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Comment Periods Open on New Fracking Regulations and Scope of Statewide EIR

In the face of mounting public pressure to address the potential perils of hydraulic fracturing, California has embarked upon a multi-faceted program to strengthen its oil and gas regulations, perform comprehensive environmental studies, and increase public disclosure. On November 15, 2013, the Department of Conservation published two notices seeking comments on steps it is taking to implement recently enacted legislation:

- [**Notice of Proposed Rulemaking to Adopt Well Stimulation Treatment Regulations**](#). The Division of Oil, Gas and Geothermal Resources has proposed regulations intended to ensure that well stimulation is performed safely by setting requirements to ensure integrity of wells, well casings, and the geologic and hydrologic isolation of the oil and gas formation during and following well stimulation treatments. The regulations also require disclosure of the composition and disposition of well stimulation fluids, and impose new procedures for issuance of well stimulation permits, public disclosure, neighbor notification and well testing. The 60-day comment period on the proposed regulations closes on **January 14, 2014**.
- [**Notice of Preparation of an Environmental Impact Report**](#). The Department of Conservation will prepare an EIR to evaluate the impacts of existing and potential future oil and gas well stimulation treatments occurring within California. While the notice does not use the label "program EIR," it includes a summary of the CEQA Guideline governing program EIRs as the basis for preparing a single EIR to address a series of actions. To grapple with the complexity of evaluating impacts throughout the state, the notice states that the EIR will evaluate potential impacts in each of the Division of Oil, Gas and Geothermal Resources' six administrative districts. The notice also states that the EIR may be used to consider future permits authorizing well stimulation. Comments about the scope of the EIR must be submitted by **January 16, 2014**.

Both of these steps stem from [Senate Bill 4](#), the only fracking bill to make it out of the Legislature and off the Governor's desk in 2013. SB 4 defines oil and gas well stimulations as "any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation." Well stimulation includes hydraulic fracturing treatments and acid well stimulation treatments, but does not include enhancement of oil and gas recovery through flooding or steam. SB 4 requires:

- An independent scientific study on the hazards and risks that well stimulation treatments pose to natural resources and public, occupational and environmental health and safety. The study is to be completed by January 1, 2015 and is expected to lead to additional regulation by 2020.
- Issuance of well stimulation permits prior to performing a well stimulation treatment.
- Disclosure of well stimulation permits to neighboring property owners, who may request baseline water quality sampling and testing before well stimulation commences.
- Disclosure of well stimulation fluid composition and disposition (with possible exceptions for trade secrets).
- Identification of all geologic features within the fracture zone.
- Monitoring and disclosure of detailed information about well history and well operations.
- Preparation of an EIR, to be certified no later than July 1, 2015, to address activities that may occur at oil wells in the state, and provide the public with detailed information regarding any potential impacts of well stimulation in the state.

SB 4 contains a streamlined interim procedure to be used for a one-year period, which allows operators to proceed with well stimulation without a permit if they comply with specified requirements. According to the [Senate Bill 4 Implementation Plan](#), the Division of Oil, Gas and Geothermal Resources intends to "use its emergency regulatory authority to set up rules for this 2014 interim process." The interim regulations are scheduled for release on December 13, 2013.

Explore more in

[California Land Use & Development Law Report](#)