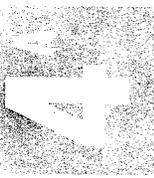


WEDNESDAY
FEBRUARY 2, 2011

Opinion Desk: 447-4080
john.harrington@helenair.com



Opinion

Legislature has to find a balance

The Senate Natural Resources Committee is the starting point for a number of important bills this session dealing with environmental policy. Among them is a hearing scheduled for this afternoon on a bill by Democrat Jim Keane of Butte that would tighten the standards under which lawsuits can be filed against projects under the Montana Environmental Protection Act, and would also forbid agencies from considering the effect projects would have on the environment anywhere other than in Montana. Kind of an only-in-my-back-yard impact statement, as it were.

One bill the committee heard last week that will likely be voted

on within the next few days makes good sense and should be moved forward to the full Senate. Senate Bill 86, by Bob Hawks of Bozeman, would require additional industry disclosure of the various fluids used in the fracturing, or "fracking," process used for extracting oil and natural gas from underground.

Fracking involves the high-pressure injection of various chemical compounds into underground formations in order to force out the oil and gas. It's not a new technique, but it's widely used in the fields of eastern Montana.

Companies already post the chemicals they're using at the sites

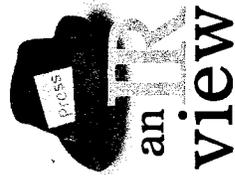
of the wells. The bill would also require that information to be posted on the website of the Montana Board of Oil and Gas Conservation. While the individual chemicals in use need to be named, the amounts or proportions can be kept secret, and there are other protections of proprietary information.

The loudest industry opposition to the bill regarded a provision that called for a 20-day notice by mail to landowners before the fracturing occurs. Businesses have repeatedly told the Legislature this session that more red tape is the last thing that the Montana economy needs. Consequently, Hawks asked for an amendment to his bill

that would eliminate the 20-day mail notice to landowners.

The bill makes sense, and it appears to us to be only calling for an added level of disclosure of information companies are already sharing anyway. But rather than make an interested party drive all the way to Richland County to see what fluids are in use at a particular well site, the information would be available on the Internet for anyone who's interested.

The Legislature has to find a balance between protecting the environment and providing economic opportunity. This bill can help with the former without getting in the way of the latter.



Easy access

Montanans should have easy access to information that explains what chemicals are being used underground by the oil and gas industries.



The Clorox Company
1221 Broadway
Oakland, CA 94612
Tel. (510) 271-7000

Material Safety Data Sheet

I Product: CLOROX REGULAR-BLEACH	
Description: CLEAR, LIGHT YELLOW LIQUID WITH A CHARACTERISTIC CHLORINE ODOR	
Other Designations	Distributor
Clorox Bleach EPA Reg. No. 5813-50	Clorox Sales Company 1221 Broadway Oakland, CA 94612
Emergency Telephone Nos.	
For Medical Emergencies call: (800) 446-1014 For Transportation Emergencies Chemtrec (800) 424-9300	

II Health Hazard Data

DANGER: CORROSIVE. May cause severe irritation or damage to eyes and skin. Vapor or mist may irritate. Harmful if swallowed. Keep out of reach of children.

Some clinical reports suggest a low potential for sensitization upon exaggerated exposure to sodium hypochlorite if skin damage (e.g., irritation) occurs during exposure. Under normal consumer use conditions the likelihood of any adverse health effects are low.

Medical conditions that may be aggravated by exposure to high concentrations of vapor or mist: heart conditions or chronic respiratory problems such as asthma, emphysema, chronic bronchitis or obstructive lung disease.

FIRST AID:
Eye Contact: Hold eye open and rinse with water for 15-20 minutes. Remove contact lenses, after first 5 minutes. Continue rinsing eye. Call a physician.
Skin Contact: Wash skin with water for 15-20 minutes. If irritation develops, call a physician.
Ingestion: Do not induce vomiting. Drink a glassful of water. If irritation develops, call a physician. Do not give anything by mouth to an unconscious person.
Inhalation: Remove to fresh air. If breathing is affected, call a physician.

III Hazardous Ingredients

Ingredient	Concentration	Exposure Limit
Sodium hypochlorite CAS# 7681-52-9	6.15%	Not established
Sodium hydroxide CAS# 1310-73-2	<1%	2 mg/m ^{3,1} 2 mg/m ^{3,2}

¹ACGIH Threshold Limit Value (TLV) - Ceiling
²OSHA Permissible Exposure Limit (PEL) - Time Weighted Average (TWA)

None of the ingredients in this product are on the IARC, NTP or OSHA carcinogen lists.

IV Special Protection and Precautions

No special protection or precautions have been identified for using this product under directed consumer use conditions. The following recommendations are given for production facilities and for other conditions and situations where there is increased potential for accidental, large-scale or prolonged exposure.

Hygienic Practices: Avoid contact with eyes, skin and clothing. Wash hands after direct contact. Do not wear product-contaminated clothing for prolonged periods.

Engineering Controls: Use general ventilation to minimize exposure to vapor or mist.

Personal Protective Equipment: Wear safety glasses. Use rubber or nitrile gloves if in contact liquid, especially for prolonged periods.

KEEP OUT OF REACH OF CHILDREN

V Transportation and Regulatory Data

DOT/IMDG/IATA - Not restricted.

EPA - SARA TITLE III/CERCLA: Bottled product is not reportable under Sections 311/312 and contains no chemicals reportable under Section 313. This product does contain chemicals (sodium hydroxide <0.2% and sodium hypochlorite <7.35%) that are regulated under Section 304/CERCLA.

TSCA/DSL STATUS: All components of this product are on the U.S. TSCA Inventory and Canadian DSL.

VI Spill Procedures/Waste Disposal

Spill Procedures: Control spill. Containerize liquid and use absorbents on residual liquid; dispose appropriately. Wash area and let dry. For spills of multiple products, responders should evaluate the MSDS's of the products for incompatibility with sodium hypochlorite. Breathing protection should be worn in enclosed, and/or poorly ventilated areas until hazard assessment is complete.

Waste Disposal: Dispose of in accordance with all applicable federal, state, and local regulations.

VII Reactivity Data

Stable under normal use and storage conditions. Strong oxidizing agent. Reacts with other household chemicals such as toilet bowl cleaners, rust removers, vinegar, acids or ammonia containing products to produce hazardous gases, such as chlorine and other chlorinated species. Prolonged contact with metal may cause pitting or discoloration.

VIII Fire and Explosion Data

Flash Point: None

Special Firefighting Procedures: None

Unusual Fire/Explosion Hazards: None. Not flammable or explosive. Product does not ignite when exposed to open flame.

IX Physical Data

Boiling point..... approx. 212°F/100°C
 Specific Gravity (H₂O=1) ~ 1.1 at 70°F
 Solubility in Water complete
 pH ~11.4

Amendments to Senate Bill No. 86
1st Reading Copy

Requested by Senator Bob Hawks

For the House Natural Resources Committee

Prepared by Joe Kolman
January 31, 2011 (9:43am)

1. Title, line 4.

Strike: "AND LANDOWNER NOTICE"

2. Title, line 5 through page 6.

Strike: "PROPRIETARY CHEMICAL" on line 5 through "FORMULAS" on line 6

Insert: "TRADE SECRETS"

3. Page 6, line 17.

Strike: "4(4)"

Insert: "4(3)"

4. Page 7, line 8.

Strike: "and notice"

5. Page 8, line 13.

Strike: "and notice"

6. Page 9, line 29 through page 10, line 1.

Strike: "complete composition" on page 9, line 29 through "listed on a" on page 10, line 1

7. Page 10, line 2.

Following: "50-78-102"

Insert: "that is available for each hazardous chemical used in the fracturing fluid"

8. Page 10, line 5 through line 10.

Strike: subsection (3) through subsection (4) in their entirety

Insert: "(3) Material data safety sheets required by this section are subject to 50-78-205, including the provision that the name of a chemical may be withheld if the chemical is determined to be a trade secret."

- END -

2011 Montana Legislature

[Additional Bill Links](#) [PDF \(with line numbers\)](#)

SENATE BILL NO. 86

INTRODUCED BY B. HAWKS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PUBLIC DISCLOSURE AND LANDOWNER NOTICE OF FRACTURING INFORMATION IN OIL AND GAS OPERATIONS; PROTECTING PROPRIETARY CHEMICAL FORMULAS **TRADE SECRETS** FROM DISCLOSURE EXCEPT IN MEDICAL EMERGENCIES; AMENDING SECTIONS 82-11-101, 82-11-117, 82-11-123, 82-11-136, 82-11-163, 82-11-181, AND 82-11-182, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-11-101, MCA, is amended to read:

"82-11-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Administrator" means the administrator of the division of oil and gas conservation.
- (2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.
- (3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:
 - (a) that have been brought to the surface in connection with oil or natural gas production;
 - (b) for purposes of enhancing the ultimate recovery of oil or natural gas; or
 - (c) for purposes of storing liquid hydrocarbons.
- (4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.
- (6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a

~~(21)~~(22) (a) "Waste" means:

- (i) physical waste, as that term is generally understood in the oil and gas industry;
- (ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;
- (iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and
- (iv) the inefficient storing of oil or gas.

(b) (i) The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of subsection ~~(21)(a)~~ (22)(a).

(ii) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of subsection ~~(21)(a)~~ (22)(a)."

Section 2. Section 82-11-117, MCA, is amended to read:

"82-11-117. Confidentiality of records. (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Except as provided in [section 4(3)], the information required pursuant to [section 4] may not be considered confidential.

~~(4)~~(5) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

~~(5)~~(6) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section."

Section 3. Section 82-11-123, MCA, is amended to read:

"82-11-123. (Temporary) Requirements for oil and gas operations. Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures (in order to facilitate the discovery of potential geothermal energy sources), the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in a manner that prevents the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) prior to fracturing, the disclosure and notice required by [section 4];

~~(4)~~(5) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

~~(5)~~(6) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(a) the board determines the well is properly plugged and abandoned as provided in the board's rules;

or

(b) the requirements of 82-11-163 are met.

~~(6)~~(7) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

~~(7)~~(8) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, or water.

~~(8)~~(9) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells.

82-11-123. (Effective on occurrence of contingency) Requirements for oil and gas and carbon dioxide injection operations. (1) Subject to the administrative control of the department under 2-15-121, the board shall require:

(a) identification of ownership of carbon dioxide injection wells, carbon dioxide, geologic storage reservoirs, and oil or gas wells, producing properties, and tanks;

(b) the making and filing of acceptable well logs, including bottom-hole temperatures, in order to facilitate the discovery of potential geothermal energy sources, the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made. However, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells.

(c) the drilling, casing, producing, and plugging of wells, carbon dioxide injection wells, and class II injection wells in a manner that prevents the escape of carbon dioxide, oil, or gas out of one stratum into another, the intrusion of water into carbon dioxide, oil, or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by carbon dioxide, oil, gas, salt, or brackish water;

(d) prior to fracturing, the disclosure and notice required by [section 4];

~~(d)~~(e) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

~~(e)~~(f) except as provided in subsection ~~(1)~~(f) (1)(g), the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

- (f) at a minimum, requirements pursuant to applicable federal regulatory standards established by:
 - (i) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;
 - (ii) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.; and
 - (iii) the underground injection control program, 40 CFR, parts 144 through 147."

NEW SECTION. Section 4. Fracturing fluid disclosure -- requirements. (1) For each well where fracturing will occur, the fracturing fluid disclosure under 82-11-123 must include the complete composition of the fracturing fluid, including the product name, the additive type, the chemical compound name, the chemical abstracts service registry number, and any hazardous component listed on a material data safety sheet as defined in 50-78-102, that is available for each hazardous chemical used in the fracturing fluid.

(2) The administrator shall post the information submitted pursuant to subsection (1), including the well location, to the board's website.

~~(3) After the posting required in subsection (2), the owner shall provide at least 20 days' notice by mail before fracturing occurs to landowners adjacent to the well where fracturing will occur.~~

~~(4) Except as provided in this subsection, the disclosure of proprietary chemical formulas used in fracturing is not required. Proprietary chemical formulas must be disclosed by the owner, the producer, any employee of the owner or producer, or anyone using the fracturing fluid upon request from a responder to a medical emergency.~~

~~(3) Material data safety sheets required by this section are subject to 50-78-205, including the provision that the name of a chemical name may be withheld if the chemical is determined to be a trade secret.~~

Section 5. Section 82-11-136, MCA, is amended to read:

"82-11-136. (Temporary) Expenditure of funds from bonds for plugging wells. The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(5)~~ 82-11-123(6).

82-11-136. (Effective on occurrence of contingency) Expenditure of funds from bonds for plugging wells. (1) The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(1)(e)~~ 82-11-123(1)(f).

50-78-201. Notice to employees. Employers shall post adequate notice at locations where notices are normally posted informing employees about their rights under this chapter.

50-78-202. Workplace chemical list. (1) Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.

(2) The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually.

50-78-203. Material safety data sheets. (1) Each chemical manufacturer or distributor shall provide a manufacturing or nonmanufacturing employer with the appropriate material safety data sheet upon delivery of a hazardous chemical.

(2) Each employer shall maintain the most current material safety data sheet for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time a hazardous chemical is delivered to the employer, the employer shall request one in writing within 5 working days. Each employer shall maintain a copy of any correspondence sent or received by the employer in an effort to obtain a material safety data sheet for a hazardous chemical when none was provided by the chemical manufacturer or distributor.

(3) Material safety data sheets must be provided by the employer to any employee or designated representative upon request for review or copying.

50-78-204. Employee rights. (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from the employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) An employer may not discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises the employee's rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter.

50-78-205. Trade secret confidentiality. (1) An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet and workplace chemical list only if:

(a) a material safety data sheet, coded to an identifying notation on each container of the hazardous chemical, is available in the work area where the hazardous chemical is present;

(b) the material safety data sheet discloses the properties and effects of the hazardous chemical;

(c) the specific chemical identity is provided to a treating physician or nurse in the event of a medical emergency, as provided for in subsection (i)(2) of the OSHA standard;

50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means the chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee.

(13) "Manufacturing employer" means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under subsection (e)(1)(i) of the OSHA standard or under this chapter.

(d) the specific chemical identity is provided in nonemergency situations to a health professional providing medical or other occupational health services to an exposed employee, as provided for in subsections (i)(3) through (5) of the OSHA standard; and

(e) the employer claims that the information is a trade secret and that claim can be supported.

(2) If a person believes that disclosing certain trade information on a material safety data sheet will reveal a trade secret, a trade secret claim may be filed with the department, which shall use this procedure to determine the validity of the trade secret claim:

(a) The department shall give notice by certified mail to the person making the claim to submit trade secret substantiation information within 30 days after receipt of such notice. Failure to supply the substantiation information constitutes a waiver of the trade secret claim.

(b) The department has the responsibility to determine the validity of the trade secret claim and shall consider the trade secret substantiation information as confidential.

(c) If the department determines the trade secret claim is not valid, the department shall so notify by certified mail the person making the claim for trade secret protection, stating the basis for the decision. The person making the claim has 30 days after notification by the department to initiate judicial review in the district court of Lewis and Clark County and obtain a preliminary injunction or other court order to prevent disclosure of the trade secret.

(d) The unauthorized use or disclosure of trade secret information submitted under this section is a misdemeanor.