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**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**

**ARTICLE 3. NEW UNDERGROUND STORAGE TANK DESIGN, CONSTRUCTION, AND  
MONITORING REQUIREMENTS**

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

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***PROPOSED REGULATORY ACTION***

The State Water Board proposes to amend California Code of Regulations, title 23, division 3, chapter 16, article 3, section 2631 relating to design and construction requirements for new underground storage tanks (USTs). The proposed regulation provides an option for compliance with existing independent testing and approval requirements so that UST owners and operators can store alternative fuels in USTs in a manner that does not create any significant risk of adverse impacts to water quality.

***PUBLIC HEARING***

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the State Water Board no later than 15 days prior to the close of the written comment period. If a request for a public hearing is made, the State Water Board shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

***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 2, 2012 at 5:00 p.m.. The State Water Board will only consider comments received by that time.

Please send comment letters to Jeanine Townsend, Clerk to the Board, by email at ([commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)) (if less than 15 megabytes in size or less), (916) 341-5620 (fax), or by mail or hand delivery addressed to:

Jeanine Townsend, 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 should also be addressed to Ms. Townsend at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Townsend at (916) 341-5600.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserve for “**Program Requirements and Guidance**” by going to: [http://www.waterboards.ca.gov/resources/email\\_subscriptions/ust\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/ust_subscribe.shtml). You may also call Ms. Laura Fisher at (916) 341-5870 or email her at [lfisher@waterboards.ca.gov](mailto:lfisher@waterboards.ca.gov). **Persons who receive this notice by mail or electronic mail are already 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 the Health and Safety Code. Reference sections are Health and Safety Code sections 25281, 25286, 25290.1, 25290.2, 25291, and 25404.1.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Chapter 6.7 of the Health and Safety Code requires that the primary containment of a UST be compatible with the stored substance, and that the secondary containment be constructed to prevent structural weakening as a result of contact with any released substance. Federal regulations also require UST owners and operators to use USTs that are made of or lined with materials that are compatible with the substance stored. Existing State Water Board regulations require that a UST be approved by an independent testing organization and that an owner or operator of a UST use system components made of, or lined with, materials that are compatible with the hazardous substances stored in the UST.

The State of California and the United States Environmental Protection Agency (U.S. EPA) have found that greenhouse gas (GHG) emissions pose a threat to human health and welfare. Using alternative fuels, including biodiesel blends, is imperative to reduce GHG emissions. Testing and approval of USTs has not kept up with the introduction of and desire to use alternative fuels in California. In 2009, the State Water Board promulgated a temporary regulatory variance of up to 36 months from certain regulatory provisions to allow UST owners to store biodiesel blends up to 20 percent biodiesel (B20) by volume in USTs before testing by an independent testing agency has been completed. This variance will sunset on June 1, 2012.

Various equipment and methods of leak detection equipment have been tested and have been approved for use with various blends of biodiesel. The mechanisms are now in place for release detection equipment manufacturers and fuel suppliers to test and obtain approval for release detection equipment for other alternative fuels in a timely manner. However, testing by an independent testing agency of biodiesel blends greater than 5 percent biodiesel (B5) by volume in USTs will likely not be completed for several years and testing has not yet begun on various other alternative fuels.

The proposed regulation provides an option for UST owners and operators with USTs that meet construction requirements contained in Health and Safety Code section 25291, subdivision (a), paragraphs (1) – (6) and subdivisions (b) – (i), inclusive, section 25290.1 or section 25290.2 to comply with existing independent testing and approval requirements so that UST owners and operators can store alternative fuels in USTs in a manner that does not create any significant risk of adverse impacts to water quality. The proposed regulation is consistent with the U.S. EPA's guidance on meeting the federal UST compatibility requirements. Similar to the temporary variance, the proposed regulation limits the option to double walled 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 State Water Board has determined that there is no cost or savings to state agencies as a result of the proposed regulations.

### **COST OR SAVINGS IMPOSED ON LOCAL AGENCIES**

The State Water Board has determined that there is no cost or savings imposed on local agencies as a result of the proposed regulations, or other nondiscretionary costs or savings imposed on local agencies.

### **COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE**

The State Water Board has determined that there is no cost or savings in federal funding to the state as a result of the proposed regulations.

### **BUSINESS IMPACT/SMALL BUSINESS**

Because the proposed regulation provides an option for compliance with existing independent testing and approval requirements it 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. Nor will the proposed regulatory action adversely affect small businesses in California.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

## **ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES**

The State Water Board has determined that the proposed regulatory action will have no effect on the creation or elimination of jobs within California. Nor will the proposed regulatory action have any effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing businesses doing business within California.

## **EFFECT ON HOUSING COSTS**

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

## **ALTERNATIVES**

The State Water Board has determined that no reasonable alternative would be more or equally effective in carrying out the purpose for which the proposed regulation is intended or less burdensome to affected private persons than the proposed action.

Interested persons may present statements or arguments with respect to alternatives to the proposed regulation during the written comment period or at any hearing on this matter.

## **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 term of the proposed regulation, 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 any hearing that is requested and considering all timely and relevant comments received, the State Water Board may adopt the proposed regulation substantially as described in this notice. 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 at least fifteen (15) days before the State Water Board adopts the regulation as modified. A copy of any modified regulation may be obtained by contacting Ms. Laura Fisher, 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: Laura Fisher  
Address: State Water Resources Control Board  
Division of Water Quality  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: (916) 341-5870  
E-mail address: [lfisher@waterboards.ca.gov](mailto:lfisher@waterboards.ca.gov)

The backup contact person is:

Name: Cory Hootman  
Address: State Water Resources Control Board  
Division of Water Quality  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: (916) 341-5668  
E-mail address: [chootman@waterboards.ca.gov](mailto:chootman@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: [http://www.waterboards.ca.gov/water\\_issues/programs/ust/](http://www.waterboards.ca.gov/water_issues/programs/ust/).