

**Assembly Bill No. 2453**

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Passed the Assembly August 23, 2010

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*Chief Clerk of the Assembly*

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Passed the Senate August 19, 2010

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

CHAPTER \_\_\_\_\_

An act to amend Sections 3225, 3236.5, 3743, and 3744 of, to add Section 3763 to, and to repeal and add Sections 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3762, 3764, 3765, 3766, 3767, and 3768 of, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL’S DIGEST

AB 2453, Tran. Oil and gas: operations: enforcement actions.

Under existing law, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation regulates the operation of oil, gas, and geothermal wells in specified districts of the state. Existing law establishes procedures for an operator of a well or owner of a rig, derrick, or other operating structure to appeal from an order of the State Oil and Gas Supervisor or a district deputy regarding the operation of a well, or drilling or testing operations.

This bill would make numerous changes to the appeal process and procedures. The bill would require an order of the supervisor or a district deputy to state the factual basis for the order, the statutory and regulatory basis of the action, and the penalties and requirements imposed on the operator. The bill would also require a cease and desist order to specify the operations to cease and a detailed explanation of the action to be taken by the operator to permit operations to resume.

The bill would, among other things, provide for review of an order of the supervisor imposing a civil penalty by the director, revise the requirements for filing a notice of appeal, provide that the filing of an appeal does not stay an order for remedial work or a cease and desist order issued under emergency circumstances and, in these circumstances, require an expedited hearing before the director. The bill requires the division to reimburse an operator for required remedial work if an order is invalidated on appeal, as determined in a hearing before the director.

The bill would also, among other things, require certain appeals to be heard in a formal hearing process before an administrative law judge, instead of in an informal hearing before the director of the department, would specify certain procedures for an informal

hearing before the director, including the conversion of an informal hearing to a formal hearing, and would impose specified requirements with regard to an appeal of an emergency order. The bill would revise the scope of the judicial review of an appealed order.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3225 of the Public Resources Code is amended to read:

3225. (a) An order of the supervisor or a district deputy issued pursuant to this chapter shall provide a clear and concise recitation of the acts or omissions with which the operator is charged. The order shall state all penalties and requirements imposed on the operator in connection with the acts or omissions charged and the order shall provide references to the provisions of this code and the regulations that support the imposition of the penalties and requirements.

(b) An order requiring an operator to cease and desist operations pursuant to Section 3270.3 shall specify the operations that the operator is required to cease and desist and shall provide a detailed explanation of the steps that the operator shall take before the supervisor will permit the operations to resume.

(c) An order of the supervisor or a district deputy shall be in writing and shall be served on the operator by personal service or by certified mail.

(d) When the supervisor or a district deputy issues a written order concerning an operation, an appeal may be made from the order pursuant to the procedures contained in Article 6 (commencing with Section 3350). The order shall inform the operator of its right to appeal the order.

SEC. 2. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) A person who violates this chapter or a regulation implementing this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation. An act of God and an act of vandalism beyond the reasonable control of the operator shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor pursuant to Section 3225 upon a determination that a violation has been committed by

the person charged. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, all of the following:

- (1) The extent of harm caused by the violation.
- (2) The persistence of the violation.
- (3) The pervasiveness of the violation.
- (4) The number of prior violations by the same violator.

(b) An order of the supervisor imposing a civil penalty shall be reviewable pursuant to Article 6 (commencing with Section 3350). When the order of the supervisor has become final and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well or use of the production facility that is the subject of the civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

SEC. 3. Section 3350 of the Public Resources Code is repealed.

SEC. 4. Section 3350 is added to the Public Resources Code, to read:

3350. (a) The operator of a well or a production facility to whom the supervisor or district deputy has issued an order pursuant to this chapter may file a notice of appeal to the director from that order. The notice of appeal shall be in writing and shall be filed with the supervisor or with the district deputy who issued the order. The operator shall file the appeal within 10 days of the service of the order, or within 10 days of the posting of a copy of an order made pursuant to Section 3308. Failure of the operator to file an appeal from the order within the 10-day period shall be a waiver by the operator of its rights to challenge the order. If the order, other than an order made pursuant to Section 3308, is served by mail, the time for responding shall be determined as provided in Section 1013 of the Code of Civil Procedure.

(b) (1) The filing of a written notice of appeal shall operate as a stay of the order, except when an order for remedial work or an order to cease and desist operations is issued as an emergency

order pursuant to Section 3226. If the order is an emergency order, the operator shall immediately cease and desist the specified operations and shall perform whatever work is required by the order to alleviate the emergency or shall permit the agents appointed by the supervisor to perform that work.

(2) If the emergency order is set aside or modified on appeal, the supervisor shall refund the reasonable costs incurred by the operator for whatever work is not required by the set-aside or modified order or shall not impose costs for work performed by the supervisor or the supervisor's agents if the work is excluded from the modified order or the order is set aside.

(3) (A) The costs to be refunded pursuant to paragraph (2) by the supervisor shall be determined in a hearing before the director after the exhaustion of appeals. The operator shall have the burden of proving the amount of costs to be refunded.

(B) A determination by the director as to the amount of costs to be refunded pursuant to paragraph (2) may be appealed by the operator pursuant to subdivision (a) of Section 3354.

(4) If the operator believes that it will be irretrievably injured by the performance of the work required to alleviate the emergency pending the outcome of the appeal, the operator may seek an order from the appropriate superior court restraining the enforcement of the order pending the outcome of the appeal.

SEC. 5. Section 3351 of the Public Resources Code is repealed.

SEC. 6. Section 3351 is added to the Public Resources Code, to read:

3351. (a) A hearing shall be provided in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code only in an appeal from an order in the following circumstances:

(1) Issued pursuant to a Section 3237 finding that the operator's wells are deserted and should be plugged and abandoned.

(2) Imposing civil penalties totaling more than ten thousand dollars (\$10,000).

(3) Rescinding an injection project approval for a project that has already commenced.

(4) Imposing a life-of-well bond or a life-of-production facility bond.

(b) An order issued pursuant to Section 3225 shall satisfy the requirement of Section 11503 of the Government Code that an accusation be filed.

(c) For an appeal of an order that is not described in subdivision (a), a hearing shall be conducted by the director in accordance with Sections 3352 and 3353.

(d) For an appeal of an order that is described in subdivision (a) and is also an emergency order for remedial work or to cease and desist operations, a hearing shall be conducted by the director in accordance with Sections 3352 and 3353 for the limited purpose of considering the emergency order for remedial work or to cease and desist operations. All other penalties and requirements imposed by the order shall be considered at a hearing provided in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 7. Section 3352 of the Public Resources Code is repealed.

SEC. 8. Section 3352 is added to the Public Resources Code, to read:

3352. (a) A hearing conducted by the director shall adhere to the following:

(1) When an order is not issued as an emergency order, within 30 days from the date of the service of the notice of appeal, the director shall provide to the operator notice of the time and place of the hearing. The hearing shall take place within 30 days after the date of the director's notice. The notice shall inform the operator that the director may extend the date of the hearing for up to 60 days for good cause upon application of the operator or the supervisor.

(2) When an order has been issued as an emergency order, within 10 days from the date of the service of the notice of appeal, the director shall provide to the operator notice of the time and place of the hearing. The hearing shall take place within 20 days after the date of the director's notice. The notice shall inform the operator that the director may extend the date of the hearing for up to 30 days for good cause upon application of the operator or the supervisor.

(b) The director shall conduct the hearing within the district where the majority of the wells or production facilities that are the subject of the order are located, or the hearing may be conducted at a location outside of that district upon application of the operator.

The hearing shall be reported by a stenographic reporter and may, in addition, be electronically recorded by either party.

(c) The notice of hearing shall inform the operator of its right to file a written answer to the charges no later than 10 days before the date of the hearing. The notice also shall inform the operator that it has the right to present oral and documentary evidence at the hearing.

(d) Upon a verified and timely petition of the operator, the director may order the testimony of a witness at the hearing. The petition shall be served upon the director and the other party within five days after the filing of an appeal and shall set forth the name and address of the witness whose testimony is requested, to the extent known; a showing of the materiality of the testimony; and a showing that the witness cannot be compelled to testify absent an order of the director. The supervisor may file an opposition to the petition within five days after the petition is served. The director shall either deny or grant the petition within 10 days after receipt of the petition and receiving any opposition to the petition. Upon granting a petition, the director shall issue a subpoena pursuant to Section 3357 compelling the testimony of the witness at the hearing.

(e) The director may convert a hearing pursuant to this section to a formal hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code in any of the following circumstances:

(1) The operator makes a showing satisfactory to the director that the order being appealed is likely to result in termination of an established oil or gas producing or injection operation.

(2) It appears to the director that the hearing will involve complex evidentiary or procedural issues that will cause more than minimal delay or burdens.

(3) The operator and the supervisor agree and stipulate to convert the hearing to a formal hearing.

(f) The conversion of a hearing pursuant to this section to a formal hearing shall be conducted in accordance with Article 15 (commencing with Section 11470.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 9. Section 3353 of the Public Resources Code is repealed.

SEC. 10. Section 3353 is added to the Public Resources Code, to read:

3353. (a) Within 30 days after the close of a hearing conducted by the director, the director shall issue a written decision affirming, setting aside, or modifying the order from which the appeal was taken. The director's written decision shall be based upon the preponderance of the evidence and shall set forth the director's factual findings, legal conclusions, and rationale for the result. The director may extend the 30-day period for issuing the written decision if the extension is agreed to by the operator.

(b) The director shall file the written decision with the supervisor and serve it on the operator as soon as the decision is complete, at which time the decision shall be deemed final. The director's decision shall supersede the order of the supervisor from which the appeal was made. If the director affirms or modifies the order, the director shall retain jurisdiction until the operator completes the work required to be performed by the order.

SEC. 11. Section 3354 of the Public Resources Code is repealed.

SEC. 12. Section 3354 is added to the Public Resources Code, to read:

3354. (a) Following a hearing conducted by the director pursuant to Sections 3352 and 3353 or subdivision (b) of Section 3350, the operator may obtain judicial review of the decision of the director by filing a petition for writ of administrative mandamus in the superior court of the county where the division's district office from which the order was issued is located. The operator shall file the petition within 30 days after the date the operator was served with the decision.

(b) Following a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the operator may obtain judicial review of the decision pursuant to Section 11523 of the Government Code.

SEC. 13. Section 3355 of the Public Resources Code is repealed.

SEC. 14. Section 3355 is added to the Public Resources Code, to read:

3355. When an operator seeks judicial review of a decision of the director, including a decision following a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the



court shall hear the cause on the record before the director or an administrative law judge. New or additional evidence shall not be introduced in court. The court's inquiry shall extend to whether the director acted without or in excess of jurisdiction, whether there was a fair hearing, and whether there is any prejudicial abuse of discretion. Abuse of discretion is established if the administrative proceeding has not been conducted in the manner required by law, the decision is not supported by the findings, or the findings are not supported by substantial evidence in light of the whole record.

SEC. 15. Section 3356 of the Public Resources Code is repealed.

SEC. 16. Section 3356 is added to the Public Resources Code, to read:

3356. If the operator does not appeal an order, if the operator does not timely seek judicial review of a decision affirming or modifying an order within the time provided in Section 3354, or if the operator has timely sought and obtained judicial review and the court has affirmed the decision, then any charge, including penalty and interest, that the decision permits the supervisor to impose on the operator for work performed by the supervisor or the supervisor's agents shall constitute a state tax lien against the real and personal property of the operator pursuant to Section 3423.

SEC. 17. Section 3743 of the Public Resources Code is amended to read:

3743. (a) An order of the supervisor or a district deputy issued pursuant to this chapter shall provide a clear and concise recitation of the acts or omissions with which the operator is charged. The order shall state all penalties and requirements imposed on the operator in connection with the acts or omissions charged and the order shall provide citations to the provisions of this code and the regulations that support the imposition of the penalties and requirements.

(b) An order of the supervisor or a district deputy shall be in writing and shall be served on the operator by personal service or by certified mail.

(c) When the supervisor or a district deputy makes or gives any written direction concerning the drilling, testing, or other operations in any well drilled, in process of drilling, or being abandoned, and the operator, owner, or representative of either, serves written notice, either personally or by mail, addressed to the supervisor,

or to the district deputy at his or her office in the district, requesting that a definite order be made upon the subject, the supervisor or the district deputy shall, within five days after receipt of the notice, deliver a final written order on the subject matter.

(d) When the supervisor or a district deputy issues any written order concerning an operation, an appeal may be made from the order pursuant to Sections 3762 to 3768, inclusive. The order shall inform the operator of its right to appeal the order.

SEC. 18. Section 3744 of the Public Resources Code is amended to read:

3744. (a) Within 30 days from the date of service of an order made pursuant to Section 3743, or if there has been an appeal from the order to the director, within 30 days after service of the decision of the director, or if a review has been taken of the order of the director, within 10 days after the affirmance of the order, the operator shall commence in good faith the work ordered and continue it until completion. If the work has not been commenced and continued to completion, the supervisor may appoint necessary agents to enter the premises and perform the work. An accurate account of the expenditures shall be kept. Any amount so expended constitutes a lien against the real or personal property of the operator upon which the work is done and the lien has the force, effect, and priority of a judgment lien pursuant to Section 3772.

(b) Notwithstanding Section 3741, 3743, or 3755, if the supervisor determines that an emergency exists, the supervisor may make formal or emergency orders or undertake any other action that the supervisor determines to be necessary for the protection of life, health, property, or natural resources.

SEC. 19. Section 3762 of the Public Resources Code is repealed.

SEC. 20. Section 3762 is added to the Public Resources Code, to read:

3762. (a) The operator of a well to whom the supervisor or district deputy has issued an order pursuant to this chapter may file a notice of appeal to the director from that order. The notice of appeal shall be in writing and shall be filed with the supervisor or with the district deputy who issued the order. The operator shall file the appeal within 10 days of the service of the order. Failure of the operator to file an appeal from the order within the 10-day period shall be a waiver by the operator of its rights to challenge

the order. If the order is served by mail, the time for responding shall be determined as provided in Section 1013 of the Code of Civil Procedure.

(b) (1) The filing of a written notice of appeal shall operate as a stay of the order, except when an order for remedial work is issued as an emergency order pursuant to Section 3744. If the order is an emergency order, the operator shall immediately perform whatever work is required by the order to alleviate the emergency or shall permit the agents appointed by the supervisor to perform that work.

(2) If the emergency order is set aside or modified on appeal, the supervisor shall refund the reasonable costs incurred by the operator for whatever work is not required by the set-aside or modified order or shall not impose costs for work performed by the supervisor or the supervisor's agents if the work is excluded from the modified order or the order is set aside.

(3) (A) The costs to be refunded pursuant to paragraph (2) by the supervisor shall be determined in a hearing before the director after the exhaustion of appeals. The operator shall have the burden of proving the amount of costs to be refunded.

(B) A determination by the director as to the amount of costs to be refunded pursuant to paragraph (2) may be appealed by the operator pursuant to subdivision (a) of Section 3354.

(4) If the operator believes that it will be irretrievably injured by the performance of the work required to alleviate the emergency pending the outcome of the appeal, the operator may seek an order from the appropriate superior court restraining the enforcement of the order pending the outcome of the appeal.

SEC. 21. Section 3763 is added to the Public Resources Code, to read:

3763. (a) A hearing shall be provided in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code only in an appeal from an order in the following circumstances:

(1) Issued pursuant to a Section 3755 finding that the operator's wells are deserted and should be plugged and abandoned.

(2) Rescinding an injection project approval for a project that has already commenced.

(b) An order issued pursuant to Section 3743 shall satisfy the requirement of Section 11503 of the Government Code that an accusation be filed.

(c) For an appeal of an order that is not described in subdivision (a), a hearing shall be conducted by the director in accordance with Sections 3764 and 3765.

(d) For an appeal of an order that is described in subdivision (a) and is also an emergency order for remedial work, a hearing shall be conducted by the director in accordance with Sections 3764 and 3765 for the limited purpose of considering the emergency order for remedial work. All other penalties and requirements imposed by the order shall be considered at a hearing provided in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 22. Section 3764 of the Public Resources Code is repealed.

SEC. 23. Section 3764 is added to the Public Resources Code, to read:

3764. (a) A hearing conducted by the director shall adhere to the following:

(1) When an order is not issued as an emergency order, within 30 days from the date of the service of the notice of appeal, the director shall provide to the operator notice of the time and place of the hearing. The hearing shall take place within 30 days after the date of the director's notice. The notice shall inform the operator that the director may extend the date of the hearing for up to 60 days for good cause upon application of the operator or the supervisor.

(2) When an order has been issued as an emergency order, within 10 days from the date of the service of the notice of appeal, the director shall provide to the operator notice of the time and place of the hearing. The hearing shall take place within 20 days after the date of the director's notice. The notice shall inform the operator that the director may extend the date of the hearing for up to 30 days for good cause upon application of the operator or the supervisor.

(b) The director shall conduct the hearing within the district where the majority of the wells that are the subject of the order are located, or the hearing may be conducted at a location outside of that district upon application of the operator. The hearing shall

be reported by a stenographic reporter and may, in addition, be electronically recorded by either party.

(c) The notice of hearing shall inform the operator of its right to file a written answer to the charges no later than 10 days before the date of the hearing. The notice also shall inform the operator that it has the right to present oral and documentary evidence at the hearing.

(d) Upon a verified and timely petition of the operator, the director may order the testimony of a witness at the hearing. The petition shall be served upon the director and the other party within five days after the filing of an appeal and shall set forth the name and address of the witness whose testimony is requested, to the extent known; a showing of the materiality of the testimony; and a showing that the witness cannot be compelled to testify absent an order of the director. The supervisor may file an opposition to the petition within five days after the petition is served. The director shall either deny or grant the petition within 10 days after receipt of the petition and receiving any opposition to the petition. Upon granting a petition, the director shall issue a subpoena pursuant to Section 3357 compelling the testimony of the witness at the hearing.

(e) The director may convert a hearing pursuant to this section to a formal hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code in any of the following circumstances:

(1) The operator makes a showing satisfactory to the director that the order being appealed is likely to result in termination of an established oil or gas producing or injection operation.

(2) It appears to the director that the hearing will involve complex evidentiary or procedural issues that will cause more than minimal delay or burdens.

(3) The operator and the supervisor agree and stipulate to convert the hearing to a formal hearing.

(f) The conversion of a hearing pursuant to this section to a formal hearing shall be conducted in accordance with Article 15 (commencing with Section 11470.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 24. Section 3765 of the Public Resources Code is repealed.

SEC. 25. Section 3765 is added to the Public Resources Code, to read:

3765. (a) Within 30 days after the close of a hearing conducted by the director, the director shall issue a written decision affirming, setting aside, or modifying the order from which the appeal was taken. The director's written decision shall be based upon the preponderance of the evidence and shall set forth the director's factual findings, legal conclusions, and rationale for the result. The director may extend the 30-day period for issuing the written decision if the extension is agreed to by the operator.

(b) The director shall file the written decision with the supervisor and serve it on the operator as soon as the decision is complete, at which time the decision shall be deemed final. The director's decision shall supersede the order of the supervisor from which the appeal was made. If the director affirms or modifies the order, the director shall retain jurisdiction until the operator completes the work required to be performed by the order.

SEC. 26. Section 3766 of the Public Resources Code is repealed.

SEC. 27. Section 3766 is added to the Public Resources Code, to read:

3766. (a) Following a hearing conducted by the director pursuant to Sections 3764 and 3765 or subdivision (b) of Section 3762, the operator may obtain judicial review of the decision of the director by filing a petition for writ of administrative mandamus in the superior court of the county where the division's district office from which the order was issued is located. The operator shall file the petition within 30 days after the date the operator was served with the decision.

(b) Following a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the operator may obtain judicial review of the decision pursuant to Section 11523 of the Government Code.

SEC. 28. Section 3767 of the Public Resources Code is repealed.

SEC. 29. Section 3767 is added to the Public Resources Code, to read:

3767. When an operator seeks judicial review of a decision of the director, including a decision following a hearing conducted

in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the court shall hear the cause on the record before the director or an administrative law judge. New or additional evidence shall not be introduced in court. The court's inquiry shall extend to whether the director acted without or in excess of jurisdiction, whether there was a fair hearing, and whether there is any prejudicial abuse of discretion. Abuse of discretion is established if the administrative proceeding has not been conducted in the manner required by law, the decision is not supported by the findings, or the findings are not supported by substantial evidence in light of the whole record.

SEC. 30. Section 3768 of the Public Resources Code is repealed.

SEC. 31. Section 3768 is added to the Public Resources Code, to read:

3768. If the operator does not appeal an order, if the operator does not timely seek judicial review of a decision affirming or modifying an order within the time provided in Section 3766, or if the operator has timely sought and obtained judicial review and the court has affirmed the decision, then any charge, including penalty and interest, that the decision permits the supervisor to impose on the operator for work performed by the supervisor or the supervisor's agents shall constitute a state tax lien against the real and personal property of the operator pursuant to Section 3772.

SEC. 32. The director may adopt emergency regulations for the purposes of implementing Sections 3225, 3236.5, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3743, 3744, 3762, 3763, 3764, 3765, 3766, 3767, and 3768. Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of

Administrative Law and shall remain in effect until revised by the director.



































Approved \_\_\_\_\_, 2010

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*Governor*