

# California Regulatory Update

Vinson & Elkins Shale & Fracking Task Force | April 2021

Action	Summary
<b><a href="#">SB 467</a> – Bill to Ban Fracking and Impose Setbacks</b>	<ul style="list-style-type: none"> <li>Introduced on February 16, 2021, will be in front of the Senate Natural Resources and Water Committee on April 13, 2021.</li> <li>Ban on fracking and other enhanced oil extraction methods statewide by 2027 (other methods include acid well stimulation treatments, cyclic steaming, and water and steam flooding).               <ul style="list-style-type: none"> <li>Halt on new permits and renewal of existing permits on Jan. 1, 2022;</li> <li>Prohibit all fracking and well stimulation treatments on Jan. 1, 2027;</li> <li>Authorizes local governments to prohibit fracking/etc. prior to the 2027 statewide ban.</li> </ul> </li> <li>Institutes setbacks effective Jan. 1, 2023.               <ul style="list-style-type: none"> <li>Prohibits new or modified permits for oil and gas wells or production facilities within a “health protection zone” (some exclusions).                   <ul style="list-style-type: none"> <li>“Health protection zone” means the area within 2,500 feet of a sensitive receptor or a greater distance set by a city, county, or CalGEM.</li> <li>“Sensitive receptor” means a residence (private home, condo, apartment, etc.), educational resource (preschools, schools, day cares, parks, playgrounds), community resource centers, health care facilities (hospitals, retirement homes, and nursing homes), live-in housing (hospitals, hospices, prisons, detention centers, and dorms), or any other locations as determined by an air pollution control district, management district, or the state air resources board.</li> </ul> </li> <li>Cities, counties and CalGEM can increase setback beyond 2,500 feet.</li> <li>If CalGEM has not published a final rule creating a health protection zone of at least 2,500 feet and prohibiting the division from issuing new or modified permits within the health protection zone by July 1, 2022, then the provisions of the Bill become available on that date.</li> </ul> </li> <li>Setback does not apply to permits and approvals issued before January 1, 2023.</li> <li>Variances are available if a court determines that the prohibition would result in a taking of private property of an operator of an oil and gas well or production facility.               <ul style="list-style-type: none"> <li>Variances are limited to the minimum reduction in the health protection zone, minimum amount of time, and minimum development necessary to avoid a taking.</li> </ul> </li> <li>Note that a prior fracking moratorium bill stalled in the CA legislature in 2014, and in 2020, a bill calling for setbacks failed in the CA Senate after passing in the Assembly.</li> <li>The <a href="#">LA Times</a> speculates that likelihood of this year’s legislation surviving as proposed is remote due to previous failures and distraction of a likely recall election for Gov. Newsom.</li> </ul>
<b>Ventura County Setbacks</b>	<ul style="list-style-type: none"> <li>In September 2020, Ventura County Board of Supervisors adopted an amended <a href="#">2040 General Plan</a> and approved an associated EIR that imposes significant restrictions on new discretionary development projects, including oil and gas, in the county. This requires setbacks of 1,500 feet and 2,500 feet from residences and schools, respectively; prohibits trucking of oil and produced water; restricts flaring; requires electrification of equipment; and requires additional reviews for projects involving well stimulation treatment or steam injection.</li> </ul>

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<b><a href="#">EO N-79-20</a> – EO Targeted at Reducing Supply and Demand for Fossil Fuels</b>	<ul style="list-style-type: none"> <li>Overall Goal: CA to reach carbon neutrality no later than 2045.</li> <li>Fracking-related goals: <ul style="list-style-type: none"> <li>CalGEM shall propose a strengthened health and safety rule that protects communities and workers from the impacts of oil extraction activities by December 31, 2020. <ul style="list-style-type: none"> <li><a href="#">CalGEM has been holding public hearings</a> on this (including possible setbacks) and is expected to announce proposed restrictions in April or May 2021.</li> </ul> </li> <li>Call to end issuance of new fracking permits by 2024.</li> <li>Agencies shall expedite regulatory process to repurpose and transition upstream and downstream oil production facilities (agencies to submit progress reports and action plans by July 15, 2021).</li> <li>Agencies shall submit strategies and recommendations to close and remediate former oil extraction sites.</li> </ul> </li> <li>Other, non-fracking-related goals <ul style="list-style-type: none"> <li>Zero emissions for vehicles in the state by 2045 (phase-in from passenger cars in 2035 to medium and heavy duty vehicles by 2045).</li> <li>Improving clean public transportation (statewide rail, bicycle and pedestrian traffic, etc.).</li> </ul> </li> </ul>
<b>AB 342 – O&amp;G Leasing on State Lands</b>	<ul style="list-style-type: none"> <li>Effective January 2020.</li> <li><a href="#">AB 342</a> prohibits the California State Lands Commission from entering into leases or conveyances for <i>state public lands</i> that authorize “new construction of oil- and gas-related infrastructure ... to support production of oil and natural gas upon federal lands that are designated as, or were at any time designated as, federally protected lands.” (effectively prohibits pipelines crossing state land, would significantly impact oil and gas production on federal lands because most federal lands in CA are adjacent to or surrounded by state owned land). Includes tidelands and submerged state lands.</li> </ul>
<b>Kern County Streamlined O&amp;G Permitting Ordinance Invalidated</b>	<ul style="list-style-type: none"> <li>In February 2020, a California appellate court determined that Kern County violated CEQA when adopting its O&amp;G Ordinance for a variety of reasons. Operators in Kern County relied heavily on a streamlined permitting process provided by the Ordinance to approve new wells and other operations. Kern County began the process of correcting deficiencies in its environmental review related to the Ordinance in the Spring of 2020 and circulated a Final Supplemental EIR on February 11, 2021.</li> <li>Kern County <a href="#">approved the revised ordinance</a> on March 8, 2021 (creates a blanket environmental impact report that allows approval of up to 2,700 new wells a year and up to 43,000 total through 2035).</li> </ul>

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<b>Underground Injection Well Control Regulations</b>	<ul style="list-style-type: none"> <li>• Effective April 2019.</li> <li>• Includes stronger testing requirements designed to identify potential leaks, increased data requirements to ensure proposed projects are fully evaluated, continuous well pressure monitoring, requirements to automatically cease injection when there is a risk to safety or the environment, and requirements to disclose chemical additives for injection wells close to water supply wells.</li> <li>• Affects two types of wells: (i) those that inject water or steam for enhanced oil recovery and (ii) those that return the briny groundwater that comes up from oil formations during production.</li> </ul>
<b>Other EOs, regulations, and laws affecting the oil and gas industry more broadly</b>	
<b>Idle Well Legislation and Regulations</b>	<ul style="list-style-type: none"> <li>• Effective in 2019 and 2020.</li> <li>• AB 1057 requires state agencies to review emissions from idle and abandoned wells, and valuate plugging and abandonment and restoration costs and associated bonding requirements (bonding cannot exceed the reasonable cost of properly plugging/abandoning wells and decommissioning associated production facilities or \$30 million). This legislation also expanded CalGEM's duties to include public health and safety and reducing or mitigating greenhouse gas emissions while meeting the state's energy needs.</li> <li>• SB 551 requires O&amp;G well operators to report to CalGEM beginning in July 2022 the estimated liability to plug and abandon wells and decommission related production facilities. The estimate would have to include site restoration and remediation.</li> <li>• Regulations include a comprehensive well testing regime to prevent leaks, compliance schedule for testing or plugging and abandoning idle wells, the collection of data necessary to prioritize testing and sealing idle wells, requirements for a long-term idle well management plan, an engineering analysis for each well idled 15 years or longer, and requirements for active observation wells. Idle well management plans should describe how they will plug and abandon or reactivate a specified percentage of long-term idle wells or pay additional annual fees and perform additional testing to retain greater flexibility to return long-term idle wells to service in the future.</li> <li>• In California, an idle well is one that has not been used for two years or more and has not yet been permanently sealed pursuant to regulations from CalGEM.</li> </ul>
<b>Methane Standards</b>	<ul style="list-style-type: none"> <li>• Effective March 2017, final phase of requirements kicked in on January 1, 2020.</li> <li>• Reduced fugitive and vented emissions of methane from both new and existing O&amp;G facilities, including: O&amp;G production, processing, and storage facilities; natural gas gathering and boosting stations; natural gas underground storage facilities; and natural gas transmission compressor stations. Also includes standards for separator and tank systems, circulation tanks, leak detection and repair, underground natural gas storage monitoring, natural gas compressors, pneumatic devices and pumps, and reporting requirements.</li> </ul>

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<b>EO N-82-20 – 30 x 30 Land Conservation</b>	<ul style="list-style-type: none"><li>October 2020 EO. Establishes state goal to conserve at least 30% of California's land and coastal waters by 2030 and directs state agencies to implement other measures to mitigate climate change and strengthen biodiversity.</li></ul>
<b>2019 Initiatives Announced by Gov. Newsom</b>	<ul style="list-style-type: none"><li>Halt approvals of new oil extraction wells that use high-pressure steam to break oil formations below the ground, a process linked to recent oil leaks in Kern County.</li><li>Plans to update and strengthen rules for public health and safety protections near O&amp;G extraction facilities (included in EO discussed above).</li><li>Conduct an independent review of pending applications to conduct hydraulic fracturing and other well stimulation practices.</li></ul>
<b>Carbon Neutrality Bills and EOs</b>	<ul style="list-style-type: none"><li><a href="#">SB 100</a> California adopted a law committing the state to the use of 100% zero-carbon electricity by 2045.</li><li><a href="#">EO B-55-18</a> EO committing California to total, economy-wide carbon neutrality by 2045.</li></ul>
<b>AB 585 – Transfer of Oil and Gas Leases on State Lands</b>	<ul style="list-style-type: none"><li><a href="#">AB 585</a> Effective January 2020. Codifies the criteria the California State Lands Commission uses to consider whether or not to approve a transfer of an oil or gas lease located on state land.</li><li>The new criteria include a review of: (1) an assignee's experience with oil and gas production; (2) financial considerations affecting an assignee's ability to comply with a lease; (3) an assignee's record of noncompliance with contracts with government entities; and (4) an assignee's record of noncompliance with other laws in general. Further, the new law sets forth that an assignor, transferor, or sublessor will remain liable for obligations under the lease unless the California State Lands Commission specifically releases the assignor, transferor, or sublessor from liability. In certain circumstances, a release may be granted if the assignor, transferor, or sublessor posts a security to fulfill outstanding lease obligations.</li></ul>
<b>Climate Disclosures</b>	<ul style="list-style-type: none"><li>April 5, 2020 – Governor Newsom launched the <a href="#">Climate-Related Risk Disclosure Advisory Group</a> to support the state through development of a climate risk disclosure standard.</li><li><a href="#">AB 766</a> – Introduced on March 18, 2021. Would <a href="#">require</a> the California Air Resources Board ("CARB") to develop and adopt regulations governing/requiring annual climate risk disclosures by January 1, 2025.</li></ul>