

STATE WATER RESOURCES CONTROL BOARD
NOTICE OF SECOND MODIFICATION TO TEXT OF
PROPOSED REGULATION

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the State Water Resources Control Board (State Water Board) is providing notice of a change made to its proposed regulation – Title 23 of the California Code of Regulations, Section 2631.2. This modification is reflected in double-underline format. **(Please note:** On October 1, 2009, modifications were made to the initial text of the regulation and those modifications are shown in strikeout and single underline. The comment period for those modifications ended on October 15, 2009.)

If you have any comments regarding this proposed modification (double-underlined text), the State Water Board will accept written comments between October 30, 2009 and November 16, 2009. All written comments must be **received** by the State Water Board no later than **9:00 a.m.** on November 16, 2009, and addressed to:

Ms. Laura Fisher
Division of Water Quality
State Water Resources Control Board
P.O. Box 2231
Sacramento, CA 95812
(916) 341-5870

Comments may be submitted by e-mail to lfisher@waterboards.ca.gov or by fax to (916) 341-5808. The rulemaking file can be viewed at the State Water Board's offices or on line at <http://www.waterboards.ca.gov/ust/>.

All written comments received by 9:00 a.m. on November 16, 2009, which pertain to the modified text reflected in double-underline, will be reviewed and responded to by the State Water Board in the Final Statement of Reasons, pursuant to section 11346.9 of the Government Code.

October 30, 2009

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 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:
 - (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 compatible with the biodiesel blend stored or to be stored. The biodiesel blend shall be identified by using the "Other Petroleum" selection under "Tank Use and Contents" on the form and specifying the biodiesel blend in accordance with subdivision (d). 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.

(5) The owner maintains documentation verifying that each delivery of biodiesel blend meets the applicable ASTM specification.

(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 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 paragraphs (1) to (3), inclusive, of 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.

(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.