

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
FEBRUARY 21, 2012**

ITEM 4

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING A REGULATION THAT PROVIDES AN OPTION FOR COMPLIANCE WITH EXISTING UNDERGROUND STORAGE TANK INDEPENDENT TESTING ORGANIZATION APPROVAL REQUIREMENTS

DISCUSSION

State Water Resources Control Board (State Water Board) regulations require that an Underground Storage Tank (UST) be approved by an independent testing organization.

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 existing and upcoming alternative fuels. The independent testing organization approvals typically used for products in California have yet to incorporate these fuels into their approval process, and it is estimated to be several more years before approvals are given.

The State Water Board published and distributed a Notice of Proposed Regulatory Action on November 18, 2011. The 45-day public comment period ended on January 2, 2012 and the State Water Board received timely comments and one late comment.

POLICY ISSUE

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

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

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

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012. In particular, approval of this item will assist in fulfilling the Objective to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and to promote fair and equitable application of laws, regulations, policies, and procedures.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

ADOPTING A REGULATON THAT PROVIDES AN OPTION FOR COMPLIANCE WITH EXISTING UNDERGROUND STORAGE TANK INDEPENDENT TESTING ORGANIZATION 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 releases 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 UST be approved by an independent testing organization.
3. With the rapid influx of alternative fuels and the lack of independent testing organization approvals, the State Water Board adopted an emergency regulation May 5, 2009 allowing for a temporary variance of the independent testing organization. The variance expires June 1, 2012.
4. With the exception of biodiesel fuel blends up to 5 percent biodiesel (B5), USTs manufactured to date and in use in California have not received independent testing organization approvals for other alternative fuels.
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 and other alternative fuels in California. Allowing additional options to demonstrate compatibility will authorize and facilitate the use of alternative fuels in California.
8. The proposed regulation provides for an option for compliance with independent testing 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.

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9. The State Water Board published and distributed a Notice of Proposed Regulatory Action and text of the proposed regulation on November 17, 2011. The 45-day public comment period ended on January 2, 2012, and the State Water Board received written comments. Responses to all timely comments and one late comment received on the proposed regulation are contained in the Final Statement of Reasons.
10. 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 (Cal. Code of Regs, title 14, §§ 15307 & 15308).

THEREFORE BE IT RESOLVED THAT:

The State Water Board adopts the proposed amendment of California Code of Regulations, title 23, division 3, chapter 16, article 3, section 2631 ([Attachment](#)) 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 February 21, 2012.

Jeanine Townsend
Clerk to the Board