

AQUIFER EXEMPTION COMPLIANCE SCHEDULE REGULATIONS

NOTICE OF REQUEST FOR READOPTION OF EMERGENCY RULEMAKING ACTION

REGARDING

TITLE 14. NATURAL RESOURCES DIVISION 2. DEPARTMENT OF CONSERVATION CHAPTER 4. DEVELOPMENT, REGULATION, AND CONSERVATION OF OIL AND GAS RESOURCES SUBCHAPTER 2. ENVIRONMENTAL PROTECTION

Notice Published October 1, 2015

NOTICE IS HEREBY GIVEN that the California Department of Conservation (Department) will be requesting readoption of the Aquifer Exemption Compliance Schedule Regulations emergency regulations necessary to ensure the State's federally-approved Underground Injection Control program for Class II injection wells meets the requirements of the federal Safe Drinking Water Act, and protects public health, safety and the environment in an efficient manner. These emergency regulations were originally approved by the Office of Administrative Law (OAL) and became effective on April 20, 2015. (OAL File No. 2015-0409-02E.) This action is being taken in accordance with Government Code sections 11346.1 and 11349.6 of the California Administrative Procedures Act, and California Code of Regulations, title 1, section 52. **The request for readoption of the emergency regulations will be submitted to OAL on October 9, 2015.**

DILIGENT ADOPTION OF PERMANENT REGULATIONS

Pursuant to Title 1, California Code of Regulations section 52(b)(1), the Department has made substantial progress and proceeded with diligence to comply with Government Code section 11346.1(e) by undertaking the following rulemaking activities:

- On May 29, 2015, the Department had OAL publish the Notice of Proposed Regulatory Action for the above-described regulations in the California Regulatory Notice Register (Register 2015, No. 22-Z). The Department posted all required

rulemaking materials on its Web site and mailed the notice to the Department's interested parties list.

- A public comment period on the proposed permanent regulations was noticed and held from May 29, 2015 through July 13, 2015. The Department, however, continued to accept comments through July 16, 2015.
- On July 15, 2015 the Department conducted a public comment hearing in Bakersfield, CA, and on July 16, 2015 the Department conducted an additional public comment hearing in Santa Maria, CA.
- The Department has received over 1,000 comments and is in the process of organizing, summarizing, and considering input received.

A readoption of the emergency regulations will provide the additional time necessary for the Department to complete the regular rulemaking process and Certificate of Compliance.

As required by the California Code of Regulations, title 1, section 52(b)(2), there have been no changes in emergency circumstances since the original adoption of the regulations regarding Aquifer Exemption Compliance Schedule Regulations by OAL.

The Department hereby incorporates by reference the rulemaking record OAL file number 2015-0409-02E.

PUBLIC COMMENT

Government Code section 11346.1(a)(2) requires that, at least five working days prior to the Department's submission of the proposed emergency action to the OAL, the Department must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the Department. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. You may submit comments on proposed emergency regulations to:

Mail:
OAL Reference Attorney
300 Capitol Mall, Suite
1250
Sacramento, CA 95814

Fax:
(916) 323-6826

E-mail:
staff@oal.ca.gov

When you submit a comment to OAL, you must also submit a copy of your comment to the Department:

| | | |
|---|----------------|--|
| Mail: | Fax: | E-mail: |
| Department of Conservation 801 K Street, MS 24-02 Sacramento, CA 95814 ATTN: Aquifer Exemption Compliance Schedule Regulations | (916) 324-0948 | UIC.Regulations@conservation.ca.gov |

OAL will confirm that the agency has received the comment before considering it. Pursuant to California Code of Regulations, title 1, section 55(b)(1-4), the comment must state that it is about an emergency regulation currently under OAL review, and include the topic of the emergency.

Adoption of emergency regulations does not require response to submitted comments. Any response to comments from the Department will be submitted to OAL within eight calendar days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable.

FINDING OF EMERGENCY

Government Code section 11346.1(b), allows a state agency to adopt emergency regulations if the agency makes a finding that the adoption of a regulation is necessary to address a situation calling for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. The emergency circumstances are unchanged since the initial adoption of the emergency regulations, and the Department of Conservation continues to find that the emergency adoption of the regulations proposed herein regarding a compliance schedule for eliminating injection into aquifers that are protected under the federal Safe Drinking Water Act, is necessary for immediate preservation of the public peace, health, safety, or general welfare.

Basis for the Finding of Emergency:

- In 1983, the Division of Oil, Gas and Geothermal Resources (Division) within the Department, obtained approval from the United States Environmental Protection Agency (US EPA) to implement and enforce requirements of the federal Safe Drinking Water Act for the protection of underground sources of drinking water

pursuant to the State's Class II Underground Injection Control (UIC) program. The Division has primary responsibility for regulating injection wells associated with oil and gas production pursuant to the UIC program, which is subject to US EPA oversight.

- The Safe Drinking Water Act requires that an underground source of drinking water or "USDW" be protected from contamination by injection wells. USDWs are generally aquifers with water quality measured at less than 10,000 milligrams per liter of total dissolved solids (mg/L TDS), but, upon recommendation by the State, US EPA may exempt individual aquifers in accordance with criteria specified in the federal regulations. (40 C.F.R. 144.3 and 144.7 (2015).) In the course of ongoing corrective review, the Division has identified over 2,500 wells that may have been improperly approved for injection into non-exempt aquifers protected by the Safe Drinking Water Act.
- US EPA, the Division and the State Water Resources Control Board (SWRCB) have engaged in intensive discussions intended to determine the appropriate corrective actions, and those discussions have culminated in a detailed corrective action plan deemed necessary by US EPA to bring the State's UIC program into compliance with the Safe Drinking Water Act.
- The corrective action plan calls for the Division to implement a compliance schedule for phasing out injection into USDWs, either by obtaining the necessary aquifer exemption or by halting injection into the aquifer. Specifically, US EPA's direction set forth the following compliance deadlines:
 - October 15, 2015 – shut-in deadline for wells injecting into non-exempt, non-hydrocarbon-bearing aquifers with less than 3,000 mg/L TDS that do not have an aquifer exemption
 - December 31, 2016 – shut-in deadline for wells injecting into 11 specific aquifers historically treated as exempt by US EPA, unless US EPA takes further action to affirm exemption of the pertinent aquifer(s) before that deadline
 - February 15, 2017 – shut-in deadline for all wells injecting into non-exempt aquifers with less than 10,000 mg/L TDS that do not have an aquifer exemption
- US EPA has made clear that the Division's failure to phase out injection in the affected aquifers by the stipulated compliance deadlines would seriously jeopardize the federal government's ongoing approval of the State's UIC program as an effective program to protect underground sources of drinking water as required by the Safe Drinking Water Act. One of the grounds for US EPA to withdraw primacy approval of a state program is when the state program fails to

comply with the terms of the Primacy Agreement and the state fails to take corrective action satisfactory to US EPA. (40 C.F.R. § 145.33.)

- The central purposes of state primacy under the Safe Drinking Water Act is to harmonize regulation under a single regulatory entity with expertise in local geology and operations. US EPA has never directly regulated injection operations in California and therefore does not have infrastructure or expertise in place to do so. The Division regulates over 50,000 injection wells statewide through six district offices staffed with engineers with extensive experience regulating oil and gas operations in this state. California is well known for its unique and complex geology, and knowledge of that geology is critical to effective regulation of injection operations. In addition, California has the most complex range of oil and gas extraction techniques in the world. It would therefore be a decade-long process for US EPA to develop an effective regulatory presence in a state of this size, activity, and complexity, and the ability to effectively enforce regulations would certainly suffer in the meantime. At the same time, significant regulatory uncertainty and burden would be introduced as regulation of oil and gas operations would be divided between state and federal entities. Operators would likely be faced with regulatory duplication and conflict as they would be required to comply with two separate regulatory schemes administered by two separate agencies for different aspects of the same operations. Such regulatory duplication and conflict would lower the quality of environmental protection, while increasing the regulatory burden on industry.
- The timeframe for the non-emergency rulemaking process would not enable an enforceable regulatory compliance schedule to be adopted before critical compliance deadlines will have already passed. That outcome would fail to satisfy US EPA's directions to the Division. Indeed, US EPA specifically contemplated utilization of the emergency regulation process in its directive.
- Failure to adopt the compliance schedule by emergency regulation would be detrimental to public health and safety. The wells injecting into non-exempt USDW aquifers were approved by the State, and administrative action is required to reverse those approvals. This rulemaking will unwind approvals on a statewide basis by dates certain, and will impose maximum civil penalties for injection after those dates. Without the use of rulemaking, the Division would have to use individual enforcement orders to unwind existing approvals and achieve compliance. Adjudication of enforcement orders takes time and resources, and, given the number of wells in question, it would be a substantial undertaking for the Division to achieve statewide compliance without the use of rulemaking. Without this rulemaking, it would likely take longer, and would certainly require greater State resources, to completely unwind all State-approved injection into nonexempt USDW aquifers.

- The Division anticipates that many of the aquifers previously approved to receive injection without an aquifer exemption in place will in fact qualify for exemptions. However, obtaining an aquifer exemption is a complex process involving multiple stages of rigorous examination over an extended period of time. First, operators seeking an exemption for a protected aquifer must prepare a package of evidence demonstrating that the aquifer meets the criteria for exemption. Next, the Division and the SWRCB will each independently review the evidence package to determine whether it warrants the State recommending for an aquifer exemption. This state-level review incorporates opportunity for public participation, potentially including a public hearing and a public comment period. If the Division and the SWRCB agree, a recommendation to adopt the aquifer exemption will be submitted to US EPA. US EPA will then undertake its own review of the supporting evidence before reaching a determination to exempt the aquifer or not. US EPA's review process could potentially include publication in the Federal Register and possibly a public comment hearing. Altogether, this multi-stage aquifer exemption process could easily span the full compliance period before exemptions are in place. Defining firm deadlines and criteria immediately is necessary so that operators understand that they must start working towards obtaining any appropriate aquifer exemptions as soon as possible.
- Regulated industry operators develop long-range business plans with substantial capital investments based around the operation of injection wells. To the extent that any wells need to be shut-in, codification of the compliance schedule as an emergency regulation will provide the level of certainty operators need in order to revise their business plans accordingly. Even shut-in deadlines as far as two years into the future necessitate implementation of immediate planning considerations to avoid substantial transaction costs. This is particularly important for smaller, independent operators, who typically have less capacity to absorb sudden logistical changes and increased expenses. If the compliance schedule is not implemented as an emergency regulation, the regulated industry may incur substantial and otherwise-avoidable expenses due to prolonged uncertainty in the enforcement landscape. Smaller, independent operators would likely experience the greatest negative financial consequences.
- The 2553 injection wells potentially affected by this compliance schedule are a significant part of California's oil production infrastructure, and abrupt disruption of their operation would be detrimental to general welfare. The Division estimates the capital investment in the affected injection wells and their attendant facilities to be roughly \$1.3 billion. To the extent that alternatives can be identified to replace injection that would be halted by the compliance schedule, significant time, advance planning, and capital investment will be required to drill and construct new wells and develop facilities to replace that injection infrastructure. The Division estimates that approximately 4% of the state's oil production (about 24,000 barrels of production per day) presently relies upon the affected injection wells. In order to avoid any unnecessary disruption of this production, it is critical that the deadlines

mandated by US EPA are clearly and finally articulated in regulation as soon as possible so that the regulated industry has as much time as possible to change business plans and organize investment around these compliance deadlines. To the extent that aquifers will qualify for an aquifer exemption, it is imperative that all involved understand that there are firm deadlines for completing the aquifer exemption process, and that qualifying injection operations will be disrupted if the process is not complete by the deadline.

- Oil and gas production in California is a \$34 billion annual industry, employing more than 25,000 people with an annual payroll of over \$1.5 billion. California is the third largest oil-producing state in the nation, producing about 575,000 barrels per day. Property and other tax payments to the State and local governments from the industry amount to about \$800 million annually. Injection wells have been an integral part of California's oil and gas operations for more than 50 years, and there are over 50,000 oilfield injection wells currently operating in the State.
- The regulated community and the public at large have expressed profound concern about the corrective actions to be taken regarding any injection into non-exempt aquifers protected by the Safe Drinking Water Act. It is important that the compliance schedule be implemented in an immediate and public manner, so as to maximize the transparency of the corrective actions being undertaken, as well as any associated impacts on public health and safety, the environment, or natural resources.
- In January of 2014, Governor Edmund G. Brown proclaimed an official State of Emergency due to record drought conditions in the State. The governor's proclamation directed state and local agencies to take immediate actions to conserve dwindling water supplies. California is now entering a fourth consecutive year of severe drought. Protection of California's aquifers from contamination is a matter of the highest priority for the Division, and of special importance given the exceptionally dry conditions currently affecting our region.
- Other provisions in the proposed emergency regulations, such as the definitions for key terms, and the provision setting a civil penalty for unlawful injection are included because they are integral to the regulations as a whole. The definitions support consistent interpretation of the proposed regulation, while the civil penalty provision is needed to provide an immediate deterrent that outweighs the potential economic incentives for unlawfully injecting beyond the compliance deadlines.

For these reasons, pursuant to Government Code section 11346.1(b), the Department hereby finds that adoption of the proposed regulation is necessary to address an emergency.

Insufficient Time for Non-Emergency Rulemaking

Although the Division has been engaged in an ongoing interagency review of its Class II UIC program for an extended period of time, this review process did not culminate in a definitive schedule for corrective action until March 9, 2015, when US EPA issued a directive requiring the adoption of a specific regulatory compliance schedule. The Division could not have implemented a rulemaking process for the presently-proposed regulation prior to that date because until then there had not yet been a determination of what deadlines would satisfy US EPA's demands for corrective action.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3013 of the Public Resources Code, and to implement, interpret, make specific, or reference sections 3106, 3220, 3222 and 3236.5 of the Public Resources Code, and 40 Code of Federal Regulations parts 144.3 and 144.7 (2015), the Department is considering changes to Subchapter 2 of Chapter 4 of Division 2 of Title 14 of the California Code of Regulations as follows: adoption of sections 1760.1 and 1779.1.

INFORMATIVE DIGEST / POLICY STATEMENT

Existing Law

California Regulation of Underground Injection Wells Associated With Oil and Gas Production

The Division supervises the drilling, operation, maintenance, and plugging and abandonment of onshore and offshore oil, gas, and geothermal wells. The Division carries out its regulatory authority to encourage the wise development of oil and gas resources, while preventing damage to life, health, property, and natural resources, including underground and surface waters suitable for domestic or irrigation purposes. (See Pub. Resources Code, § 3106.) Among the wells the Division regulates are injection wells that inject fluids or gas for the purpose of enhancing oil or gas recovery or repressuring oil or gas reservoirs, and injection wells that dispose wastewater and other byproducts associated with oil and gas production. Written approval from the Division is required before any subsurface injection associated with oil or gas production can begin. (Cal. Code Regs., title 14, §§ 1714, 1724.6.) The Division's regulations at Title 14, Division 2, Chapter 4 of the California Code of Regulations contain specific requirements that an applicant must satisfy before the Division will approve a subsurface injection project.

Any person who violates the State oil and gas laws is subject to a civil penalty of up to \$25,000 for each violation. (Pub. Resources Code, § 3236.5, subd. (a).) When establishing the amount of the penalty, the Division considers, in addition to other relevant

circumstances, (1) the extent of harm caused by the violation; (2) the persistence of the violation; (3) the pervasiveness of the violation; and (4) the number of prior violations by the same violator. (Ibid.)

California Primacy to Enforce an Underground Injection Control Program Pursuant to the Federal Safe Drinking Water Act

Enacted in 1974, the federal Safe Drinking Water Act directed US EPA to develop federal standards for the protection of the nation's public drinking water supply. Section 1425 of the Safe Drinking Water Act provides a mechanism by which states can obtain primary enforcement responsibility (often referred to as "primacy") for regulating the underground injection of fluids associated with oil and gas production through their own state UIC programs. To obtain primacy under section 1425 of the Safe Drinking Water Act, a state must demonstrate to US EPA's satisfaction that its UIC program meets certain minimum requirements set forth in the Safe Drinking Water Act and represents an effective program to prevent injection which endangers underground sources of drinking water. (See 42 U.S.C., § 300h-4(a).)

Once US EPA approves a state UIC program, the state has primary responsibility for regulating underground injection within its jurisdiction. In such cases, the state and US EPA enter into a Memorandum of Agreement (Primacy Agreement), which may include other terms, conditions, or agreements relevant to the administration and enforcement of the state's regulatory program. (See 40 C.F.R. § 145.25(a).) In primacy states, US EPA retains oversight and secondary enforcement authority, as well as the authority to revise or withdraw state primacy. (See 42 U.S.C. § 300h-2(a) [US EPA may enforce the SDWA when the state fails to take appropriate action]; see also 40 C.F.R. § 145.33 [identifying grounds for US EPA to withdraw primacy approval of a state program].) One of the grounds for US EPA to withdraw primacy approval of a state program is when the state program fails to comply with the terms of the Primacy Agreement and the state fails to take corrective action satisfactory to US EPA. (40 C.F.R. § 145.33.)

In 1981, California applied, through the Division, pursuant to section 1425 of the Safe Drinking Water Act, for primacy to implement a Class II UIC program. (See Application for Primacy in the Regulation of Class II Injection Wells under section 1425 of the Safe Drinking Water Act¹). "Class II" is the classification US EPA's regulations give to wells that inject fluid associated with oil and gas production. US EPA granted primacy to the Division through a Memorandum of Agreement between US EPA and the Division, dated September 29, 1982. The Primacy Agreement defines the terms of the Division's UIC program, as understood and approved by US EPA.

¹ Available at

http://www.conservation.ca.gov/dog/general_information/Documents/Application%20for%20Primacy.pdf

Underground Sources of Drinking Water and Aquifer Exemptions

Among the Safe Drinking Water Act's minimum requirements for the Division's UIC program is a requirement that the Division protect underground sources of drinking water. Underground sources of drinking water are defined in federal regulation as including any aquifer that contains a sufficient quantity of groundwater to supply a public water system and that has a TDS composition of less than 10,000 mg/L TDS. (See 40 C.F.R. § 144.3.) The Division's Primacy Agreement with US EPA provides that the Division will not authorize injection into underground sources of drinking water.

An aquifer or its portion that would otherwise qualify as an underground source of drinking water may be exempted from protection, however, if it meets specific exemption criteria enumerated in federal regulations and undergoes an exemption process that involves both the Division and US EPA. (See 40 C.F.R., §§ 146.4, 144.7.) In states that implement their own UIC programs, such as California, exempted aquifers may be designated by the state and submitted to US EPA for review. No aquifer exemption is valid unless and until it is approved by US EPA. (See 40 C.F.R. § 144.7.)

In some cases, industry participants who need an aquifer exemption in order to conduct injection activities may provide the Division information showing the aquifer meets the exemption criteria. If the Division finds the aquifer meets the exemption criteria, the Division provides opportunity for public notice and comment before submitting the designation to US EPA for review and possible approval.

Background

The objective of these proposed emergency regulations is to implement corrective action necessary to bring California's Class II Underground Injection Control program into compliance with the federal Safe Drinking Water Act. The proposed action is intended to prevent risk of harm to groundwater suitable for municipal or irrigation purposes, and is also thereby implementing the Division's statutory mandate to prevent, as far as possible, damage to life, health, property and natural resources. Using rulemaking action to achieve these goals will promote transparency and consistency, which is necessary to address public concern and to prevent unnecessary disruption of operations.

US EPA Audit and Identification of Deficiencies in California's Class II UIC Program

Beginning in or about April 2010, the US EPA audited the State's Class II UIC program and subsequently concluded that the Division's implementation of the State program was falling short of the Safe Drinking Water Act's minimum requirements. In the course of its

ongoing corrective review, the Division determined that it has in the past permitted injection wells into aquifers (or portions of aquifers)² that qualify as underground sources of drinking water under the Safe Drinking Water Act and yet have not been exempted pursuant to the aquifer exemption process. In addition, US EPA has determined that eleven aquifers historically treated as exempt by US EPA and the Division may not actually be exempt, and that the State and US EPA must reevaluate these aquifers to determine whether they are appropriate for ongoing injection.

1. Injection into Non-Exempt Aquifers

The Division's allowance of injection wells in non-exempt underground sources of drinking water conflicts with the terms of the Division's Primacy Agreement with US EPA, which defines the parameters of the State's federally-approved UIC program. The Primacy Agreement mandates that the Division will not authorize injection into aquifers that contain less than 10,000 mg/L TDS unless the aquifer meets the criteria for an aquifer exemption and an exemption has been designated by the Division and approved by US EPA. (See Primacy Agreement at pp. 6-7.) The Division has identified over 2,500 wells in California (including both enhanced oil recovery injection wells and disposal injection wells) that may have been improperly approved for injection into non-exempt aquifers containing water with less than 10,000 mg/L TDS. These aquifers are subject to protection as underground sources of drinking water unless and until they are covered by an aquifer exemption.

2. Uncertain Exemption Status of Eleven Aquifers Historically Treated as Exempt

In 1981, the Division proposed aquifer exemptions for various hydrocarbon-producing aquifers and certain non-hydrocarbon-producing aquifers that were being used for the injection of oil or gas field waste at the time of the primacy application. (See Primacy Application at Appendix B.) The Primacy Agreement between the State and US EPA identifies those aquifers for which US EPA confirmed exemptions. Unfortunately, however, there exist two competing versions of the Primacy Agreement, each with the same signature page and dates, which differ with respect to the non-hydrocarbon-producing aquifers US EPA agreed to exempt. One version purports to deny exemptions for eleven non-hydrocarbon-producing aquifers, while the second version purports to approve exemptions for those same aquifers. Many or all of the eleven affected aquifers appear to contain non-hydrocarbon-producing waters with less than 3,000 mg/L TDS, raising additional questions about whether these aquifers are or were ever eligible for an exemption. Nevertheless, the Division and US EPA have historically (up until about 2012)

² In some cases, injection is occurring into non-exempt portions of exempted aquifers (at depth or lateral locations outside the scope of the existing exemption). References herein to non-exempted aquifers or aquifers that require an aquifer exemption for purposes of injection authorization may include such portions of aquifers not covered by the scope of an existing exemption.

treated these eleven aquifers as exempt (hereinafter the “Eleven Aquifers Historically Treated as Exempt”), and the Division has approved injection wells into these aquifers.

Corrective Actions to Bring the State UIC Program into Compliance with the Safe Drinking Water Act

On March 9, 2015, extensive discussions between US EPA, the Division, and the SWRCB culminated in a detailed corrective action plan, explicitly deemed necessary by US EPA, to bring the State’s Class II UIC program into compliance with the Safe Drinking Water Act. The corrective action plan calls for the Division to phase out all injection into non-exempt aquifers by October 15, 2015 (for wells injecting into non-hydrocarbon-producing zones under 3,000 mg/L TDS) and February 15, 2017 (for all remaining Class II injection wells). The plan also requires that the Division prohibit by December 31, 2016 injection into the Eleven Aquifers Historically Treated as Exempt absent a US EPA decision that the aquifer(s) meet the regulatory criteria for an aquifer exemption. US EPA’s command that the Division take these corrective actions is significant in part because US EPA may withdraw a state’s primacy authorization under the Safe Drinking Water Act if the state fails to comply with the terms of its Primacy Agreement and fails to take corrective action satisfactory to US EPA. (See 40 C.F.R. § 145.33.)

Objectives and Benefits of the Emergency Regulations

The proposed regulations would phase out injection into non-exempt USDWs according to the compliance deadlines directed by US EPA. The regulations would also clarify that codification of these compliance deadlines does not create an entitlement to injection approval, they would define relevant terms, and they would identify the civil penalty for unlawful injection that occurs beyond the compliance deadlines. The objectives, benefits and policy rationale of the proposed regulations include the following:

- Implement Corrective Actions Deemed Necessary by US EPA. The proposed regulations would carry out the corrective actions deemed necessary by US EPA; phasing out injection into non-exempt aquifers and the Eleven Aquifers Historically Treated as Exempt (absent US EPA affirmation of an aquifer exemption) by specified compliance dates that US EPA sanctioned after extensive interagency discussions. US EPA has made clear that the Division’s failure to phase out injection in the specified aquifers by the stipulated compliance deadlines (absent the approval of aquifer exemptions) would seriously jeopardize the State’s ability to maintain primacy over Class II injection in California. Losing primacy would be an unfavorable result in part because it would diminish the State’s regulatory role and authority over important resource management decisions affecting groundwater resources and oil and gas production.
- Implement the Division’s Mandate under Public Resources Code Section 3106. Public Resources Code section 3106 requires the Division to encourage the wise

development of oil and gas resources, while preventing damage to life, health, property, and natural resources, including underground and surface waters suitable for domestic or irrigation purposes. (See Pub. Resources Code, § 3106.) The proposed regulations would implement the Division's section 3106 mandate by phasing out injection into non-exempt aquifers according to a schedule that prioritizes action on the aquifers that are most likely to contain water suitable for domestic or irrigation purposes.

- *Codify a Key Component of the Primacy Agreement.* The proposed regulations would codify the requirement in the Primacy Agreement that an aquifer exemption must be in effect prior to or concurrent with the Division's approval of injection wells into any aquifer that meets US EPA's definition of an underground source of drinking water. This would give unambiguous regulatory effect to an important aspect of the State's Class II UIC program that is currently only explicit in the Primacy Agreement.
- *Resolve Uncertainty Over Status of the Eleven Aquifers Historically Treated as Exempt.* The proposed regulations would identify the State's and US EPA's resolution of the historical and geologic/factual uncertainty regarding the Eleven Aquifers Historically Treated as Exempt. The proposed regulations would effectively cease injection into these aquifers by the end of 2016 unless US EPA affirms the existence of the aquifer exemption(s).
- *Clarify the Civil Penalty for Unlawful Injection.* The proposed regulations would establish a civil penalty of \$25,000 per day for each well where injection occurs beyond the compliance deadline. A significant penalty is needed to provide an effective deterrent that outweighs the potential economic incentives of unlawfully operating enhanced oil recovery or disposal injection wells.
- *Provide Transparency and Consistency.* The proposed regulations will ensure that the regulated industry and the general public are aware of the State's plan for addressing this issue and that compliance is achieved in a consistent and predictable manner.

CONSISTENCY WITH FEDERAL REGULATION OR STATUTE

The proposed regulations are the product of extensive consultation between US EPA, the Department, and the SWRCB. One of the primary objectives of the proposed regulations is to bring the State's Class II UIC program into compliance with the federal Safe Drinking Water Act by implementing specific corrective actions identified and deemed necessary by US EPA. The proposed regulations do not differ substantially from existing federal law; rather, they are intended to harmonize state and federal requirements.

CONSISTENCY WITH EXSITING STATE REGULATIONS

These regulations are the product of extensive consultation between US EPA, the Department, and the SWRCB, and they are not inconsistent or incompatible with existing state regulations. The purpose of these regulations is to achieve compliance with certain requirements of the federal Safe Drinking Water Act, and there are no existing state regulations that are inconsistent with those Safe Drinking Water Act requirements.

NONDUPLICATION

The definition of “aquifer” found in Section 1760.1, subdivision (a)(1), is identical to the definition of “aquifer” found in the Safe Drinking Water Act implementing regulations (40 C.F.R. 144.3). Inclusion of this definition satisfies the “nonduplication” standard of Government Code section 11349.1, subdivision (a)(6), because the definition is necessary to satisfy the “clarity” standard of Government Code section 11349.1, subdivision (a)(3). (Cal. Code Regs., tit. 1, § 12, subd. (b)(1).) Without inclusion of the federal definition of “aquifer” in these regulations, it would not be clear that the Division intends for that definition to apply.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

COST OR SAVINGS TO STATE AGENCIES

Costs or Savings to State Agencies: The Department does not anticipate any added costs to the Department or other State agencies as a result of this emergency rulemaking. The Department estimates that the emergency rulemaking may result in minor, unquantifiable savings to the Department and potentially the SWRCB and/or Regional Water Quality Control Boards because an emergency rulemaking is anticipated to be a more efficient mechanism for obtaining compliance than individual enforcement orders issued to each affected operator.

Non-Discretionary Costs or Savings to Local Agencies, Including Costs to any Local Agency or School District Requiring Reimbursement Pursuant to Section 17500 et seq.: None. This emergency rulemaking will not result in any costs or savings to local agencies.

Cost or Savings in Federal Funding to the State: This emergency rulemaking does not directly affect federal funding to the State. However, the State’s failure to bring its UIC Program into compliance with the federal Safe Drinking Water Act – of which compliance is one of the primary goals of this emergency action – could result in a loss of federal funding to the State.

DOCUMENTS RELIED UPON

The Department relied upon the following documents in proposing this rulemaking action:

- Application for Primacy in the Regulation of Class II Injection Wells Under Section 1425 of the Safe Drinking Water Act, dated April 20, 1981
- Memorandum of Agreement between the Division and US EPA re Class II UIC Program, dated September 29, 1982 (*two versions, with Department of Conservation note*)
- Proclamation of a State of Emergency by Governor Edmund G. Brown, dated January 17, 2014
- Letter from US EPA to California Environmental Protection Agency and California Natural Resources Agency, dated July 17, 2014
- Letter from US EPA to the Division and SWRCB, dated December 22, 2014
- Letter from the Division and SWRCB to US EPA, dated February 6, 2015
- Memorandum re Review of UIC Program, from California Environmental Protection Agency to Governor's Office and California Natural Resources Agency, dated March 2, 2015
- Letter from US EPA to the Division and SWRCB, dated March 9, 2015

INCORPORATION BY REFERENCE

The following document is incorporated by reference into these regulations:

- *Division of Oil, Gas, and Geothermal Resources Field Boundary Specifications 1 through 9* (dated April 1, 2015).

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The proposed regulatory language for the emergency regulations can be accessed through our website at: <http://www.conservation.ca.gov>.

If you have any questions regarding the process of the proposed emergency action, please contact Tim Shular, Office of Governmental and Environmental Relations at (916) 322-3080, or by email at UIC.Regulations@conservation.ca.gov.