

**Proposed Amendments
to the
California Code of Regulations
Title 23. Waters
Division 3. State Water Resources Control Board
and Regional Water Quality Control Boards
Chapter 16. Underground Tank Regulations**

**INITIAL
STATEMENT OF REASONS**

**MARCH 2016
State Water Resources Control Board
Division of Water Quality**

Chapter 16. Underground Storage Tank Regulations

The State Water Resources Control Board (State Water Board) proposes to amend chapter 16 of division 3 of title 23 of the California Code of Regulations (regulations) to clarify or make specific existing reporting requirements under the Underground Storage Tank (UST) Program by stating the method by which UST owners or operators and local agencies must submit specified information and documents to the State Water Board, Regional Water Quality Control Boards (Regional Water Boards), or the applicable local agency as defined in Health and Safety Code section 25283.

In accordance with Health and Safety Code section 25404, subdivision (e)(4), regulated businesses and local agencies must report unified program data electronically. To comply with that requirement, the California Environmental Protection Agency (CalEPA) created the California Environmental Reporting System (CERS). As amended, the regulations require UST owners or operators and local agencies to submit specified information or documents to CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq. These provisions do not include any new reporting requirements; however, the existing reporting requirements are amended to make specific the method of reporting.

In addition to the requirements to submit specified information or documents through CERS, existing regulations also include requirements for submission of other information or documents that cannot be submitted through CERS and in certain instances must be submitted electronically through GeoTracker, the state Geographic Information System mapping database. For clarification purposes, the regulations are amended to specify the method of reporting for each reporting requirement for which a specific method is required. Additionally, as amended, the regulations provide that where a submittal method is not specified, the information or document may be provided by hand-delivery, mail, or facsimile or other electronic methods, unless otherwise directed by the State Water Board, Regional Water Board, or local agency that will receive the submittal.

Under California Code of Regulations, title 23, division 3, chapter 30, section 3890 et seq., persons responsible for submitting reports must submit the report electronically through GeoTracker if the report is required for the purpose of subsurface investigation or remediation of an unauthorized release of a hazardous substance pursuant to the regulations. GeoTracker is used by the State Water Board, Regional Water Boards, and local agencies to track and make accessible to the public statewide environmental compliance data for groundwater cleanup programs, including cleanup of unauthorized releases from underground storage tanks. As amended, the regulations specify what information or documents must be submitted through GeoTracker, for the purpose of preventing confusion between GeoTracker and CERS requirements. These amendments do not change existing requirements.

The specific purpose and the basis for the State Water Board's determination of the necessity of each amendment are explained herein.

The State Water Board relied on an Economic and Fiscal Impact Statement and an Economic Impact Analysis/ Assessment prepared pursuant to Government Code section 11346.3, subdivision (b) to amend these regulations. The complete Economic Impact Analysis/ Assessment can be found below. For two weeks in April 2015, the State Water Board convened a workgroup consisting of representatives from the State Water Board, CalEPA, local

agencies, and the regulated community to review and comment on a draft of the proposed regulations. The State Water Board considered and, as appropriate, incorporated the workgroup's comments into the proposed regulations. The State Water Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents to amend these regulations.

The State Water Board has determined that no reasonable alternative would be more effective in carrying out the purpose for which the proposed regulations are proposed, would be as effective and less burdensome to affected private persons than the proposed regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The proposed amendments to the regulations are necessary for consistency with Health and Safety Code section 25404, subdivision (e)(4), with California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq., with California Code of Regulations, title 23, division 3, chapter 30, section 3890 et seq., and for clarification purposes. The proposed amendments do not duplicate or conflict with any federal law or federal regulation.

Some of the proposed amendments require electronic submittal of data and documents via the internet using readily available technology. To assist those regulated businesses that do not have a computer with internet access, some local agencies have made computers available at their offices or other locations within their jurisdictions for regulated businesses to use to submit program information. In addition, some inspectors carry laptop or tablet computers with them when they inspect regulated businesses and assist regulated businesses to submit program information.

The proposed regulations will improve the health and welfare of California residents, worker safety, and the state's environment because emergency response personnel and agencies will have instant electronic access to facility and chemical information needed to mitigate environmental hazards. In addition, the State Water Board, Regional Water Boards, and local agencies will be able to identify and correct potential sources of environmental risk more efficiently by analyzing the data in CERS.

The State Water Board also proposes certain amendments to the regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (i.e., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of revising structure, syntax, cross-references, grammar, punctuation, or renumbering or relocating regulatory provisions. 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.

ECONOMIC IMPACT ANALYSIS/ ASSESSMENT

CHAPTER 16. UNDERGROUND STORAGE TANK REGULATIONS

The State Water Resources Control Board (State Water Board) has prepared this Economic Impact Analysis/ Assessment in accordance with Government Code section 11346.3, subdivision (b).

The proposed regulations clarify or make specific the method of reporting for existing reporting requirements. Some of the proposed amendments require electronic submittal of data and documents via the internet using readily available technology. These amendments are consistent with existing requirements in Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

To assist those regulated businesses that do not have a computer with internet access, some local agencies have made computers available at their offices or other locations within their jurisdictions for regulated businesses to use to submit program information. In addition, some inspectors carry laptop or tablet computers with them when they inspect regulated businesses and assist regulated businesses to submit program information.

Creation or Elimination of Jobs within the State of California

No jobs will be created or eliminated because of the proposed regulations. The proposed regulations only amend the method of reporting for specified information and documents. Electronic submittal is via the internet using readily available technology and local agencies are assisting those regulated businesses that do not have a computer with internet access.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

No businesses will be created or eliminated because of the proposed regulations. The proposed regulations only amend the method of reporting for specified information and documents. Electronic submittal is via the internet using readily available technology and local agencies are assisting those regulated businesses that do not have a computer with internet access.

Expansion of Businesses Currently Doing Business within the State of California

No businesses currently doing business within the State of California will be expanded because of the proposed regulation. The proposed regulations only amend the method of reporting for specified information and documents. Electronic submittal is via the internet using readily available technology and local agencies are assisting those regulated businesses that do not have a computer with internet access.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations will improve the health and welfare of California residents, worker safety, and the state's environment because emergency response personnel and agencies will have instant electronic access to facility and chemical information needed to mitigate environmental hazards. In addition, the State Water Board, Regional Water Quality Control Boards, and local agencies will be able to identify and correct potential sources of environmental risk more efficiently by analyzing the data in CERS.

Article 1. Definition of Terms

SECTION 2610. DEFINITIONS/ APPLICABILITY OF DEFINITIONS.

Specific Purpose and Necessity of the Proposed Action

As amended, the regulations require UST owners or operators and local agencies to submit specified data or documents to CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq. Proposed subdivisions (c) and (d) are added to existing section 2610 and existing section 2610(a) is amended accordingly, to incorporate definitions for terms used in the regulations that are defined in section 15110 of title 27 of the California Code of Regulations and chapter 3 of subdivision 1 of division (3) of title 27 of the California Code of Regulations.

SECTION 2611. ADDITIONAL DEFINITIONS.

Specific Purpose and Necessity of the Proposed Action

1. **“GeoTracker”** – (added) Existing regulations refer to the state Geographic Information System mapping database, rather than provide the specific name of that database, GeoTracker. References to the state Geographic Information System mapping database are replaced with GeoTracker and this definition of “GeoTracker” is added for clarification purposes.
2. **“Submit”** – (added) As amended, the regulations clarify or make specific existing UST reporting requirements by stating the method by which UST owners or operators and local agencies must submit specified data and documents to the State Water Board, Regional Water Boards, or the applicable local agency. This definition of “submit” is added to provide that where a method of submittal is specified, submittal only is valid if the document or information is submitted through the specified method. This definition also provides that where no submittal method is specified, the document or information may be provided by hand-delivery, mail, or facsimile or other electronic methods, unless otherwise directed by the agency that will receive the submittal.

Article 3: New Underground Storage Tank Design, Construction, and Monitoring Requirements

SECTION 2631.2. BIODIESEL BLENDS – VARIANCE FROM MATERIAL COMPATIBILITY CERTIFICATION REQUIREMENTS.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirement in existing section 2631.2(e)(4) is amended to require that the “UST Facility Operating Permit Application – UST Tank Information/Monitoring Plan” submittal be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq. The owner also must submit a written statement

that the underground storage tank and components are compatible with the biodiesel blend stored or to be stored. The written statement of compatibility may be provided by hand-delivery, mail, or facsimile or other electronic methods, unless otherwise directed by the agency that will receive the submittal.

SECTION 2632. MONITORING AND RESPONSE PLAN REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANKS CONSTRUCTED PURSUANT TO SECTION 2631.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirement in existing section 2632(d) is amended to require that the submittal be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

SECTION 2634. MONITORING AND RESPONSE PLAN REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANKS CONTAINING MOTOR VEHICLE FUEL AND CONSTRUCTED PURSUANT TO SECTION 2633.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirements in subdivisions (d)(2) and (e) of existing section 2632 are amended to require that the submittals be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

SECTION 2635. INSTALLATION AND TESTING REQUIREMENTS FOR ALL NEW UNDERGROUND STORAGE TANKS.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirement in existing section 2635(d) is amended to require that the submittal be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

SECTION 2636. DESIGN, CONSTRUCTION, INSTALLATION, TESTING, AND MONITORING REQUIREMENTS FOR PIPING.

Specific Purpose and Necessity of the Proposed Action

1. **Section 2636(c)(2)** – The existing submittal requirement in existing section 2636(c)(2) is amended to require that the submittal be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

2. **Section 2636(g)(1)(B)** – For clarification purposes, the reference to the state Geographic Information System mapping database in existing section 3636(g)(1)(B) is replaced with the more specific term, GeoTracker.

Article 4. Existing Underground Storage Tank Monitoring Requirements

SECTION 2640. GENERAL APPLICABILITY OF ARTICLE.

Specific Purpose and Necessity of the Proposed Action

For clarification purposes, the reference to the state Geographic Information System mapping database in existing section 3636(g)(1)(B) is replaced with the more specific term, GeoTracker.

SECTION 2643. NON-VISUAL MONITORING/ QUANTITATIVE RELEASE DETECTION METHODS.

Specific Purpose and Necessity of the Proposed Action

The existing reporting requirement in existing section 2643(g) is amended to require that the report be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

SECTION 2644.1 ENHANCED LEAK DETECTION.

Specific Purpose and Necessity of the Proposed Action

The existing reporting requirement in existing section 2643(a)(5) is moved to proposed section 2643(e) and is amended to require that the report be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

Article 5. Release Reporting and Initial Abatement Requirements

SECTION 2652. REPORTING, INVESTIGATION AND INITIAL RESPONSE REQUIREMENTS FOR UNAUTHORIZED RELEASES

Specific Purpose and Necessity of the Proposed Action

1. **Section 2652(c)** – The existing reporting requirement in existing section 2652(c) is amended to require that the report be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

2. **Section 2653(d)** – The reporting requirement in existing section 2653(d) is amended to clarify that the required reports must be submitted electronically through GeoTracker consistent with existing requirements in California Code of Regulations, title 23, division 3, chapter 30, section 3890 et seq. This amendment does not change existing requirements.

SECTION 2655. FREE PRODUCT REMOVAL REQUIREMENTS.

Specific Purpose and Necessity of the Proposed Action

The reporting requirement in existing section 2655(e) is amended to clarify that the required report must be submitted electronically through GeoTracker consistent with existing requirements in California Code of Regulations, title 23, division 3, chapter 30, section 3890 et seq. This amendment does not change existing requirements.

Article 6. Underground Storage Tank Repair and Upgrade Requirements

SECTION 2663. INTERIOR TANK LINING REQUIREMENTS.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirements in subdivisions (b) and (h) of existing section 2663 are amended to require that the submittals be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

SECTION 2664. REQUIREMENTS FOR USING BLADDER SYSTEMS.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirement in existing section 2664(b)(6) is amended to require that the submittal be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

Article 10. Permit Application, Quarterly Report and Trade Secret Request Requirements

SECTION 2711. INFORMATION AND APPLICATION FOR PERMIT TO OPERATE AN UNDERGROUND STORAGE TANK.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirements in subdivisions (b) and (c) of existing section 2711 are amended to require that the submittals be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

SECTION 2712. PERMIT CONDITIONS.

Specific Purpose and Necessity of the Proposed Action

1. **Section 2712(c)** – For identification and tracking purposes, the CERS identification number is added to the items that must be included on a permit to operate.
2. **Section 2712(d)** – The existing submittal requirement in existing section 2712(d) is amended to require that the submittal be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.
3. **Section 2712(i)** – The existing requirement to retain a copy of the permit to operate at the facility is amended to clarify that the facility does not need to retain a paper copy of the permit, if an electronic copy of the permit is readily accessible at the facility.

SECTION 2713. LOCAL AGENCY REPORTING REQUIREMENTS.

Specific Purpose and Necessity of the Proposed Action

1. **Section 2713(a)** – The existing submittal requirement in existing section 2713(a) is amended to require that the submittal be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.
2. **Section 2713(c) & (d)** – The existing reporting requirements in subdivisions (c) and (d) of existing section 2713 are amended to require that the report be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq. As amended, proposed subdivision (d) includes a requirement that local agencies include the specific type of violation for which the local agency took each enforcement action consistent with existing subdivision (c) and existing practice.

SECTION 2714. TRADE SECRET PROVISIONS.

Specific Purpose and Necessity of the Proposed Action

1. **Section 2714(a)** – The existing submittal requirements in subdivision (a) of existing section 2714 is amended to specify what application information must be submitted through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq., where the person making an application believes some of the information on the application is a trade secret. As amended, proposed subdivision (a) provides that information that the applicant believes is a trade secret must be submitted to the local agency separately.

2. **Section 2714(f)** – Pursuant to subdivision (f) of existing section 2714, where a document or portion of a document has been found to be confidential or is being reviewed to determine if confidentiality should exist, the document must be placed in a separate “confidential” file and a notation should be placed in the file that further information is in the confidential file. The requirement to notate the file is deleted as unnecessary because a notation is included in the CERS submittal. All information not being withheld as a trade secret must be submitted in CERS or a local reporting portal and the applicant must indicate that information is being withheld as a trade secret. If the local agency finds that the request for trade secret protection is not valid the information will need to be submitted in CERS or a local reporting portal.

SECTION 2715. CERTIFICATION, LICENSING, AND TRAINING REQUIREMENTS FOR UNDERGROUND STORAGE TANK OWNERS, OPERATORS, INSTALLERS, SERVICE TECHNICIANS, AND INSPECTORS.

Specific Purpose and Necessity of the Proposed Action

The existing submittal requirements in existing section 2715(a) are amended for clarification purposes and to require that the submittals be made through CERS or a local reporting portal consistent with Health and Safety Code section 25404, subdivision (e)(4) and California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, section 15100 et seq.

Article 11. Corrective Action Requirements

SECTION 2722. SCOPE OF CORRECTIVE ACTION.

Specific Purpose and Necessity of the Proposed Action

The submittal requirement in existing section 2722(c) is amended to clarify that if a regulatory agency has assumed responsibility for overseeing corrective action the required plan must be submitted electronically through GeoTracker consistent with existing requirements in California Code of Regulations, title 23, division 3, chapter 30, section 3890 et seq. This amendment does not change existing requirements.

SECTION 2725. SOIL AND WATER INVESTIGATION PHASE.

Specific Purpose and Necessity of the Proposed Action

The submittal requirement in existing section 2725(c) is amended to clarify that the required plan must be submitted electronically through GeoTracker consistent with existing requirements in California Code of Regulations, title 23, division 3, chapter 30, section 3890 et seq. This amendment does not change existing requirements.

SECTION 2726. CORRECTIVE ACTION PLAN IMPLEMENTATION PHASE.

Specific Purpose and Necessity of the Proposed Action

The submittal requirements in subdivisions (b) and (c) of existing section 2725 are amended to clarify that the required plan must be submitted electronically through GeoTracker consistent with existing requirements in California Code of Regulations, title 23, division 3, chapter 30, section 3890 et seq. This amendment does not change existing requirements.

SECTION 2727. VERIFICATION MONITORING PHASE.

Specific Purpose and Necessity of the Proposed Action

The submittal requirement in existing section 2727(c) is amended to clarify that the required reports must be submitted electronically through GeoTracker consistent with existing requirements in California Code of Regulations, title 23, division 3, chapter 30, section 3890 et eq. This amendment does not change existing requirements.