

Client Alert

June 2013

California Senate Passes Hydraulic Fracturing Bill

In the last legislative session (2011–12), bills that would have imposed severe restrictions or even an outright moratorium on hydraulic fracturing (HF) were narrowly defeated in the California legislature. Earlier this year, we issued an alert regarding draft regulations that had been issued by the Division of Oil, Gas, and Geothermal Resources. We noted in that alert that opponents of HF promised that they would continue their efforts to limit HF and, as expected, HF has been in the sights of the legislature again this session. These efforts have now come to some fruition, since on May 29, 2013, the California Senate voted 28–11 in favor of Senate Bill 4.

Senate Bill 4, sponsored by Sen. Fran Pavley (D) of Agoura Hills, requires a number of disclosures from companies that engage in HF. Under this bill, before a company can conduct a new HF treatment or repeat a HF treatment, it will be required to apply for a permit from the state's oil and gas supervisor or a district deputy. The permit application will require such information as the well identification and location; the time period during which HF is planned to occur; an estimate of the amount of water to be used and its source; the planned location of the HF treatment on the well bore; the estimated length, height and direction of the induced fractures; and a complete list of the names, Chemical Abstracts Service numbers and estimated concentrations of every chemical constituent of the HF fluids to be used.

Upon approval of a permit, the division will be required to post the permit on its public website within five business days. Moreover, at least 30 days prior to commencing a HF treatment, the operator will be required to provide a copy of the permit to every surface property owner within a 1,500-foot radius of the wellhead and within 500 feet from the horizontal projection of all subsurface portions of the designated well to the surface. Then, the operator must also provide notice to the division at least 72 hours prior to the actual start of the HF treatment, to facilitate divisional "spot checks," which are also mandated by the bill. Once the HF has ended, the operator will be required within 60 days to post a notice on a public website of the HF fluid composition and disposition.

As we noted previously in discussing the draft regulations, protecting the chemical composition of HF fluids as a trade secret has been a particular concern of environmental groups that oppose HF. (Recall that the draft regulations allow operators to invoke trade secret protections *without disclosure to the division of the specific chemicals* by submission of a sworn declaration that the trade secret provides a significant economic advantage that would be compromised by disclosure, that disclosure has not already occurred elsewhere and that the fluid cannot be reverse engineered.) In contrast, although the bill does provide some degree of trade secret protection for the chemical composition of HF fluids, it nevertheless requires disclosure to the division, even when trade secret protection is invoked. Failure to provide this information will render an application incomplete, and thus a permit will not be issued. The bill does provide that information designated as a trade secret generally will not be disclosed to the public, but there is a significant exception: when the division receives a request for the release of information that includes a designated trade secret, the supplier will have 60 days to obtain a declaratory judgment or preliminary injunction against disclosure, without which the information will be disclosed.

The bill also calls for completion of an independent scientific study to evaluate all aspects and possible consequences of HF, including, at a minimum, atmospheric emissions, potential degradation of air

quality, potential water and surface contamination, induced seismicity and the effect of HF fluids on the environment. Initially, the bill would have suspended issuance of HF permits after January 1, 2015, until this study was completed, but the sponsor removed this provision on the Senate floor. Sen. Pavley has announced that she will continue working with the oil and gas industry to develop additional regulations.

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