

E-ALERT | Environmental

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CALIFORNIA ENACTS SB 4 ESTABLISHING FRACKING REGULATION WITH MANY DETAILS TO COME THROUGH REGULATION BEFORE 2015

California's recently enacted fracking statute -- SB 4 -- specifically regulates hydro-fracturing and acid stimulation of oil and gas wells in the state for the first time. Although the original bill's stringent provisions were softened, causing some environmental groups to withdraw their previous support and the *Los Angeles Times* to editorialize for a gubernatorial veto ("A Fracking Bill Gone Bad," September 12, 2013), industrial groups opposed certain aspects of the bill as too stringent, arguing that they could prevent Californians from receiving a reliable energy supply.

Hydro-fracking or acid stimulation are not new to California. However, the regulating agency -- the Division of Oil, Gas and Geothermal Resources within the Department of Conservation (the "Division") -- was only in the process of informal rulemaking on hydro-fracking or acid stimulation and California did not yet have regulations specific to the activity.

SB 4 mandates a permitting and tracking system to hydro-fracture an oil or gas well. It does so through a phased program. The first phase ends by January 1, 2015. During the first phase, the Secretary of the Natural Resources Agency will cause "an independent scientific study" to be completed on well stimulation treatments, including evaluation of risks and hazards on a broad range of issues. During this phase, the Division, in consultation with various state agencies, is required to promulgate regulations specific to well stimulation treatments. The Division, in the consultation process, is required to identify and delineate the authorities and responsibilities of the many public entities that may claim enforcement authority over one or another aspect of the process, followed by formal agreements among State agencies to delineate the respective responsibilities.

The second phase begins when the regulations are promulgated.

During the first phase, SB 4 does provide for well stimulation upon permit application or a similar written submission but imposes certain conditions. The legislation may require clean-up relative to the applicability of the California Environmental Quality Act to permitting during the first phase.

The permit application must include, among other information, (1) the amount and source of water to be used, (2) provisions for local groundwater monitoring, (3) specification of the method to be used for disposing of flowback water and other wastes, and (4) the contents of the fracking fluids. The permit may not be approved until 30 days after notice is provided by an independent entity to surface property owners and tenants within a 1,500 foot radius of the wellhead or within 500 feet from the horizontal projection of all subsurface portions of the designated well to the surface. Those property owners have certain rights to demand water quality sampling and testing on water wells. At least 72 hours before the fracking occurs, the operator must notify the Division, giving them the opportunity to inspect the operation. SB 4 also establishes the obligation to post information and data on a public website (to be established). Posting of this data need not occur prior to the drilling but within 60 days after completion of the fracking operation. There are other provisions on the

protection of trade secret information, which also describe exceptions that allow third parties (e.g., health professionals) to obtain the information.

Between now and the end of 2014, California's regulatory agencies will tackle the adoption of regulations, which the bill states "shall" include "revisions, as needed, to the rules and regulations governing construction of wells and well casings 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, and full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids, acid well stimulation fluids, and flowback fluids." The regulations will also identify the threshold levels of acid matrix stimulation that will be subject to the rules.

The Division had been developing its own regulations governing fracking before the passage of SB 4, and had released an informal discussion draft of the regulations. The Division will now need to integrate the requirements of SB 4 into its regulatory approach, which – given the need to complete the regulatory process in 2014 – should occur relatively quickly. We expect the Division will formally issue proposed regulations in 2013 or early 2014, as the formal rulemaking process may take a year to complete and SB 4 requires the regulations to be finalized and implemented by January 1, 2015.

California is the fourth largest producing state and some estimates suggest that very substantial additional oil and gas resources can be produced using fracking techniques. Participants and parties interested in the activity should seek to stay abreast of developments and, as appropriate, contribute to the development of the regulations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our environmental practice group:

E. Donald Elliott	+1.202.662.5631	delliott@cov.com
George Frampton, Jr.	+1.202.662.5062	gframpton@cov.com
Lawrence Hobel	+1.415.591.7028	lhobel@cov.com
Steven Rosenbaum	+1.202.662.5568	srosenbaum@cov.com

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