

BOARD MEETING DATE: January 9, 2015

AGENDA NO. 7

**PROPOSAL:** Approve Memorandum of Agreement Among Division of Oil, Gas, and Geothermal Resources, CARB and SCAQMD Regarding Well Stimulation Treatments and Well Stimulation Treatment – Related Activities

**SYNOPSIS:** Senate Bill 4 (Pavley), adopted in 2013, requires the Division of Oil, Gas, and Geothermal Resources (DOGGR) to adopt rules & regulations specific to well stimulation activities and hydraulic fracturing treatments. Senate Bill 4 also requires DOGGR to enter into formal agreements with CARB and local air districts where well stimulation activities may occur. The agreements shall delineate the respective authority, responsibility, and notification and reporting requirements for each agency that are related to such activities.

**COMMITTEE:** Administrative, December 12, 2014; Reviewed

**RECOMMENDED ACTION:**

Authorize the Executive Officer to execute the attached Memorandum of Agreement among the Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR), CARB, and SCAQMD Regarding Well Stimulation Treatments and Well Stimulation Treatment – Related Activities, as is required by Senate Bill 4 (Pavley, 2013) and to determine whether to accept any additional changes in consultation with the Board Chairman.

Barry R. Wallerstein, D. Env.  
Executive Officer

## **Background**

In recent years, increasing public interest and concern regarding the use of hydraulic fracturing and other well stimulation techniques for oil and gas drilling has caused California regulatory agencies and the state legislature to examine these activities more closely. The SCAQMD Governing Board adopted Rule 1148.2 on April 5, 2013, which requires well operators and suppliers of well stimulation materials to provide specified information to the SCAQMD. While several legislative bills have been proposed, the only comprehensive legislative measure dealing with hydraulic fracturing is SB 4 by Senator Fran Pavley, which was adopted in 2013. This bill required DOGGR to develop rules and regulations specific to well treatment activities and hydraulic fracturing treatments. Senate Bill 4 also requires DOGGR to enter into formal agreements, by January 1, 2015, with CARB and local air districts where well stimulation activities may occur.

Pursuant to SB 4, the agreement is required to delineate the respective authority, responsibility, and notification and reporting requirements for each agency that are related to well stimulation activities. The agreement also provides for the sharing of information, including trade secret information, in accordance with confidentiality agreements. The agreement provides for SCAQMD comments on well stimulation permits to be issued by DOGGR, and requires the SCAQMD and CARB to notify DOGGR if they discover any equipment failures or violations of the DOGGR regulations or the well stimulation permit during their monitoring and enforcement activities, and requires DOGGR to notify CARB and the SCAQMD upon discovering any potential or actual unauthorized air emissions resulting from improperly maintained equipment, or any air quality related nuisance. The agreement provides that nothing in SB 4 limits the existing authorities of any of the Parties (DOGGR, CARB, or the SCAQMD).

Staff has negotiated terms of the agreement with staff from CARB and DOGGR. Attached is the master MOA to be signed by all affected air districts, except the San Joaquin Valley District which will enter into its own separate agreement with DOGGR (part of the Department of Conservation). DOGGR has recently agreed to allow Air Districts 45 days to comment on the Well Stimulation Treatment permits proposed by DOGGR as we have requested, based on the concern that individual permits will likely cover a number of wells and require extensive analysis. DOGGR has agreed to include a paragraph regarding SCAQMD activities relative to fracking and related activities. The draft agreement attached hereto includes all the changes recommended by SCAQMD staff, which have now been agreed to by DOGGR and CARB staff.

## **Proposal**

Authorize the Executive Officer to execute the attached Memorandum of Agreement among DOGGR, CARB, and SCAQMD regarding Well Stimulation Treatments and Well Stimulation Treatment – Related Activities, and to determine whether to accept any

additional changes that may be proposed by the parties prior to executing the Agreement, in consultation with the Board Chairman. .

**Resource Impacts**

The Memorandum of Agreement will be carried out using existing staff resources.

**Attachment**

Final Memorandum of Agreement with DOGGR and CARB with SCAQMD Proposed Amendments

**MEMORANDUM OF AGREEMENT  
AMONG THE  
DEPARTMENT OF CONSERVATION, DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES  
AND  
CALIFORNIA AIR RESOURCES BOARD  
AND  
LOCAL AIR DISTRICTS  
REGARDING  
WELL STIMULATION TREATMENTS AND WELL STIMULATION TREATMENT-RELATED  
ACTIVITIES**

**I. PURPOSE**

This Memorandum of Agreement (“MOA”) satisfies certain provisions of Senate Bill 4 (Chapter 313, Statutes of 2013), hereinafter referred to as “SB 4.” Among other requirements, SB 4 directs the Division of Oil, Gas, and Geothermal Resources in the California Department of Conservation (“Division”) to enter into one or more formal agreements with the California Air Resources Board (“Air Board”) and any local air districts (“Air Districts”) where well stimulation treatments may occur. The formal agreement(s) must delineate the agencies’ respective authority, responsibilities, and notification and reporting requirements associated with well stimulation treatments and well stimulation treatment-related activities, including air quality monitoring. (Pub. Resources Code, § 3160, subd. (c)(2).) In addition, the formal agreement(s) must specify the public entity responsible for air quality monitoring, include trade secret handling protocols as necessary, and provide for ready public access to information regarding well stimulation treatments and the related activities. (Pub. Resources Code, § 3160, subd. (c)(3).) This MOA satisfies these requirements, focusing on the concurrent or similar legal authority, responsibilities, and requirements of the Division, Air Board, and Air Districts (collectively, the “Parties”) to protect public health and safety and the environment.

The Parties share a common goal of protecting the People of the State of California, including by controlling air pollution which could result from well stimulation activities. The purpose of this MOA is to outline a coordinated approach to exercising the regulatory responsibilities of the Parties as they relate to well stimulation activities. In entering into this MOA, the Parties commit to efficiently pursuing this common goal, considering their respective financial constraints and available resources. Nothing in this MOA shall limit the existing authority of the Air Board, Air Districts, or Division.

## II. OVERVIEW OF LEGAL AUTHORITY AND SB 4 REQUIREMENTS

### A. Division

Chapter 1 (Oil and Gas Conservation) of Division 3 (Oil and Gas) of the Public Resources Code (commencing with section 3000) governs oil and gas exploration and production activities in the State. The chapter establishes the Division as the principal state agency charged with regulating the drilling, operation, maintenance, and abandonment of oil and gas wells on land not held by the federal government. The State Oil and Gas Supervisor supervises these activities on behalf of the Division as well as the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production. Such supervision is “to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances.” (Pub. Resources Code, § 3106, subd. (a).)

In regulating oil and gas activities and related facilities to protect the public and environment, the Division’s regulatory powers outside of and supplementary to SB 4 include, but are not limited to: (1) requiring an operator to implement a monitoring program designed to detect releases to the air, soil, surface water, and groundwater from aboveground oil production tanks and facilities; (2) issuing permits or approvals for oil and gas activities, such as the drilling or abandonment of wells; (3) investigating the environmental conditions and inspecting facilities associated with oil and gas activities and preparing related reports; (4) ordering and/or undertaking tests or remedial work; and (5) issuing enforcement orders for violations of applicable oil and gas law and permits or approvals.

SB 4 requires the Division to review applications from operators for well stimulation treatment permits (“WST Permits”). The Division may issue any such permit if the application is complete and any other applicable legal requirements are satisfied. In addition, SB 4 establishes requirements for the handling of information that is or may be a trade secret and information that may relate to a well that the Division granted confidential status. SB 4 provides authority to the Division to enforce against violations of Chapter 1 and its implementing regulations.

### B. Air Board

The Air Board has ultimate responsibility for adopting and carrying out the State Implementation Plan required under the federal Clean Air Act in California, and works in partnership with local air districts to protect public health and welfare. The Air Board has regulatory authority for greenhouse gases, toxic air contaminants, and emissions generally from a broadly defined class of vehicular and mobile sources. (Health & Saf. Code, §§ 38510 (greenhouse gases); 39650 et seq. (toxic air contaminants and hazardous air pollutants); 39002, 43013, 43018 (vehicular and mobile sources)).

More specifically, pursuant to the California Global Warming Solutions Act (“AB 32”) and related authorities, the Air Board is the state agency charged with monitoring and regulating sources of greenhouse gas emissions and enforcing any measure or regulation it adopts pursuant to AB 32 (Health & Saf. Code, §§ 38510, 38580). For toxic air contaminants, Health and Safety Code section 39666 gives the Air Board authority to promulgate “airborne toxic control measures” (“ATCMs”) using a process and criteria set forth in section 39665. Such measures are designed to address sources of the air toxics presenting the highest health risks statewide. The Air Board is also charged with coordinating regional and local efforts to attain and maintain compliance with both state and national ambient air quality standards. (Health & Saf. Code, §§ 39003, 39602, 41500.) For all these purposes, the Air Board has broad authority to collect and develop data on air quality and air pollution, monitor air pollutants, and adopt rules and regulations. (See, e.g., Health & Saf. Code, §§ 39600, 39605, 39607, 39659, 38530, 39701(a)(2) & (b), 41511, 41750-41755, 42700-42708, 44300 et seq., Cal. Code Regs., tit. 17, § 91100.)

The Air Board can use these authorities to conduct, or require sources to conduct, any air quality monitoring, testing, sampling, or reporting activities, including investigations of well stimulation treatment activities of the sort addressed by SB 4.

### **C. Air Districts**

Air Districts have authority and responsibility for the control of air pollution from all sources except motor vehicles. (Health & Saf. Code, §§ 39002, 40000.) Air Districts are required to adopt regulations for nonvehicular sources to achieve and maintain the state and federal ambient air quality standards. (Health & Saf. Code, § 40001.) They enforce all provisions of state and federal air pollution law for sources within their jurisdiction. (*Ibid.*) Air Districts enforce the Air Board-adopted ATCMs, or equally-effective or more stringent regulations for toxic air contaminants adopted by the Air Districts (Health & Saf. Code, § 39666). They also have independent authority to regulate toxic air contaminants from nonvehicular sources. (*Western Oil & Gas Ass’n. v. Monterey Bay Unified APCD*, 49 C. 3d 408 (1989).) Air Districts may require the holder of or applicant for a permit to provide information regarding the source’s emissions (Health & Saf. Code, § 42303) and may adopt rules to require the owner or operator of a source to take such steps as the District considers reasonable for the determination of the amount of emissions from such source, including source testing, sampling, monitoring and recordkeeping. (Health & Saf. Code, § 41511.) They may also require sources to install and operate monitoring devices. (Health & Saf. Code, § 42700 et seq.) Air Districts implement permit systems for nonvehicular sources. The permits are required to ensure that the source complies with all applicable air pollution control requirements. (Health & Saf. Code, §§ 42300, 42301.) Except as specifically provided in the Health and Safety Code, Air Districts may adopt additional, more stringent requirements for nonvehicular sources than those established by law or by the Air Board. (Health & Saf. Code, § 41508.)

### **III. SCOPE OF AGREEMENT**

The following procedures have been formulated and agreed to by the Parties to: (1) streamline notification and reporting requirements associated with well stimulation treatments and well stimulation treatment-related activities; (2) clarify responsibility for air monitoring; and (3) specify protocols for sharing information claimed or deemed to be trade secrets.

### **IV. RESPONSIBILITIES AND REQUIREMENTS REGARDING WELL STIMULATION TREATMENTS AND WELL STIMULATION TREATMENT-RELATED ACTIVITIES**

The Division, Air Board, and Air Districts shall have the following responsibilities and requirements regarding well stimulation treatments and well stimulation treatment-related activities:

#### **A. Well Stimulation Treatment Permits and Related Information**

1. Upon receiving a WST Permit application that includes information related to air quality, the Division shall forward a copy of the application (or some portion thereof as the Air Board or Air District determines to be relevant to regulating air quality) to the Air Board and relevant Air District(s) where well stimulation treatments may occur. The Air Board and Air Districts, as appropriate, shall assist the Division in identifying the types of information that are related to air quality. The Division shall notify designated personnel at the Air Board and Air District of, and provide to them, any additional information that the Division receives during the application process that is related to air quality.
2. Upon determining that the Division received a complete application for a WST Permit pursuant to section 1783, subdivision (c) of title 14 of the California Code of Regulations, the Division shall so notify the Air Board and any relevant Air District in writing. The Division shall make the complete application (or some portion thereof as the Air Board or Air District determines to be relevant to regulating air quality) available to the Air Board and Air Districts in accordance with Section IV.F (Information Sharing) of this MOA.
3. To the extent that the Division receives WST application data in, or enters WST application data into, a readable, searchable, and sortable electronic format (e.g., a spreadsheet), the Division shall share the information in that format with the Air Board and Air District.
4. Except where the Parties agree to a more expedited review upon the Division's request, the Air Board and Air Districts shall have up to 45 days from when the Air Board or an Air District determines that the application is complete for purposes of regulating air quality and so notifies the Division in writing, or from when the

Division notified the Air Board and Air District that the application is complete pursuant to paragraph 2 of Section IV.A of this MOA, whichever is earlier, to provide comments to the Division.

5. In reviewing the WST Permit application, the Air Board and/or Air District may request from the Division, in writing, additional information that the Air Board or Air District determines is relevant to regulating air quality.
6. The Air Board and/or Air District may recommend that the Division add provisions (such as mitigation measures) to the WST Permit to address the Air Board's and/or Air District's air quality concerns.
7. The Division shall consider all comments received from the Air Board and any Air District in preparing the WST Permit.
8. The Division shall post a copy of the final WST Permit on the Division's website. In the event that some or all of a WST Permit is not posted on the Division's website as a result of legal protections against public disclosure, the Division shall notify the Air Board and Air District when any information being withheld is relevant for purposes of regulating air quality. The Division shall share any such withheld information with the Air Board and the Air District upon request and in accordance with Section IV.F (Information Sharing) of this MOA. The Air Board and Air Districts, as appropriate, shall assist the Division in identifying the types of information in a final WST Permit that are relevant for purposes of regulating air quality. To the extent that the Division has the withheld information in a readable, searchable, and sortable electronic format (e.g., a spreadsheet), the Division shall share the information in that format with the Air Board and Air District.
9. Issuance of a WST Permit by the Division shall not preclude or preempt the Air Board or any relevant Air District from enforcing or imposing existing or future regulations, including, but not limited to, monitoring, reporting, recordkeeping, notification or permit requirements, including requirements that may be different or more stringent than requirements imposed by the Division.
10. When the Division receives 72-hour notice that the WST Permit applicant will be commencing well stimulation, the Division shall, within 24 hours, transmit that notice and confirmation to the Air Board and any relevant Air District. This provision applies both to any initial notice given by the WST Permit applicant and to any additional notices, confirmations, or cancellations which the Division receives that are related to the 72-hour notice.
11. The Division shall notify the Air Board and any relevant Air District when the Division does not post information received pursuant to section 1788 or 1789 of title 14 of



the California Code of Regulations (The Well Stimulation Treatment Disclosure Reporting Form and Post-Well Stimulation Treatment Report), which is relevant for purposes of regulating air quality, on the Division's website as a result of legal protections against public disclosure. The Division shall share that withheld information with the Air Board and the relevant Air District upon request and in accordance with Section IV.F (Information Sharing) of this MOA. The Air Board and Air Districts, as appropriate, shall assist the Division in identifying the types of information submitted in response to sections 1788 and 1789 that are relevant for purposes of regulating air quality. To the extent that the Division has the withheld information in a readable, searchable, and sortable electronic format (e.g., a spreadsheet), the Division shall share the information in that format with the Air Board and Air District.

12. As used in Section IV.A of this MOA, "in writing" shall include messages sent by electronic mail or using a Webportal.

## **B. Investigation, Monitoring, and Reporting**

1. The Air Board and Air Districts are primary responsible entities for air quality monitoring and retain continuing authority to conduct air quality monitoring, sampling, and investigations, as they deem appropriate; to conduct site visits and enforcement activities at sites where well stimulation treatment is occurring; and to require air pollution monitoring, testing and reporting from operators conducting well stimulation treatment. The Air Board or Air District, as appropriate, shall notify the State Oil and Gas Supervisor or his/her designee of any equipment failures (e.g., leaking tanks) observed by the Air Board or Air District during an investigation.
2. For the purpose of regulating to prevent the unreasonable waste of oil and gas during production, the Division shall be responsible for ensuring that operators properly maintain equipment used during a well stimulation treatment or during well stimulation treatment activities in leak-free condition. The Division shall promptly notify the Air Board and any relevant Air Districts when: (i) the Division discovers potential or actual unauthorized air emissions, including odors, resulting from improperly maintained equipment; or (2) the Division receives a complaint of potential or actual unauthorized air emissions, including odors.
3. The Division, on one hand, and the Air Board and Air Districts, on the other hand, shall engage in efforts to cross-train each other's staff, as the Parties deem appropriate, to enhance field investigations designed to ensure compliance with WST Permits, air quality permits, and other entitlements associated with well stimulation treatments and related laws under the Parties' respective legal authorities.

4. The Division shall consult with the Air Board/appropriate Air District prior to requiring an operator to implement a monitoring program designed at least in part to detect releases to ambient air associated with well stimulation treatment or well stimulation treatment-related activities, if such a program is required under the California Environmental Quality Act or any other laws or agreements.

### **C. Enforcement Coordination**

1. The Division shall, as soon as is practicable, notify the Air Board and appropriate Air District of any potential or actual air-quality related nuisance or unauthorized pollution conditions associated with well stimulation identified during the Division's inspection activities or in a complaint received by the Division.
2. The Air Board or appropriate Air District shall, as soon as is practicable, notify the State Oil and Gas Supervisor or his/her designee of any potential or actual violations of the Division's regulations or WST Permit requirements identified during their inspection activities or in a complaint received by the Air Board or Air District.
3. If the Division, Air Board, or Air District determines that there is a violation of air quality-based statutory or regulatory requirements associated with well stimulation treatments or well stimulation treatment-related activities (e.g., WST Permit requirements, air permit), the agency may take any actions under its authority that the agency deems appropriate to ensure that compliance is achieved, including penalty assessment or negotiated settlements in lieu thereof.
4. If an Air District issues a Notice of Violation relating to a well stimulation activity that involves stationary sources, the Air District shall promptly provide a copy to the State Oil and Gas Supervisor or his/her designee. If the Division determines that a violation has occurred related to well stimulation activities that the Division knows involves, or suspects may involve, emissions into the ambient air, it shall notify the Executive Officer of the Air Board and the Executive Director or Officer of the appropriate Air District (or his/her designee) promptly upon notifying the alleged violator.
5. The Parties may coordinate their enforcement actions (e.g., share investigative reports, witnesses, or other evidence) to the extent that the Parties deem appropriate.
6. Nothing in this MOA shall be construed as precluding the Parties from taking independent enforcement actions or from responding timely to an emergency.

#### **D. Air Quality Planning and Coordination**

1. The Air Board is designated as the state agency responsible for the preparation of the State Implementation Plan required under the federal Clean Air Act and, to this end, coordinates the activities of all districts to attain and maintain both state and national ambient air quality standards, even in light of population or industrial growth. Both the Air Board and Air Districts have responsibility for ensuring that all areas of the state come into, and remain, in attainment with federal ambient air quality standards, and comply with other relevant Clean Air Act requirements. As such, the Air Board and Air Districts shall continue to work together, in consultation with the Division when appropriate, to prevent any air pollution associated with well stimulation activities from impairing compliance with these mandates. These efforts may include, but are not limited to, regulatory initiatives on the part of both the Air Districts and Air Board, which may lead to improved monitoring and control of air toxics, criteria pollutants, and greenhouse gas pollutants from well stimulation practices, as well as other aspects of oil and gas production.
2. The Division may regulate to prevent the unreasonable waste of gas through the use of flares under Chapter 1 (Oil and Gas Conservation) of Division 3 (Oil and Gas) of the Public Resources Code (commencing with section 3000). Under various authorities, the Air Board and Air Districts regulate the use of flares with regard to air emissions. The Air Board and Air Districts shall, as soon as is practicable, provide to the State Oil and Gas Supervisor or his/her designee a copy of any permit or other entitlement issued by the Air Board or Air District that authorizes the flaring of gas during well stimulation treatment or well stimulation treatment-related activities.
3. The Parties shall attempt to identify opportunities, in addition to those identified in this MOA, to share information regarding well stimulation treatment and well stimulation treatment-related activities, for example, by identifying reporting requirements to which operators are subject and exchanging the information reported for regulatory purposes. In implementing this MOA and in identifying the additional opportunities for information sharing, the Parties shall work toward developing a common understanding of terms frequently used in regulating well stimulation treatment and well stimulation treatment-related activities.
4. The Air Board adopts and enforces off-road and on-road vehicle regulations to reduce emissions from off-road equipment, such as those used for well site preparation, and from on-road vehicles, such as those used to bring equipment and supplies to and from well stimulation sites. In addition, the Air Board has adopted a Portable Engine Air Toxic Control Measure, implemented and enforced by both the Air Board and the Air Districts, to reduce diesel particulate matter from portable engines, such as those used in drilling rigs and well stimulation pumps.

5. Under the Air Toxics “Hot Spots” Act (Health & Saf. Code, § 44300 et seq.), the Air Districts manage a formal air toxics emission inventory risk quantification program. The goal is to collect emission data indicative of routine predictable releases of toxic substances to the air, to identify facilities having localized impacts, to evaluate health risks from exposure to the emissions, to notify nearby residents of significant risks, and to reduce risk below the determined level of significance. The Air Districts transmit all monitoring data contained in the emissions inventory report to the Air Board. Information gathered from this program complements the Air Board’s existing toxic air contaminant program by locating sources of substances that were not under evaluation and by providing exposure data needed to develop regulations for control of toxic air pollutants.
6. Air Districts in which oil or gas wells are located typically implement various regulations affecting these activities, which may include requiring permits for certain equipment such as oil/water separators, gas treatment systems, storage tanks, etc. Included in these requirements is that most new permitted equipment at such sources requires the best available air pollution controls, and that increases in emissions from permitted equipment are mitigated. Certain equipment used at oil or gas exploratory and production sites, such as engines driving oil well drilling and workover rigs, may be regulated under the state Portable Equipment Registration Program, under which a registration is issued by the Air Board but the Air Districts enforce the state requirements. Under their statutory authority, Air Districts also require permits for engines which are part of a stationary sources, remain in one location for too long, or otherwise require permits in an individual District rather than a registration under the Portable Equipment Registration Program.
7. Air Districts enforce the state law prohibiting emissions which endanger public health or cause nuisance or annoyance to any considerable number of persons, e.g., odors or emissions causing respiratory symptoms. (Health & Saf. Code, § 41700.)
8. Air Districts adopt and enforce a variety of federal, state, and local regulations limiting emissions of volatile organic compounds (an ozone precursor) and toxic air contaminants from these sources, such as leak detection and repair requirements, prohibition of gas venting, and vapor recovery systems.
9. Air Districts may adopt regulations to require operators to notify the Air District of well stimulation activities, and to require operators and suppliers to inform the Air District of the chemicals used in these activities. If these activities or the chemicals used in them present a threat to public health or air quality, the Air Districts may adopt further regulations limiting or regulating these activities. The Air Districts shall consult with the Division in developing any regulations applicable to well stimulation treatment or well stimulation treatment-related activities.

10. Air Districts may respond to requests for comments from Lead Agencies under the California Environmental Quality Act (“CEQA”) on oil and gas exploration and development projects, such as those from the Division. Air Districts may also act as Lead Agencies for such projects, if no other agency with a greater degree of responsibility has a discretionary decision. Prior to completing an environmental impact report under CEQA for WST, in accordance with CEQA, the Division shall consult with, and may obtain comments from, the Air Board and the relevant Air Districts as Responsible Agencies.
  
11. The South Coast Air Quality Management District (“SCAQMD”) adopted Rule 1148.2 on April 5, 2013, “Notification and Reporting Requirements for Oil and Gas Wells and Chemical Suppliers” to supplement existing rules pertaining to oil and gas production operations. Rule 1148.2 applies to oil and gas well operators and to any supplier distributing a chemical to an operator for use as a drilling fluid, well completion fluid, or rework. Operators must notify the SCAQMD at least 24 hours and no more than 10 days before beginning any drilling, well completion, or rework, to allow SCAQMD inspectors to observe the operation. Operators must submit reports containing specified information regarding their drilling, well completion, or rework, and suppliers must provide information to the operator regarding the chemical ingredients, amounts and purposes of the chemicals used for drilling, well completion or rework. If the supplier claims trade secret, the information must be provided to the SCAQMD. The SCAQMD makes non-trade-secret information available to the public on its website. In addition, the SCAQMD conducts inspections of well operations, monitors air quality, responds to odor complaints, and enforces applicable SCAQMD rules, including permit rules, as well as enforcing the Air Board’s Portable Equipment Registration Program as appropriate. Where an oil or gas operation creates a public nuisance, the SCAQMD takes enforcement action which may include seeking an Order for Abatement from the SCAQMD Hearing Board to require measures to eliminate the nuisance, and seeking appropriate civil penalties.

**E. Review Following Initial Implementation of the MOA and Completion of Mandated Documents**

1. At a time following the initial implementation of this MOA that the Parties deem appropriate, the Parties should meet to discuss and potentially modify the procedures (including timeframes) specified herein as related to Section IV.A with the goal toward improving the efficiency of the procedures while continuing to fulfill their regulatory purposes.
  
2. In addition to any other meetings that may otherwise be required, the Division, Air Board, and Air Districts should meet to review this MOA: (1) following completion of the independent scientific study required by SB 4, and again (2) following completion of the Environmental Impact Report required by SB 4.

3. The Division, Air Board, and Air Districts should amend this MOA if and to the extent necessary to ensure that the MOA is consistent with and accounts for the independent study and Environmental Impact Report required by SB 4.

#### **F. Information Sharing**

1. For the purpose of regulating well stimulation treatment and well stimulation treatment-related activities, the Division, the Air Board, and the Air Districts may exchange information in a manner that is consistent with SB 4, the Public Records Act (Gov. Code, § 6250 et seq.), and any other applicable law. The information that the Parties may exchange includes, but is not limited to, information that is subject to confidential well status pursuant to Public Resources Code section 3234 and information that is subject to protection as a trade secret.
2. Any information shared or exchanged between or among the Parties that the transmitting Party deems protected from public disclosure shall include a written advisory to that effect (e.g., include “Confidential” in the subject line of a transmitting electronic mail). As used in this MOA, “Confidential Communication” refers to such information transmitted with the written advisory.
3. Only persons authorized in writing by the Director of the Department of Conservation, the Executive Officer of the Air Board, or the Executive Director or Officer of an Air District (as applicable) shall be permitted to obtain or view Confidential Communications.
4. Except by written agreement, or as required by court order, neither the Division, Air Board, nor Air Districts shall release, disclose, discuss, or otherwise make available to the public any Confidential Communication or any other information which SB 4, the Public Records Act, or any other applicable law protects from public disclosure.
5. A Party that receives a request from a non-Party to release, disclose, discuss, or otherwise obtain access to any Confidential Communication (whether by way of subpoena, discovery request, request under the Public Records Act, or other federal or state law) shall notify the transmitting Party that deemed the information protected of the request before the date on which a response to such a request is due, with the goal of providing the notice at least five calendar days before the response deadline. Unless the transmitting Party consents to disclosure or release of the Confidential Communication, the Party that received the disclosure request shall assert all relevant privileges and other objections to the disclosure to the extent authorized by law and subject to any court orders.

## **G. Other Responsibilities and Requirements**

1. The Division, Air Board, and Air Districts continue to have any other responsibilities and requirements as set forth in SB 4 and other statutes, regulations, and orders.
2. Any responsibility or requirement set forth in this MOA that is inconsistent with any regulation of the Division, Air Board or any Air District shall be inoperative.
3. It is the understanding of the Parties that nothing in SB 4 or this MOA limits the existing authorities of any of the Parties, and the Parties shall exercise their own authorities and responsibilities in a manner consistent with this understanding.

## **V. ADDITIONAL PROVISIONS AND AGREEMENTS**

### **A. Contact Information Within an Agency**

1. Each Party is responsible for providing its contact information (e.g., electronic mail addresses and/or Webportal designations) to the other Party for transmitting notices and other information under this MOA.
2. No later than the effective date of this MOA, as specified below, the Parties shall exchange their contact information for implementing this MOA. The State Oil and Gas Supervisor shall provide the Division's contact information to the Executive Officer of the Air Board and the Executive Director or Officer of each Air District. The Executive Officer of the Air Board and the Executive Directors and Officers of the Air Districts shall provide their contact information to the Oil and Gas Supervisor.
3. Each Party shall be responsible for updating its contact information with the other Parties, as appropriate, to ensure receipt of the notices and other information described in this MOA.
4. Each Party shall assist the others in identifying the appropriate contact(s) including agency personnel, for receiving information or handling inquiries regarding the matters addressed in this MOA.

### **B. Reservation of Authority**

1. Nothing in this MOA shall be construed as delegating, limiting, or expanding the authority of the Division, Air Board, or any Air District in carrying out their respective legal responsibilities for the management, regulation, coordination, and control of well stimulation treatments and well stimulation treatment-related activities.

2. Nor shall anything in this MOA be construed as affecting the discretion of the Division, Air Board, or any Air District in carrying out their respective legal responsibilities for the management, regulation, coordination, and control of well stimulation treatments and well stimulation treatment-related activities.
3. This MOA does not limit the authority of the Air Board under the California Global Warming Solutions Act and, except as provided herein, does not create and shall not be construed to create any right, permission, or requirement for the Air District to implement or enforce any authority of the Air Board regarding regulations adopted by the Air Board pursuant to AB 32 (Nunez).
4. Nothing in this MOA shall be construed as limiting or eliminating the authority of the Air Board or any Air District from applying or adopting future regulations or requirements within their respective jurisdictions, including, but not limited to, regulations or requirements which are more stringent than or otherwise go beyond the requirements imposed by the Division, or which regulate greenhouse gas emissions from non-vehicular sources.

#### **C. Execution, Term, and Modification**

1. This MOA represents the entire agreement of the Parties, and merges and supersedes any prior written or oral representations, discussions, understandings or agreements by, between, or among the Parties relating to the subject matter of this MOA.
2. This MOA shall become effective upon the date of the last signature of the Parties designated in Section VI below and shall continue in full force and effect unless modified, replaced or terminated by operation of law, except as provided in subparagraph V D 1 below.
3. This MOA may be modified or replaced upon the initiative of any Party for the purpose of ensuring consistency with State, Federal or local statutes or regulations, or for any other purpose mutually agreed upon. Any such modifications or replacement must be in writing and must be signed by an authorized representative of each of the Parties.
4. The Parties may execute this MOA in counterparts. Each executed counterpart shall have the same force and effect as an original instrument. Taken together, the executed counterparts shall constitute one and the same agreement.



**D. Ability to Enter Into Other Agreements**

1. Any individual Air District may withdraw from this MOA without the consent of the other Parties. Any such withdrawing district shall expeditiously negotiate with the Air Resources Board and the Division to enter into a separate substitute agreement which achieves the goals of SB4. No party may unreasonably withhold approval of such a substitute agreement.
2. The Division may enter into additional side agreements to this MOA with the Air Board or any individual Air District for purposes of achieving the goals of SB 4 and regulating well stimulation treatments and well stimulation treatment-related activities. Any such additional side agreements shall not conflict with this MOA.

**E. Construction**

1. There may be instances in which more than one Air District should receive notice or other information from the Division in accordance with this MOA. The Division shall attempt to identify such instances and provide the subject information to all appropriate Air Districts. The Air Districts and Air Board should assist the Division in this regard.
2. Any determination that a provision of this MOA is invalid does not invalidate any other provision of this MOA or the MOA in its entirety.

**F. Representation on Authority**

Each Party represents and warrants that it has the right, power, and authority to execute this MOA. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this MOA for it, to enter into this MOA.

**VI. SIGNED AND DATED**

\_\_\_\_\_  
MARK NECHODOM  
Director  
CALIFORNIA DEPARTMENT OF CONSERVATION

\_\_\_\_\_  
STEVEN R. BOHLEN  
State Oil and Gas Supervisor  
DIVISION OF OIL, GAS, AND GEOTHERMAL  
RESOURCES

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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RICHARD W. COREY  
Executive Officer  
CALIFORNIA AIR RESOURCES BOARD

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Date

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BARRY WALLERSTEIN  
Executive Officer  
SOUTH COAST AIR QUALITY MANAGEMENT  
DISTRICT

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Date

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LARRY ALLEN  
Air Pollution Control Officer  
SAN LUIS OBISPO COUNTY AIR POLLUTION  
CONTROL DISTRICT

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Date

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MIKE VILLEGAS  
Air Pollution Control Officer  
VENTURA COUNTY AIR POLLUTION CONTROL  
DISTRICT

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Date

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LOUIS D. VAN MULLEM, JR.  
Air Pollution Control Officer  
SANTA BARBARA COUNTY AIR POLLUTION  
CONTROL DISTRICT

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Date

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MAT EHRHARDT  
Air Pollution Control Officer  
YOLO-SOLANO AIR QUALITY MANAGEMENT  
DISTRICT

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Date