

NALCO Champion

An Ecolab Company

March 25, 2014

VIA ELECTRONIC MAIL

Re: Comments on SEAB FracFocus 2.0 Task Force Draft Report of February 24, 2014

Dear Secretary of Energy Advisory Board Members

Nalco Champion, an Ecolab Company, is a leading supplier of specialty chemicals used in the drilling, completion and maintenance of oil / gas wells. With 2013 sales of \$ 3 billion and over 6,000 associates, Nalco Champion delivers comprehensive solutions and on-site services to promote energy use and improve operational efficiencies for customers in more than 150 countries.

We appreciate the opportunity to comment on the draft report issued by the Secretary of Energy Advisory Board Task Force (the Task Force) regarding FracFocus 2.0, dated February 24, 2014 (the Draft Report).

1. Nalco Champion is concerned with the recommendations regarding "full disclosure of all known constituents added to fracturing fluid" and "trade secret protection generally can be accomplished by reporting a list of products and chemicals added without disclosing which chemical is in each product."

We do not believe the idea that "trade secrets can be protected by reporting the raw chemicals separately from the additive products they go into" is consistent or compliant with other Federal legislation. Requiring the disclosure of chemical substances that have never been publically disclosed completely negates the Confidential Business Information protections guaranteed under the EPA TSCA

new chemicals (PMN) program [see 40 CFR 720.85] and EPA FIFRA Confidential Statement of Formula [see FIFRA sec. 10(d)(1)(A)]. Even if these chemicals are not directly tied to product trade names, disclosing the chemical name and CAS number would make it relatively easy for competitors to see what new chemistry is being used in a relatively unique market and application.

2. Nalco Champion is concerned with the Task Force's statement that "the goal should be to have very few trade secret exemption claims from disclosure."

We employ over 400 research and development associates who invest significant time and millions of dollars in the development of new chemicals and new or improved products with the goal of innovating products that are the least resource intensive. We believe these proposed disclosure requirements will have a negative impact on our business and also reduce innovation. In regions or States where full disclosure is required with no exceptions for protecting trade secrets, older and less efficient technologies may be used which could mean more chemical over-all is required. It may also mean less environmentally friendly products are being used.

We disagree with the suggestions in the Draft Report regarding the disclosure of a list of chemicals by CAS number, the amounts used and list of products used in a system would adequately protect trade secret information. Our competitors in the oil and gas industry are generally aware of the classes of chemicals which are typically used for specific applications (i.e. corrosion inhibition, scale inhibition, formation stabilization, etc). Providing this information can significantly enhance the ability of a competitor familiar with the industry and these types of products to reverse engineer these proprietary formulations. Providing a list of exact chemical names by CAS number and by concentration used would give industry competitors ideas of how that chemical might be used in specific applications. Although development work would have to be conducted to come up with a usable formulation, knowing a specific chemical is being used in fracturing operations gives competitors a jump-start in cloning proprietary technology.

As stated, we believe these proposed disclosure requirements will reduce innovation and the development of safer or more effective chemical technologies. Based on our customer needs and requests, we have been working to develop products which are more environmentally acceptable from a potential human or environmental health perspective. We have developed a proprietary screening tool, e-VerifiedTM, to evaluate our new products against expected regulatory and customer requirements. If we are required to provide a complete disclosure of our products by exact chemical name, CAS number, and concentration there would be little to no advantage in the marketplace. This would negate the significant research and development investments made to bring a new product into the marketplace.

We are also concerned the disclosure of a trade secret formulation will jeopardize our ability to maintain trade secret status for other uses and/or jurisdictions. Once a trade secret chemical is disclosed publically, trade secret claims may effectively be negated for all other uses of that chemical.

3. States and federal regulators should establish a standard for claiming the "trade secret" exemption.

Nalco Champion supports the concept of a consistent process in which to disclose our trade secret information to the appropriate regulatory agency. However, it is important to consider both the applicable State and various Federal requirements. The procedures established in Arkansas and Wyoming are working and meet both the State and industry needs. We believe the current FracFocus reporting process provides a reasonable balance of disclosing the hazardous constituents as well as protecting our company's trade secrets.

We appreciate the opportunity to comment on the Draft Report and would be willing to address any questions from the SEAB or Task Force regarding our comments.

Thank you for your consideration of our comments.

Sincerely,

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Nalco Champion

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Senior Vice President, WellChem Division
Nalco Champion

Kevin D Drake

Kevin Drake
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CC: Amy Bodette, Deputy Director, Office of Secretarial Boards and Councils