



State Water Resources Control Board

TITLE 23. WATERS DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARDS CHAPTER 16. UNDERGROUND STORAGE TANK REGULATIONS

Notice of Proposed Regulatory Action

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) proposes to amend, adopt, or repeal the underground storage tank (UST) regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to amend California Code of Regulations, title 23, division 3, chapter 16 (commencing with section 2610) (UST Regulations) to make them consistent with current technology and operational practices, including deleting deadlines that have passed. The State Water Board further proposes to amend the UST Regulations to implement amendments to the Health and Safety Code, division 20, chapter 6.7 (commencing with section 25280) (Health and Safety Code chapter 6.7) enacted by Chapter 536, Statutes of 2012, Chapter 547, Statutes of 2014, Chapter 721, Statutes of 2018, and Chapter 207, Statutes of 2023.

PUBLIC HEARING

The State Water Board will hold a hearing beginning at 1:00 p.m. on Monday, January 13, 2025, in the Sierra Hearing Room at the Joe Serna Jr./Cal-EPA Headquarters Building, 1001 I Street, Sacramento, California 95814. The Joe Serna Jr./Cal-EPA Headquarters Building is accessible to people with disabilities. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed regulatory action described in the Informative Digest/ Policy Statement Overview. The State Water Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The State Water Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modifications of the proposed regulations. The State Water Board will not accept oral statements subsequent to the public hearing.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes on January 7, 2025 at 12:00 p.m. The State Water Board only will consider written comments received by that time at the addresses below.

Please send comment letters to Ms. Courtney Tyler, Clerk to the Board, by email at commentletters@waterboards.ca.gov, by fax at (916) 341-5620, or by mail or hand delivery addressed to:

Courtney Tyler, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000 (by mail)
1001 I Street, 24th Floor, Sacramento, CA 95814 (by hand delivery)

Please also indicate in the subject line, “**Comment Letter – Proposed UST Regulations.**”

Hand and special deliveries also should be addressed to Ms. Tyler at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Tyler at (916) 341-5611. Due to the limitations of the email system, emails larger than 15 megabytes are rejected and cannot be delivered or received by the State Water Board. Therefore, the State Water Board requests that comments larger than 15 megabytes be submitted under separate emails.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserv for “**Program Requirements and Guidance**” by going to:

https://public.govdelivery.com/accounts/CAWRCB/subscriber/new?qsp=ca_swrcb. You also may call Mr. Tom Henderson at (916) 319-9128 or email him at Tom.Henderson@Waterboards.ca.gov. **Persons who receive this notice by mail or electronic mail already are on the mailing list.**

AUTHORITY AND REFERENCE

Health and Safety Code section 25299.3 authorizes the State Water Board to adopt regulations to implement chapter 6.7 of division 20 of the Health and Safety Code. The proposed regulations implement, interpret, or make specific chapter 6.7 of division 20 of the Health and Safety Code, commencing with section 25280. References to specific code sections are identified in the proposed amendments to the UST Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Water State Water Board proposes to amend the UST Regulations located in chapter 16 of division 3 of title 23 of the California Code of Regulations to update the UST Regulations to make them consistent with current technology and operational practices, including deleting deadlines that have passed. The State Water Board further proposes to amend the UST Regulations to implement amendments to the Health and Safety Code, division 20, chapter 6.7 (commencing with section 25280) (Health and Safety Code chapter 6.7) enacted by Chapter 536, Statutes of 2012, Chapter 547, Statutes of 2014, Chapter 721, Statutes of 2018, and Chapter 207, Statutes of 2023.

The State Water Board intends for the amendments to the UST Regulations to go into effect on January 1, 2026. Consequently, the State Water Board proposes to delete any provisions in the regulations regarding those USTs which must be permanently closed on or before December 31, 2025, in accordance with Health and Safety Code section 25292.05 (single-walled USTs). All USTs meeting the definition of single-walled USTs include those USTs that meet the definition of “existing underground storage tank” in the existing regulations and the only USTs that will be permitted to continue in operation will be certain USTs that meet the definition of “new underground storage tanks.” For this reason, these terms will be deleted from the UST Regulations. Instead of classifying USTs as existing or new, the proposed regulations classify USTs as Type 1, Type 2, or Type 3 based on the date they were installed consistent with regulatory requirements in chapter 6.7 of division 20 of the Health and Safety Code and existing regulations.

The State Water Board proposes to significantly reorganize the regulations to rearrange the order in which topics are presented, consistent with the deletion of provisions related to single-walled tanks. Like subjects are grouped and placed together in separate articles for ease of use. In addition, the General Applicability sections in the existing regulations are deleted as these sections are redundant and unnecessary.

The State Water Board also proposes changing terminology uses in the regulations for greater specificity and clarity. Specifically, as defined by Health and Safety Code section 25281(i), there are two types of local agencies, with different roles and responsibilities. Existing regulations use the term “local agency” for both types. To distinguish between these two types of local agencies and to implement amendments to the Health and Safety Code enacted by Statutes 2012, Chapter 536, the term “local agency” is replaced by either “Unified Program Agency” or “Cleanup Oversight Agency” throughout the proposed regulations.

The term “leak” has been replaced with the defined terms “release” or “unauthorized release” throughout the proposed regulations because these terms are the defined terms used in Health and Safety Code chapter 6.7. The term “line leak detector,” however, continues to be used to refer to devices that monitor buried pressurized piping for catastrophic releases because this term is commonly used in industry. The use of the terms “inspect,” “certify,” and “test” in the existing regulations are largely interchangeable. The proposed regulations use the term “test” exclusively for

consistency and accurately describe all the activities required for verifying that UST components are properly functioning and in compliance.

The State Water Board also proposes certain amendments to the California UST Regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (e.g., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of revising structure, syntax, cross-references, grammar, punctuation, capitalization, renumbering or relocating regulatory provisions. For consistency purposes, the citation format for statutory and regulatory references is made consistent throughout the proposed regulations. To the extent that many of these amendments without regulatory effect are non-substantive and their purposes are self-evident or merely editorial, they are not discussed herein. To the extent that many of these amendments without regulatory effect are non-substantive and their purpose is self-evident or merely editorial, they are not discussed herein.

In Fall of 2022 State Water Board staff hosted a series of focus workgroups via Microsoft Teams and conference calls consisting of State Water Board staff, select UST regulators, and select representatives from the UST industry including UST testers and installers. State Water Board staff also reached out to other members of industry for insight related to the proposed forms and cost of implementing specific actions of the proposed regulations. The State Water Board did not rely on any other technical, theoretical, or empirical studies, reports, or documents in proposing these amendments.

The State Water Board relied on an Economic and Fiscal Impact Statement (Form 399) and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11436.3, subdivision (b) in proposing these amendments to the UST Regulations. The specific purpose and basis for the State Water Board's determination of the necessity of each amendment are explained herein.

Anticipated Benefits of the Proposed Regulations

The proposed regulatory action will implement statutory changes and update the UST Regulations to: 1) provide higher standards of UST construction, monitoring, and testing; 2) improve tracking, notification procedures, and clarify agency responsibilities; and 3) update abatement and corrective action procedures and oversight. These amendments decrease the risk of a release of a hazardous substance from a UST and decrease the risks of soil and groundwater contamination in the event of a release of a hazardous substance from a UST, improving the health and welfare of California residents, worker safety, and the State's environment. As a consequence, the proposed regulations will: 1) improve the health and welfare for California residents, worker safety, and the State's environment; 2) result in a savings in cleanup costs to businesses and the UST Cleanup Fund; 3) reduce confusion within the regulated community; and 4) be consistent with the established policy of the State recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

Evaluation of Duplication/ Conflict with Existing State Regulations

The State Water Board has determined that the proposed regulations do not duplicate or conflict with any federal law or federal regulation.

Evaluation of Inconsistency/ Incompatibility with Existing State Regulations

The State Water Board has determined that the proposed amendments to the UST Regulations are not inconsistent or incompatible with existing regulations. After conducting a review of any regulations that would relate to or affect this area, the State Water Board has concluded that these are the only regulations that concern USTs.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with section 17500) of the Government Code, division 4.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations specify new notification requirements and streamline existing reporting requirements. Electronic notification is via the internet using readily available technology; and it is expected that this process will be automated and not incur fiscal impact.

COST OR SAVINGS IMPOSED ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations specify new notification requirements and streamline existing reporting requirements. Electronic notification is via the internet using readily available technology; and it is expected that this process will be automated and not incur fiscal impact to local agencies or school districts.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

The proposed regulations do not have fiscal impacts on any federally funded State agency or program.

ANY OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

The proposed regulations do not have any other non-discretionary cost or savings imposed upon local agencies.

EFFECT ON HOUSING COSTS

The State Water Board has determined that the proposed regulatory action will have no effect on housing costs.

BUSINESS IMPACT/ SMALL BUSINESS

The State Water Board has determined that the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its 25-year lifetime is \$13,309,590. The Board initially determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations will affect small businesses. Approximately 80 percent of the affected businesses are small businesses. The State Water Board has determined that a representative person or business may incur up to \$45,000 over the lifetime of the proposed regulations, depending on whether the person or business will be installing new USTs or has USTs with single-walled spill containers or uses mechanical released detection to monitor under-dispenser containment.

More specifically, the proposed regulations expand existing requirements regarding anchoring of USTs to require all new USTs to be anchored. As a result of existing regulations, local requirements, and best practices, anchoring currently is used on 60 to 70 percent of new UST installations, therefore, this proposed requirement only impacts approximately 35 percent of new UST installations. Anchoring new USTs will cost an additional \$45,000 for a typical business who would not otherwise anchor its new USTs. It should be noted, however, that anchoring the USTs avoids the potential risk of buoyant tanks, which is increasing as storm events become more extreme due to climate change. The costs associated with this are similar to a complete, new UST installation, including re-excavation, re-plumbing, paving, and all associated testing, and system down time.

For those businesses with existing USTs with direct buried, single-walled spill containers, the proposed regulations will require direct buried, single-walled spill containers to be replaced with secondarily contained spill containers when they need to be repaired. The cost of replacing direct buried, single-walled spill containers with secondarily contained spill containment for a typical business will cost approximately \$39,000 more than replacing the spill container with a new direct-buried spill container. Owners and operators, however, will incur reduced future repair costs as a result of this change, resulting in approximately \$720 in cost savings over the lifetime of the proposed regulations.

For those businesses with existing USTs with mechanical release detection equipment used to continuously monitored under-dispenser containment, the proposed regulations will require mechanical release detection equipment to be replaced with a continuous electronic monitoring method if it fails to function properly during operation or testing.

The cost of replacing the mechanical release detection equipment with a continuous electronic monitoring method, instead of replacing the failed mechanical release detection equipment with new mechanical release detection equipment, will cost a typical business an additional \$2,100.

BUSINESS REPORTING REQUIREMENTS

It is necessary for the health, safety, or welfare of the people of the state that the regulation which requires a report apply to business.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

No businesses will be affected by all three of the proposed regulatory requirements discussed above that may increase costs of compliance for typical businesses regulated by the UST Regulations. New UST installations are prohibited from installing direct bury spill containers and using under-dispenser mechanical release detection equipment. Additionally, many businesses will not be impacted by any of these three proposed regulatory requirements. Typical businesses installing new USTs that would not otherwise anchor their USTs would incur an additional \$45,000, while avoiding the potential risk of significant costs resulting from their USTs becoming buoyant. A typical business with existing USTs may incur the cost of replacing three single-walled spill containers with secondarily contained spill containers (\$39,000) and six under-dispenser mechanical release detection methods be replaced with continuous electronic monitoring methods (\$2,100), for up to \$41,100 in additional costs, however, these initial costs are off-set by long-term savings in lower ongoing repair costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The State Water Board has determined that the proposed regulations will impact about 3,600 businesses. The typical UST business employs less than 500 employees, and it is estimated that 80 percent of affected businesses are small businesses. Individuals affected by the proposed regulations are owners and operators of these businesses. The majority of affected businesses are fueling stations and hospitals and includes other facilities that store hazardous substances in USTs.

Assessment Regarding Effect on Jobs and Businesses

The State Water Board estimates that the proposed regulatory action will have a minimal impact on the creation or elimination of jobs within California because the amendments to the UST Regulations do not create or eliminate a significant enough workload to support the creation or elimination of jobs within California.

The State Water Board has determined that the proposed regulatory action will have a minimal impact on the creation and elimination of new businesses within the State of California, because the added construction, monitoring, and testing requirements for existing equipment do not create a significant workload to support the creation of new

businesses. Businesses that are unable or unwilling to invest in equipment to meet the proposed regulatory requirements may be eliminated; however, the State Water Board expects the number of these businesses that are either unable or unwilling to invest in new equipment to be minimal based on the cost of the proposed requirements, including the long-term cost savings for businesses implementing these requirements.

Benefit of the Regulation for Public Health, Safety, and Welfare

The proposed regulatory action will implement statutory changes and update the UST Regulations to: 1) provide higher standards of UST construction, monitoring, and testing; 2) improve tracking, notification procedures, and clarify agency responsibilities; and 3) update abatement and corrective action procedures and oversight. These amendments decrease the risk of a release of a hazardous substance from a UST and decrease the risks of soil and groundwater contamination in the event of a release of a hazardous substance from a UST, improving the health and welfare of California residents, worker safety, and the State's environment. As a consequence, the proposed regulations will: 1) improve the health and welfare for California residents, worker safety, and the State's environment; 2) result in a savings in cleanup costs to businesses and the UST Cleanup Fund; 3) reduce confusion within the regulated community; and 4) be consistent with the established policy of the State recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

CONSIDERATION OF ALTERNATIVES

The State Water Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention: 1) would be more effective in carrying out the purpose for which the action is proposed; 2) would be as effective and less burdensome to affected private persons than the proposed action; or 3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND THE RULEMAKING FILE

The State Water Board has prepared an Initial Statement of Reasons for the proposed action. The statement includes the specific purpose for the regulation proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulation is proposed. All the information upon which the proposed regulation is based is contained in the rulemaking file. The Initial Statement of Reasons, the express terms of the proposed regulations, and the rulemaking file are available from the contact person listed below or at the website listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearing and considering all timely and relevant comments received, the State Water Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for written comment at least fifteen (15) days before the State Water Board adopts the regulations as modified. A copy of any modified regulation may be obtained by contacting Mr. Tom Henderson, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy may also be accessed on the State Water Board website previously identified.

CONTACT PERSONS

Requests of copies of the text of the proposed regulation, the Statement of Reasons, or other information upon which the rulemaking is based, or other inquiries should be addressed to the following:

Name: Tom Henderson, Manager
Address: State Water Resources Control Board
Division of Water Quality
1001 "I" Street
Sacramento, CA 95814
Telephone No.: (916) 319-9128
E-mail address: Tom.Henderson@waterboards.ca.gov

The backup contact person is:

Name: Austin Lemire-Baeten
Address: State Water Resources Control Board
Division of Water Quality
1001 "I" Street
Sacramento, CA 95814
Telephone No.: (916) 327-5612
E-mail address: Austin.Lemire-Baeten@waterboards.ca.gov

The documents relating to this proposed action may also be found on the State Water Board's website at the following address:

https://waterboards.ca.gov/water_issues/programs/ust/leak_prevention/chapter16/rewrite.html

November 22, 2024

Date



Courtney Tyler
Clerk to the Board