

CALIFORNIA RELEASES “DISCUSSION DRAFT” OF FRACKING REGULATIONS

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On December 18, 2012, California’s Division of Oil, Gas and Geothermal Resources ([DOGGR](#)) released a “discussion draft” of its long-awaited regulations governing the oil and gas well stimulation technique known as hydraulic fracturing, or “fracking.” The regulations may be found here on the blog ([pdf](#)) and on the Division of Conservation website ([DOC](#)). DOGGR also released a [five-page narrative](#) of the regulations and a set of [FAQs](#).

In releasing the draft regulations, DOC and DOGGR noted:

The Department of Conservation/Division of Oil, Gas, and Geothermal Resources on December 18, 2012 released a “discussion draft” of regulations for the oil and natural gas production technique known as hydraulic fracturing (“fracking”). What does “discussion draft” mean? It means that this version does not kick off the formal rulemaking process. Instead, it is a starting point for discussion by key stakeholders – industry, the environmental community, and other regulators, as well as interested members of the public – in preparation for the more formal process, which probably will begin in early 2013. These “discussion draft” regulations include provisions for pre-fracturing well testing; advance notification; monitoring during and after fracturing operations; disclosure of materials used in fracturing fluid; trade secrets; and storage and handling of hydraulic fracturing fluids.

The draft regulations are the culmination of a several-months-long process undertaken by DOGGR, during which DOGGR conducted a series of [public workshops](#) and a [fracking seminar](#), and invited public comments. At a September fracking symposium sponsored by the South Coast Air Quality Management District ([AQMD](#)), the State Oil and Gas Supervisor, [Tim Kustic](#), outlined the anticipated scope of the regulations. We summarized Mr. Kustic’s remarks [here](#). DOGGR’s draft regulations largely track the key elements of Mr.

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Kustic's September outline and also capture the major concerns addressed in legislation introduced by Senator Fran Pavley and Assemblymember Bob Wieckowski on December 3, 2012, which we summarized [here](#).

DOGGR's proposal would add a new article to Chapter 4 of Title 14 of the California Code of Regulations ([pdf](#)). In brief summary, the new sections would provide as follows:

- Section 1780 would create several new fracking-related definitions. Among these is the identification of www.FracFocus.org as the internet-based chemical registry for disclosure of fracking activities in California.
- Section 1781 would clarify that well stimulation activities such as fracking are not underground injection or disposal projects, and thus not subject to statutory schemes governing those activities.
- Section 1782 would impose various general requirements on operators related to well casing, protection of water zones, prevention of vertical migration of fluids or gases, wellbore integrity, and related matters.
- Section 1783 would require operators to provide to DOGGR and to the applicable regional water quality control board a host of information detailing the proposed fracking operations before fracking begins. Operators would be required to complete a "Form DOGGR HF1" at least ten days before fracking begins, and notify DOGGR again at least 24 before actually commencing work. DOGGR would be required to post information about the proposed fracking within seven days of receipt of Form DOGGR HF1.
- Section 1784 would require operators to perform a series of evaluations before commencing fracking operations. These evaluations would include pressure testing of cemented casing strings and tubing strings, proper rigging of surface equipment, adequacy of well cementing, and a fracture radius analysis to ensure that no fracking fluids or hydrocarbons will migrate into protected water zones.

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- Section 1785 would establish monitoring requirements during fracking operations. In the event anomalies occur, fracking operations must be terminated and DOGGR must be notified.
- Section 1786 would create requirements for the proper and safe storage and handling of fracking fluids, including fluids stored at well sites and fracking flowback. Among these are a prohibition against storing non-freshwater fracking-related fluids in unlined sumps or pits, and clean up and remediation requirements in the event of an unauthorized release, with associated reporting requirements.
- Section 1787 would obligate operators to continue to monitor wells after fracking has been completed to identify any potential problems that could endanger any underground source of protected water. The monitoring data must be maintained for at least five years and made available to DOGGR on request.
- Section 1788 would require that operators post specified data about fracking operations on www.FracFocus.org. In addition to basic information identifying the relevant well(s), operators would be required to disclose “[a] complete list of the names, CAS numbers, and maximum concentration, in percent by mass, of each chemical added to the [fracking] fluid.” Operators would also need to disclose trade names, suppliers, and a brief description of the intended purpose of each chemical in the fluid. Also subject to disclosure would be the the volume of carrier fluid, the disposition of carrier fluid, any radiological components or tracers injected in the well, and the estimated volume of flowback fluid.
- Section 1788.1 would create an exemption to Section 1788’s disclosure requirements to protect against disclosure of trade secrets. Trade secret protection would be afforded to information that meets the definition created by California [Civil Code Section 3426.1\(d\)](#) or [Penal Code Section 499c\(a\)\(9\)](#). Operators seeking trade secret protection would be required to execute a declaration under penalty of perjury confirming the confidential nature of the

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information and demonstrating that disclosure would harm the competitive position of the party asserting the protection.

- Section 1788.2 would govern the use of trade secret information in the event that the information is necessary to investigate or respond to a spill or release of fracking fluid, as well as in the event that a medical professional needs access to such information to treat a patient who may have been exposed to a hazardous chemical.

Noticeably absent from the draft regulations is any significant treatment of induced seismicity. Section 1784 would require analysis of faults, but that analysis is primarily focused on protection of water rather than prevention of induced seismicity. In the [FAQs](#), DOGGR explains that “reports of induced seismicity associated with [fracking] are actually related to long-duration, high-volume injection of waste fluids in disposal wells. [Fracking] is a short-duration production well stimulation treatment.” California already has injection control rules in place that address waste fluid disposal well pressures. DOGGR concludes that “induced seismicity has not been an issue in California.”

As noted above, this "discussion draft" of the fracking regulations does not kick off the formal rulemaking process. DOGGR has promised to hold workshops to elicit stakeholder input on the regulations. DOC Chief Deputy Director [Jason Marshall](#) indicated that at least three such workshops will be conducted, likely in Sacramento, Bakersfield, and the Los Angeles Basin. Additional workshops may be scheduled. Formal rulemaking is expected to begin in February 2013. The duration of that process will depend on the level of public participation and the possible need to revise the regulations to address public and stakeholder comments. DOGGR estimates that process will take eight to ten months, meaning the regulations could be enacted by late 2013. We will continue to monitor the [rulemaking process](#) and provide updates as circumstances warrant.

The release of these draft regulations marks DOGGR's first effort to explicitly regulate fracking as a distinct well stimulation technique. DOGGR has not historically collected data on, or required disclosure of, 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 has not required a new or separate permit or even

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notification to DOGGR. Despite the past absence of explicit fracking regulations, fracking has not gone wholly unregulated. As DOGGR has [previously stated](#),

California's requirements for the protection of underground resources and well construction standards provide a first line of protection from potential damage caused by hydraulic fracturing. However, California's regulations do not require notification to the Division when hydraulic fracturing occurs. There is a gap between the requirements placed on oil and gas operators to safely construct and maintain their wells, and the information they provide to the Division about hydraulic fracturing operations and steps taken to protect resources and the environment. The Department's pending regulatory process is intended to close that gap.

With today's release of the draft regulations, DOGGR has now begun to close that perceived regulatory gap.

For more information regarding California fracking issues, please contact:

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