



LEAGUE OF WOMEN VOTERS® OF CALIFORNIA

Statement to Senate Committees on Natural Resources and Water and Environmental Quality

Joint Oversight Hearing

February 26, 2014

SB 4 (2013) Implementation and Well Stimulation Regulations

The League of Women Voters of California submitted comments in December on the Interim Regulations implementing SB 4. Those regulations were amended, apparently in response to our comments, to clarify the disclosure requirements for chemicals used in well stimulation.

Our concerns about the draft permanent regulations are similar. That statement, presented in January, is attached.

We continue to be concerned that DOGGR's guidance documents on both sets of regulations—including the Frequently Asked Questions and the Narrative Descriptions—contain incorrect information on the handling of trade secrets under SB 4. We do appreciate that a trade secret disclosure reporting form and accompanying instructions, which did not comply with the law, have been removed from DOGGR's well stimulation web page.

It is apparent that DOGGR staff is still learning about the new law and their responsibilities under it, and is unfamiliar with some of the technical concepts of regulating hydraulic fracturing and acid treatments. (For example, they abbreviate hydraulic fracturing as HF, an unfortunate juxtaposition with the chemical formula HF for the most hazardous chemical used in acid treatments, hydrofluoric acid.)

The background document for today's hearing gives a good list of other concerns, which also need to be addressed. We recognize that it is still early in the process and there has been a great deal of pressure to start the implementation quickly. We will continue to watch and give input into the process.

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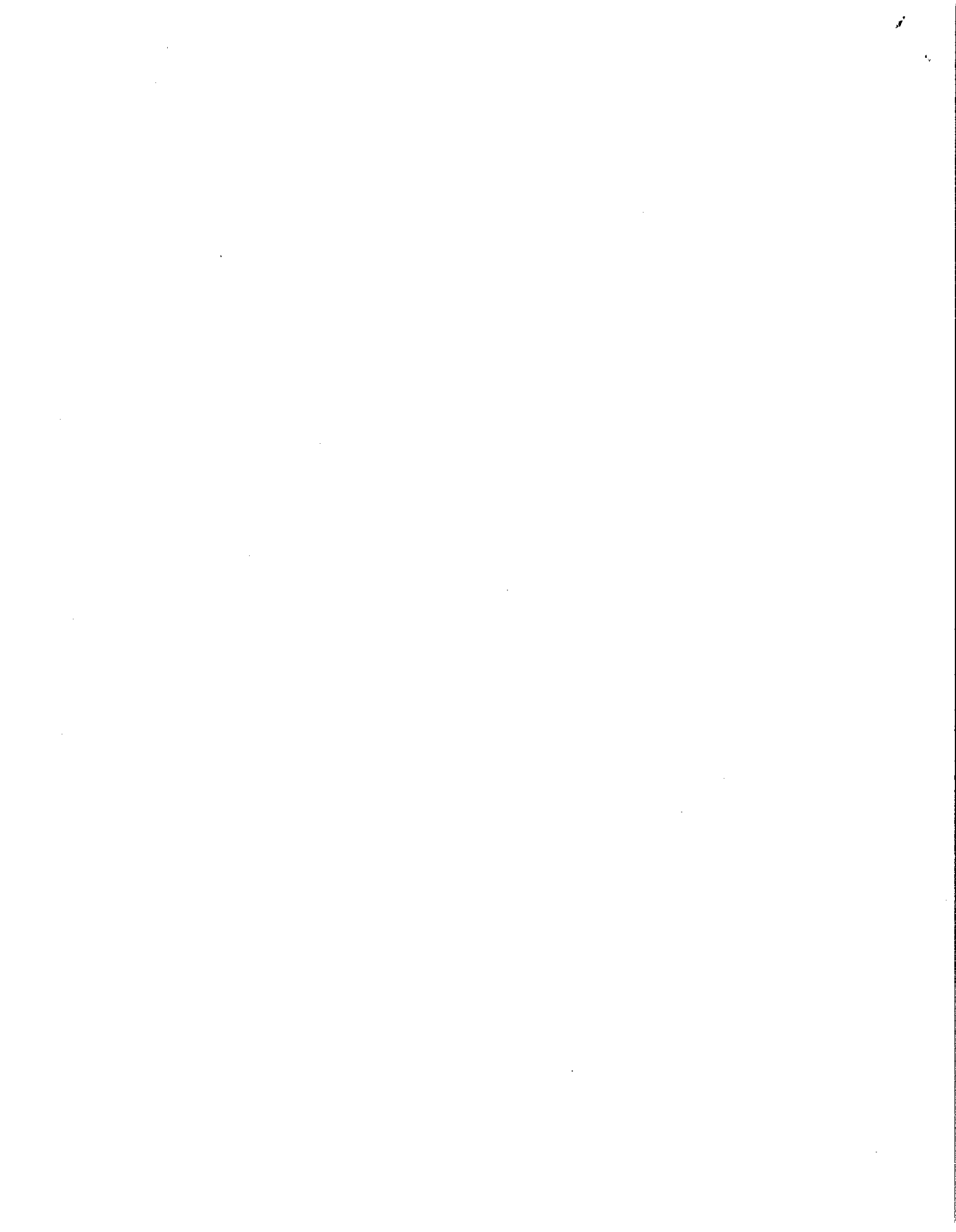
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Statement for DOGGR hearing on Draft Permanent SB 4 Regulations
Santa Maria, January 13, 2014
Linda K. Phillips, Ph.D., representing the League of Women Voters of California

The League of Women Voters of California submitted comments last month on the Interim Regulations implementing SB 4. Our concerns about the draft permanent regulations are similar. We wish to focus mainly on two problems today: trade secrets, on which the regulations are confusing even to your staff; and the exemption from these regulations for acid matrix treatment with acids of less than 7% concentration, on which the regulations do not conform to the law.

Trade secrets: We are pleased that the interim regulations were slightly modified to specifically require the identities of all chemicals to be included in the permit application, even if trade secrets are claimed.

However, the provisions in PRC 3160(j)(2) and 3160(j)(4)(C), which specify what information shall not be claimed as trade secrets, need to be quoted in the regulations, not just cited. We have already seen that not only operators, but even DOGGR staff, may be unfamiliar with these provisions. *In fact, the Frequently Asked Questions and Narrative Descriptions for both the interim and the draft permanent regulations incorrectly state that chemical names may be claimed as trade secrets. Thus they invite operators to violate the law.*

We urge that the regulations, in 1783.1(a)(26) and 1788(d), should include the exact wording of, or accurately paraphrase, these subsections on what information cannot be trade secrets. These sections should also be included in corrected versions of both the FAQ and Narrative Description.

Acid matrix stimulation exception:

PRC 3160(b)(1)(C)(i) requires the regulations to "establish threshold values for acid volume applied per treated foot of any individual stage of the well or for total acid volume of the treatment, or both, based upon a quantitative assessment of the risks posed by acid matrix stimulation treatments that exceed the specified threshold value or values in order to prevent, as far as possible, damage to life, health, property, and natural resources."

Instead, the regulations, in 1780(a), establish what appears to be an arbitrary threshold for acid concentration. While the concentration would be a very useful additional factor in determining the threshold volume, it cannot be a substitute.

Furthermore, the threshold concentration must be established for each acid, or mixture of acids, based on its risk. 7% acetic acid may be found in kitchens; it is the best vinegar for making dill pickles. On the other extreme is hydrofluoric acid (chemical formula HF). HF is one of the most dangerous acids known. Ingesting 1% HF can be fatal. At 2% concentration, it causes agonizing, but delayed, burns. If you spill 7% HF on yourself, you may experience no pain for an hour, or up to several hours; by that time, you may already have extreme tissue or bone damage.

Ingesting one tablespoon of 9% HF has been reported to cause death. So HF should be exempted from regulation only at a very low concentration or never be exempted, at any concentration or volume.

Confidential wells: The commonly-used term "confidential well" is not used in these draft regulations. Instead, the reference, in 1788(c), is to "a well record that the Division has determined not to be public record." Does this mean that the Division anticipates broadening their determinations that well records are not public records, to wells that are not "confidential"? And if so, what are the extenuating circumstances that you anticipate?

Any confidential information that would normally be required in reports, and that might be important to protection of public health and safety and the environment, should be reported to DOGGR, and be available to emergency response and public health agencies, as well as to medical personnel when needed, with the same rules as trade secret information. Since wells may be considered confidential for up to 4-7 years, it is important that this information be available in a timely manner.

- **Definition of "tenant":** needs to be changed to conform with that in the Interim Regulations. Neighboring tenants must be notified of pending well stimulation, and in some cases must be allowed to request water testing. Therefore, the less restrictive definition in the Interim Regulations should be used in the permanent regulations.

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