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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

#### Underground Storage Tank Biodiesel Regulations

**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 regulatory action.

#### ***PROPOSED REGULATORY ACTION***

The State Water Board proposes to amend California Code of Regulations, title 23, division 3, chapter 16 (California UST Regulations), article 3, sections 2631 and 2631.2 (proposed amendments). The proposed amendment to section 2631 provides that diesel containing up to 20 percent biodiesel meeting the American Society of Testing and Materials International (ASTM) standard D7467 (B20) shall be recognized as equivalent to diesel for the purpose of complying with existing approval requirements for double-walled USTs unless any material or component of the UST system has been determined to not be compatible with B20. This proposed amendment allows double-walled UST owners and operators that wish to store B20 to comply with these California UST Regulations. The State Water Board also proposes to delete section 2631.2, which provided a temporary variance for biodiesel blends from June 1, 2009 to June 1, 2012, because it is inoperative.

#### ***PUBLIC HEARING***

A public hearing has not been scheduled for this proposed regulatory 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 June 25, 2019 at 12:00 noon. The State Water Board only will 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), by fax at (916) 341-5620, 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, 24<sup>th</sup> 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. 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 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 also may call Ms. Laura Fisher at (916) 341-5870 or email her at [laura.fisher@waterboards.ca.gov](mailto:laura.fisher@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. References to specific code sections are identified in the proposed amendments to the UST Regulations.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Water Board proposes to amend California UST Regulations, article 3, sections 2631 and 2631.2. The proposed amendment to section 2631 provides that B20 shall be recognized as equivalent to diesel for the purpose of complying with existing approval requirements for double-walled USTs. This proposed amendment allows double-walled UST owners and operators that wish to store B20 to comply with these California UST Regulations. The State Water Board also proposes to delete section 2631.2, which provided a temporary variance for biodiesel blends from June 1, 2009 to June 1, 2012, because it is inoperative.

Biodiesel is a renewable fuel that can be manufactured from new and used vegetable oils, animal fat, and recycled restaurant grease. Biodiesel’s physical properties are similar to those of diesel, but biodiesel produces fewer greenhouse gas (GHG) emissions and other toxic air pollutants, which pose a threat to human health and welfare and the environment. One hundred

percent biodiesel conforms to the voluntary consensus technical standard of the ASTM D6751. Biodiesel can be blended with diesel and used in many different concentrations according to ASTM. For example, ASTM D975 allows diesel to contain up to five percent biodiesel and ASTM D7467 allows diesel to contain up to 20 percent biodiesel. Unfortunately, independent testing and approvals for USTs has not kept up with the introduction of and desire to use B20 in order to reduce GHG emissions and other toxic air pollutants.

California UST Regulations require that the primary and secondary containment, leak detection equipment, and all other UST equipment that comes into contact with the stored substance be approved for the storage of a specific hazardous substance. California UST Regulations require an approval from an independent testing organization for primary containment and any secondary containment that is integral to the primary containment. If the independent testing organization approval for the primary containment does not cover the specific hazardous substance to be stored, the manufacturer of the primary containment may provide an affirmative statement of compatibility. California UST Regulations require secondary containment that is not integral to the primary containment be designed and constructed to prevent structural weakening due to contact with the stored hazardous substance; and be in accordance with a nationally recognized industry code or standard or an engineering specification approved by a California registered professional engineer. California UST Regulations require leak detection equipment be certified by an independent third-party testing laboratory. California UST Regulations require an approval for all other UST components that comes into contact with the stored substance (e.g., spill containers, overfill prevention equipment, and ancillary equipment) from an independent testing organization, manufacturer of the equipment, or California registered professional engineer for the storage of a specific hazardous substance.

Underwriter's Laboratory (UL) is an independent testing organization that has issued approvals for primary and secondary containment for USTs that are used in California. UL approvals do not always cover B20. In 2009, UL began material compatibility testing for biodiesel and biodiesel blends in USTs. On January 7, 2009, UL determined that diesel containing up to five percent biodiesel fell within existing approvals covering diesel. Section 2631.2 of the California UST Regulations provided a temporary variance for UST owners and operators of double-walled USTs to lawfully store B20 from June 1, 2009 to June 1, 2012.

Effective June 1, 2012, sections 2631(j) and (k) of the California UST Regulations provided a permanent option to double-walled UST owners and operators to store any hazardous substance including biodiesel and biodiesel blends containing more than five percent biodiesel USTs. Sections 2631(j) and (k) provide that if the independent testing organization approval does not cover the specific hazardous substance to be stored in a double-walled UST, a manufacturer's affirmative statement of compatibility for that specific hazardous substance may be used. As of April of 2019, UL still has not completed material compatibility testing for biodiesel and biodiesel blends in USTs.

The State Water Board has collected and posted on its website many manufacturer's affirmative statements of compatibility for B20 to assist double-walled UST owners and operators in obtaining these manufacturer's affirmative statements of compatibility so that they may store B20. It is not always possible, however, to identify the manufacturer of all primary containment components of USTs and sometimes the manufacturer is no longer in business. As a result, some UST owner and operators cannot store B20 in their existing USTs. Not only does this result in a delay in reductions in GHG emissions and other toxic air pollutants; it reduces the competitiveness of those UST owners and operators who are unable to comply with existing

independent testing and approval requirements to store B20 and hinders the biodiesel industry in California.

Recognizing B20 as equivalent to diesel for the purpose of complying with existing approval requirements, allows double-walled UST owners and operators to store B20 lawfully resulting in expeditious reductions in GHG emissions and other toxic air pollutants, increasing the likelihood of securing and maintaining a permanent source of biodiesel for California in the future. The proposed amendments allow double-walled UST owners and operators to store B20 in a manner that does not create any significant risk of adverse impacts to water quality. The State Water Board believes the proposed amendments are consistent with existing California UST statutes and reduces air quality impacts that are harmful to health, safety and general welfare without posing any additional risk to beneficial uses of California waters.

Part 280.32 of the 40 Code of Federal Regulations (Federal UST Regulations) requires compatibility of USTs be demonstrated only when the hazardous substance to be stored contains greater than 20 percent biodiesel. The proposed amendments to the California UST Regulations are more stringent than the Federal UST Regulations because the proposed amendments limit the storage of B20 to double-walled USTs. The State Water Board believes that allowing the storage of B20 in single-walled USTs is not sufficiently protective of the public health and safety and the environment.

The State Water Board relied upon the technical, theoretical, or empirical studies, reports, and documents discussed in the Initial Statement of Reasons in proposing these amendments to the California UST Regulations. The State Water Board also relied on an Economic and Fiscal Impact Statement (Form 399) and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b) in proposing these amendments to the California UST Regulations. The specific purpose and the basis for the State Water Board's determination of the necessity of each amendment are explained in the Initial Statement of Reasons.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations:*

The State Water Board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the State Water Board has concluded that these are the only regulations that concern the design and construction approval requirements for double-walled USTs.

#### **LOCAL MANDATE**

The proposed amendments do 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 are no fiscal impacts on any State agency or program because the regulations apply to owners and operators of USTs that are regulated by Unified Program Agencies who implement the UST program on the State Water Board's behalf.

**COST OR SAVINGS IMPOSED ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

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

**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 regulatory action.

**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 proposed action amends California UST Regulations, article 3, sections 2631 and 2631.2. The proposed amendment to section 2631 provides that B20 shall be recognized as equivalent to diesel for the purpose of complying with existing approval requirements for double walled USTs. This proposed amendment allows double-walled UST owners and operators that wish to store B20 to comply with these California UST Regulations.

As a result, this regulatory action 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 regulatory action.

**RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

The State Water Board has determined that the cost for a typical UST facility in California to comply with the proposed amendments are zero.

*Assessment Regarding Effect on Jobs and Businesses/Small Businesses*

The proposed regulatory action recognizing B20 as equivalent to diesel for the purpose of complying with existing approval requirements for double-walled USTs unless any material or component of the UST system has been determined to not be compatible with B20, allows more businesses that own or operate USTs to store B20.

The proposed regulatory action will not have an effect on the creation or elimination of jobs within the State of California. Nor will the proposed regulatory action have an effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing businesses doing business within the State of California.

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

The proposed amendments will benefit double-walled UST owners and operators that choose to store B20 by reducing the cost to satisfy existing UST requirements. The proposed amendments will benefit double-walled UST owners and operators by increasing the competitiveness of those UST owners and operators who are unable to comply with existing independent testing and approval requirements to store B20. The proposed amendments may benefit the health and welfare of California residents and the State's environment by reducing GHG emissions and other toxic air pollutants. The proposed amendments also may benefit the biodiesel industry in California by increasing the State's competitiveness of those biodiesel manufacturers within the State.

**BUSINESS REPORTING REQUIREMENT**

The State Water Board has determined that the proposed regulatory action will have no effect on reporting requirements to businesses.

**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 regulatory action is proposed; 2) would be as effective and less burdensome to affected private persons than the proposed regulatory action; 3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law; or 4) more consistent with California's existing requirements and groundwater protection policies.

**AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, ECONOMIC AND FISCAL IMPACT STATEMENT (FORM 399), AND THE RULEMAKING FILE**

The State Water Board has prepared an Initial Statement of Reasons, which includes an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b), and an Economic and Fiscal Impact Statement (Form 399) for the proposed regulatory action. The Initial Statement of Reasons 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, including the Economic Impact Analysis/Assessment, the express terms of the proposed regulations, Form 399, the technical, theoretical, or empirical studies, reports, and documents upon which the State Water Board relied in proposing these amendments, and the rulemaking file are available from the contact person listed below or at the website listed below.

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

[http://www.waterboards.ca.gov/water\\_issues/programs/ust/adm\\_notices/bio\\_regs/](http://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/bio_regs/).

**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 amendments 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 above.

**CONTACT PERSONS**

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

Name: Laura S. Fisher, Chief  
Address: State Water Resources Control Board  
Division of Water Quality  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: (916) 341-5870  
E-mail address: [laura.fisher@waterboards.ca.gov](mailto:laura.fisher@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: [cory.hootman@waterboards.ca.gov](mailto:cory.hootman@waterboards.ca.gov)

The documents relating to this proposed regulatory 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/adm\\_notices/bio\\_regs/](http://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/bio_regs/).

May 10, 2019  
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Date

  
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Jeanine Townsend  
Clerk to the Board