

COST ESTIMATE REGULATIONS FOR OIL AND GAS OPERATIONS

NOTICE OF PROPOSED RULEMAKING ACTION

REGARDING

TITLE 14. NATURAL RESOURCES

DIVISION 2. DEPARTMENT OF CONSERVATION

**CHAPTER 4. DEVELOPMENT, REGULATION, AND CONSERVATION OF
OIL AND GAS RESOURCES**

Notice Published August 18, 2023

Office of Administrative Law Notice File Number: Z2023-0802-01

NOTICE IS HEREBY GIVEN that the California Department of Conservation (Department) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD AND PUBLIC COMMENT HEARING

Any person, or his or her authorized representative, may submit written statements, arguments, or comments related to the proposed regulatory action to the Department.

Comments may be submitted by email to:

CalGEMCostEstimates@conservation.ca.gov

or by mail to:

Department of Conservation
715 P Street, MS 1907
Sacramento, CA 95814
ATTN: Cost Estimate Regulations

The written comment period closes at 12 midnight on October 4, 2023. The Department will only consider comments received at the Department's offices by that time.

Public Hearing

Any interested person, or his or her authorized representative, may present, either orally or in writing, comments regarding the proposed action at the virtual public hearing to be held on **October 3, 2023, at 5:30 pm.**

Register for the public hearing on zoom by clicking [HERE](#).

Or join by Telephone: US Toll 213-787-0529
 US Toll Free 888-808-6929
 Conference Code 847183

Accessibility

If you have a disability and require a reasonable accommodation to fully participate in this event, please contact Sarah Rubin, Outreach and Engagement Coordinator as soon as possible to discuss your accessibility needs.

Email: Sarah.Rubin@conservation.ca.gov | PH: (916) 214-5731

[English]

Translation and interpretation services may be provided upon request. To ensure availability of these services, please make your request no later than ten working days prior to the workshop by contacting Sarah Rubin, Outreach and Engagement Coordinator. Email: Sarah.Rubin@conservation.ca.gov | PH: (916) 214-5731

[Spanish]

Se podrán proporcionar servicios de traducción e interpretación a petición previa. Para poder garantizar la disponibilidad de estos servicios, asegúrese de realizar su solicitud a más tardar diez días hábiles antes de la reunión comunitaria comunicándose con Sarah Rubin, Coordinadora de Alcance y Participación.

Correo electrónico: Sarah.Rubin@conservation.ca.gov | Tel: (916) 214-5731

[Vietnamese]

Dịch vụ thông dịch và biên dịch có thể được cung cấp theo yêu cầu. Để đảm bảo khả năng có sẵn của các dịch vụ này, vui lòng đưa ra đề nghị không muộn hơn mười ngày làm việc trước khi buổi họp cộng đồng bắt đầu, bằng cách liên lạc với Sarah Rubin, Điều Phối Viên Tham Gia Và nỗ Lực Hành Động.

Email: Sarah.Rubin@conservation.ca.gov | ĐT: (916) 214-5731

[Chinese – simplified]

如有要求，可提供除西班牙语以为语言的笔译和口译服务。为确保及时这些服务，请在社区会议前十个工作日内 联系外联与参与协调员Sarah Rubin提出请求 电子邮件：

Sarah.Rubin@conservation.ca.gov | 电话：(916) 214-5731

[Tagalog]

Ang mga serbisyo sa pagsasalin at interpretasyon ay maaaring ibigay sa kahilingan. Upang masiguro ang pagkakaroon ng mga serbisyong ito, mangyaring gawin ang iyong kahilingan nang hindi lalampas sa sampung araw ng pagtatrabaho bago ang pagawaan sa pamamagitan ng pagtawag kay Sarah Rubin, Outreach and

Engagement Coordinator.

Email: Sarah.Rubin@conservation.ca.gov | PH: (916) 214-5731

[Punjabi]

ਅਨੁਵਾਦ ਅਤੇ ਵਿਆਖਿਆ ਸੇਵਾਵਾਂ ਬੇਨਤੀ ਕਰਨ ਤੇ ਪਦਾਨ ਕੀਤੀਆਂ ਜਾ ਸਕਦੀਆਂ ਹਨ. ਇਹਨਾਂ ਸੇਵਾਵਾਂ ਦੀ ਉਪਲਬਧਤਾ ਨੂੰ ਯਕੀਨੀ ਬਣਾਉਣ ਲਈ, ਵਿਰਧਾ ਕਰਕੇ ਵਰਕਸ਼ਾਪ ਤੋਂ 10 ਕੰਮਕਾਜੀ ਦਿਨਾਂ ਤੋਂ ਪਿਹਲਾਂ ਆਪਣੀ ਬੇਨਤੀ ਸਾਰਾਹ ਰਿਬਨ, ਆ ਟਰੀਚ ਅਤੇ ਐਗੰ ਜਮੰਟ ਕੋਆਰਡੀਨੇਟਰ (916) 214-5731 ਜਾਂ ਸਾਰਾਹ.ਰੂਬੀਨ@ਕਨਜ਼ਰਵੇਸ਼ਨ ਸੀ.ਏ.

[Hmong]

Cov kev pab cuam txhais lus thiab txhais ntaub ntawv (dhau ntawm lus Xab Pees Niv) yuav muaj raws qhov thov tuaj. Los ua kom cov kev pab cuam no muaj siv, thov ua koj li kev thov tsis pub dhau kaum hnuv ua hauj lwm ua ntej lub rooj sib tham hauv zej zog los ntawm txuas lus nrog Sarah Rubin, Outreach thiab Tus Neeg Ua Hauj Lwm Pab Txuas Lus Muab Kev Txhawb Nqa.

Email: Sarah.Rubin@conservation.ca.gov | Xov Tooj: (916) 214-5731

AUTHORITY AND REFERENCE

Pursuant to the authority vested by California Public Resources Code sections 3013 and 3106, and to implement, interpret, or make specific sections 3011, 3106, and 3205.7 of the Public Resources Code, the Department proposes to add sections 1753, 1753.1, 1753.1.1, 1753.1.2, 1753.2, 1753.2.1, 1753.2.2, 1753.3, 1753.3.1, and 1753.3.2 within the California Code of Regulations, title 14, division 2, chapter 4, subchapter 2, article 1.

INFORMATIVE DIGEST / POLICY STATEMENT

Existing Law

The California Geologic Energy Management Division (CalGEM), within the Department of Conservation, supervises and regulates oil, gas, and geothermal well operations, including their attendant facilities, throughout the state. (See Public Resources Code, § 3106). CalGEM 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. More specifically, per Public Resources Code section 3106, CalGEM supervises the decommissioning and abandonment of both wells and facilities attendant to oil and gas production. 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.)

In 2008, the California State Legislature substantially strengthened and clarified CalGEM's authority to regulate oil and gas production facilities (AB 1960, Nava, Chapter 562, Statutes of 2008, in particular Public Resources Code, §§ 3270 *et seq.*)

In October 2019, Governor Newsom signed into law Senate Bill 551 (Jackson, Chapter 774, Statutes of 2019) adding Public Resources Code section 3205.7, which requires every operator to submit a report demonstrating the total estimated costs related to the plugging and abandonment of all of their wells and decommissioning of all attendant facilities, including any needed site remediation. Legislative history suggests that the bill's authors and supporters were concerned about operator insolvencies leaving the state responsible for decommissioning costs. Author Jackson said we need “to begin assessing these costs in a systematic, wholesale, across-the-board, thorough, comprehensive and regular way, or we risk entering into billions in liabilities with no plan and no recourse.” (Sen. Rules Com., Senate Floor Analysis, S.B. 551 2017-2018 Reg. Sess.) p. 5.)

To implement the new reporting requirement, Public Resources Code section 3205.7 requires CalGEM to establish criteria that operators must adhere to when developing their cost estimates. The statute also requires CalGEM to establish a schedule for operators to submit their initial reports such that at least one-half of the operators are required to submit an initial report by July 1, 2024, and all operators are required to submit an initial report by July 1, 2026. The July 1, 2024 date specified by the statute was not achieved due to delays in the rulemaking process. After initial submission, each operator is required to submit an updated report at least once every five years.

Related to the addition of Public Resources Code section 3205.7, effective January 1, 2020, Public Resources Code section 3205.3 significantly augmented CalGEM's bonding authority. Before adoption of Public Resources Code section 3205.3, operators were generally required to post a bond based upon the number of wells the operator operates and the depth of those wells. (Pub. Resources Code, §§ 3204, 3205.) With the adoption of Public Resources Code section 3205.3, based on CalGEM's evaluation of the operator's risk of desertion, CalGEM has broad authority to require an operator to provide additional security beyond the minimum indemnity bond amounts required under Public Resources Code sections 3204 and 3205. (PRC, § 3205.3, subd. (a).) The additional security cannot exceed the lesser of CalGEM's estimation of the reasonable cost of properly plugging and abandoning all of the operator's wells and decommissioning any attendant production facilities, or thirty million dollars. (Pub. Resources Code, § 3205.3, subd. (a).) Although the reports required under Public Resources Code section 3205.7 are not required for CalGEM to implement the new bonding authority, the cost estimate reports will be a valuable tool for implementation of that authority.

Proposed Regulations

The proposed regulations establish the criteria that operators would be required to use when preparing the cost estimate reports required under Public Resources Code section 3205.7, allowing two different methods for making the required estimates. Method 1 is a prescribed methodology whereby an operator uses values developed by CalGEM to estimate the costs associated with well plugging and abandonment, production facility decommissioning, and site remediation based upon the condition, location, and history of the operator's assets. Method 2 allows for the operator to forego the assumed costs under Method 1 and develop their own site-specific cost estimates, providing the estimates are persuasively supported by detailed documentation.

The proposed regulations also establish a schedule for operators to submit their cost reports, grouping operators by recent per-well production volumes in a manner that is

intended to ensure at least one-half of operators have a submission due date of January 1, 2025, which is the first quarterly date available after the regulations will be finalized. Remaining operators have a submission due date of July 1, 2026.

Objectives and Benefits of the Proposed Regulations

The proposed regulations are necessary to respond to the mandate of Public Resources Code section 3205.7 to establish criteria that operators must utilize when preparing the required cost estimate reports. The two methodologies have complementary benefits. Method 1 will allow operators to complete the reports expeditiously by using conservative default cost amounts that CalGEM believes are unlikely to fall short of actual costs. Method 2 will be more labor intensive to complete but will allow the operator the opportunity to demonstrate that the default cost estimates of Method 1 do not accurately reflect cost associated with its assets.

The establishment of a schedule for operators to submit their cost estimate reports is also necessary to respond to the mandates of Public Resources Code section 3205.7, including establishing staggered reporting deadlines and a five-year recurring reporting cadence. Diminished per-well production volumes can be a risk indicator for potential desertion. Requiring operators with lower per-well production volumes to report first will generally provide for data on higher-risk assets sooner.

The proposed regulations will provide the additional benefits of assisting CalGEM with its implementation of its enhanced bonding authority under Public Resources Code section 3205.3. Public Resources Code section 3205.3, subdivision (b), outlines eight criteria CalGEM must consider in estimating the reasonable costs of properly abandoning an operator's wells and decommissioning the attendant production facilities, including any cost estimate submitted by the operator. The methodology contemplated by these regulations considers the applicable factors from Public Resources Code section 3205.3, subdivision (b), and as such will streamline implementation of Public Resources Code section 3205.3.

The proposed regulations will also have the benefit of furthering CalGEM's mandates under Public Resources Code sections 3011 and 3106 of preventing damage to life, health, property, and natural resources and protecting public health and the environment. By ensuring CalGEM and the state have data and analysis available regarding the costs associated with end-of-life remediation of oil and gas operations, this rulemaking will allow the state to begin assessing these costs in a comprehensive and regular way, help educate stakeholders on potential future costs, allow for identification of changing cost trends over time, and where appropriate, inform

appropriate bonding requirements. Taking these steps now ensures the state can begin to plan the most appropriate approach to managing these risks and costs.

CONSISTENCY WITH COMPARABLE FEDERAL STATUTE AND REGULATION

The proposed regulations are not inconsistent or incompatible with federal statutes or regulations. The Bureau of Land Management (BLM) has overlapping jurisdiction over oil and gas production operations on federal land, but BLM's regulations do not require operators to submit cost estimate reports similar to what is required under Public Resources Code section 3205.7.

The US Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) is the federal agency primarily responsible for pipeline regulation and safety. (49 USC, § 108, subd. (b), (f).) It adopts regulations that prescribe minimum pipeline safety standards for the pipeline transportation of natural gas and hazardous liquids. (See 49 CFR, §§ 190-192, 195.) In California, the PHMSA requirements are implemented by the Public Utilities Commission on behalf of PHMSA. These regulations implementing the cost estimate reporting requirements of Public Resources Code section 3205.7 do not conflict with the PHMSA requirements for testing and inspecting pipelines.

CONSISTENCY WITH EXISTING STATE REGULATIONS

CalGEM has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. No other state agency is implementing the requirements of Public Resources Code section 3205.7 or otherwise requires comparable cost estimate reporting. The additional reporting required by the proposed regulations would be cumulative to the numerous existing state reporting requirements and neither redundant nor incompatible with them.

PLAIN ENGLISH REQUIREMENT

The Department staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349, subdivision (c), and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a) (1). The proposed regulations are written in a manner to be easily understood by the persons that will use them.

LOCAL MANDATE

The Department has determined that the proposed action does not impose a mandate on local agencies or school districts.

COST TO LOCAL AGENCIES

This proposed action does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies.

COST OR SAVINGS IN FEDERAL FUNDING

This proposal does not result in any costs or savings in federal funding to the state.

COST OR SAVINGS TO STATE AGENCIES

Implementation of the requirements in the proposed regulations would entail CalGEM to incur additional staff hours for support and oversight of operator compliance with the established cost estimate method. Through the five years of initial reporting, CalGEM will incur total expenses estimated to range between \$1.8 million and \$2.5 million from staff hours devoted to support and oversight operator compliance with the proposed regulations. Out of this total amount required, it is anticipated that CalGEM will incur expenses estimated to range between \$390,000 and \$543,000 during the first year of regulatory implementation and an annual average between \$350,000 and \$500,000 from the second year to the fifth year of regulatory implementation. These expenditure ranges depend on the cost estimate method selected by operators.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed regulation will have no significant effect on housing costs.

IMPACT ON BUSINESS

The proposed regulations will affect operators of oil and gas wells. The following reporting and compliance requirements will result from the proposed regulations:

- The proposed regulations will establish criteria that owners and operators of oil and gas wells must adhere to when complying with the requirement of Public Resources Code section 3205.7 to prepare and submit reports with cost estimates for plugging and abandoning each well, decommissioning each facility, and remediating each well site.
- The proposed regulations will establish a schedule of deadlines for owners and operators of oil and gas wells to submit cost estimate reports in accordance with the requirement of Public Resources Code section 3205.7.

The Department has made an initial determination that the adoption of these regulations will not contribute to the elimination of jobs and businesses in the oil and gas industry and will not create new business nor eliminate business within the State of California.

IMPACT ON SMALL BUSINESS

The Department has determined that the proposed regulations will most likely not affect small business.

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department drafted the proposed regulations after careful consideration of current best practices with regard to cost estimates for plugging and abandoning oil and gas wells, decommissioning attendant facilities, and remediating well sites, as well as similar statutes and regulations implemented by other federal and state agencies.

Additionally, the Department drafted the proposed regulations based on the requirements of Public Resources Code section 3205.7. It has been argued that there is no cost associated with the regulation, that instead all costs are associated with the statutory requirement, but conservatively, the economic impact analysis assumes the economic impact is associated with the criteria being imposed by these regulations.

The following areas of the proposed regulations have been identified by the Department as potentially resulting in economic impact on a representative operator:

- The preparation and submission of an initial report with cost estimates for plugging and abandoning each well, decommissioning each facility, and remediating each well site.
- The preparation and submission of follow-up reports no less frequently than five years after the initial report and each subsequent report with cost estimates for plugging and abandoning each well, decommissioning each facility, and remediating each well site.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Based upon its analysis, the Department determined:

- The proposed regulations will benefit the health and welfare of California residents, worker safety, and the environment.
- The proposed regulations may affect the creation of jobs within the State of California.

- The proposed regulations will not affect the creation of new businesses nor the elimination of existing businesses within the State of California.
- The proposed regulations will not affect expansion of businesses currently doing business within the state.
- The proposed regulations will most likely not affect the ability of businesses within California to compete with businesses in other states.

The proposed regulations satisfy CalGEM's statutory mandate under Public Resources Code section 3205.7 to:

- Require each operator of an oil or gas well to submit a report to the Supervisor that demonstrates the operator's total liability to plug and abandon all wells and to decommission all attendant production facilities, including site remediation.
- Develop criteria, including certain requirements, to be used by operators for estimating costs to plug and abandon wells and decommission attendant production facilities, including site remediation.

BUSINESS REPORTING REQUIREMENT

These regulations will implement the requirements under Public Resources Code section 3205.7 for the submission of information to the Department by businesses that own or operate oil and gas wells. The Department finds that it is necessary for the health, safety, or welfare of the people of this state that the submission of information required by these regulations applies to the affected businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at any hearing scheduled to take statements or arguments that are relevant to the proposed action.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Conservation
715 P Street, MS 1907
Sacramento CA 95814
Attn: Cost Estimate Regulations

Christine Hansen
Regulations Manager
Christine.Hansen@conservation.ca.gov
Phone: 916-694-7577

Nicholas Pesci
Regulations Analyst
Nicholas.Pesci@conservation.ca.gov
Phone: 916-208-4190

The Department has made available the express terms of the regulation, the Initial Statement of Reasons, and all the information upon which the proposal is based (the rulemaking record). Copies of these documents are available on the Department website at: <https://www.conservation.ca.gov/index/Pages/rulemaking.aspx> and via email from the contact persons listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Department will consider all timely and relevant comments received during the written comment period and at the public hearings above. Thereafter, the Department may adopt the proposed regulations in substantially the same form as described in this Notice.

If the Department makes any modifications to the text of the proposed regulations that are substantial, but sufficiently related to the original proposed text as described in this Notice, the Department will make the modified text (with changes clearly indicated) available to the public for at least 15 days before adopting the proposed regulations as modified. The Department will accept written comments regarding modified regulations for 15 days after the date upon which they are made available to the

public. Please send requests for copies of any modified regulations via email or mail to the persons identified as contact persons in this notice.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by sending an inquiry to one of the contact persons above. The Final Statement of Reasons will also be available on the Department website at:

<https://www.conservation.ca.gov/index/Pages/rulemaking.aspx>

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at:

<https://www.conservation.ca.gov/index/Pages/rulemaking.aspx>.

If you have any questions regarding the process of this proposed action, please contact the Department of Conservation by email at:

CalGEMCostEstimates@conservation.ca.gov.