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## State Water Resources Control Board

### **Title 23. Waters**

### **Division 3. State Water Resources Control Board and**

### **Regional Water Quality Control Boards**

### **Chapter 16. Underground Tank Regulations**

## **Notice of Proposed Regulatory Action**

### **Underground Storage Tank Reporting Requirements**

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Water Board) proposes to amend, adopt, or repeal the underground storage tank (UST) regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

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#### ***PROPOSED REGULATORY ACTION***

The State Water Board proposes to amend California Code of Regulations, title 23, division 3, chapter 16 (California UST Regulations). These proposed amendments include modifications to the local agency reporting requirements and modifications to the reporting requirements for UST owners and operators.

#### ***PUBLIC HEARING***

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the State Water Board no later than 15 days prior to the close of the written comment period. If a request for a public hearing is made, the State Water Board shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes on **December 17, 2019** at 12:00 p.m. The State Water Board only will consider comments received by that time.

Please send comment letters to Jeanine Townsend, Clerk to the Board, by email at [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov), by fax at (916) 341-5620, or by mail or hand delivery addressed to:

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000 (by mail)  
1001 I Street, 24<sup>th</sup> Floor, Sacramento, CA 95814 (by hand delivery)

Please also indicate in the subject line, “**Comment Letter – Proposed UST Reporting Regulations.**” Hand and special deliveries should also be addressed to Ms. Townsend at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Townsend at (916) 341-5600. Due to the limitations of the email system, emails larger than 15 megabytes are rejected and cannot be delivered or received by the State Water Board. Therefore, the State Water Board requests that comments larger than 15 megabytes be submitted under separate emails.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserv for “**Program Requirements and Guidance**” by going to:

[http://www.waterboards.ca.gov/resources/email\\_subscriptions/ust\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/ust_subscribe.shtml).

You also may call Ms. Laura Fisher at (916) 341-5870 or email her at [laura.fisher@waterboards.ca.gov](mailto:laura.fisher@waterboards.ca.gov). **Persons who receive this notice by mail or electronic mail are already on the mailing list.**

### AUTHORITY AND REFERENCE

Health and Safety Code section 25299.3 authorizes the State Water Board to adopt regulations to implement chapter 6.7 of division 20 of the Health and Safety Code. References to specific code sections are identified in the proposed amendments to the regulations.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Water Board proposes to amend the requirements in California UST Regulations, section 2713 regarding the data that local agencies must provide to the State Water Board pursuant to California UST Regulations, section 2713. The UST performance measures that the State Water Board reports to the United States Environmental Protection Agency (U.S. EPA) under the federal Leaking Underground

Storage Tank Trust Fund Corrective Action Cooperation Agreement for California and the State Water Board Cooperative Agreement Work Plan (U.S. EPA UST performance measures) have been amended. In addition to these U.S. EPA UST performance measures, the State Water Board must report compliance inspection data to the U.S. EPA pursuant to the Federal Energy Policy Act of 2005.

The State Water Board proposes to amend the UST performance measures that each local agency must report to the State Water Board semiannually (local agency UST performance measures) consistent with the amendments to the U.S. EPA UST performance measures. The State Water Board also proposes to add a new requirement that local agencies provide compliance inspection data through the California Environmental Reporting System (CERS) the statewide web-based system used to collect and report hazardous material related data. Finally, the State Water Board is proposing to simplify the existing local agency reporting requirement regarding red tags. These amendments to the local agency reporting of UST performance measures are necessary so that the State Water Board can provide complete and accurate reporting of all U.S. EPA UST performance measures to the U.S. EPA.

The State Water Board also proposes to amend the requirements in California UST Regulations, section 2716 to clarify UST owners and operators designated UST operator visual inspection responsibilities. These proposed amendments clarify the corrective actions that must be reported on the Designated Underground Storage Tank Operator Visual Inspection Report and the UST owner or operator signature requirement for this form. The State Water Board is proposing a corresponding modification to the signatory statement on the Designated Underground Storage Tank Operator Visual Inspection Report (Appendix XIII).

The State Water Board proposes several additional amendments to forms contained in the appendices of the California UST Regulations. These forms were added to the California UST Regulations in 2018 for consistency in reporting and to simplify the reporting process. The State Water Board proposes to amend the Underground Storage Tank Monitoring System Certification Form (Appendix VI) and the Underground Storage Tank Secondary Containment Testing Report Form (Appendix VII) to remove the interstice test reporting requirement. There is no separate statutory or regulatory requirement to conduct this communication testing, which may be impossible or infeasible on many existing UST systems.

In addition, the State Water Board proposes to add a requirement to the Underground Storage Tank Spill Container Testing Report Form (Appendix VIII) and the Underground Storage Tank Overfill Prevention Equipment Inspection Report Form (Appendix IX) that the service technician provide the expiration date of the technician's training and certification for spill container testing and performing the overfill equipment inspection, respectively. This addition is necessary to ensure compliance with training and certification requirements and is consistent with all other forms that require service technician information in the California UST Regulations.

The State Water Board also proposes certain amendments to the forms for consistency, clarification, and updating purposes. These amendments include: 1) edits to terminology used for clarification and consistency purposes; 2) modifications intended to simplify the reporting process, such as deleting the requirement to attach the test method used and adding check boxes for construction exceptions to reduce the need to write explanatory comments; 3) removing unnecessary duplicative instructions; and 4) combining or modifying questions on the Underground Storage Tank Overfill Prevention Inspection Report Form (Appendix IX) for clarification purposes.

Finally, the State Water Board proposes certain amendments to the regulations, including the forms, that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California UST Regulations provision (i.e., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of accessibility, syntax, cross-references, spelling, grammar, punctuation, or renumbering or relocating regulatory provisions.

The State Water Board did not rely on any technical, theoretical, or empirical studies, reports, and documents in proposing these amendments to the California UST Regulations. The State Water Board relied on an Economic and Fiscal Impact Statement (Form 399) and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b) in proposing these amendments to the California UST Regulations. The specific purpose and the basis for the State Water Board's determination of the necessity of each amendment are explained in the Initial Statement of Reasons.

#### *Anticipated Benefits of the Proposed Action*

The proposed amendments will simplify, standardize, and update reporting requirements for UST owners and operators and for local agencies, which may assist in earlier identification of issues that may result in UST releases and will assist the State Water Board in maximizing the coordination, consolidation, and consistency of the regulation of USTs throughout the State. As a result, the proposed amendments may decrease the risk of soil and groundwater contamination resulting from UST releases, improving the health and welfare of California residents, worker safety, and the State's environment.

#### *Evaluation of Inconsistency/Incompatibility with Existing State Regulations*

The State Water Board has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the State Water Board has concluded that these are the only regulations that require local agencies and UST owners and operators to report the affected items.

### **LOCAL MANDATE**

This proposal does 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 4.

### **COST OR SAVINGS TO STATE AGENCIES**

The State Water Board has determined that there are no fiscal impacts on any State agency or program because the regulations apply to local agencies and to UST owners and operators of USTs that are regulated by the local agencies, who implement the existing California UST program on the State Water Board's behalf.

### **COST OR SAVINGS IMPOSED ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The State Water Board has determined that there is no cost or savings imposed on school districts as a result of the proposed regulatory action, or other nondiscretionary costs or savings imposed on local agencies or school districts. The State Water Board expects the modifications to the local agency reporting requirements to reduce the overall time that local agencies must spend reporting UST information to the State Water Board. The modifications to the reporting requirements for UST owners and operators also may benefit local agencies by reducing confusion and inconsistent reporting.

### **COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE OF CALIFORNIA (STATE)**

The State Water Board has determined that there is no cost or savings in Federal funding to the State as a result of the proposed regulatory action.

### **EFFECT ON HOUSING COSTS**

The State Water Board has determined that the proposed regulatory action will have no effect on housing costs.

### **BUSINESS IMPACT/SMALL BUSINESS**

The proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Nor will the proposed regulatory action adversely affect small businesses in California because this regulatory action modifies local agency reporting requirements and reporting requirements for UST owners and operators, and amendments does not create a significant workload to create or eliminate business processes.

## **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

The State Water Board has determined that the cost for a typical UST facility in California to comply with the proposed amendments is zero.

### *Assessment Regarding Effect on Jobs and Businesses*

The State Water Board has determined that the proposed regulatory action will not have an effect on the creation of new businesses within the State, because the removed testing requirements for existing equipment do not create a significant enough workload to support the creation of new businesses. The proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Nor will the proposed regulatory action adversely affect small businesses in California.

The proposed regulatory action will not have an effect on the creation or elimination of jobs within the State. Nor will the proposed regulatory action have an effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing doing business within the State.

### *Benefit of the Regulation for Public Health, Safety, and Welfare*

The proposed amendments will simplify, standardize, and update reporting requirements for UST owners and operators and for local agencies, which may assist in earlier identification of issues that may result in UST releases and will assist the State Water Board in maximizing the coordination, consolidation, and consistency of the regulation of USTs throughout the State. As a result, these proposed amendments may decrease the risk of soil and groundwater contamination resulting from UST releases, improving the health and welfare of California residents, worker safety, and the State's environment.

## **BUSINESS REPORTING REQUIREMENT**

The State Water Board finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation which requires a report apply to businesses. The proposed regulatory action simplifies, clarifies, and updates existing reporting requirements.

## CONSIDERATION OF ALTERNATIVES

The State Water Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention: 1) would be more effective in carrying out the purpose for which the regulatory action is proposed; 2) would be as effective and less burdensome to affected private persons than the proposed regulatory action; 3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law; or 4) more consistent with California's existing requirements and groundwater protection policies.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, ECONOMIC AND FISCAL IMPACT STATEMENT, AND THE RULEMAKING FILE**

The State Water Board has prepared an Initial Statement of Reasons, which includes an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b), and Form 399 for the proposed regulatory action. The Initial Statement of Reasons includes the specific purpose for the regulation proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulation is proposed. All the information upon which the proposed regulation is based is contained in the rulemaking file. The Initial Statement of Reasons, including the Economic Impact Analysis/Assessment, the express terms of the proposed regulations, the Form 399, and the rulemaking file are available from the contact person listed below or at the website listed below.

The documents relating to this proposed regulatory action may be found on the State Water Board's website at the following address:

[https://www.waterboards.ca.gov/water\\_issues/programs/ust/adm\\_notices/repregs/index.html](https://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/repregs/index.html)

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding any hearing that is requested and considering all timely and relevant comments received, the State Water Board may adopt the proposed amendments substantially as described in this notice. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the State Water Board adopts the regulation as modified. A copy of any modified regulation may be obtained by contacting Ms. Laura S. Fisher, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy also may be accessed on the State Water Board website previously identified.

**CONTACT PERSONS**

Requests of copies of the text of the proposed regulation, the Statement of Reasons, or other information upon which the rulemaking is based, or other inquiries should be addressed to the following:

Name: Laura S. Fisher, Chief  
Address: State Water Resources Control Board  
Division of Water Quality  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: (916) 341-5870  
E-mail address: [laura.fisher@waterboards.ca.gov](mailto:laura.fisher@waterboards.ca.gov)

The backup contact person is:

Name: Tom Henderson  
Address: State Water Resources Control Board  
Division of Water Quality  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: (916) 319-9128  
E-mail address: [tom.henderson@waterboards.ca.gov](mailto:tom.henderson@waterboards.ca.gov)

The documents relating to this proposed action also may be found on the State Water Board's website at the following address:  
[https://www.waterboards.ca.gov/water\\_issues/programs/ust/adm\\_notices/repregs/index.html](https://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/repregs/index.html)

November 1, 2019  
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Date

  
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Jeanine Townsend  
Clerk to the Board