

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF WATER QUALITY  
MAY 5, 2009**

**ITEM 4**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT EMERGENCY REGULATIONS TO PROVIDE AN INTERIM VARIANCE FOR UNDERGROUND STORAGE TANK SYSTEMS STORING CERTAIN BIODIESEL BLENDS FROM THIRD-PARTY MATERIAL COMPATIBILITY TESTING AND APPROVAL REQUIREMENTS

**DISCUSSION**

State Water Resources Control Board (State Water Board) regulations require that: a) An Underground Storage Tank (UST) be approved by an independent testing organization; b) An owner or operator use system components made of, or lined with, materials that are compatible with the hazardous substances stored in the UST; c) The components approved for the installation of a UST system, on and after July 1, 2004, include a list of compatible products tested and the measured permeation rate of those products; and d) The release detection equipment be tested by an independent testing laboratory and be approved to function with the substance stored.

With the exception of biodiesel blends up to 5 percent biodiesel (B5), USTs manufactured to date and in use in California have not received independent testing organization approvals for biodiesel or other biodiesel blends. The estimated time period to obtain independent testing organization approval is two years from when the UST manufacturer submits the product to the testing organization. Release detection method approvals have not been obtained for biodiesel or any blend of biodiesel. The estimated time period for obtaining approval of a release detection method is one year from when the material is submitted.

These issues have contributed to the delay of more widespread use of biodiesel in California. The proposed regulations provide for a 36-month variance from the required independent organization certification of leak detection equipment with biodiesel and biodiesel compatibility with UST components. The interim provision specifically allows for UST systems to store biodiesel blends up to B20 in double-walled tanks and piping that currently meet the operational permitting requirements for motor vehicle fuels (petroleum).

In order for the State Water Board to adopt the proposed regulations on an emergency basis, the State Water Board must find that the adoption is necessary for the immediate preservation of public peace, health and safety, and general welfare. Such a condition of emergency exists because facilitating and expediting the use of biodiesel blends up to B20 will assist the State in meeting both greenhouse gas (GHG) emission reduction mandates and requirements under the federal Energy Policy Act.

**POLICY ISSUE**

Should the State Water Board adopt the proposed resolution declaring the existence of an emergency condition, approving the proposed emergency regulations, and authorizing the Executive Director to transmit them to the Office of Administrative Law?

**FISCAL IMPACT**

None

**REGIONAL WATER BOARD IMPACT**

None

**STAFF RECOMMENDATION**

Staff recommends adoption of the proposed resolution declaring the existence of an emergency condition, approving the proposed emergency regulations, and authorizing the Executive Director to transmit the regulations to the Office of Administrative Law.

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

### ADOPT EMERGENCY REGULATIONS TO PROVIDE AN INTERIM VARIANCE FOR UNDERGROUND STORAGE TANK SYSTEMS STORING CERTAIN BIODIESEL BLENDS FROM THIRD-PARTY MATERIAL COMPATIBILITY TESTING AND APPROVAL REQUIREMENTS

#### WHEREAS:

1. Chapter 6.7 of the Health and Safety Code requires that the primary containment of an underground storage tank (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.
2. To implement Chapter 6.7 of the Health and Safety Code, the State Water Resources Control Board (State Water Board) promulgated regulations which require that: a) A UST be approved by an independent testing organization; b) An owner or operator use system components made of, or lined with, materials that are compatible with the hazardous substances stored in the UST; c) The components approved for the installation of a UST system, on and after July 1, 2004, include a list of compatible products tested and the measured permeation rate of those products; and d) The release detection equipment be tested by an independent testing laboratory and be approved to function with the substance stored.
3. With the exception of biodiesel blends up to 5 percent biodiesel (B5), USTs manufactured to date and in use in California have not received independent testing organization approvals for biodiesel or other biodiesel blends as required under the State Water Board regulations. The estimated time period to obtain independent testing organization approval is two years from when the UST manufacturer submits the product to the testing organization.
4. Release detection method approvals have not been obtained for biodiesel or any blend of biodiesel. The estimated time period for obtaining approval of a release detection method is 12 months from when the material is submitted.
5. In 2007, Governor Schwarzenegger signed [Executive Order S-01-07](#), which states, among other things, that greenhouse gas (GHG) emissions pose a serious threat to the health of California's citizens and the quality of the environment and that alternative fuels can reduce GHG emissions.
6. The federal Energy Policy Acts of 1992 and 2005 require the use of renewable fuels and/or alternative fuel vehicles (AFVs) by certain light duty vehicle fleets. Fleets can earn credits through the purchase and use of biodiesel blends containing at least 20 percent biodiesel (B20) in lieu of purchasing AFVs. Many California fleets are attempting to comply with the provisions of the Energy Policy Acts through the use of B20.
7. Storage issues have contributed to the delay of more widespread use of biodiesel in California. Allowing a temporary variance from independent organization testing requirements will authorize and facilitate the use of biodiesel blends up to B20 in California.

# DRAFT

8. The proposed regulations provide for an interim variance for UST systems storing biodiesel blends up to B20 from independent organization approval requirements. The variance criteria are designed to facilitate the use of biodiesel blends up to B20 while minimizing any risk of an unauthorized release to the environment.
9. Government Code section 11346.1 provides for the adoption of emergency regulations when necessary for the immediate preservation of the public peace, health, safety, and general welfare.
10. The State Water Board has determined that it is appropriate to adopt the proposed regulation on an emergency basis because facilitating and expediting the use of biodiesel blends up to B20 will assist the State in reducing GHG emissions and meeting requirements under the federal Energy Policy Acts.
11. Adoption of this regulation is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., as a project to protect natural resources and the environment (California Code of Regulations, title 14, §§ 15307 and 15308).

## THEREFORE BE IT RESOLVED THAT:

1. For the reasons set forth in the Finding of Emergency prepared in connection with the proposed regulations, a condition of emergency exists for the purposes of Government Code section 11346.1, subdivision (b) justifying the immediate adoption of the proposed regulations in order to preserve the public peace, health and safety, and general welfare.
2. The proposed addition of section 2631.2 to Title 23, California Code of Regulations, Division 3, Chapter 16 ([Attachment](#)) is adopted on an emergency basis, and the Executive Director is authorized to transmit the emergency regulation to the Office of Administrative Law for filing with the Secretary of State, and to make any non-substantive revisions to the regulation to facilitate the review process.

## CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 5, 2009.

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Jeanine Townsend  
Clerk to the Board