

AMENDED IN ASSEMBLY MAY 31, 2013

AMENDED IN ASSEMBLY MAY 28, 2013

AMENDED IN ASSEMBLY APRIL 30, 2013

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 7

Introduced by Assembly Member Wieckowski

December 3, 2012

An act to amend Sections 3108, 3203, 3213, and 3215 of, to add ~~Section Sections~~ *Sections 3017, 3203.1, 3203.2, and 3215.5* to, and to add Article 3 (commencing with Section 3150) to Chapter 1 of Division 3 of, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 7, as amended, Wieckowski. Oil and gas: hydraulic fracturing.
~~Under~~

(1) *Under* existing law, the Division of Oil, Gas, and Geothermal Resources, or the division, in the Department of Conservation, regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. The State Oil and Gas ~~Supervisor, or the supervisor,~~ *Supervisor* supervises the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field regarding safety and environmental damage. Existing law requires an operator of a well, before commencing the work of drilling the well, to file with the supervisor or the district deputy a written notice of intention to commence drilling, and prohibits the

commencement of drilling until approval is given by the supervisor or the district deputy. Existing law requires the operator of a well to keep, or cause to be kept, a careful and accurate log, core record, and history of the drilling of the well. Within 60 days after the date of cessation of drilling, rework, or abandonment operations, the owner or operator is required to file with the district deputy certain information, including the history of work performed.

This bill would revise that procedure to instead require the operator to file an application before commencing drilling and would prohibit drilling until approval or denial of the application is given by the supervisor or district deputy within 30 working days. The bill would require, on and after January 1, 2014, additional information to be included in the application, including information regarding the chemicals, if any, to be injected into a well. *This bill would additionally require the operator prior to drilling, redrilling, or deepening operations to submit proof to the supervisor that the applicable regional water quality control board has approved the disposal method and location of wastewater disposal for the well.*

This bill would define, among other things, hydraulic fracturing and hydraulic fracturing fluid. The bill would require the owner or operator of a well to provide to the supervisor, or to arrange with the supplier to provide to the supervisor, specific information relating to hydraulic fracturing as a part of the history of the drilling of the well. The bill would, on or before January 1, 2015, require the division, in consultation with the Office of Environmental Health Hazard Assessment and the Department of Toxic Substances Control, to establish a process through which all chemicals used in hydraulic fracturing treatments may be studied or reviewed. The bill would provide that a supplier who provides information to the supervisor relating to hydraulic fracturing may, at the time of submission, submit to the supervisor a claim in writing that some or all of the information is protected trade secret information, as specified. The bill would require a supplier claiming trade secret protection for the chemical composition of additives used in the hydraulic treatment to disclose the composition to the division, in conjunction with a hydraulic fracturing treatment notice, but would, except as specified, prohibit those with access to the trade secret from disclosing it. Because this bill would create a new crime, it would impose a state-mandated local program.

This bill would require the supervisor, on or before January 1, 2014, and annually thereafter, to transmit to the Legislature a comprehensive

report on hydraulic fracturing in the exploration and production of oil and gas resources in the state, as specified.

(2) Existing law requires the supervisor, on or before the first day of October of each year, to make public a report on specified information.

This bill would additionally require the supervisor to include information on the origin and total amount of freshwater used in each county for the production of oil and gas production, the disposal of wastewater from oil and gas production in each county, and the well casing failures in each county.

This bill would require the operator of a well, at least 30 days prior to commencing a hydraulic fracturing treatment, as defined, to provide a copy of the approved hydraulic fracturing treatment permit to every surface property owner. The bill would authorize those property owners to request the applicable regional water quality control board to perform water quality sampling and testing on any water well suitable for drinking or irrigation purposes, as specified. The bill would require a notice of intent to drill, rework, or deepen a well where hydraulic fracturing will occur to include specified information. Because a violation of these requirements is a crime, this bill would impose a state-mandated local program.

The

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Hydraulic fracturing has been used in California for several
4 decades to extract oil and gas and is likely to be used more
5 extensively as the industry seeks to develop additional oil-bearing
6 and gas-bearing formations.

7 (b) The Division of Oil, Gas, and Geothermal Resources in the
8 Department of Conservation, which has the obligation to protect

1 public health and the natural resources of the state, including
2 groundwater resources, has the authority to regulate all oil and
3 natural gas drilling in the state, but currently does not require the
4 disclosure of pertinent information regarding hydraulic fracturing
5 or ascertain all specific types of production and exploration taking
6 place at permitted wells.

7 (c) Given California's geologic, seismic complexity, and its
8 finite and significantly compromised water resources, it is
9 important to collect basic information about natural resource
10 production processes. The state and the public should know when
11 and where hydraulic fracturing is occurring and what chemicals
12 are being used in the process.

13 *SEC. 2. Section 3017 is added to the Public Resources Code,*
14 *to read:*

15 *3017. "Hydraulic fracturing" means a well stimulation*
16 *treatment that may include the application of hydraulic fracturing*
17 *fluids into an underground geologic formation in order to create*
18 *fractures in the formation, thereby causing or improving the*
19 *production of oil or gas from a well.*

20 *SEC. 3. Section 3108 of the Public Resources Code is amended*
21 *to read:*

22 3108. (a) On or before the first day of October of each year
23 the supervisor shall make public, for the benefit of all interested
24 persons, a report in writing showing:

25 (a)

26 (1) The total amounts of oil and gas produced in each county
27 in the state during the previous calendar year.

28 (b)

29 (2) The total cost of the division for the previous fiscal year.

30 (c)

31 (3) The total amount delinquent and uncollected from any
32 assessments or charges levied pursuant to this chapter.

33 (4) *The origin and total amount of freshwater used in each*
34 *county for oil and gas production during the previous calendar*
35 *year.*

36 (5) *The surface and underground destinations and total amount*
37 *of disposed wastewater from oil and gas production in each county*
38 *during the previous calendar year.*

39 (6) *The total number of well casing failures in each county, the*
40 *exact location of these wells, the reason for the failures, and at*

1 *what point the failures occurred, such as during well completion,*
2 *well stimulation, or well production, during the previous calendar*
3 *year.*

4 ~~The~~

5 *(b) The report shall also include such other information as the*
6 *supervisor deems advisable.*

7 ~~SEC. 2.~~

8 *SEC. 4.* Article 3 (commencing with Section 3150) is added
9 to Chapter 1 of Division 3 of the Public Resources Code, to read:

10

11

Article 3. Hydraulic Fracturing

12

13 3150. “Chemical Abstracts Service” means the division of the
14 American Chemical Society that is the globally recognized
15 authority for information on chemical substances.

16 3151. “Chemical Abstracts Service (CAS) number” means the
17 unique identification number assigned to a chemical by the
18 Chemical Abstracts Service.

19 ~~3152. “Hydraulic fracturing” is a well stimulation treatment~~
20 ~~that may include the application of hydraulic fracturing fluids into~~
21 ~~an underground geologic formation in order to create fractures in~~
22 ~~the formation, thereby causing or improving the production of oil~~
23 ~~or gas from a well.~~

24 3153. “Hydraulic fracturing fluid” includes water or other
25 carrier fluids that may be mixed with physical and chemical
26 additives for the purpose of hydraulic fracturing. The additives
27 may, but are not required to, serve additional purposes beyond the
28 transmission of hydraulic pressure to the geologic formation.
29 Additives may be of any phase and may include proppants.

30 3154. “Proppants” are materials inserted or injected into the
31 formation that are intended to prevent newly created or enhanced
32 fractures from closing.

33 3155. “Supplier” means an entity performing hydraulic
34 fracturing or a person supplying an additive or proppant directly
35 to the operator for use in hydraulic fracturing on a well.

36 3156. If hydraulic fracturing is performed on a well, the owner
37 or operator of the well shall provide to the supervisor, or shall
38 arrange with the supplier to provide to the supervisor, and shall
39 include in the well history maintained pursuant to Section 3213,

1 all of the following information, except for information claimed
2 as a trade secret pursuant to subdivision (c) of Section 3203:

3 (a) A complete list of the chemical constituents formulated for
4 use in the hydraulic fracturing fluid that is injected into the well
5 and each chemical's associated CAS numbers. Where the CAS
6 number does not exist, the operator or supplier may provide another
7 unique identifier where available.

8 (b) The purpose of each additive contained in the hydraulic
9 fracturing fluid.

10 (c) The estimated total amount of the additives in the hydraulic
11 fracturing fluid.

12 (d) The estimated maximum concentration of each chemical
13 constituent in the additive as disclosed on a material safety data
14 sheet in the hydraulic fracturing fluid expressed as a percentage
15 by mass.

16 (e) The estimated maximum concentration of each chemical
17 constituent disclosed on a material safety data sheet in the hydraulic
18 fracturing fluid, expressed as a percentage by mass.

19 (f) The amount and source of any water suitable for irrigation
20 or domestic purposes used to conduct the hydraulic fracturing
21 treatment of the well.

22 (g) The amount and disposition of water and hydraulic fracturing
23 fluid recovered from each well where hydraulic fracturing occurred
24 prior to the reporting of the water produced pursuant to Section
25 3227.

26 (h) Any radiological components or tracers injected into the
27 well as part of the hydraulic fracturing process and a description
28 of the recovery method, if any, for those components or tracers,
29 the recovery rate, and the disposal method for recovered
30 components or tracers.

31 3157. On or before January 1, 2015, the division, in
32 consultation with the Office of Environmental Health Hazard
33 Assessment and the Department of Toxic Substances Control, shall
34 establish a process through which all chemicals used in hydraulic
35 fracturing treatments may be studied or reviewed, a list containing
36 any restricted or prohibited toxic chemicals, and a list containing
37 any restricted or prohibited locations deemed extremely vulnerable
38 to a spill or release of chemicals.

1 ~~SEC. 3.~~

2 *SEC. 5.* Section 3203 of the Public Resources Code is amended
3 to read:

4 3203. (a) The operator of any well, before commencing the
5 work of drilling the well, shall file with the supervisor or the district
6 deputy an application to commence drilling. Drilling shall not
7 commence until approval or denial of the application is given by
8 the supervisor or the district deputy within 30 working days. If
9 operations have not commenced within one year of receipt of the
10 application, the application shall be deemed canceled. The
11 application shall contain the pertinent data the supervisor requires
12 on printed forms supplied by the division or on other forms
13 acceptable to the supervisor. The supervisor may require other
14 pertinent information to supplement the application.

15 (b) (1) On and after January 1, 2014, in addition to the
16 information required in the application under subdivision (a), the
17 application shall additionally include all of the following
18 information:

19 (A) The type of exploration and production techniques that the
20 operator will use at the well or wells.

21 (B) A complete list of the chemicals, if any, that will be injected
22 into the well for hydraulic fracturing or other production
23 enhancement methods in the exploration or production process or
24 processes. This list of chemicals shall include all of the following
25 information:

26 (i) The name of the chemical.

27 (ii) The purpose of the chemical in the production or exploration
28 process.

29 (iii) The Chemical Abstract Service numbers for the chemical.

30 (iv) The estimated total amount of the chemical used.

31 (2) If any of the information required pursuant to paragraph (1)
32 changes over the course of the exploration and production process,
33 the operator shall immediately notify the supervisor.

34 (c) (1) A supplier may claim trade secret protection for the
35 chemical composition of additives pursuant to Section 1060 of the
36 Evidence Code, or the Uniform Trade Secrets Act (Title 5
37 (commencing with Section 3426) of Part 1 of Division 4 of the
38 Civil Code).

39 (2) If a supplier believes that information regarding a chemical
40 constituent of a hydraulic fracturing fluid is a trade secret, the

1 supplier shall nevertheless disclose the information to the division
2 in conjunction with a hydraulic fracturing treatment notice, if not
3 previously disclosed, within 30 days following cessation of
4 hydraulic fracturing on a well, and shall notify the division in
5 writing of that belief.

6 (3) The supplier is not required to disclose trade secret
7 information to the operator.

8 (4) This subdivision does not permit a supplier to refuse to
9 disclose the information required pursuant to this section to the
10 division.

11 (5) To comply with the public disclosure requirements of this
12 section, the supplier shall indicate where trade secret information
13 has been withheld and the specific name of a chemical constituent
14 shall be replaced with the chemical family name or similar
15 descriptor associated with the trade secret chemical information.

16 (6) Except as provided in subparagraph (B) of paragraph (8),
17 the division shall protect from disclosure any trade secret
18 designated as such by the supplier, if that trade secret is not a public
19 record.

20 (7) The supplier shall notify the division in writing within 30
21 days of any changes to information provided to the division to
22 support a trade secret claim.

23 (8) Upon receipt of a request for the release of information to
24 the public, which includes information the supplier has notified
25 the division is a trade secret and is not a public record, the
26 following procedure applies:

27 (A) The division shall notify the supplier of the request in
28 writing by certified mail, return receipt requested.

29 (B) The division shall release the information to the public, but
30 not earlier than 60 days after the date of mailing the notice of the
31 request for information, unless, prior to the expiration of the 60-day
32 period, the supplier commences an action in an appropriate court
33 for a declaratory judgment that the information is subject to
34 protection or for a preliminary injunction prohibiting disclosure
35 of the information to the public and provides notice to the division
36 of that action.

37 (9) (A) Except as provided in subparagraph (B) of paragraph
38 (8), trade secret information is not a public record and shall not be
39 disclosed to anyone except to an officer or employee of the
40 division, the state, local air districts, or the United States, in

1 connection with the official duties of that officer or employee, to
2 a health professional, under any law for the protection of health,
3 or to contractors with the division or the state and its employees
4 if, in the opinion of the division, disclosure is necessary and
5 required for the satisfactory performance of a contract, for
6 performance of work, or to protect health and safety.

7 (B) A health professional may share trade secret information
8 with other persons as may be professionally necessary, including,
9 but not limited to, the patient and other health professionals.
10 Confidentiality of the trade secret information shall be maintained.
11 The holder of the trade secret may request a confidentiality
12 agreement consistent with the requirements of this subdivision to
13 whom this information is disclosed as soon as circumstances
14 permit. If necessary, a procedure for timely disclosure by the
15 division in the event of an emergency shall be identified.

16 (10) For the purposes of this subdivision, the definitions
17 provided in Article 3 (commencing with Section 3150) shall apply
18 when appropriate.

19 (d) After the completion of any well, this section also applies,
20 as far as it may be applied, to the deepening or redrilling of the
21 well, an operation involving the plugging of the well, or any
22 operations permanently altering in any manner the casing of the
23 well. The number or designation of a well, and the number or
24 designation specified for a well in an application filed as required
25 by this section, shall not be changed without first obtaining a
26 written consent of the supervisor.

27 (e) If an operator fails to comply with an order of the supervisor,
28 the supervisor may deny approval of proposed well operations
29 until the operator brings its existing well operations into
30 compliance with the order. If an operator fails to pay a civil penalty,
31 remedy a violation that it is required to remedy to the satisfaction
32 of the supervisor pursuant to an order issued under Section 3236.5,
33 or to pay any charges assessed under Article 7 (commencing with
34 Section 3400), the supervisor may deny approval to the operator's
35 proposed well operations until the operator pays the civil penalty,
36 remedies the violation to the satisfaction of the supervisor, or pays
37 the charges assessed under Article 7 (commencing with Section
38 3400).

39 (f) This section does not apply to routine pressure tests to
40 monitor the integrity of wells and well casings.

1 (g) Prior to the approval of the commencement of any drilling,
2 redrilling, or deepening of a well, the operator shall submit written
3 proof to the supervisor that a waste discharge report has been
4 filed with the applicable regional water quality control board
5 pursuant to Section 13260 of the Water Code for the disposal of
6 the wastewater for the well.

7 SEC. 6. Section 3203.1 is added to the Public Resources Code,
8 to read:

9 3203.1. (a) At least 30 days prior to commencing a hydraulic
10 fracturing treatment, the operator shall provide a copy of the
11 approved hydraulic fracturing treatment permit to every surface
12 property owner.

13 (b) (1) A property owner notified pursuant to subdivision (a)
14 may request the applicable regional water quality control board
15 to perform water quality sampling and testing on any water well
16 suitable for drinking or irrigation purposes and on any surface
17 water suitable for drinking or irrigation purposes as follows:

18 (A) Baseline measurements prior to the commencement of the
19 hydraulic fracturing treatment.

20 (B) Followup measurements after the hydraulic fracturing
21 treatment on the same schedule as the pressure testing of the well
22 casing of the hydraulically fractured well.

23 (2) The regional water quality control board may contract with
24 an independent third party that adheres to board-specified
25 standards and protocols to perform the water sampling and testing.

26 (3) The regional water quality control board shall retain and
27 archive sufficient samples collected pursuant to this subdivision
28 to permit a reasonable number of additional analyses.

29 SEC. 7. Section 3203.2 is added to the Public Resources Code,
30 to read:

31 3203.2. A notice of intent to drill, rework, or deepen a well
32 where hydraulic fracturing will occur shall include all of the
33 following information:

34 (a) A description of the estimated quantity of water planned to
35 be used in the hydraulic fracturing process.

36 (b) The source or sources of water to be used.

37 ~~SEC. 4.~~

38 SEC. 8. Section 3213 of the Public Resources Code is amended
39 to read:

1 3213. The history shall show the location and amount of
2 sidetracked casings, tools, or other material, the depth and quantity
3 of cement in cement plugs, the shots of dynamite or other
4 explosives, the results of production and other tests during drilling
5 operations, and the information required pursuant to Section 3156.

6 ~~SEC. 5.~~

7 *SEC. 9.* Section 3215 of the Public Resources Code is amended
8 to read:

9 3215. (a) Within 60 days after the date of cessation of drilling,
10 rework, hydraulic fracturing, or abandonment operations, or the
11 date of suspension of operations, the owner or operator shall file
12 with the district deputy, in a form approved by the supervisor, true
13 copies of the log, core record, and history of work performed, and,
14 if made, true and reproducible copies of all electrical, physical, or
15 chemical logs and tests. Upon a showing of hardship, the supervisor
16 may extend the time within which to comply with this section for
17 a period not to exceed 60 additional days.

18 (b) (1) The supervisor shall post the information provided
19 pursuant to Section 3156 and that is not claimed as a trade secret
20 pursuant to subdivision (c) of Section 3203 to existing Internet
21 maps on the division's Internet Web site, and shall make that
22 information available to the public in a way that the information
23 is associated with each specific well where chemicals are injected
24 for purposes of hydraulic fracturing.

25 (2) For purposes of complying with the posting requirements
26 of paragraph (1), the supervisor may use an existing public Internet
27 Web site administered by the Ground Water Protection Council
28 or the Interstate Oil and Gas Compact Commission if all of the
29 following are met:

30 (A) The information is transmitted and posted to the public
31 Internet Web site in a form and manner approved by the supervisor
32 and includes the information provided to the supervisor pursuant
33 to Section 3156, except for trade secret information pursuant to
34 subdivision (c) of Section 3203.

35 (B) There is an electronic link from the wells represented on
36 the division's existing internet maps that allows members of the
37 public to view the information about specific wells based on their
38 location.

39 (C) On and after January 1, 2014, the Chemical Disclosure
40 Registry allows for the division staff and the public to aggregate

1 data and search and sort the registry for information by geographic
2 area, ingredient, Chemical Abstract Service number, time period,
3 and operator.

4 (D) Members of the public are permitted to copy, reproduce,
5 modify, republish, upload, post, transmit, or distribute the
6 information without restriction.

7 ~~SEC. 6.~~

8 *SEC. 10.* Section 3215.5 is added to the Public Resources Code,
9 to read:

10 3215.5. (a) Notwithstanding Section 10231.5, on or before
11 January 1, 2014, and annually thereafter, the supervisor shall
12 prepare and transmit to the Legislature a comprehensive report
13 regarding hydraulic fracturing in oil and gas exploration and
14 production in California, using the information provided pursuant
15 to Section 3156. Where the information involves trade secret
16 protection, the supervisor shall only use information provided
17 pursuant to paragraph (5) of subdivision (c) of Section 3203 to
18 complete the report. The report shall additionally include, but is
19 not limited to, the following relevant information:

20 (1) Aggregated data detailing the volumes of hydraulic fracturing
21 fluid used during hydraulic fracturing, identifying whether it is
22 water suitable for irrigation or domestic purposes, water not
23 suitable for irrigation or domestic purposes, or something other
24 than water.

25 (2) Aggregated data detailing the disposition of hydraulic
26 fracturing fluid used to conduct hydraulic fracturing.

27 (3) Aggregated data detailing the volumes of each chemical
28 used in hydraulic fracturing treatments in the state, in each county,
29 and by each company, during the preceding year.

30 (4) The number of emergency responses to a spill or release.

31 (5) The number of well failures.

32 (6) Based on a representative sampling of information submitted
33 to the division pursuant to Section 3156 and subdivision (c) of
34 Section 3203, the percentage of chemical information withheld
35 within the representative sample as trade secret information.

36 (b) A report to the Legislature pursuant to subdivision (a) shall
37 be submitted in compliance with Section 9795 of the Government
38 Code.

1 ~~SEC. 7.~~

2 *SEC. 11.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

O