

## D R A F T

### 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.

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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 **there is a situation that calls for immediate action to avoid serious harm necessary for the immediate preservation of** to the public peace, health, safety, **and** or 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~~ **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 avoid serious harm to** the public peace, health and safety, **and or** 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

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Section 2631.2 – Biodiesel Blends – Variance from material compatibility certification requirements

(a) This section provides for a temporary variance from certain provisions of sections 2631, 2631.1 and 2643, which will allow owners to store biodiesel blends up to 20 percent biodiesel (B20) by volume in underground storage tanks before testing by an independent testing organization has been completed.

(b) Biodiesel means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, that meets the requirements of the American Society for Testing and Materials Standard Specification D-6751, and the registration requirements of the United States Environmental Protection Agency as a fuel and as a fuel additive under the Clean Air Act (42 U.S.C. Sec. 7401).

(c) Biodiesel blend means a fuel that contains one percent to 99.99 percent biodiesel blended with diesel fuel.

(d) For purposes of this section, where a biodiesel blend is designated BX, X represents the percentage of the fuel, by volume, that is biodiesel. For example, B20 means a biodiesel blend that contains 20 per cent, by volume, of biodiesel.

(e) For an underground storage tank storing biodiesel blends greater than B5 and up to and including B20, a variance from the approval requirements contained in section 2631, subdivision (b) and section 2631.1, subdivision (b) shall be provided by the local agency if all of the following requirements are satisfied:

- (1) The underground storage tank meets the construction requirements contained in Health and Safety Code section 25291, subdivision (a), paragraphs (1) – (6), inclusive and subdivisions (b) – (i), inclusive, section 25290.1 or section 25290.2
- (2) The underground storage tank **and components are is** approved for the storage of petroleum diesel pursuant to section 2631, subdivision (b).
- (3) The underground storage tank satisfies and the owner or operator complies with all other applicable requirements contained in Chapter 6.7 of the Health and Safety Code, the regulations adopted to implement that chapter, and operational requirements contained in a permit issued pursuant to Section 25284 of the Health and Safety Code.
- (4) The owner provides both of the following to the local agency:

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- (A) A Notice of Intent, signed by the owner, to store a biodiesel blend greater than B5 and up to and including B20 in the underground storage tank pursuant to the variance established in this section.
- (B) An “Operating Permit Application – Tank Information” form contained in Title 27, Division 3, Subdivision 1, Chapter 6 that identifies the biodiesel blend accompanied by a written statement from the owner that the underground storage tank **and components are is** compatible with the biodiesel blend stored **or to be stored**. This statement shall be supported by documentation from the underground storage tank manufacturer, a nationally-recognized biodiesel association, or a nationally-recognized research organization with applicable expertise.

(f) For an underground storage tank system storing biodiesel blends up to and including B20, a variance from the certification requirements of section 2643, subdivision (f) shall be provided by the local agency if **both-all** of the following requirements are satisfied:

(1) The release detection method otherwise meets the requirements contained in section 2643 for the biodiesel blend stored.

(2) The owner provides both of the following to the local agency:

(A) A Notice of Intent, signed by the owner, to utilize release detection method or equipment pursuant to the variance established in this section.

(B) A written statement by the owner that the release detection method or equipment functions with the biodiesel blend stored **or to be stored**. This statement shall be supported by documentation from the manufacturer of the release detection method or equipment.

**(3) The underground storage tank meets the requirements contained in subdivision (e).**

(g) The variance established in subdivision (e) shall become inoperative on the following date, whichever date is sooner:

(1) Ninety days after the date of any decision by the applicable certification organization that determines that the certification for underground storage tanks that contain the biodiesel blend stored are included in the standard petroleum diesel approval or that determines that materials or components of the underground storage tank for which the variance was obtained are not compatible with the biodiesel blend stored.

(2) Thirty-six (36) months from the effective date of this section.

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(h) The variance contained in subdivision (f) shall become inoperative thirty-six (36) months from the effective date of this section.

(i) If the variance established under subdivision (e) becomes inoperative pursuant to paragraph (2) of subdivision (g) or because the applicable certification organization determines that materials or components of the underground storage tank for which the variance was obtained are not compatible with the biodiesel blend stored, the owner shall empty the underground storage tank and the local agency shall inspect the underground storage tank pursuant to Health and Safety Code section 25288 before any other substance is stored.