

**The California Oil and Gas Report**

# An Analysis of DOGGR’s Draft Fracking Regulations

[January 3, 2013](http://www.caloilgas.com/doggr-draft/%22%20%5Co%20%225%3A39%20pm)

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The Division of Oil, Gas, and Geothermal Resources (“DOGGR”) on December 18, 2012, released a highly anticipated “[discussion draft](http://www.conservation.ca.gov/dog/)” of regulations that pertain to DOGGR’s oversight of hydraulic fracturing in California.

This article looks at the background of this action by DOGGR, the content of the draft, and initial reactions both by opponents of fracking and by members of the oil and gas industry.

**Background**

Public concern over hydraulic fracturing continues to grow and receive increasing attention from legislators and regulatory agencies alike.  In California, the Department of Conservation responded by convening Hydraulic Fracturing Seminars that were given at seven locations throughout the state in 2012.  The seminars were a precursor to the discussion draft regulations that have been released.

In addition, there are already two fracking-oriented bills introduced in the 2013-2014 legislative session, namely AB 7 authored by Assemblymember Bob Wieckowski (D-Fremont) and SB 4 authored by Senator Fran Pavley (D-Agoura Hills).  It is likely that debate over the bills will have an influence in the development of the final DOGGR regulations.

**Summary of Discussion Draft Regulations**

The draft regulations provide as follows:

* Section 1780 – **Definitions**.  This section identifes fracfocus.org as the chemical disclosure registry for California.  Provides standards for the definition of “protected water.”
* Section 1781 – **Well Stimulation Not an Injection Project**.  Clarifies that  well stimulation operations, including hydraulic fracturing, are not underground injection or disposal projects, and are not subject to statutes that govern those activities.
* Section 1782 – **General Hydraulic Fracturing Requirements**.  This section imposes various general requirements on operators related to well casing, protection of water zones, prevention of vertical migration of fluids or gases, wellbore integrity, disclosure of hydraulic fracturing fluids and proppants, and use of best industry standards.
* Section 1783 – **Required Data Prior to Hydraulic Fracturing**.  This section requires operators to provide to DOGGR and the applicable regional water quality control board  information detailing the proposed hydraulic fracturing operations. Operators are required to complete a “Form DOGGR HF1′′ at least ten days before hydraulic fracturing begins, and notify DOGGR again at least 24 hours before actually commencing work. DOGGR would be required to post information about the proposed hydraulic fracturing within seven days of receipt of Form DOGGR HF1.  Records submitted pursuant to the regulation would be presumed to be public records for purposes of the California Public Records Act.
* Section 1784 – **Evaluation Prior to Hydraulic Fracture**.  This section requires operators to perform certain evaluations before commencing hydraulic fracturing operations. These evaluations would include pressure testing of cemented casing strings and tubing strings, proper rigging of surface equipment, adequacy of well cementing, conducting fracture radius analysis, and well design to ensure that no hydraulic fracturing fluids or hydrocarbons will migrate into protected water zones.
* Section 1785 – **Monitoring During Hydraulic Fracturing Operations**.  This section establishes monitoring requirements during hydraulic fracturing operations. In the event that any irregularities occur, hydraulic fracturing operations must be terminated and DOGGR must be notified.
* Section 1786 – **Storage and Handling of Hydraulic Fracturing Fluids.**  This section createsrequirements for the proper and safe storage and handling of hydraulic fracturing fluids, including fluids stored at well sites and hydraulic fracturing flowback. Among these are storage of non-freshwater fluids associated with hydraulic fracturing to be in compliance with secondary containment requirements, compliance with all applicable testing, inspection and maintenance requirements for production facilities continaing hydraulic fracturing fluids, 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, and reporting of unauthorized releases within five days of the occurence.
* Section 1787 – **Well Monitoring After Hydraulic Fracturing**.  This section requires  operators to monitor wells after hydraulic fracturing has been completed to identify any potential problems with a well that could endanger any underground source of protected water.  The section identifies the type of information to be gathered during monitoring. The monitoring data must be maintained for at least five years and made available to DOGGR on request.
* Section 1788 – **Required Public Disclosures**.  This section requires that operators post specified data about hydraulic fracturing operations to the Chemical Disclosure Registry ([www.FracFocus.org](http://www.fracfocus.org/)).  The information includes well operator’s name, hydrualic fracturing date, county where well located, well API number, well name and number, well location, true vertical depth of well, name of productive zone, a complete list of the names, CAS numbers, and maximum concentration, in percent by mass, of each chemical added to the [fracking] fluid, trade names, suppliers, and a brief description of the intended purpose of each additive contained in the hydraulic fracturing fluid, the volume of carrier fluid used, the disposition of carrier fluid, any radiological components or tracers injected in the well, and the estimated volume of flowback fluid recovered.
* Section 1788.1 – **Claims of Trade Secret Protection**.  This section creates 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 information and demonstrating that disclosure would harm the competitive position of the party asserting the protection.
* Section 1788.2 – **Use of Trade Secret Information**.  This section governs the use of trade secret information in the event that the information is necessary to investigate or respond to a spill or release of hydraulic fracturing 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.

**Industry Response**

DOGGR chief **Tim Kustic**, said in a news conference Tuesday that DOGGR reviewed other states’ hydraulic fracturing rules, and that as far as he could tell, the pre-frack testing he proposed would be unique in the country.

Industry representatives say cost remains a primary concern with any new regulations, even as they declined to estimate how much oil producers’ costs would rise under Tuesday’s proposal.  **Les Clark**, executive vice president of Bakersfield’s **Independent Oil Producers Agency**, said well testing is “expensive to do,” but that he expects upcoming discussions with state regulators to result in a set of “common sense” rules.

The oil and gas industry has previously opposed such prenotification, saying it would needlessly worry neighbors who have no power to appeal a company’s decision to frack.  While details remain to be worked out, “we don’t have a problem” with the proposal’s prenotification requirements, said **Rock Zierman**, chief executive of the **California Independent Petroleum Association**.

**Dennis R. Luna** of **Luna & Glushon**, a leading oil and gas attorney, stated “the proposed regulations appear to present a balanced response to public concerns.  Going forward, it is important to keep in mind that no evidence has been brought to light that hyrdaulic fracturing presents any threat to the environment or public health after approximately sixty years of safe use in California.”

**Critical Response**

The DOGGR announcement had a strong reaction from several environmentalists and politicians, in a written statement, **Sen. Fran Pavley** (D-Agoura Hills) criticized the prenotification proposal as inadequate. She did not elaborate but did add that “public disclosure and public input are key to this process.”

Still more contentious was the idea of exempting “trade secrets” from the list of frack fluid ingredients that the draft rules say should be published online at fracfocus.org or some other public website.  DOGGR proposes to allow oil companies to identify certain ingredients by only the chemical family or a similarly vague description. But environmentalists said the industry should have to state exactly what it wants to inject underground, no exceptions.  “There should be some way to disclose what those (chemicals) are,” said **George Torgun**, staff attorney at **Earthjustice**, a San Francisco nonprofit.

In a statement **Kristin Lynch**, Pacific Region Director of **Food & Water Watch**, said “With proposed regulations, which took nearly a year to draft, today the California Division of Oil, Gas and Geothermal Resources (DOGGR) proves that it has no intention to move beyond the lawless Wild West when it comes to fracking in our state, leaving us at the mercy of the oil and gas industry.

“DOGGR’s draft regulations will do nothing to protect Californians from the dangers fracking poses to our air, water and climate. It does not address the federal environmental and health legislative exemptions the oil and gas industry currently enjoys, including the key exemption to the Safe Drinking Water Act. Nor does it provide meaningful chemical disclosure requirements and it would have the industry police itself by evaluating and monitoring its fracking operations for safety. The ‘regulations’ proposed are akin to having state speeding regulations where automobile drivers are expected contact law enforcement on their own volition if they break the posted speed limit at any given time.”

In a written statement, the **Center for Biological Diversity** said the draft regulations “do little to protect the state’s environment, wildlife, climate and public health.”  “California faces huge environmental risks unless state officials halt this dangerous fracking boom,” **Kassie Siegal**, an attorney for the center said.

It is interesting to note that there are two bills ) related to hydraulic fracturing in front of the current session of the California Legislature, **AB 7** by **Assemblyman Bill Wieckowski** (D-Fremont) and **SB 4** by **Senator Fran Pavley** (D-Agoura). These bills, which are a remake of bills put forth by both legislaturors in the previous session, **ask for stronger oversight of fracturing** than the new  “discussion draft regulations” proposed by DOGGR.

Another point of interest, DOGGR’s draft rules do not address other controversial aspects of hydraulic fracturing, such as impacts on air quality and related seismic activity. In the “Frequently asked questions” section on the DOGGR website, their response to seismic activity concerns was, “since 1947 in the United States, more than one million oil and gas wells have been hydraulically fractured with no recorded incidences of triggered earthquakes….” thus basically stating that seismic concerns are a non-issue.

**Next Steps**

In the “frequently asked questions” link listed on DOGGR’s website, there are two key questions and answers that address the next steps:

***Will the public have an opportunity to comment on these regulations?***

Prior to commencing the formal rulemaking process, the Division is circulating the proposed regulations to solicit stakeholder input on an informal basis. To this end, the **Division will hold stakeholder workshops** at times and places to be announced. Written comments about these draft proposed regulations can be submitted at any time to **comments@conservation.ca.gov**. In addition, once the formal rulemaking process begins, there will be a minimum **45-day public comment period** that will include at least one public comment hearing.

***When will the regulations go into effect?***

The Division hopes to **commence the formal rulemaking process in February 2013**. The duration of the rulemaking process depends on the extent of public participation and the number of revisions the Division makes to the regulations during the process. The Division estimates that this rulemaking process will take **eight to ten months** to complete.