

**Proposed Amendments
to the
California Code of Regulations
Title 23. Waters
Division 3. State Water Resources Control Board
and Regional Water Quality Control Boards
Chapter 16. Underground Tank Regulations**

**FINAL
STATEMENT OF REASONS**

**July 2016
State of California
State Water Resources Control Board
Division of Water Quality**

Chapter 16. Underground Storage Tank Regulations

UPDATE OF INITIAL STATEMENT OF REASONS¹

The information contained herein is updated as follows.

The Notice of Proposed Rulemaking for these regulations was published in the California Notice Register on March 25, 2016. In response to comments received during the initial 45 day comment period of March 25 to May 10, 2016 the State Water Resources Control Board (State Water Board) modified the proposed regulations:

The modified text was made available to comment during the 15-day comment period from June 15 to July 1, 2016.

Existing regulations use the terms “paragraph,” “subparagraph,” “subsection,” and “subdivision” inconsistently. The State Water Board has amended the use of these terms in the regulations for consistency purpose. As amended, the use of these terms are consistent with the modern use of these terms at the State Water Board.

Article 1. Definition of Terms

SECTION 2611. ADDITIONAL DEFINITIONS.

“Submit”

“Submit” means to provide documentation or information to the State Water Board, the Regional Water Quality Board, or the local agency by the specified method. If no method is specified herein, submittal may be made by hand-delivery, mail, or facsimile or other electronic methods, unless otherwise directed by the agency that will receive the submittal. If the method specified is through the California Environmental Reporting System or a local reporting portal, but at the time of the submittal the California Environmental Reporting System data dictionary does not define the data elements for the submittal and there is no specific-named document upload option for that submittal, then it shall be as though no method is specified.

Specific Purpose and Necessity of the Proposed Action

Three commenters raised concerns that requiring a document for which there is no specifically-named document location to be submitted through California Environmental Reporting System (CERS) may cause added workload and/or confusion. Currently in CERS, there are multiple specifically-named document locations and one location for all other miscellaneous state-required documents. Specifically-named document locations provide a specific location for underground storage tank (UST) owners and operators to upload specific documents (e.g., the UST Site Plan). Any document for which there is no specifically-named location only can be submitted by uploading it to the miscellaneous state-required documents location.

¹ This section explains the changes that have been made to the text of the regulations initially proposed. The changes that have been made are reflected in strikeout and underline format.

To reduce any added workload and/or confusion an upcoming version of CERS will include additional locations for specifically-named documents, including the documents referenced by the commenters. In addition some documents currently required to be uploaded will be converted into discrete data fields (e.g., the Unauthorized Release Form). The State Water Board agrees that as originally proposed, the requirement to submit the additional documents to CERS as miscellaneous state-required documents may cause confusion and added workload. The State Water Board is amending the definition of the term “submit” to provide an alternate method of submission in accordance with California Code of Regulations, title 27, section 15186 until CERS is upgraded. As amended, the documents that would otherwise be submitted to CERS as miscellaneous state-required documents may be submitted via paper or other method until CERS is upgraded.

Article 3: New Underground Storage Tank Design, Construction, and Monitoring Requirements

SECTION 2631.2. BIODIESEL BLENDS – VARIANCE FROM MATERIAL COMPATIBILITY CERTIFICATION REQUIREMENTS.

Withdraw all proposed changes to this section.

Specific Purpose and Necessity of the Proposed Action

Section 2631.2 is inoperative, so there is no reason to amend any of the text. The State Water Board is not removing this section at this time because doing so is beyond the limited scope of the proposed regulations.

SECTION 2632. MONITORING AND RESPONSE PLAN REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANKS CONSTRUCTED PURSUANT TO SECTION 2631.

- (a) This section is applicable only to underground storage tanks constructed pursuant to the requirements of section 2631.
- (b) Owners or operators of underground storage tanks subject to this section shall implement a monitoring program approved by the local agency and specified in the underground storage tank operating permit. The program shall include interstitial space monitoring as described in subdivision (c) and shall include the items listed in subdivision (d).
- (c) Monitoring of the interstitial space shall include either visual monitoring of the primary containment system as described in subdivision (c)(1) or one or more of the methods listed in subdivision (c)(2).
 - (1) A visual monitoring program shall incorporate all of the following:
 - (A) All exterior surfaces of the underground storage tanks and the surface of the floor directly beneath the underground storage tanks shall be capable of being monitored by direct viewing.
 - (B) Visual inspections shall be performed daily, except on weekends and recognized state and/or federal holidays. Inspections may be more frequent if required by the local agency or the local agency may reduce the frequency of visual monitoring at

facilities where personnel are not normally present and inputs to and withdrawals from the underground storage tanks are very infrequent. In these instances, visual inspection shall be made weekly. The inspection schedule shall take into account the minimum anticipated time during which the secondary containment system is capable of containing any unauthorized release and the maximum length of time any hazardous substance released from the primary containment system will remain observable on the surface of the secondary containment system. The inspection schedule shall be such that inspections will occur on a routine basis when the liquid level in the tanks is at its highest. The inspection frequency shall be such that any unauthorized release will remain observable on the exterior of or the surface immediately beneath the underground storage tanks between visual inspections. The evaluation of the length of time the hazardous substance remains observable shall consider the volatility of the hazardous substance and the porosity and slope of the surface immediately beneath the tanks.

- (C) The liquid level in the tank shall be recorded at the time of each inspection.
 - (D) If any liquid is observed around or beneath the primary containment system, the owner or operator shall, if necessary, have the liquid analyzed in the field using a method approved by the local agency or in a laboratory to determine if an unauthorized release has occurred. The owner or operator shall have a tank integrity test conducted, if necessary, to determine whether the primary containment system is leaking. If a leak is confirmed, the owner or operator shall comply with the applicable provisions of Article 5, Article 6, and Article 7.
- (2) A monitoring program which relies on the mechanical or electronic detection of the hazardous substance in the interstitial space shall include one or more of the methods in Table 3.2. The following requirements shall apply when appropriate:
- (A) The interstitial space of the tank shall be monitored using a continuous monitoring system which meets the requirements of section 2643(f).
 - (B) The continuous monitoring system shall be connected to an audible and visual alarm system approved by the local agency.
 - (C) For methods of monitoring where the presence of the hazardous substance is not determined directly, for example, where liquid level measurements in the interstitial space are used as the basis for determination, the monitoring program shall specify the proposed method(s) for determining the presence or absence of the hazardous substance in the interstitial space if the indirect methods indicate a possible unauthorized release.
- (d) All monitoring programs shall include the following:
- (1) A procedure for monitoring ~~entered into~~ submitted through the UST Tank Information/Monitoring Plan submittal element in the California Environmental Reporting System or a local reporting portal which establishes:
 - (A) The frequency of performing the monitoring;

- (B) The methods and equipment, identified by name and model, to be used for performing the monitoring;
 - (C) The location(s), as identified on a plot plan, where the monitoring will be performed;
 - (D) The name(s) and title(s) of the person(s) responsible for performing the monitoring and/or maintaining the equipment;
 - (E) The reporting format;
 - (F) The preventive maintenance schedule for the monitoring equipment. The maintenance schedule shall be in accordance with the manufacturer's instructions, and;
 - (G) A description of the training necessary for the operation of both the tank system and the monitoring equipment.
- (2) A response plan submitted through the California Environmental Reporting System or a local reporting portal which demonstrates, to the satisfaction of the local agency, that any unauthorized release will be removed from the secondary containment system within the time consistent with the ability of the secondary containment system to contain the hazardous substance, but not more than 30 calendar days or a longer period of time as approved by the local agency. The response plan shall include, but is not limited to, the following:
- (A) A description of the proposed methods and equipment to be used for removing and properly disposing of any hazardous substances, including the location and availability of the required equipment if not permanently on-site, and an equipment maintenance schedule for the equipment located on-site.
 - (B) The name(s) and title(s) of the person(s) responsible for authorizing any work necessary under the response plan.
- (e) When implementation of a monitoring program or any other condition indicates that an unauthorized release may have occurred, the owner or operator shall comply with the release reporting requirements of Article 5. If the release came from the tank system, the owner or operator shall replace, repair, or close the tank in accordance with Articles 3, 6, or 7, respectively.

Table 3.2 Methods of Monitoring for Hazardous Substances in the Interstitial Space of an Underground Storage Tank System

Methods of Monitoring					
Condition of the Secondary System [FN1]	Type of Substance Stored	Liquid Level Indicator [FN2]	Hazardous Substance Sensor [FN3]	Vapor Monitor	Pressure or Vacuum Loss Detector [FN4]
Dry	Volatile	X	X	X	X
Dry	Nonvolatile	X	X		X
Wet	Volatile	X	X		X

Wet	Nonvolatile	X	X		X
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[FN1]

A “dry” system does not contain liquid within the secondary containment during normal operating conditions while a “wet” system does.

[FN2]

Includes continuously operated mechanical or electronic devices.

[FN3]

Includes either qualitative or quantitative determinations of the presence of the hazardous substance.

[FN4]

Detects changes in pressure or vacuum in the interstitial space of an underground storage tank with secondary containment.

Specific Purpose and Necessity of the Proposed Action

A commenter suggested that the term “submitted through” would be more precise than the originally proposed term “entered into.” The commenter’s concern is that it can be argued that “entered into” only means a person must enter data into the UST Tank information/Monitoring Plan submittal element, without necessarily making the submission to the local agency. The State Water Board agrees that the term “entered into” does not fully represent the intent of the section and “submitted through” is a better term.

SECTION 2634. MONITORING AND RESPONSE PLAN REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANKS CONTAINING MOTOR VEHICLE FUEL AND CONSTRUCTED PURSUANT TO SECTION 2633.

- (a) This section applies only to underground storage tanks containing motor vehicle fuel and which are constructed in accordance with section 2633.
- (b) Owners or operators of tanks which are constructed pursuant to section 2633 and which contain motor vehicle fuel shall implement a monitoring program approved by the local agency and specified in the tank operating permit.
- (c) New tanks which contain motor vehicle fuel and which are constructed in accordance with section 2633 shall be monitored as follows:
 - (1) The leak interception and detection system shall be monitored in accordance with subdivision (d) of this section;
 - (2) The motor vehicle fuel inventory shall be reconciled according to the performance requirements in section 2646; and,
 - (3) All underground piping shall be tested and monitored in accordance with section 2636.
- (d) Before implementing a monitoring program, the owner or operator shall demonstrate to the satisfaction of the local agency that the program is effective in detecting an unauthorized

release from the primary container before it can escape from the leak interception and detection system. A monitoring program for leak interception and detection systems shall meet the following requirements:

- (1) The system shall detect any unauthorized release of the motor vehicle fuel using either:
 - (A) One or more of the continuous monitoring methods provided in Table 3.2. The system shall be connected to an audible and visual alarm system approved by the local agency; or,
 - (B) Manual monitoring. If this method is used, it shall be performed daily, except on weekends and recognized state and/or federal holidays, but no less than once in any 72 hour period. Manual monitoring may be required on a more frequent basis as specified by the local agency.
 - (2) The owner or operator shall prepare a procedure for monitoring, ~~entered into~~ submitted through the "UST Tank Information/Monitoring Plan" submittal element in the California Environmental Reporting System or a local reporting portal, which establishes:
 - (A) The frequency of performing the monitoring;
 - (B) The methods and equipment to be used for performing the monitoring;
 - (C) The location(s) where the monitoring will be performed;
 - (D) The name(s) and title(s) of the person(s) responsible for performing the monitoring and/or maintaining the equipment;
 - (E) The reporting format;
 - (F) The preventive maintenance schedule for the monitoring equipment. The maintenance schedule shall be in accordance with the manufacturer's instructions; and
 - (G) A description of the training necessary for the operation of both the tank system and the monitoring equipment.
 - (3) For methods of monitoring where the presence of the hazardous substance is not determined directly, for example, where liquid level measurements are used as the basis for determination (i.e., liquid level measurements), the monitoring program shall specify the proposed method(s) for determining the presence or absence of the hazardous substance if the indirect method indicates a possible unauthorized release of motor vehicle fuel.
- (e) A response plan for an unauthorized release shall be developed before the underground storage tank system is put into service and submitted through the California Environmental Reporting System or a local reporting portal within 30 days after the underground storage tank system is put into service. If the leak interception and detection system meets the volumetric requirement of section 2631(d), the local agency shall require the owner to develop a response plan pursuant to the requirements of section 2632(d)(2). If the leak

interception and detection system does not meet the volumetric requirements of section 2631(d)(1) through (5), the response plan shall consider the following:

- (1) The volume of the leak interception and detection system in relation to the volume of the primary container;
- (2) The amount of time the leak interception and detection system shall provide containment in relation to the period of time between detection of an unauthorized release and cleanup of the leaked substance;
- (3) The depth from the bottom of the leak interception and detection system to the highest anticipated level of ground water;
- (4) The nature of the unsaturated soils under the leak interception and detection system and their ability to absorb contaminants or to allow movement of contaminants; and
- (5) The methods and scheduling for removal all of the hazardous substances which may have been discharged from the primary container and are located in the unsaturated soils between the primary container and ground water, including the leak interception and detection system sump.

Specific Purpose and Necessity of the Proposed Action

A commenter suggested that the term “submitted through” would be more precise than the originally proposed term “entered into.” The commenter’s concern is that it can be argued that “entered into” only means a person must enter data into the UST Tank information/Monitoring Plan submittal element, without necessarily making the submission to the local agency. The State Water Board agrees that the term “entered into” does not fully represent the intent of the section and “submitted through” is a better term.

Article 5. Release Reporting and Initial Abatement Requirements

SECTION 2655. FREE PRODUCT REMOVAL REQUIREMENTS.

- (e) A free product removal report shall be submitted through GeoTracker to the agency overseeing the cleanup within 45 calendar days of release confirmation and shall include, but not be limited to:

Specific Purpose and Necessity of the Proposed Action

The majority of the existing regulations are implemented by the applicable “local agency” which has authority over the permitting and operation of underground storage tanks. However, oversight and cleanup of releases from underground storage tanks is implemented by an agency designated as a Local Oversight Program. Proposed section 2665(e) uses the term “agency” in reference to the agency that has oversight and cleanup authority over free product removal which is different from the “local agency.”

Article 10. Permit Application, Quarterly Report and Trade Secret Request Requirements

SECTION 2714. TRADE SECRET PROVISIONS

- (a) Any person making an application for a permit to operate an underground storage tank, for renewal of the permit, or for a site-specific variance, shall submit all of the application submittal elements through the California Environmental Reporting System or a local reporting portal, ~~but may withhold the information which the person believes is a trade secret. The~~ Any person asserting ~~the~~ a trade secret must ~~separately~~ submit all information which the person believes is a trade secret and a legal justification for the request for confidentiality. The information which shall be submitted includes, but is not limited to:
- (1) Identification of those portions of the information which are believed to be trade secrets;
 - (2) The length of time this information should be treated as confidential;
 - (3) Measures that have been taken to protect this information as confidential; and
 - (4) A discussion of why this information is subject to trade secret protection, including references to statutory and case law as appropriate.
- (b) If the local agency, the State Water Board, or the Regional Water Quality Board (collectively referred to as “agency” for the purposes of this section) determines that a request for trade secret protection is clearly valid, the material shall be given trade secret protection as discussed in subdivision (f) of this section.
- (c) If the agency determines that the request for trade secret protection is clearly frivolous, it shall send a letter to the applicant stating that the information will not be treated as a trade secret unless the agency is instructed otherwise by a court within 10 working days of the date of the letter.
- (d) If the validity of the request for trade secret protection is unclear, the agency will inform the person claiming trade secrecy that the burden is on him or her to justify the claim. The applicant shall be given a fixed period of time to submit the additional information as the agency may request. The agency shall then evaluate the request on the basis of the definition of “trade secrets” contained in the appropriate section of Chapter 6.7 of Division 20 of the Health and Safety Code and shall issue its decision. If the agency determines that the information is not a trade secret, it shall act in accordance with subdivision (c) of this section.
- (e) All information received for which trade secrecy status is requested shall be treated as confidential as discussed in subdivision (f) of this section until a final determination is made.
- (f) Information which has been found to be confidential or which is being reviewed to determine if confidentiality should exist, shall be immediately filed in a separate “confidential” file. If a document or portion of a document is filed in a confidential file, a notation shall be filed with the file document indicating that further information is in the confidential file.
- (g) Information contained in confidential files shall only be disclosed to authorized representatives of the applicant or other governmental agencies in connection with the agency’s responsibilities pursuant to Chapter 6.7 of the Health and Safety Code or Division 7 of the Water Code.
- (h) Nothing contained herein shall limit an applicant’s right to prevent disclosure of information pursuant to other provisions of law.

Specific Purpose and Necessity of the Proposed Action

1. **Section 2714(a)** - Health and Safety Code, section 25404, subdivision (e)(4), requires regulated businesses and local agencies to report all unified program data electronically. The State Water Board recognizes that as originally proposed, the requirement to withhold and separately submit permit application information that the person submitting believes is a trade secret and should be confidential would not fully implement Health and Safety Code, section 25404, subdivision (e)(4). The State Water Board is amending the regulation to require that all permit application information be submitted through CERS or a local reporting portal, including any information the person submitting believes is a trade secret.

2. **Section 2714(f)** - The proposed amendment to subdivision (f) of this section is withdrawn because the State Water Board has determined that it still is necessary to direct local agencies how to keep trade secrets confidential. CERS does not yet have a mechanism to distinguish data that has been determined to be confidential from public data. Until such time as CERS is upgraded to include such a mechanism, local agencies must make a note in CERS to indicate that there is information in the file that has been determined to be confidential and they must consult their “confidential files” before responding to any request for records to ensure that information that previously has been determined to be confidential is kept confidential.

SUMMARY AND RESPONSES TO COMMENTS RECEIVED DURING THE INITIAL 45-DAY COMMENT PERIOD FROM MARCH 25 TO MAY 10, 2016

List of Comment Letters (Alphabetical Order) Public Comments regarding Electronic Reporting Regulations Comment Letters (#)	
Commenter(s)	Submitted by:
Belshire Environmental Services, Inc (Commenter #3)	Glenda Kierstead
Petaluma City Fire Department (Commenter #2)	Cary Fergus
San Diego County Department of Environmental Health (Commenter #5)	Cecilia Lewallen
Santa Clara County Department of Environmental Health (Commenter #4)	Greg Breshears
Stanislaus County Department of Environmental Resources (Commenter #1)	Robert Riess

List of Comment Letters (Numerical Order) Public Comments regarding Electronic Reporting Regulations Comment Letters (#)	
Commenter(s)	Submitted by:
Stanislaus County Department of Environmental Resources (Commenter #1)	Robert Riess
Petaluma City Fire Department (Commenter #2)	Cary Fergus
Belshire Environmental Services, Inc (Commenter #3)	Glenda Kierstead
Santa Clara County Department of Environmental Health (Commenter #4)	Greg Breshears
San Diego County Department of Environmental Health (Commenter #5)	Cecilia Lewallen

GENERAL COMMENTS

Comment Summary 1: Three commenters raised concerns that requiring a document to be submitted through CERS may cause added workload and/or confusion if there is no specific place in CERS for uploading them. (Commenter #1, #2, #3)

Response: The State Water Board is amending the definition of “submit” in response to the comments. As amended, the documents that would otherwise be submitted to CERS as miscellaneous state-required documents may be submitted via paper or other method until CERS is upgraded.

Comment Summary 2: Comment supporting the Proposed Regulations. (Commenter #2)

Response: The State Water Board thanks you for your support.

Comment Summary 3: Commenter is concerned that previously submitted test results will be required to be submitted through CERS. (Commenter #3)

Response: Businesses must submit several UST test results within a specified time frame to the local agency for review. Once a test result is submitted to the local agency, the UST owner/operator’s responsibility has been met. If the owner/operator previously submitted the test results on paper, then there is no requirement to re-submit them electronically through CERS.

Comment Summary 4: Commenter asked will there be another user status/login for contractors to submit installation/modification information? (Commenter #3)

Response: Proposed plans for an upgraded version of CERS will allow limited access to authorized contractors. The proposed plan is to allow authorized contractors to upload specified documents, including test results, into CERS on behalf of the UST owner/operator. The State Water Board notes, however, that there still are several hurdles for making that plan a reality and that contractors only will be permitted to upload specified documents into CERS. Another proposal for the next CERS upgrade is to remove the installation/modification data elements in favor of creating a specifically-named upload document for the information.

BIODIESEL BLENDS – VARIANCE FROM MATERIAL COMPATIBILITY CERTIFICATION REQUIREMENTS. (Section 2631.2)

Comment Summary 5: Commenter is concerned that the proposed changes in section 2631.2 are being made to older version of title 23 of the California Code of Regulations. (Commenter #5)

Response: The proposed amendments are being made to the latest version of the regulations. The commenter’s copy of the regulations is outdated. This comment did, however, bring up the question of why the State Water Board was proposing to amend language to a section of the regulations that, though not repealed, has expired and is inoperative. As amended, the State Water Board is no longer proposing any amendments to section 2631.2. The State Water Board is not removing the section at this time due to the limited scope of these proposed regulations.

MONITORING AND RESPONSE PLAN REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANKS CONSTRUCTED PURSUANT TO SECTION 2631. (Section 2632)

Comment Summary 6: Commenter proposed changing “entered into” to “submitted through” for section 2632(d)(1) because using the words, “entered into” would allow the UST owner/operator to comply simply by entering DRAFT submittal information into CERS or the local portal without actually submitting the information for review by the Unified Program Agency. (Commenter #4)

Response: The State Water Board agrees and is amending this section as proposed by the commenter.

MONITORING AND RESPONSE PLAN REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANKS CONTAINING MOTOR VEHICLE FUEL AND CONSTRUCTED PURSUANT TO SECTION 2633. (Section 2634)

Comment Summary 7: Commenter proposed changing “entered into” to “submitted through” for section 2634(d)(2) because using the words, “entered into” would allow the UST owner/operator to comply simply by entering DRAFT submittal information into CERS or the local portal without actually submitting the information for review by the Unified Program Agency. (Commenter #4)

Response: The State Water Board agrees and is amending this section as proposed by the commenter.

SUMMARY AND RESPONSES TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD FROM JUNE 15 TO JULY 1, 2016

List of Comment Letters (Alphabetical Order) Public Comments regarding Electronic Reporting Regulations Comment Letters (#)	
Commenter(s)	Submitted by:
Alameda County-Department of Environmental Health (Commenter #2)	Jerry Yoshioka
Belshire Environmental Inc. (Commenter #1)	Glenda Kierstead

List of Comment Letters (Numerical Order) Public Comments regarding Electronic Reporting Regulations Comment Letters (#)	
Commenter(s)	Submitted by:
Belshire Environmental Inc. (Commenter #1)	Glenda Kierstead
Alameda County-Department of Environmental Health (Commenter #2)	Jerry Yoshioka

GENERAL COMMENTS

Comment Summary 1: Commenter is concerned about whether the proposed amendments released for public comment is the entire set of regulations. (Commenter #2)

Response: Only the portions of regulation that will be amended were included in the proposed amendments released for public comment.

Comment Summary 2: Commenter is concerned about whether there is sufficient space available in the CERS database to receive all data required to be submitted through CERS. (Commenter #1)

Response: CERS can handle required reporting and uploading of pdf documents in accordance with the existing specified parameters limiting document sizes. There are presently no plans to further limit required document uploads. The California Environmental Protection Agency (CalEPA) has requested that businesses not upload documents that are not required (e.g., Aboveground Petroleum Storage Tank Spill Prevention, Control, and Countermeasure Plans and Material Safety Data Sheets.)

Comment Summary 3: Commenter is concerned that space limitations in CERS will create inconsistent submittal policies between local agencies. (Commenter #1)

Response: There is no current or expected space limitation issues that would affect business reporting required data or documents. CalEPA does not have any plans to change reporting requirements or data/document retention in CERS due to space limitations.

Comment Summary 4: Commenter is concerned that space limitations in CERS will contribute to slow response times and connectivity issues. (Commenter #1)

Response: Although CalEPA continues to develop CERS to manage data reporting requirements in a timely and efficient manner, slow response times may occur during peak times of use. CalEPA has scheduled certain activities that could result in slow response times, such as downloading large sets of data, to nights or other off-peak times.

Comment Summary 5: Commenter asked if documents uploaded to the Miscellaneous State-Required Documents section of CERS can or should be removed from submittals? (Commenter #1)

Response: Businesses cannot remove data or documents once they have been submitted. Once a document is submitted, it is a public record and is subject to requirements regarding retention of such records. Businesses only should submit required data or documents.

ADDITIONAL DEFINITIONS. (Section 2611)

Comment Summary 6: Commenter suggested amending the definition of the term “repair” to consistent with the recent amendment to the federal definition of the term “repair” in part 280.10 of title 40 of the Code of Federal Regulations (federal UST regulations). (Commenter #2)

Response: The State Water Board recognizes that the federal definition of the term “repair” has been amended, however; the State Water Board is not amending the definition of the term “repair” at this time because doing so is beyond the limited scope of these proposed regulations. The State Water Board intends to address this issue, as well as other amendments to the federal UST regulations, as part of a separate regulatory package.

Comment Summary 7: The definition of the term “submit” contains the phrase “unless otherwise directed by the agency that will receive the submittal,” one commenter asked how must the agency provide this direction? (Commenter #1)

Response: The default is that where the regulation does not specify the submittal method, businesses may submit the required document via hand-delivery, mail, or facsimile or other electronic methods. The phrase “unless otherwise directed by the agency that will receive the submittal,” simply allows the agency to state a preference for a submittal method or to not allow a submittal method that the agency is not equipped to handle (e.g., limits on document sizes in emails and facsimiles). Business should have the option to either provide specific documents electronically as uploaded pdf files or to continue to be reported in the manner used before electronic reporting was implemented. Please see the guidance and Frequently Asked Questions prepared by CalEPA and the State Water Board for more information regarding reporting requirements at http://www.waterboards.ca.gov/water_issues/programs/ust/cers/faqs.shtml.

Comment Summary 8: Commenter is concerned that if the agency that will receive the submittal can direct how information is submitted, the requirement could become subject to the unique preference of each inspector. (Commenter #1)

Response: Decisions regarding permissible submittal methods must be made by the agency to whom the submittal will be made, not individual inspectors. Businesses should have the option to either provide specific documents electronically as uploaded pdf files or to continue to be reported in the manner used before electronic reporting was implemented.

INFORMATION AND APPLICATION FOR PERMIT TO OPERATE AN UNDERGROUND STORAGE TANK. (Section 2711)

Comment Summary 9: Commenter is concerned that there is no specific-named document upload option in CERS for the permit application to be uploaded to after the permit application has been signed. (Commenter #2)

Response: The permit application to operate an underground storage tank has been converted into discreet data fields in CERS to collect the necessary information required.

When the information is submitted through the owner's or operator's own password protected CERS account, it satisfies the requirement for a signature. Businesses should not upload the permit application to CERS.

Comment Summary 10: Commenter suggested that the regulation state that submittal through CERS of the permit application is acknowledgement of signature. (Commenter #2)

Response: The State Water Board does not agree with the suggestion. In July 2009 a United States Environmental Protection Agency memorandum clarified that states may accept electronic submission of information including electronic certification in lieu of wet signatures. Submitting information through a CERS account is a form of electronic certification. Therefore it is not necessary that regulation state that submittal through a CERS account of the permit application is acknowledgement of signature.

LOCAL MANDATE

The State Water Board has determined that the proposed action will 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 2. Additionally, the State Water Board has determined that the proposed action will not result in costs or savings to any state agency or any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code, other nondiscretionary costs or savings imposed on local agencies, or costs or savings in federal funding to the State.

ALTERNATIVES DETERMINATION

The State Water Board has determined that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.