



## REGULATION:

### Calif. walloped with criticisms on proposed fracking rules

Anne C. Mulkern / E&E reporter  
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LOS ANGELES -- A group of California residents yesterday denounced the state's proposed rules on hydraulic fracturing of oil and gas, saying they are inadequate and wouldn't protect people or resources.

About 80 people who filled a hotel ballroom here rattled off what they saw as flaws with the draft regulations, including that the proposed rule fails to provide enough advance warning when fracking will occur and would not force public disclosure of all chemicals used.

The more than four-hour event turned raucous at several points, with some people refusing to stop speaking when told their time was up, shouting over state officials and calling out that the process was a "farce" and a "kangaroo court."

"We have the fox guarding the henhouse," said Carol Dorbacopoulos, a Glendale, Calif., resident who said she was a concerned citizen. "You say that you're regulating, but I read over and over here [in the draft rule] that you're depending on the operators to report to you. I don't see that your regulations are effective or that they have any teeth for enforcement whatsoever."

The meeting was the first in a series of community sessions that the state plans to hold to take feedback on its draft regulations. Others are planned for Bakersfield and Sacramento.

They take place as the state's Division of Oil, Gas and Geothermal Resources (DOGGR) develops the first regulations on hydraulic fracturing. While oversight exists for oil and gas drilling, there are no rules that specifically cover fracking, where high-pressure

volumes of chemical-laced fluid is injected into shale rocks to push petroleum products to the surface.

The state emphasized that the regulations remain under review and that they will be revised. A vote on a final rule likely would not come for more than a year.

"We're still in the beginning of this process," said Jason Marshall, chief deputy director of DOGGR. "We want to hear what people want us to put on the agenda."

The state Legislature also is considering new rules for fracking. The Senate's S.B. 4 would require drilling companies to disclose a variety of information, including which chemicals they will use in fracking. They would also need to give 30 days' notice of intent to use hydraulic fracturing.

A.B. 7 from Rep. Bob Wieckowski and A.B. 288 from Rep. Marc Levine also would require companies to alert the state at least 30 days before beginning fracking. A.B. 7 additionally would change how DOGGR handles information deemed a "trade secret."

DOGGR's draft rule proposes requirements for well construction, wastewater management and chemical disclosure. But those at the first public meeting complained that oil and gas companies wouldn't need to secure permits before fracking, which some saw as lessening the state's authority. Residents also charged that in too many circumstances, the state would trust oil and gas companies to provide information without any verification.

DOGGR officials said that they understood many of the concerns and were looking for suggestions that could make the regulations better, if those changes were feasible.

But toward the end of the day, they also appeared taxed by the criticisms, with one DOGGR official telling a woman who was shouting from the audience, “if anyone would like the practice of fracking regulated by another agency, they are welcome to change the Public Resources Code.”

A representative of an oil and gas trade group who was at the meeting said that the state should be cautious in crafting the regulations.

“DOGGR must address the desire to regulate recent advances in hydrocarbon production stimulation without unduly burdening the well-established existing production methods and the energy self-sufficiency, jobs and tax revenue that the oil industry can provide,” said Nicholas Ortiz, manager of production regions and property tax issues for the Western States Petroleum Association, reading a prepared statement. “Responsible development of the state’s resources helps improve the quality of life for all Californians.”

### **Demands for moratorium**

The crowd at yesterday’s public hearing appeared mostly opposed to allowing any hydraulic fracturing. There were repeated questions about why the state has not imposed a moratorium rather than develop regulations.

“The only way to protect Californians from fracking is to replace regulations with a prohibition, or at the very minimum have a moratorium while regulations are developed,” said Kassie Siegel, senior counsel and Climate Law Institute director at the Center for Biological Diversity.

State officials said that they could impose a moratorium only through a regulation, which would take about a year. It would also likely face legal action, DOGGR’s Marshall said. After enacting a ban, it would then start work on regulations, he said, but that would push those rules out to at least 2016.

“The reality is the practice is currently allowed,” Marshall said of fracking. While the question of whether the state had a right to enact a ban was litigated, “fracking would continue,” he said. “Rather than get into a lengthy legal battle about our ability to ban ... a regulation is what we’re doing here.”

Citizens voiced concern about provisions connected to trade secrets. Under state law, if a company deems information about its drilling competitive, it mostly doesn’t have to share it with the state.

DOGGR does not take any of the information, largely because it doesn’t want to then become the subject of numerous public records claims and lawsuits, Marshall said.

The proposed regulations would not change that much, he said. Information on chemicals, for example, would only need to be released to state officials and some medical workers if there were an injury or spill that threatened public health.

Angela Johnson Meszaros, general counsel with Physicians for Social Responsibility, warned that the rule as written could be problematic. Emergency medical technicians and firefighters might also need to know what chemicals they were encountering if there were a spill, she said.

And a doctor doesn’t want to have to call the 1-800 number at a company in an emergency, she said.

“If you’re not going to make the information publicly available, then your procedure needs to work and needs to work every time,” Meszaros said.

Several residents said they feared companies could hide behind the competitive disadvantage claim. Health and safety laws should trump that trade secret claim, said Patrick O’Rourke of the Los Angeles area.

“The tobacco industry had to disclose every single chemical in their cigarettes,” O’Rourke said. “The oil industry should be at a higher standard.”

Marshall with DOGGR said that existing law defines what rises to the level of a trade secret and that the agency does “not have ability to trump.”

DOGGR would like to adopt the model that is used by the state's Department of Toxic Substances Control, he said. That agency takes possession of information that companies say is a trade secret. But if anyone challenges the claim, DTSC tells the business in question that it plans to release the information. If they protest, a court must decide whether to uphold the need for privacy.

"We would like to have the Legislature give us that authority," Marshall said. "We'd like that model that DTSC has."

### **Residents want more notice**

Many at the meeting voiced concern about what they saw as short notice oil and gas companies would have to give before starting a fracking operation. They would need to provide at least 10 days' notice. The state would then have a week to post the information.

Residents said the advance notice needs to be a longer period.

"We do think that's completely insufficient," said Tatiana Gaur, staff attorney with Los Angeles Waterkeeper. "Realistically, the public only has three days to comment." There should be "at least 30 days," she said.

"I live right next to the Inglewood oil field," she added. "If you told me I had three days, three days isn't enough time to read about it and prepare."

Wendy Phillips with the League of Women Voters of California asked what companies would be covered by the regulations. The rules appear to target operators, she said, but those "may not necessarily be the owners with deeper pockets. What happens if a problem develops later?"

Rob Habel, a DOGGR chief deputy director, responded that "we're dealing with some of those challenges on a regular basis," including when handling wells drilled in the 1920s and '40s that have changed owners.

"We aren't just stuck with the current operator," Habel said. "In some cases, we're able to go to the landowner. We haven't really done that very often, but we're looking into that."

Meghan Sahli-Wells, a Culver City, Calif., council member, urged more "real time monitoring" of fracking activities.

"It would be incredibly helpful to have all this information online real-time," including checks on air quality and water quality, she said, that are "available to the public 24/7."

While all government resources are tight, Sahli-Wells said, "through technologies we can do that by using all of us. Culver City is in the largest urban oil field in the U.S. Without these protections, I feel like my people are greatly in danger."

Many in the audience applauded her statement.

Marni Weber, assistant director of the Office of Government and Environmental Relations, responded that "we're taking all these [suggestions] into account. All these require resources."