

DETAILS BEGIN TO EMERGE ABOUT CALIFORNIA'S PROPOSED FRACKING REGULATIONS

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California's Division of Oil, Gas & Geothermal Resources (DOGGR) yesterday revealed details about the regulations it is currently drafting to govern hydraulic fracturing, or "fracking," in the state.

Speaking at a September 18, 2012, symposium sponsored by the South Coast Air Quality Management District (see our related story dated September 19), the state's oil and gas supervisor Tim Kustic outlined a working summary of the fracking regulations currently under consideration. Before doing so, Mr. Kustic noted that fracking is not a new process in California and has been employed in the state for over 50 years. Unlike most of the fracking in the eastern United States, the primary function of fracking in California is to stimulate crude oil production, not the production of natural gas. The recent public attention paid to fracking in the state is not the result of any change in the practice or any new environmental problems locally, in Mr. Kustic's estimation. Rather, it is the result of the heightened public and media scrutiny in Pennsylvania, Ohio, New York, and elsewhere.

Mr. Kustic pointed out that DOGGR has not historically collected data on fracking activities in California, largely because it is one of many well stimulation activities employed in the state, one that does not change the physical structure of the well and thus does not require a new or separate permit or even notification to DOGGR. He expects that the failure to gather fracking-related data will change with the upcoming regulations. He was quick to point out, however, that the lack of historical information does not mean that fracking has gone unregulated. DOGGR's extensive regulations cover all aspects of well construction and operation, including wells subjected to fracking.

Mr. Kustic then outlined the content of the proposed regulations, noting that nothing has been finally determined and certain issues are still being evaluated. In brief summary, he laid out the following elements currently under consideration:

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- Operators would be required to provide notification to DOGGR before engaging in fracking. As yet undetermined is whether notification to the public would also be required, as was contemplated by Senate Bill 1054, which failed on the Senate floor in May.
- DOGGR is reviewing its current well construction regulations as part of the process of considering new fracking regulations. Implicit in that review is the possibility that such regulations may be modified to address concerns associated with fracking.
- Well integrity testing will likely be required to ensure that the well casing is structurally sound before fracking activities begin.
- Inspection of nearby wells, particularly old abandoned wells whose structural integrity may raise concerns, may be required before fracking occurs.
- The structural integrity of the cap rock above the fracture zone may need to be tested to protect against potential migration of fracking fluids or hydrocarbons, as well as to ensure conservation of the hydrocarbon resource.
- Groundwater protection will likely be addressed, beyond existing well casing requirements.
- Fluid management, including the disclosure of the contents of the fracking fluid (an issue raised by Assembly Bill 591, which failed in the Senate Appropriations Committee in August) will be addressed in the regulations. Such disclosure requirements will likely create exemptions to address trade secret concerns.
- Operators would be required to report to DOGGR following completion of fracking operations. The details of such reporting were not disclosed.
- Operators would be required to report on post-fracking water disposal.

Mr. Kustic added that DOGGR currently has full authority to draft and adopt the regulations, explaining that his authority is limited in only two respects. First, DOGGR lacks authority to ban fracking in the state. That would require a legislative effort, such as was proposed by Assemblymember Betsy Butler in Assembly Bill 972, another bill that died in the Senate Appropriations Committee in August. Second, Mr. Kustic said that DOGGR

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may lack full authority to compel disclosure of information subject to trade secret protection under California law.

A first draft of the regulations should be produced by the end of the year. They will then be subjected to public review and comment, a process that may be repeated – perhaps multiple times – if the regulations undergo significant revisions. Mr. Kustic expressed optimism that the regulations will be adopted within a year of the first draft, possibly by the end of 2013. We will continue to monitor the regulatory process and provide updates as circumstances warrant.

In further comments at the symposium on the proposed regulations and fracking generally, Dr. Mark Nechodom, Director of the Department of Conservation (DOC) (to whom Mr. Kustic reports), explained that one of the primary functions of DOGGR, one that is written into California law, is the dual obligation to maximize the production of the state’s natural resources, while simultaneously protecting the public, the environment, *and* the natural resource itself – oil and gas. These requirements are contained in Section 3106 of California’s Public Resources Code, which obligates DOGGR to supervise oil and gas production:

so as to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances.

Section 3106 also requires that DOGGR allow operators “to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case.” That would include, among other things,

the injection of air, gas, water, or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons,

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the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells, when these methods or processes employed have been approved by the supervisor

Dr. Nechodom promised science-based decision-making and evidence-based regulation, and strongly advocated a cooperative, multi-agency approach to regulation and supervision of fracking. He confirmed his commitment to ensure full cooperation between DOC, DOGGR, SCAQMD, and other potentially interested governmental agencies, specifically mentioning the State Water Resources Control Board (SWRCB) and the Department of Public Health (DPH). Mr. Kustic similarly committed to a close working relationship with the SCAQMD and other interested agencies and stakeholders.

For more information regarding California fracking issues, please contact:

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