

SB 1137 FIRST EMERGENCY IMPLEMENTATION REGULATIONS

NOTICE OF PROPOSED EMERGENCY RULEMAKING ACTION

REGARDING

CALIFORNIA CODE OF REGULATIONS

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 December 19, 2022

NOTICE IS HEREBY GIVEN that the California Department of Conservation (Department) proposes to adopt emergency regulations necessary to protect public health, safety, and the environment, by ensuring the immediate implementation of health protection zones for all oil and gas operations in the state that are near sensitive receptors. This action is being taken in accordance with Government Code sections 11346.1 and 11349.6 of the California Administrative Procedure Act.

These regulations will be submitted to the Office of Administrative Law (OAL) on December 27, 2022, with an intended effective date no later than January 5, 2023.

Government Code section 11346.1, subdivision (a)(2), requires that, at least five working days prior to submission of a proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency action to OAL, OAL shall post the notice of proposed emergency action on its website and allow interested persons five calendar days to submit comments on the proposed emergency regulations, as set forth in Government Code section 11349.6.

PUBLIC COMMENT

If you wish to comment on the proposed emergency action, please submit your comment directly to both OAL and the Department within five calendar days of OAL's posting of the proposed emergency regulations on the OAL website. You may submit comments to OAL and the Department at the following addresses:

OAL Reference Attorney
300 Capital Mall, Suite 1250
Sacramento, CA 95814
staff@oal.ca.gov

Department of Conservation
715 P Street, MS 1907
Sacramento, CA 95814
Attn: SB 1137 Health Protection Zones
calgemregulations@conservation.ca.gov

OAL will confirm that the Department has received each comment before considering it. Pursuant to California Code of Regulations, title 1, section 55, subdivision (b)(1) through (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. Where responses are issued by the Department they will be submitted to OAL within eight calendar days following the date of submission of the proposed emergency regulations to OAL, unless specific exceptions are applicable.

FINDING OF EMERGENCY

Government Code section 11346.1, subdivision (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 Department finds that emergency adoption of the regulations proposed herein regarding health protection zones is necessary for immediate preservation of the public peace, health, safety, or general welfare.

Basis for the Finding of Emergency:

Senate Bill 1137 (Gonzalez, Chapter 385, Statutes of 2022) adds Article 4.6, titled "Health Protection Zones," to Chapter 1 of Division 3 of the Public Resources Code. Article 4.6 includes an express legislative declaration that adoption of regulations to implement the provisions of the new article shall, for purposes of the Administrative Procedure Act, be considered an "emergency" necessary for the immediate preservation of public peace, health, and safety. Further, the Legislature authorized the Department, through its Geologic Energy Management Division (CalGEM), to employ emergency rulemaking

procedures to address that need. The declaration and finding appear in Public Resources Code section 3288:

The division, the State Air Resources Board, and the State Water Resources Control Board may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties under this article. Any emergency regulation prescribed, adopted, or enforced pursuant to this article shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, the emergency regulations adopted by the division, the State Air Resources Board, and the State Water Resources Control Board may remain in effect for two years from adoption.

Within section 1 of Senate Bill 1137, the Legislature also made the following findings and declarations:

- “In addition to increasing impacts of climate change, a growing body of research shows direct health impacts from proximity to oil extraction.”
- “These impacts are disproportionately impacting Black, indigenous, and people of color in California, who are most likely to live in close proximity to oil extraction activities and who are the most vulnerable to the negative impacts of climate change.”
- “Proximity to oil and gas extraction sites pose significant health risks, especially due to increased air pollution.”
- “Studies have shown evidence of harm at distances less than one kilometer, which is approximately 3,200 feet.”
- “Further assistance must be provided to frontline communities that have been most polluted by the fossil fuel industry by cleaning up pollution, remediating negative health impacts, and building resilient infrastructure to prepare for the unavoidable impacts of climate change.”

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3011, 3013, 3106, 3270, and 3288 of the Public Resources Code, and to implement, interpret, or make specific sections 3011, 3106, 3203, 3270, 3280, 3281, 3281.5, 3284, 3285, 3288, and 3403.5 of the Public Resources Code, the Department is proposing changes to Subchapter 2 of Chapter 4 of Division 2 of Title 14 of the California Code of Regulations as follows: the addition of Article 2.5, consisting of 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, and 1765.10.

INFORMATIVE DIGEST / POLICY STATEMENT

Existing Law

CalGEM regulates the drilling, operation, maintenance, and plugging and abandonment of onshore and offshore oil and gas wells, and the operation, maintenance, and removal or abandonment of facilities attendant to oil and gas production throughout California. CalGEM carries out this regulatory mission under a legislative mandate 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. (Pub. Resources Code, § 3106.) CalGEM's duties include the protection of public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon resources. (Pub. Resources Code, § 3011.) Written notice to and approval from CalGEM is required before any oil or gas well may be drilled, redrilled, deepened, plugged and abandoned, or subjected to any operations permanently altering the casing of the well. (Pub. Resources Code, § 3203.) The process for providing that notice to CalGEM is referred to as a "notice of intention."

In furtherance of these legislative mandates, CalGEM oversees and enforces compliance with numerous existing statutory and regulatory requirements regarding oil and gas operations in California. These include: requirements regarding the protection of underground and surface water, requirements for testing and monitoring to ensure the integrity of the well casing, requirements for cement used to secure the well casing inside the bore hole, requirements for the cement and equipment used to seal off the well from other hydrocarbon resources and groundwater resources, requirements for routinized reporting of information about production and injection volumes, and minimum maintenance requirements for oil and gas production facilities. Compliance

with and enforcement of these requirements provides a first line of protection from potential damage caused by oil and gas production.

On September 16, 2022, Governor Gavin Newsom signed into law Senate Bill 1137 (Gonzalez, Chapter 365, Statutes of 2022) (SB 1137). SB 1137 complements and expands upon this existing framework by creating Health Protection Zones in a 3,200-foot area around “sensitive receptors,” as defined in the bill. SB 1137 sets forth a variety of new requirements related to Health Protection Zones and to wells and production facilities based on their location relative to a Health Protection Zone. Some of these requirements do not take effect until 2025 or 2027. Several new requirements, however, involve compliance obligations commencing in 2023. Beginning on January 1, 2023, CalGEM will no longer be authorized to approve a notice of intention for any well with a wellhead (i.e., a surface location) situated within a Health Protection Zone, unless a specific exception applies. Further, beginning January 1, 2023, when performing work authorized by an approved notice of intention on a well located within a Health Protection Zone, operators will be required to offer sampling and testing of water wells and surface water to nearby property owners and tenants, and to provide related notices and information to certain state agencies. Construction and operation of new production facilities within a Health Protection Zone also will be statutorily prohibited as of January 1, 2023, unless a specific exception applies. Additionally, beginning July 1, 2023, all operators of oil and gas wells in California will be required to provide CalGEM with an annual submission that describes the proximity of their wells and production facilities to sensitive receptors.

Objectives and Benefits of the Emergency Regulations

This emergency rulemaking is intended to interpret and make specific certain provisions of the Public Resources Code as necessary to implement those particular statutory imperatives regarding Health Protection Zones that take effect in 2023, pursuant to SB 1137.

More specifically, the proposed language of the emergency regulations will accomplish the following:

- **Proposed section 1765. “Scope and Purpose.”** This section describes and clarifies the intended function of all the regulations within the newly created Article 2.5.
- **Proposed section 1765.1. “Definitions.”** This section specifies and clarifies aspects of the definition of “sensitive receptor,” as provided in Public Resources Code section 3280, subdivision (c). In particular, this section provides specifications

regarding what constitutes a “community resource center,” what constitutes a “business that is open to the public,” and what qualifies a “park” to be a type of “education resource,” for purposes of identifying sensitive receptors. This specification is necessary to set consistent expectations on establishing Health Protection Zones, the related compliance status of operators, and any subsequent enforcement. This section also duplicates the statutory definition of “sensitive receptor” found in Public Resources Code section 3280, subdivision (c). This duplication is necessary to give contextual clarity to its specifications of the “sensitive receptor” definition.

- **Proposed section 1765.2. “Measuring Distances.”** This section specifies standards or procedures applicable to several types of measurements called for elsewhere within the proposed regulations. This specification is necessary to ensure consistency in methods, reported data, and the determinations based on those data.
- **Proposed section 1765.3. “Additional Requirements for a Notice of Intention.”** This section specifies the additional informational items an operator must provide in connection with a notice of intention in order for CalGEM to determine whether it may approve the notice of intention, consistent with the general statutory prohibition and specific exceptions applicable to approval of notices of intention within a Health Protection Zone. The additional informational items include data and information needed to determine the location of the well at issue relative to any proximate Health Protection Zone, and information needed to evaluate if the notice of intention may be necessary to prevent or respond to a threat to public health, safety, or the environment. This specification is necessary to ensure notices of intention contain the information necessary for CalGEM’s approval determination.
- **Proposed sections 1765.4, “Water Sampling and Testing,” and 1765.4.1, “Notice to Property Owners and Tenants.”** Public Resources Code section 3284 requires that operators offer to provide testing of water wells or surface water to property owners and tenants within a Health Protection Zone when the operator performs work authorized by an approved notice of intention on a well located in the Health Protection Zone. Public Resources Code section 3284 further requires operators to provide notice to certain state agencies before conducting the water sampling and to submit the water quality data obtained as a result of that testing to certain state agencies. Public Resources Code section 3284 also authorizes a waiver of the water sampling and testing requirements in certain

situations. This section specifies procedures for operators to complete and document compliance with these statutory requirements and clarifies what information an operator would need to provide to CalGEM if seeking a waiver. These sections are necessary to provide operators with a clear and consistent direction for compliance with the notification requirements of Public Resources Code section 3284, to ensure that CalGEM receives consistent, sufficiently detailed documentation of compliance from operators to enable effective enforcement oversight, and to clarify the information CalGEM will need operators to provide for its consideration when seeking a waiver from the water sampling and testing requirements.

- **Proposed sections 1765.5, “Required Notice for New Production Facilities,” and 1765.5.1, “Contents of a New Production Facility Notice.”** Public Resources Code section 3281, subdivision (b), prohibits the construction or operation of a new production facility within a Health Protection Zone, unless subject to certain exceptions. Section 1765.5 specifies a notice procedure required before an operator constructs or operates a new production facility. This section also clarifies the procedure by which CalGEM will evaluate such notices to confirm that the new production facility may be constructed or operated in compliance with the requirements of Public Resources Code section 3281, subdivision (b). Section 1765.5.1 specifies the informational contents of the “new production facility notice” referenced in section 1765.5’s notice procedure. Sections 1765.5 and 1765.5.1 are necessary so that CalGEM will consistently receive timely prior notice and sufficient information to effectively enforce compliance with the general prohibition and specific exceptions applicable to construction and operation of new production facilities within a Health Protection Zone.
- **Proposed section 1765.6, “Annual Submission of Sensitive Receptor Inventory and Map.”** This section specifies the informational contents that an operator must include in the annual submission describing the proximity of its wells and production facilities to sensitive receptors, as required under Public Resources Code section 3285. This section is necessary to provide operators with clear direction for compliance and to ensure that the annual submission information CalGEM receives is sufficiently complete and consistent in content. Complete and consistent annual submission information will facilitate CalGEM’s timely and orderly enforcement of compliance with requirements related to Health Protection Zones.

- **Proposed sections 1765.7, “Content and Format Specifications for Sensitive Receptor Inventories,” and 1765.8, “Content and Format Specifications for Sensitive Receptor Maps.”** As part of the process for identifying Health Protection Zones and enforcing requirements related to Health Protection Zones, Public Resources Code sections 3281 and 3285 require that operators submit inventories and maps of sensitive receptors to CalGEM annually, with respect to all of the operator's wells and production facilities, and also when seeking approval of a notice of intention, with respect to the particular well or wells that are the subject of the notice. The inventories and maps are the core informational materials required from operators to confirm whether wells and production facilities are located within a Health Protection Zone. Sections 1765.7 and 1765.8 specify the content and format of the required inventories and maps, with distinctions based on the submission requirement the map and inventory are intended to satisfy. These sections are necessary to ensure that when CalGEM receives this information about sensitive receptors, wells, and production facilities it is sufficiently complete, organized, and in a usable format. Complete, organized, readily usable inventory and mapping information will be essential for CalGEM to review notices of intention, new production facility notices, and annual sensitive receptor submissions in a timely manner, to enable CalGEM's effective enforcement of compliance with requirements related to Health Protection Zones, and to facilitate provision of information to interested members of the public.
- **Proposed section 1765.9, “Determination that a Location is Not Within a Health Protection Zone.”** This section specifies the process and informational requirements applicable when an operator seeks to demonstrate that a well, production facility, or part or all of their operations are not within the boundaries of a Health Protection Zone. Determination that a location is not within a Health Protection Zone is a component of the procedures for notices of intention, new production facility notices, and annual sensitive receptor inventory and map submissions set forth in other sections of the proposed regulations. Those other sections include a cross-reference to this section. Consequently, this section is necessary to clarify how the determination will be made and to ensure that the information CalGEM receives in this context is consistent and sufficiently complete.
- **Proposed section 1765.10, “Underground Gas Storage Facilities in the Health Protection Zone.”** Public Resources Code section 3181 expressly excludes underground gas storage wells and attendant production facilities from

compliance with the various requirements related to Health Protection Zones. This section clarifies the scope of that exclusion.

CONSISTENCY WITH FEDERAL REGULATION OR STATUTE

The proposed regulations are an administrative framework for implementing specific and express requirements of SB 1137 and certain related statutes. The proposed regulations are not inconsistent or incompatible with federal statutes and regulations.

CONSISTENCY WITH EXISTING STATE REGULATIONS

The proposed regulations are an administrative framework for implementing specific and express requirements of SB 1137 and certain related statutes. No other state agency has existing regulations implementing SB 1137. The proposed regulations are intended to dovetail with existing requirements implemented by other state agencies charged with regulatory functions related to natural resources, the environment, and public health, such as the State Water Resources Control Board and the regional water quality control boards. The proposed regulations are not inconsistent or incompatible with existing state regulations.

LOCAL MANDATE

The proposed regulations do not impose a mandate on local agencies or school districts.

COST OR SAVINGS TO STATE AGENCIES

Costs or Savings to State Agencies: Impacts on the Department will be limited to costs associated with administration and review of operator submission.

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.*: There will be no impact on local agencies.

Costs or Savings in Federal Funding to the State: There will be no impact on federal funding to the state.

DOCUMENTS RELIED UPON

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

- Senate Bill 1137, Gonzalez, Chapter 365, Statutes of 2022.
- Dill, J. (2003). Transit use and proximity to rail: Results from large employment sites in the San Francisco, California, Bay Area. *Transportation Research Record*, 1835(1), 19-24.
- Dittmar, H., and G. Ohland, eds. (2004). The New Transit Town: Best Practices in Transit-Oriented Development. Island Press. p. 120.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

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

If you have questions regarding the process of the proposed emergency action, please contact Glen Baird, Office of Legislative and Regulatory Affairs at (916) 531-7201 or calgemregulations@conservation.ca.gov.