



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Planning and  
Development  
Department No.: 053  
For Agenda Of: August 2, 2011  
Placement: Departmental  
Estimated Time: One hour  
Continued Item:  
If Yes, date from: Yes, June 7, 2011  
Vote Required: Majority

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**TO:** Board of Supervisors

**FROM:** Department Director(s) Contact Info: Dr. Glenn Russell, PhD, 568-2085  
Doug Anthony, Deputy Director, 568-2046

**SUBJECT:** Briefing on Hydraulic Fracturing

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**County Counsel Concurrence**

As to form: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

As to form: No

**Recommended Actions:**

That the Board of Supervisors receive a follow-up briefing on hydraulic fracturing, direct staff to continue its investigation of potential options available to the County to address future demand by members of the oil industry to enhance local oil production via hydraulic fracturing, and continue this item to September 20, 2011, to consider available options.

**Summary Text:**

At its hearing of June 7, 2011, the Board of Supervisors received a briefing on hydraulic fracturing, and continued the item to August 2, 2011, when Ms. Miller, State Oil and Gas Supervisor, Division of Oil, Gas and Geothermal Resources would be available to answer questions. The Board also requested staff to return with the following information in relation to regulatory oversight of hydraulic fracturing:

- Chart the current permitting path for oil and gas drilling and production
- Chart the fines and penalties available to enforce compliance with County regulations when violations occur
- Present actionable items to address issues related to future demand to conduct hydraulic fracturing in Santa Barbara County

### **Current Permitting Paths for Oil/Gas Drilling and Production (Inland)**

Attachment A charts the current permitting paths for oil and gas drilling and production inland of the Coastal Zone, pursuant to the County's Land Use and Development Code (LUDC), Petroleum Ordinance, the Fire Department's Business Plan program, the Santa Barbara County Air Pollution Control District's (APCD) regulations, and the Division of Oil, Gas, and Geothermal Resources' regulations (Title 14 of the California Code of Regulations). Permits for new production wells are issued in the following sequence: (1) a Land Use Permit or Oil Drilling and Production Plan pursuant to the Land Use and Development Code, along with the related environmental document;<sup>1</sup> (2) Permit to Conduct Well Operations from the California Division of Oil, Gas, and Geothermal Resources, and (3) Permit to Drill pursuant to the County's Petroleum Ordinance. APCD permits also follow issuance of the LUDC permits and related environmental review. Planning and Development serves as the Lead Agency pursuant to the California Environmental Quality Act (CEQA).

Staff has informed the industry that current proposals to conduct hydraulic fracturing typically require an Oil Drilling and Production Plan, with approval authority residing with the Planning Commission, pursuant to the LUDC permitting path summarized in Attachment A.

### **Current Enforcement Procedure**

Violations of the LUDC, such as conducting hydraulic fracturing without appropriate permit approvals, would be subject to the provisions of Chapter 24A, Administrative Fines, and Section 35-108, Enforcement and Penalties, of Chapter 35 of the Santa Barbara County Code. Attachment B charts the current processes for pursuing abatement of violations.

### **Regulation of Hydraulic Fracturing by the State of California**

Ms. Elena Miller, State Oil and Gas Supervisor, Division of Oil, Gas, and Geothermal Resources, California Department of Conservation (DOGGR), will be available for questions. Ms. Miller has previously stated that: "There is currently no permitting process for the recovery of natural gas via hydraulic fracturing in the State."<sup>2</sup> (This statement would apply to recovery of oil as well.) While the Division has an Underground Injection Control Program to address enhanced oil recovery, water disposal, and gas storage, hydraulic fracturing is not included in this program because the Division applies it only to sustained injection.<sup>3</sup>

Industry notes, and staff recognizes, that the Division's regulations address proper casing and cementing of wells. Such regulations are designed to prevent formation gases and fluids from entering groundwater aquifers through which the wellbore may traverse, and from escaping to the surface other than through the wellbore itself. However, a more comprehensive regulatory examination of hydraulic fracturing would appear prudent, based on recent efforts in New York.

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<sup>1</sup> Environmental review ranges from categorical exemptions, negative declarations (including mitigated negative declarations), and environmental impact reports.

<sup>2</sup> Letter to State Senator Pavley, February 16, 2011, included as Attachment A to the June 7, 2011 staff report on hydraulic fracturing.

<sup>3</sup> Injection of fluids under hydraulic fracturing is considered to be temporary, because fluids, termed "flowback" are allowed to return to the surface after fracturing of the target formation is achieved. Immediate recovery of fracking fluids varies, but usually is 35% or less of the volume initially pumped into the wellbore at pressure. Presumably, additional volumes of fracking fluids are recovered during production.

The New York State Department of Environmental Conservation (NYSDEC) recently published a *Supplemental Generic Environmental Impact Statement – Well Permit Issuance for Horizontal and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs* (SGEIS).<sup>4</sup> This SGEIS assesses environmental impacts of separate actions that have similar types of impacts in order “... to set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQRA [New York State Environmental Quality Review Act] compliance.”

The SGEIS comprehensively examines projected future hydraulic fracturing operations in the New York State area, among other things addressing the potential to impact water resources, and to induce (cause) seismic activity. The examination recommends mitigation measures directly associated with future hydraulic fracturing operations, some of which have been or may be incorporated into regulation. Some of the recommended mitigation stems from a brief review of selected non-routine incidents that resulted during hydraulic fracturing operations in Pennsylvania.<sup>5</sup> The SGEIS also identifies generic criteria under which hydraulic fracturing may take place without subsequent environmental assessment, provided that no project-specific well drilling and production features would otherwise trigger environmental review. Those criteria include proximity of the target subsurface formation in which hydraulic fracturing is proposed to the surface and to groundwater, and proximity of the drill site to specific water resources.

### **Potential Actionable Options for Santa Barbara County**

1. **Program Environmental Impact Report (PEIR) and Code Revision.** The County could prepare a PEIR to identify environmental impacts and related mitigation unique to hydraulic fracturing, absent any near-term effort by the State of California to duplicate New York’s Supplemental Generic Environmental Impact Statement. CEQA Guidelines (§ 15168) envision the use of PEIRs in connection with “the issuance of rules, regulations, or other general criteria to govern the conduct of a continuing program.” In this case, a generic treatment of hydraulic fracturing the Monterey shale would be the focus.

While New York State’s SGEIS assesses the potential to open new areas to gas development, the scope of the County’s PEIR might focus on impacts that are unique to hydraulic fracturing within existing state-designated oil/gas fields. Water resources, public health, and seismicity would be key areas of focus. Resulting findings of potential impacts and mitigation could be used to augment development standards in the LUDC to address occurrences of hydraulic fracturing. Using the New York State SGEIS as an example, potential regulation would include surveys in the vicinity of proposed hydraulic fracturing to ensure no presence of naturally occurring open faults or existing wells that could provide pathways for fracking fluids to reach groundwater or surface waters. Environmental review for the permitting of specific projects could use the PEIR in a manner similar to how PEIRs are used to adopt Community Plans and subsequent development. Specific projects would still be subject to environmental review typical for onshore oil and gas projects.

Staff has discussed this concept with some stakeholders to date, and seeks the Board’s direction to continue this dialogue. Ultimately, any decision to prepare a PEIR would depend upon the oil industry’s willingness to fund it. In return, the PEIR would provide a public process, outside the

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<sup>4</sup> <http://www.dec.ny.gov/energy/75370.html> (Preliminary Revised Draft – July 2011). This document augments the NYSDEC’s augmented its 1992 *Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program* (GEIS 1992) <http://www.dec.ny.gov/energy/47368.html>.

<sup>5</sup> Potential to impact floodplains, freshwater wetlands, ecosystems and wildlife, air quality, visual and acoustic aesthetics, roads, and community character were also included in the assessment.

context of a specific project or site, to address the potential impacts and remedies associated with hydraulic fracturing and respond to public concerns. It also would provide opportunities to streamline future environmental review via tiering, as envisioned in CEQA. Lastly, it would forward the opportunity to enact a more thoroughly defined, regulatory process via predictable rules and regulations.

2. **Pending Legislation – Disclosure of Fracking-Fluid Chemicals.** The June 7, 2011 staff report summarized two bills pending before Congress (HR 1084 and S 587), and one bill before the California Legislature (AB 591) that seek public disclosure of chemicals used in hydraulic fracturing operations. The County’s Legislative Committee met on June 27<sup>th</sup> to consider these bills. The Committee voted unanimously to recommend to the full Board of Supervisors support of the two federal bills. It also discussed a position to oppose AB 591, unless revised to improve disclosure. The legislature has revised AB 591 since June 7<sup>th</sup>, with some provisions being deleted. Required mapping of state groundwater resources in relation to hydrocarbon resources and required public notification of chemicals prior to commencement hydraulic fracturing operations were both deleted. AB 591 has continued to pass through various committees, most recently the Senate Environmental Quality Committee on June 27. It will next be heard in the Senate Appropriations Committee on August 15.

**Fiscal Analysis:**

Staff time to research and prepare this briefing is funded in the Administration Program of the Development Review Division, North found on page D-316 of the FY 11-12 budget book.

**Attachments:**

- A. Current Permitting Pathways
- B. Zoning Enforcement Fines and Penalties