broad. See Wyo. Stat. §§ 16-3-114(c)(ii)(A), 16-4-202, 16-4-203(d)(v); Wyo. Admin. Code OIL GEN Ch. 3 § 45.

PRAAYER FOR RELIEF

Therefore, Petitioners respectfully request that this Court:

1. Compel WOGCC to show cause, pursuant to Wyo. Stat. § 16-4-203(f), why its partial denial of Petitioners' public records request is lawful;
2. Declare that WOGCC's actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
3. Set aside WOGCC's approval of insufficiently supported and overly broad trade secret and confidential commercial information exemptions, and order WOGCC to make new determinations consistent with the Public Records Act and WOGCC's Environmental Rules; and
4. Grant Petitioners such other and further relief as the Court deems just and proper.

Respectfully submitted this 22nd day of March, 2012.



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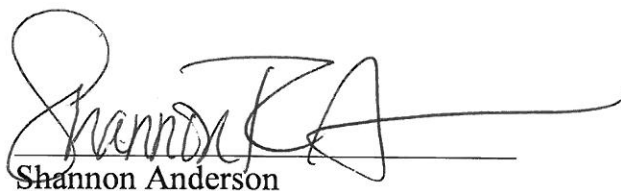
CERTIFICATE OF SERVICE

I certify that on the 22nd day of March, 2012, I caused to be served a true and correct copy of the forgoing by first-class mail and electronic mail to:

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