

**State of California
Office of Administrative Law**

In re:
Department of Conservation

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections: 1765, 1765.1, 1765.2,
1765.3, 1765.4, 1765.4.1,
1765.5, 1765.5.1, 1765.6,
1765.7, 1765.8, 1765.9,
1765.10

Amend sections:
Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6

OAL Matter Number: 2022-1228-01

OAL Matter Type: Emergency (E)

This emergency action adopts regulations which prohibit the Geologic Energy Management Division (Division) of the Department of Conservation from approving any notice of intention to commence the drilling of a well for oil and gas extraction, within a Health Protection Zone, except for reasons related to preventing or responding to a threat to public health, safety, or the environment, complying with a court order, or to plug and abandon an existing well, among other related provisions.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/6/2023 and, pursuant to Public Resources Code section 3288, will expire on 1/7/2025. The Certificate of Compliance for this action is due no later than 1/6/2025.

Date: January 6, 2023



Dale P. Mentink
Assistant Chief Counsel

For: Kenneth J. Pogue
Director

Original: David Shabazian, Director
Copy: Justin Turner

EMERGENCY

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2022-1228-01E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

For use by Secretary of State only

FILED
 in the office of the Secretary of State
 of the State of California

JAN 06 2023

At 1:33 O'Clock P M.

By _____
 Deputy Secretary of State

AGENCY WITH RULEMAKING AUTHORITY Department of Conservation	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) SB 1137 First Emergency Implementation Regulations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT See Attachment
	AMEND
TITLE(S) Title 14	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Justin Turner	TELEPHONE NUMBER (916) 216-9143	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>David Shabazian</i>	DATE 12/20/2022
TYPED NAME AND TITLE OF SIGNATORY David Shabazian, Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 06 2023

Office of Administrative Law

Attachment to Form 400

Part B, Section 2, continued

ADOPT

Sections 1765, 1765.1, 1765.2, 1765.3, 1765.4, 1765.4.1, 1765.5, 1765.5.1, 1765.6,
1765.7, 1765.8, 1765.9, 1765.10

**DEPARTMENT OF CONSERVATION
GEOLOGIC ENERGY MANAGEMENT DIVISION
SB 1137 FIRST EMERGENCY IMPLEMENTATION REGULATIONS
TEXT OF PROPOSED REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS, TITLE 14
DIVISION 2. DEPARTMENT OF CONSERVATION
CHAPTER 4. DEVELOPMENT, REGULATION, AND CONSERVATION OF OIL AND
GAS RESOURCES**

Subchapter 2. Environmental Protection

Article 2.5. Health Protection Zones

§ 1765. Scope and Purpose.

The purpose of this article is to implement and make specific the provisions of Public Resources Code, Division 3, Chapter 1, Article 4.6 (commencing with section 3280), to accomplish the purposes of Article 4.6 as declared in Statutes of 2022, chapter 365, section 1 (SB 1137).

Authority: Sections 3013, 3106 and 3288 Public Resources Code. Reference: Sections 3011, 3106, 3280, 3281, 3281.5, 3284 and 3285 Public Resources Code.

§ 1765.1. Definitions.

(a) For the purpose of this article, "area" means surface area, and all measurement of distances is on the surface of the land.

(b) For the purpose of this article, "Health Protection Zone" means the area within 3,200 feet of a sensitive receptor. The measurement shall be made from the property line of the receptor unless the receptor building is more than 50

feet set back from the property line, in which case the measurement shall be made from the outline of the building footprint to 3,200 feet in all directions.

(c) For the purposes of this article, a "sensitive receptor" means any of the following:

(1) A residence, including a private home, condominium, apartment, and living quarter.

(2) An education resource, including a preschool, school maintaining transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, daycare center, park, playground, university, and college. Where a university or college is the only sensitive receptor within 3,200 feet of the operator's wellheads or production facilities, the university or college is not a sensitive receptor if the operator demonstrates to the Division's satisfaction that no building with nominal daily occupancy on the university or college campus is located within 3,200 feet of the operator's wellheads or production facilities.

(3) A community resource center, including a youth center.

(4) A health care facility, including a hospital, retirement home, and nursing home.

(5) Live-in housing, including a long-term care hospital, hospice, prison, detention center, and dormitory.

(6) Any building housing a business that is open to the public.

(d) A park is an education resource for purposes of subdivision (c) if it is an area that is open to the public for outdoor recreation that is at least partially within one-quarter mile of a residence or another education resource. Only the portion of a park that is within one-quarter mile of a residence or another education resource shall be considered a sensitive receptor.

(e) If a building is open to the public, then for purposes of subdivision (c) it is either a business that is open to the public or it is a community resource center. A building is open to the public if visitors are regularly permitted on the premises who are not the owner of the building or a tenant of the building and are not employees, contractors, or service providers of the owner of the building or of a tenant of the building.

Authority: Sections 3013, 3106 and 3288 Public Resources Code. Reference: Sections 3011, 3106 and 3280 Public Resources Code.

§ 1765.2. Measuring Distances.

(a) For the purposes of this article distances shall be measured in feet as horizontal distance.

(b) When distance from a sensitive receptor is measured from the property line, the measurement shall be from the property line directly between the sensitive receptor and the wellhead or production facility and from the point on the property line that is nearest to the wellhead or production facility.

(c) Distances from production facilities may be measured from the geometric center of the location of the production facility, except if precise measurement from the edge of the production facility nearest a sensitive receptor would result in a finding that the production facility is within a Health Protection Zone.

(d) When latitude and longitude coordinates are required under this article, the coordinate shall be provided in decimal degrees with an accuracy of plus or minus ten feet using the geodetic datum North American Datum of 1983 (NAD83).

Authority: Sections 3013, 3106 and 3288 Public Resources Code. Reference: Sections 3011, 3106, 3280, 3281 and 3285 Public Resources Code.

§ 1765.3. Additional Requirements for a Notice of Intention.

(a) If a notice of intention submitted under Public Resources Code section 3203 is for a well with a wellhead that is not within a Health Protection Zone, then the operator shall provide a statement to that effect and all the supporting information and explanation described in Section 1765.9, subdivision (a), upon which the operator based its determination. The Division will not approve the notice of intention unless the Division has verified the wellhead location is not within a Health Protection Zone.

(b) If a notice of intention submitted under Public Resources Code section 3203 is for a well with a wellhead that is within a Health Protection Zone, then the operator shall include the following:

(1) Identification of the sensitive receptor nearest to the wellhead location. Information regarding the sensitive receptor shall be provided in a sensitive receptor inventory in accordance with Section 1765.7 and a sensitive receptor map in accordance with Section 1765.8.

(2) Identification of the type, purpose, and size of production facilities that will be constructed or operated in association with the notice of intention, including any production facilities that are planned to be newly constructed or operated in association with notice of intention.

(3) A statement of the basis for approving the notice of intention under Public Resources Code section 3281, subdivision (a), or Public Resources Code section 3281.5, as applicable.

(c) If a notice of intention submitted under Public Resources Code section 3203 is for a well with a wellhead that is within a Health Protection Zone, and the basis for approving the proposed operations is to prevent or respond to a threat to public health, safety, or the environment, then the operator shall include the following:

(1) A description of the threat to public health, safety, or the environment.

(2) A description and characterization of the magnitude of the risks and harms associated with the threat, including the likely populations or protected resources that may be affected.

(3) Discussion of the timeframe of the threat, including potential short- and long-term impacts of the threat.

(4) Discussion of any potential alternative approaches to address the threat and reasons why the alternatives were not selected by the operator.

(5) Any data or engineering studies demonstrating the existence of the threat and the magnitude of potential harms, including any relevant well test results, pressure test results, mechanical integrity logs, cement bond logs, and any other relevant documentation.

(6) An explanation of how the proposed operations will reduce or eliminate the threat.

(7) Any other information requested by the Division to evaluate the threat to public health, safety, or the environment, and the proposed operations responding to the threat.

(d) The requirements of this section do not apply to a notice of intention to plug and abandon or reabandon a well or to drill an intercept well necessary to plug and abandon or reabandon a well. The requirements of this section are in addition to and do not replace the requirements for a notice of intention under any other statute or regulation.

Authority: Sections 3013, 3106 and 3288 Public Resources Code. Reference: Sections 3011, 3106, 3203, 3281, 3281.5 and 3285 Public Resources Code.

§ 1765.4. Water Sampling and Testing.

(a) Except as provided in subdivisions (b) and (c), operators shall not commence any work that requires a notice of intention under Public Resources Code section 3203 in a Health Protection Zone unless notice requirements under Public Resources Code section 3284 have been met and until at least five working days after providing the following to the Division:

(1) The declaration of completion of notice required under Section 1765.4.1, subdivision (a)(8).

(2) For each water source where an owner or tenant has requested water quality testing under Public Resources Code section 3284, the date that the baseline sampling and testing was performed. If the operator was unable to do the requested testing because the property owner or tenant was unable to provide the necessary access, then a description and timeline of the efforts made by the operator to obtain access to the water source.

(b) The Division may waive the requirements of Public Resources Code section 3284 if the operator demonstrates that the delay in well work associated with the requirements of this section is likely to result in significant damage to life, health, or natural resources. An operator's request for a waiver shall adhere to the following requirements:

(1) The operator shall specifically request a waiver of the requirement under this exemption when submitting the notice of intention.

(2) The operator shall provide documentation of the risk associated with the delay caused by the sampling and testing process including a qualitative discussion of the probability that the harm will occur and a rough estimate of the potential magnitude of the impacts of the harm that is likely to result.

(3) Documentation provided shall include an analysis of contributing hazards and risk factors, any available data that evidences the details of

existing conditions that contribute to the risk, and an analysis of the time sensitivity of that risk.

(c) A notice of intention to plug and abandon a well within a Health Protection Zone is not subject to the requirements of Public Resources Code section 3284.

(d) Operators receiving at least one request from a property owner or tenant for water testing under Public Resources Code section 3284 shall provide the following documentation to the Division no more than 120 days after the well work is complete:

(1) For each water source where a baseline sample was taken, the date or dates that the follow-up sample was taken or documentation of reasons why testing was unable to be performed including a description and timeline for efforts made by the operator to gain access to the water source;

(2) Water quality sampling data and analysis for each water source sampled, including identification of the property owner or tenant that made the request;

(3) Documentation, including date, of the delivery of the water quality data to each property owner or tenant entitled to receive the data under Public Resources Code section 3284, subdivision (d)(4);

(4) Date that the water quality data for each sampling location were transmitted to the appropriate regional water quality control board and the State Water Resources Control Board.

(e) When notifying the appropriate regional water quality control board prior to collecting a sample under Public Resources Code section 3284, subdivision (d)(5), the operator shall also notify the State Water Resources Control Board.