

**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**

**February 2012
State of California
State Water Resources Control Board
Division of Water Quality**

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

SECTION 2631. DESIGN AND CONSTRUCTION REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANKS.

UPDATE OF INITIAL STATEMENT OF REASONS

The State Water Resources Control Board (State Water Board) has determined that there is no need to update the Initial Statement of Reasons. The State Water Board did not make any changes to the regulations after they were noticed for public comment on November 18, 2011. Consequently, no additional notice or public comment period was required.

SUMMARY OF AND RESPONSE TO COMMENTS RECEIVED ON PROPOSED RULEMAKING

Commenter 1. C.L. Stathos on behalf of Rear Admiral Smith, Department of Defense Regional Environmental Coordinator for U.S. EPA Region IX and the Military Services in California

Comment 1.1: "We appreciate your efforts to accommodate our short-term needs for storage of alternative fuels."

Response 1.1: The State Water Board thanks you for your support.

Comment 1.2: "[G]iven the national mandates for federal agencies to increase usage of alternative fuels over the next decade and beyond (including biofuel-based aviation fuels), we recommend an ongoing collaboration to develop a similar regulatory solution for the large volumes of underground piping that serve aboveground tanks at military bulk fuel facilities."

Response 1.2: The commenter recommends that the State Water Board develop regulations governing the use of alternative fuels in underground piping that serves aboveground tanks at military bulk fuel facilities. The State Water Board cannot comply with this request because the State Water Board does not have the authority to regulate design and construction of underground piping that serves aboveground tanks at military bulk fuel facilities.

Commenter 2. Steve Howell, Technical Director, National Biodiesel Board (NBB)

Comment 2.1: "NBB supports the proposed regulatory action for new underground storage tank design, construction, and monitoring requirements, without modification."

Response 2.1: The State Water Board thanks you for your support.

Comment 2.2: "In the United States Environmental Protection Agency's (US EPA) guidance, "Compatibility of Underground Storage Tank Systems with Biofuel Blends," dated July 5, 2011, EPA amended the regulation to allow for another option that is not an option under the proposed California UST Regulations: Use of another method determined by the implementing agency to sufficiently protect human health and the environment. EPA stated they will work with states to further evaluate other acceptable options. The National Renewable Energy Laboratory is in the

process of completing a report outlining the current status of biodiesel equipment approvals, including available materials compatibility data. This report may contain as much data on biodiesel—if not more—than is available from the current UL third party data used to approve gasoline and petrodiesel fuel in existing equipment. We would encourage the Board to consider in the future a third party report such as that being prepared by NREL as an accepted option in addition to the proposed alternatives for complying with California UST regulations.”

Response 2.2: The commenter states that the NREL report may provide an alternative option for compliance with existing independent testing and approval requirements for biodiesel blends. Because the NREL report is not yet complete, the State Water Board cannot thoroughly evaluate its use as an alternative compliance mechanism at this time.

Comment 2.3: “We also encourage the board to consider approval of biodiesel blends of B20 and lower, potentially of B20 and higher, in single wall underground storage tanks that are currently used in commerce for petrodiesel. Such a determination could be based in part, on a third party study such as that being conducted by NREL on biodiesel. Based on the existing data, there does not appear to be any more risk of UST leakage with B20 and lower blends—potentially with higher blends—then there is with conventional petrodiesel.”

Response 2.3: The third-party testing required to meet existing independent testing and approval requirements is extensive. This regulation allows a written, affirmative statement of compatibility from the manufacturer of the component as an option for compliance with existing independent testing and approval requirements for double-walled underground storage tanks (USTs). At this time, the State Water Board does not feel that it is appropriate to extend this compliance alternative to the storage of hazardous substances in single-walled USTs.

The commenter states that the State Water Board could decide to approve biodiesel blends of B20 and lower, potentially of B20 and higher, in single-walled USTs, based in part on the NREL report. Because the NREL report is not yet complete, the State Water Board cannot fully evaluate its use to support storage of biodiesel blends in single-walled USTs at this time.

Commenter 3. Eric Bowen, Chairman, California Biodiesel Alliance (CBA)

Comment 3.1: “CBA wishes to express our support for the proposed regulatory action without modification.”

Response 3.1: The State Water Board thanks you for your support.

Comment 3.2: “In the United States Environmental Protection Agency’s (US EPA) guidance, “Compatibility of Underground Storage Tank Systems with Biofuel Blends,” dated July 5, 2011, EPA amended the regulation to allow for another option that is not an option under the proposed California UST Regulations: Use of another method determined by the implementing agency to sufficiently protect human health and the environment. EPA stated they will work with states to further evaluate other acceptable options. The National Renewable Energy Laboratory is in the process of completing a report outlining the current status of biodiesel equipment approvals, including available materials compatibility data. This report may contain as much data on biodiesel—if not more—than is available from the current UL third party data used to approve gasoline and petrodiesel fuel in existing equipment. We would encourage the Board to consider in the future a third party report such as that being prepared by NREL as an accepted option in addition to the proposed alternatives for complying with California UST regulations.”

Response 3.2: See response to Comment 2.2, above.

Comment 3.3: “We also encourage the board to consider approval of biodiesel blends of B20 and lower, potentially of B20 and higher, in single wall underground storage tanks that are currently used in commerce for petrodiesel. Such a determination could be based in part, on a third party study such as that being conducted by NREL on biodiesel. Based on the existing data, there does not appear to be any more risk of UST leakage with B20 and lower blends—potentially with higher blends—then there is with conventional petrodiesel.”

Response 3.3: See response to Comment 2.3, above.

LOCAL MANDATE

The State Water Board has determined that the proposed action will not impose a mandate on local agencies or school districts. 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 alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

The proposed regulation provides an option for compliance with existing independent testing and 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. Because the proposed regulation provides an option for compliance with existing independent testing and approval requirements, the State Water Board has determined that the proposed regulation 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. The State Water Board has further determined that the proposed regulatory action will not adversely affect small businesses in California.