

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
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March 3, 2015

Ms. Felicia Marcus
Chair, State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento, CA 95814

Dr. Steve Bohlen, Ph.D.
Oil and Gas Supervisor
Division of Oil, Gas and Geothermal Resources
801 K Street, MS 20-20
Sacramento, CA 95814

RE: Disposal of oil and gas wastewaters in unlined pits

Dear Chair Marcus and Supervisor Bohlen,

We are writing to express our concern about the recent revelation that hundreds of unlined, open air, oil and gas wastewater pits are operating without adequate permits in California. These facilities may endanger groundwater resources, including drinking and irrigation water, as well as air quality, and the responsible government entities appear to have failed to ensure proper regulatory oversight over the operation of these pits.

During the 2013 - 2014 legislative session, several bills were enacted relevant to these unlined oil and gas wastewater pits. Most directly, Senate Bill 1281 (Pavley) directed the Division of Oil, Gas and Geothermal Resources (DOGGR) to provide an annual inventory of these unlined pits to the State Water Resources Control Board (Board). Additionally, Senate Bill 4 (Pavley/Leno) while bringing well stimulation treatments of the state's oil and gas wells firmly under explicit regulation provided an ongoing role for the Board and the regional boards (the Water Boards), including, for example, required groundwater monitoring by the Board. The Board also has an increased role in the protection of groundwater after the three bills in the groundwater package (Senate Bills 1168 and 1319 (Pavley) and Assembly Bill 1739 (Dickinson)) became law. In keeping with these roles, the Board must take the opportunity to actively protect groundwater from oil and gas impacts.

As you both know, the oil and gas industry in California produces a massive waste stream that, if not handled and disposed of properly, presents numerous threats to public and environmental health and safety. For example, over 3 billion barrels (130 billion gallons) of wastewater were produced in 2013 of which about 1.9 billion barrels (79 billion gallons)

were generated by Central Valley oil and gas wells alone. Oil and gas wastewater is often high in salinity, heavy metals, hydrocarbon-associated contaminants such as benzene, and may contain naturally occurring radioactive materials (NORMs) and other chemicals associated with oil and gas well operations, such as maintenance and well stimulation treatments, that generate waste.

Given the composition and potential composition of these wastewaters, improper handling and disposal of them is an ongoing concern. We are aware that, for example, the Central Valley Regional Water Quality Control Board (Central Valley Board) has issued enforcement orders where illegal dumping has occurred. These include the well-publicized illegal dumping of fracking wastes by Vintage Production last year, as well as action against E&B Natural Resources and pending against Breitburn Operating, LLC in the South Belridge oil field.

The Central Valley Board began its current investigation of unlined oil and gas wastewater pits in mid-to-late 2013, and has acknowledged that it was aware that it did not know where all the pits were. In June 2014, the Central Valley Board indicated that there were 630 pits, of which 432 were active. These pits were largely covered by 85 existing Waste Discharge Requirements (WDRs), although "2 sets" were unpermitted by the Central Valley Board. Recently, the number of pits reported has grown to over 930 and hundreds of these are not permitted. Central Valley Board staff have publicly indicated that approximately 200 enforcement actions will be taken and will include shutting down some pits. However, to our knowledge, all of these pits – including those that are unpermitted, not in compliance with an existing permit or operating under an out-of-date permit – continue to operate.

As you know, the Board has both the authority and responsibility to intervene when a regional board has failed to take an appropriate action.

Based on the emerging information about the scope of this issue and the apparent regulatory lapses, we respectfully request that the Board and DOGGR respond to the following:

- What immediate steps are being taken to require compliance with state law and the Water Boards' regulatory requirements?
- Why are the unpermitted pits still being allowed to receive discharge?
- What is the rationale for using these pits when other disposal methods are available for these wastewaters?
- Do the existing permit requirements require that the composition of the wastewater be fully characterized using appropriate analytical methods and reported to a regulator? If so, for how many pits does the state have this information for?
- Is groundwater monitoring required of any of these pits, and, if so, in what circumstances? Is there any evidence of groundwater contamination due to any of these existing pits?

- Are there any pits in use outside of the Central Valley (we are aware of pits in use in Kern, Tulare, Kings and Fresno counties only)? Preliminary information suggests that no pits are located in Ventura and Los Angeles counties – can this be confirmed?
- Has there been cooperation with the California Department of Fish and Wildlife to ensure compliance with Public Resources Code 3783 that requires the pits to be netted if necessary?
- How are DOGGR and the Water Boards cooperating in the efforts to identify and assess these wastewater pits? What steps are anticipated to ensure ongoing identification, permitting, compliance and enforcement?

Many other questions could also be asked. This letter represents an initial effort to focus on the most critical questions designed to evaluate compliance and the achievement of compliance with important state laws. Please feel free to contact Katharine Moore of the Senate Natural Resources and Water Committee at 651-4116 or Michael Jarred of the Assembly Natural Resources Committee at 319-2092, if you have any questions about this request. We look forward to your response. Thank you for your time and consideration.

Sincerely,



Fran Pavley
Senator, Senate District 27
Chair, Senate Committee on Natural Resources
and Water



Das Williams
Assemblymember, Assembly District 37
Assembly Committee on Natural
Resources

cc: Matt Rodriquez, Secretary, California Environmental Protection Agency
Thomas Howard, Executive Director, State Water Resources Control Board
Tara Dias-Andress, Deputy Secretary for Legislative Affairs, California Environmental Protection Agency
Robert Egel, Legislative Director, State Water Resources Control Board
John Laird, Secretary, California Natural Resources Agency
Keali'i Bright, Deputy Secretary for Legislative Affairs, California Natural Resources Agency
Ben Turner, Assistant Director, Office of Governmental and Environmental Relations, Department of Conservation
Martha Guzman-Aceves, Deputy Legislative Secretary, Governor Brown
Cliff Rechtschaffen, Senior Advisor, Office of Governor Brown