 Late last month the California Legislature passed, and Governor Jerry Brown signed into law, the nation's first comprehensive system of regulating hydraulic fracturing, the oil and gas drilling technique more commonly known as "fracking." It turns out that no one–the oil and gas industry, surface landowners or environmentalists–is particularly happy with the new law. And that actually suggests that, on balance, the new California fracking law represents a positive development for environmental law and policy.

The new legislation, SB 4, was authored by one of the California Legislature's strongest environmental voices–State Senator Fran Pavley. Pavley is generally considered a rock star in state, national and global conservation circles. (She wrote the nation's first law requiring greenhouse gas emission limits for motor vehicles in 2002, was a principal author of AB 32, California's Global Warming Solutions Act of 2006, and sponsored landmark water legislation in 2009.) But Pavley's leadership this year on the fracking front has strained her relationship with the environmental community a bit, at least for the moment.

Fracking involves the injection of fluids and other materials into underground oil and gas wells at high pressure, cracking underground rock formations and extracting previously inaccessible oil and gas deposits. The technology has been around in primitive forms for many decades. What makes modern fracking both far more effective and controversial is that current fracking technology involves injection of a combination of water, sand and a mixture of often-toxic chemicals. Current-generation fracking techniques, combined with other advances in underground drilling technologies, have been wildly successful in recent years to increase domestic production of oil and gas production. (Indeed, the Wall Street Journal reported yesterday that, largely as a result of the fracking boom, the U.S. "is poised to overtake Russia as the world's largest producer of oil and natural gas this year, a startling shift that is reshaping energy markets and eroding the clout of traditional pretroleum-rich nations.") They have launched a domestic energy development boom that has dramatically improved America's balance-of-payments outlook, and greatly aided in reducing the nation's longstanding dependence on unreliable foreign oil and gas imports.

Additionally, the environmental community can–or at least should–welcome several other consequences of the fracking boom: the increasing availability of domestic natural gas reserves is important as a relatively low-polluting "bridge fuel" to transition to a domestic energy portfolio that relies primarily on renewable energy sources. And the fact is that the new abundance of relatively inexpensive U.S. natural gas has done far more to displace and reduce coal as a U.S. energy source than have all the protestations of the conservation community.

But fracking has also become enormously controversial as a result of its documented, adverse environmental effects–including widespread groundwater contamination, negative wildlife impacts, and increased conventional air and greenhouse gas pollution. In the absence of any comprehensive regulatory scheme–until now–fracking controversies have generally played out in the courts and political arena.

With this backdrop, the enactment of SB 4 represents a very big deal. The legislation directs California's Division of Oil and Gas to develop the nation's first-ever, statewide permit system to regulate fracking and related drilling technologies, and to have that system in place by January 1, 2015.

Perhaps wisely, the legislation provides few details as to how California regulators should structure the new fracking permit system. (The California Legislature similarly delegated broad discretion to the California Air Resources Board under AB 32 to devise the program for California to reduce the state's aggregate greenhouse gas emissions, a decision which in hindsight has proven exceedingly wise.)

One particular feature of SB 4 that is a most positive development concerns trade secrets. Many oil and gas firms have in the past refused to disclose the chemical composition of their fracking fluids to government or the interested public, claiming that this information constitutes proprietary trade secrets not subject to public disclosure. By contrast, SB 4 presumes such information can and should be disclosed, and places the burden squarely on the industry to prove to state regulators–and the courts, if necessary–that the composition of their fracking fluids truly qualifies as a trade secret. Leaving aside the larger question of whether trade secret laws should *ever* be allowed to trump public health and safety concerns, this is a welcome reform.

Conversely, the biggest current controversy over California's new fracking law is how it relates to California's "little NEPA" statute, the California Environmental Quality Act. 11th hour amendments to SB 4 made clear that fracking can continue unregulated at the state level until the new SB 4 permit scheme takes effect in 2015. In the meantime, the Division

of Oil and Gas is directed by the law to "conduct" an environmental impact report under CEQA "to provide the public with detailed information regarding any potential environmental impacts" of fracking in California. But that language is ambiguous, at best: does it mean that state regulators are supposed to prepare some sort of "master" or "program" EIR studying California fracking practices generally? Or is it mandating EIRs for some or all fracking projects on an individualized basis during this interim period? From the statutory language, it's nigh impossible to tell.

SB 4's inclusion of these confusing CEQA provisions caused a number of California environmental groups to renounce their prior support for the bill at the conclusion of this year's legislative session. In a statement accompanying his signing of SB 4, Governor Jerry Brown obliquely referred to some drafting ambiguities that he believes require fixing through 2014 clean-up legislation. (My strong hunch is that the Governor was referencing the bill's vague CEQA provisions in his comments.) For her part, Senator Pavley has announced that she's amenable to such revisions to SB 4. Those are most welcome developments.

In the meantime, all eyes are on the California Division of Oil and Gas, a small and previously-obscure state agency that has generally avoided public scrutiny over the years. Just as CARB was thrust into prominence for its work to implement AB 32, and the Department of Toxic Substances Control achieved similar attention for its recent launch of California's controversial "Green Chemistry" initiative, so too will there be tremendous media, industry and public scrutiny focused on the Division of Oil and Gas as it develops the nation's first statewide program to regulate oil and gas fracking. Let's hope those California regulators prove to be up to the task.