

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF WATER QUALITY  
NOVEMBER 17, 2009**

**ITEM 11**

**SUBJECT**

CONSIDERATION OF A RESOLUTION TO ADOPT A REGULATION THAT PROVIDES AN INTERIM VARIANCE FOR UNDERGROUND STORAGE OF BIODIESEL BLENDS UP TO 20 PERCENT BIODIESEL (B20)

**DISCUSSION**

State Water Resources Control Board (State Water Board) regulation requires 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 regulation provides 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).

On May 5, 2009, the State Water Board adopted this regulation as an emergency regulation and the regulation became effective on June 1, 2009. In accordance with statutory mandate, the emergency regulation will expire on November 28, 2009, unless the State Water Board complies with the regular rulemaking procedures of the California Administrative Procedure Act or seeks readoption of the emergency regulation before that deadline.

The State Water Board published and distributed a Notice of Proposed Regulatory Action on August 14, 2009. The proposed regulation is substantially the same as the existing emergency regulation. The 45-day public comment period ended on September 28, 2009, and the State Water Board received timely comments. The State Water Board received a request for a public hearing and held a public hearing on November 17, 2009.

**POLICY ISSUE**

Should the State Water Board adopt the proposed resolution approving the proposed regulation, and authorize the Executive Director to transmit the regulation to the Office of Administrative Law (OAL)?

**FISCAL IMPACT**

None

**REGIONAL WATER BOARD IMPACT**

None

**STAFF RECOMMENDATION**

Staff recommends that the State Water Board adopt the proposed resolution approving the proposed regulation, and authorize the Executive Director to transmit the regulation to OAL.

# DRAFT

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

### ADOPTING A REGULATION THAT PROVIDES AN INTERIM VARIANCE FOR UNDERGROUND STORAGE OF BIODIESEL BLENDS UP TO 20 PERCENT BIODIESEL (B20)

#### 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 a regulation which requires 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 State Water Board regulation. 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 regulation provides 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. The State Water Board adopted an emergency regulation on May 5, 2009. The Office of Administrative Law (OAL) approved the regulation and the regulation became effective on June 1, 2009. The existing emergency regulation will expire on November 28, 2009, unless the State Water Board submits to OAL, on or before November 28, 2009, the proposed permanent regulation, the rulemaking record, and a certification that the regular rulemaking procedures prescribed in Government Code sections 11346.2 to 11347.3, inclusive, were satisfied. If this deadline is not met, the State Water Board may seek re-adoption of the emergency regulation.
10. The State Water Board published and distributed a Notice of Proposed Regulatory Action and text of the proposed regulation on August 14, 2009. The proposed regulation is substantially the same as the emergency regulation. The 45-day public comment period ended on September 28, 2009, and the State Water Board received written comments. Responses to all timely comments received on the proposed regulation shall be contained in the Final Statement of Reasons.
11. On November 17, 2009, the State Water Board held a public hearing on the proposed regulation.
12. 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:

The proposed addition of [section 2631.2 to Title 23, California Code of Regulations, Division 3, Chapter 16](#) is adopted and the Executive Director is authorized to transmit the regulation to OAL 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 November 17, 2009.

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Jeanine Townsend  
Clerk to the Board