

**TITLE 23: CALIFORNIA CODE OF REGULATIONS - WATERS  
DIVISION 3: STATE WATER RESOURCES CONTROL BOARD (SWRCB)  
CHAPTER 30: ELECTRONIC SUBMITTAL OF INFORMATION**

**AND**

**TITLE 27: CALIFORNIA CODE OF REGULATIONS  
ENVIRONMENTAL PROTECTION  
DIVISION 3: ELECTRONIC SUBMITTAL OF INFORMATION  
SUBDIVISIONS 1 AND 2**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN THAT THE STATE WATER RESOURCES CONTROL BOARD PROPOSES TO ADOPT REGULATIONS ON ELECTRONIC SUBMITTAL OF INFORMATION REQUIREMENTS AFTER CONSIDERING ALL COMMENTS, OBJECTIONS AND RECOMMENDATIONS REGARDING THE PROPOSED ACTION**

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**PROPOSED REGULATORY ACTION:** These proposed regulations repeal sections 2729 and 2729.1 in Title 23 of the California Code of Regulations (CCR) and replace them with expanded versions in sections 3890, 3891, 3892, 3893, 3894 and 3895 in Title 23 of the CCR. In addition, new data dictionaries (the format for electronic submittal of information) for these regulations are added to Title 27 in coordination with existing Cal/EPA Unified Program data dictionaries, providing a cross-program unified structure for electronic reporting of information. The existing Unified Program data dictionaries are moved from their current location as Appendices in Subdivision 4, Division 1 in Title 27 into separate chapters in Subdivision 1 of a new Division 3 in Title 27. The new data dictionaries for electronic submittal of information are added as new chapters under Subdivision 2, Division 3 in Title 27 of the CCR.

These regulatory changes implement Water Code (WC) sections 13195 through 13198 and expand electronic submission requirements to all the SWRCB's groundwater cleanup programs. These groundwater cleanup programs require responsible parties to submit reports concerning subsurface investigations or remediation of unauthorized releases of waste or hazardous substances. These changes will also ensure a uniform standard for future electronic submittal of information requirements that other Cal/EPA programs may utilize.

**PUBLIC HEARING AND WRITTEN COMMENT PERIOD**

The SWRCB will hold a public hearing on the proposed regulations at 10:00 a.m. on June 16, 2003 in the Sierra Hearing Room at 1001 I Street, Sacramento, CA. At the public hearing, any person may present statements or arguments that are relevant to the proposed regulations described in the informative digest, either orally, or in writing. Written comments not presented at the public hearing will be considered by the SWRCB if they are received prior to 5:00 p.m. on June 16, 2003.

Submit written comments to: Diane Trommer, State Water Resources Control Board, Division of Water Quality, 1001 I Street, P.O. Box 2231, Sacramento, CA, 95812.

A representative of the SWRCB will preside at the hearing. Persons who wish to speak are requested to register prior to the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded the opportunity after the registered persons have been heard. Time for presentations after the registered persons speak may be limited. All hearing attendees should allow up to 15 minutes to sign in and receive a badge prior to attending the public hearing.

Reasonable accommodation or sign language interpreting services at the public hearing will be provided upon request. Such request should be made no later than 15 days prior to the public hearing date.

### **AUTHORITY AND REFERENCE**

Water Code sections 185 and 1058, and Health and Safety Code (HSC) sections 25299.3, and 25299.7, authorize the SWRCB to adopt the proposed regulations, which would implement Water Code sections 13195 through 13198, enacted through Assembly Bill 2886 (Ch. 727, Stats. of 2000).

### **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

Assembly Bill 2886 (Ch. 727, Stats. of 2000) required the SWRCB to adopt regulations for the electronic submittal of information concerning contaminant threats to groundwater to the State Water Resources Control Board's (SWRCB's) Geotracker database. Geotracker is an Internet-accessible database system integrated with a geographic information system (GIS). Geotracker was developed in response to AB 592 (Ch. 814, Stats. of 1997) and SB 1189 (Ch. 815, Stats. of 1997), to allow regulators to prioritize and manage threats to drinking water supplies more effectively and efficiently. Water Code section 13196 authorizes the SWRCB to establish electronic formats for reporting compliance data and mandates the adoption of a single standard for electronic reporting of analytical data from certified analytical laboratories. The SWRCB adopted emergency regulations on April 26, 2001, requiring electronic submittal to Geotracker of laboratory reports containing soil or water analysis data generated for reports required as part of the Underground Storage Tank (UST) program. The proposed regulations would replace the emergency regulations. Water Code Section 13198 authorizes the SWRCB to adopt regulations to expand the scope of sites for which electronic submittal of information is required. The need to see spatial and temporal trends of groundwater data is the same at all cleanup sites regardless of the program. Because the electronic submittal of information is the only viable method of ensuring that data are consistently and reliably entered, we are proposing that the regulations be extended to all groundwater cleanup programs at the SWRCB. This will allow the tools now available to the UST program to be used by other programs, greatly enhancing our overall ability to manage groundwater improvement efforts in California. The proposed regulations make permanent the existing electronic submittal requirements for UST cleanup sites, expand

information required to be submitted, and extend the scope to include all the SWRCB's groundwater cleanup program sites.

Section 3890 will specify the intent, content, applicability and implementation of the regulations.

Section 3891 will provide definitions of relevant terms.

Section 3892 will specify that reports are subject to electronic reporting requirements if those reports are otherwise required, for the purpose of subsurface investigation or remediation of a discharge of waste or a hazardous substance.

Section 3893 will specify the elements of reports that will be required to be submitted electronically.

Section 3894 will specify additional reporting requirements.

Section 3895 will specify the timing for implementation of electronic submittal requirements.

The proposed regulations also provide a unified cross-program structure for electronic reporting. New data dictionaries (the format for electronic submittals of information) for these regulations are added to Title 27 in coordination with existing Cal/EPA Unified Program data dictionaries. The existing Unified Program data dictionaries are moved from their current location as appendices in Subdivision 4, Division 1 in Title 27 into separate chapters in Subdivision 1 of a new Division 3 in Title 27. The new data dictionaries for electronic submittals are added as new chapters under Subdivision 2, Division 3 in Title 27 of the CCR. This is in accordance with directive by the Legislature in 2000 to establish "... an electronic geographical information management system capable of receiving all data collected by the Unified Program Agencies, and to make all non-confidential data available on the Internet." Section 25404(e)(2) states clearly that this responsibility shall be carried out by the Unified Program. The Unified Program Electronic Data Dictionary, as developed, was the first of its kind in the state. The proposed regulations provide that all of the environmental data dictionaries should be located in the same site in the California Code of Regulations.

Title 27, Division 1, Subdivision 4, Chapter 1, Article 6, Section 15290(d)(2) will specify the SWRCB UST Program division based on the January 1, 2003 reorganization.

Title 27, Division 3, Subdivision 1, Chapter 1 will provide Unified Program business section data dictionaries for facility information.

Title 27, Division 3, Subdivision 1, Chapter 2 will provide a Unified Program business section data dictionary for hazardous materials.

Title 27, Division 3, Subdivision 1, Chapter 3 will provide Unified Program business section data dictionaries for underground storage tanks.

Title 27, Division 3, Subdivision 1, Chapter 4 will provide Unified Program business section data dictionaries for hazardous waste.

Title 27, Division 3, Subdivision 1, Chapter 5 will provide Unified Program Certified Unified Program Agency (CUPA) section data dictionaries for information collection and reporting.

Title 27, Division 3, Subdivision 1, Chapter 6 will provide the Unified Program Consolidated Form.

Title 27, Division 3, Subdivision 2, Chapter 1 will provide a data dictionary for laboratory electronic reporting.

Title 27, Division 3, Subdivision 2, Chapter 2 will provide data dictionaries for well and site information electronic reporting.

## **FISCAL IMPACT ESTIMATES**

**Mandates on Local Agencies and School Districts pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code:** The SWRCB has determined that the proposed amendments would not impose a mandate on local agencies or school districts nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

**Cost or Savings to any State Agency:** State agencies that own or operate leaking underground storage tanks (USTs) have already incurred additional costs as a result of the proposed regulations, depending on the type of system installed. The most significant additional cost will be for those systems that report electronic data in accordance with the existing regulations. Based on information provided from various state agencies, the SWRCB estimates that 387 state-owned facilities are subject to the electronic reporting requirements. Each facility may incur an ongoing cost of approximately \$400 per year.

The total first year estimated cost to the state as a result of the proposed regulations is \$329,000. The average ongoing state cost will be \$224,000 annually. The SWRCB expects that state agencies will be able to absorb these additional costs within their existing budgets and resources.

**Estimate of potential cost or savings subject to reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code:** None.

**Other Non-discretionary Costs or Savings to Local Agencies:** Local agencies that are responsible for groundwater cleanup sites may incur additional costs as a result of the proposed regulations, depending on the number of systems installed. The number and type of local agency-owned facilities subject to this regulation is unknown and thus the cost to local agencies is unknown. However, the costs imposed by these regulations are incidental to laws of general application, do not apply uniquely to local governments, and do not add or increase the service from the local government to the public. Therefore, they are not subject to reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code.

Local agencies will also be subject to minimal additional workload resulting from electronic file management and reporting requirements. The SWRCB believes that the additional extra local agency staff workload is insignificant.

**Cost or savings in federal funding to the state:** None.

## **ECONOMIC IMPACT ESTIMATES**

**Statement of No Significant Adverse Economic Impact on California Businesses:** The SWRCB has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with other businesses in other states. The additional incremental cost to electronically submit data will have a very minor impact on the overall cost of investigation and cleanup at sites affected by the proposed regulation.

**Types of Businesses Affected:** Any business that has had an unauthorized release from an UST system has already been affected by the emergency regulations. Approximately 16,000 active leak sites from underground storage tanks have been subject to the emergency regulations. These businesses are mostly retail fuel service stations either owned or leased by major petroleum distributors or small, independently owned facilities. Other businesses affected include those that might have owned or operated USTs where there has been an unauthorized release, such as factories, equipment rental yards, construction companies or mines.

The proposed regulations will also affect small industrial and waste disposal facilities. These regulations would expand this number to include about 1000 sites on federal military facilities and 1165 small industrial facilities where site investigation and cleanup are currently ongoing. Approximately 1000 additional waste disposal facilities would also be subject to these electronic reporting requirements. About half of these sites will be required to submit electronic results resulting in 1630 sites expected to be subject to these regulations.

Laboratories certified to analyze hazardous wastes in the state of California may also be impacted by these regulations. By January 2002, over 140 laboratories were authorized to provide electronically deliverable laboratory reports. These laboratories analyze samples for UST sites subject to the emergency regulations promulgated under AB 2886, effective September 1, 2001. Many of these laboratories also analyze samples for the sites in the Spills, Leaks, Investigation and Cleanup (SLIC), Department of Defense (DOD), and Land Disposal programs that will now also be subject to the final regulations. These laboratories will incur little additional cost to service the new facilities added by these regulations. There may be up to fifty additional laboratories that will need to develop or improve their abilities to submit electronic data. Their experience should mirror that of the laboratories that have already instituted the required systems and methods without major problems.

**Projected Reporting, Record Keeping, and Other Compliance Requirements:** Owners or operators of sites where electronic reporting is required, or their consultants, must gather, manage and submit additional electronically formatted data. Since periodic reporting of other site investigation and cleanup data is already required, the cost of the additional reporting

requirements will be minor within the overall cost of investigations and cleanup. These overall costs routinely can be more than a million dollars per contaminated site.

The SWRCB has found that it is necessary for the health, safety or welfare of the people of the state that this regulation requiring reporting should apply to businesses.

**Potential Impact on Private Persons or Businesses Directly Affected:** Private persons who own facilities for personal use may be affected by the proposed regulations depending on the investigation and cleanup status of the facility. However, on an individual basis, private facility owners will be subject to the costs detailed below for applicable businesses.

The proposed regulations will cause California businesses (mostly gasoline retail facilities, waste disposal facilities, and small industrial facilities) to incur new costs. The SWRCB estimates that an additional 1,630 facilities with active ongoing site investigations will be subject to electronic submittal requirements. Each facility may incur an initial cost of up to \$4,000. The first year facility costs are determined by the time to gather and prepare all the electronic data files necessary for submittal, estimated at \$1,000 per site, plus the cost of surveying. This cost of surveying averages \$2,000 per facility and is required once, to locate all the monitoring wells sampled at each facility, and later if any additional monitoring wells are installed. Approximately \$1,000 of initial costs are allocated to fully recapture laboratory startup costs.

Ongoing costs are expected to average approximately \$400 per year, per facility for continued gathering and submission costs associated with electronic data reporting. These costs are assumed to be relatively constant for different types of facilities (UST, SLIC, etc.). Total costs for all private and business facilities are estimated at over \$6,400,000 during the initial startup year and \$652,000 in subsequent years. These costs must be placed in context with the estimated \$400,000,000 per year presently spent to investigate and clean up the contaminated sites that are subject to this regulation. Before electronic data submittal requirements, the data collected during these investigations was available in hard copy only and was not readily managed. With electronic data submittal into a centralized State database, most of this data will now be available to the public and regulators over the Internet.

Laboratory costs are incurred in the first year of program implementation. Laboratories must program their database systems to produce the specified electronic, formatted, laboratory report required by these regulations. Once this programming is completed, there are very few subsequent costs incurred. Laboratories recover their costs by subjecting all electronic deliverables to a 5% to 10% surcharge. First year implementation costs for the 50 laboratories that participated in electronic data reporting for the UST program are estimated to range from \$500,000 to \$1,500,000. Cost per laboratory is estimated at \$10,000 to \$30,000.

Table 1. Summary of Economic and Fiscal Impact

Component	Cost in Year Incurred (Million \$)	
	Year 1	Each Subsequent Year
<b>Private/Business Enterprises</b>		
Consultant Costs	\$1.630	\$0.652
Surveyor Costs	\$3.260	
Laboratory Costs	\$1.50	
Annual Combined Costs	\$6.390	\$0.652
<b>Local/State Agency</b>		
Consultant Costs	\$0.154	\$0.154
SWRCB Costs	\$0.175	\$0.070
<b>Annual State Costs</b>	<b>\$0.329</b>	<b>\$0.224</b>
<b>Total Costs</b>	<b>\$6.719</b>	<b>\$0.876</b>

**Effect on the Creation or Elimination of Jobs within California:** The SWRCB is unable to calculate the net effect on the creation or elimination of jobs within California. However, since the vast majority of all expenditures required by this regulation will be paid and received within California, jobs lost from one part of a program would be offset by new jobs created in another.

**Effect on the Creation of New Businesses or Elimination of Existing Businesses within California:** The SWRCB is unable to calculate the effect on the creation of new businesses or elimination of existing businesses within California. However, new businesses will be created and existing businesses eliminated within California in likely the same manner as jobs, described above.

**Effect on the Expansion of Businesses Currently Doing Business in California:** The proposed regulations will not have a significant adverse affect on the expansion of businesses currently doing business in California. Analytical laboratories are the most directly affected businesses. Laboratories that are capable of electronic reporting may experience an increase in business, because customers may favor the more technologically adept laboratories.

**Potential Significant Impact on Housing Costs:** None.

## EFFECT ON SMALL BUSINESSES

The proposed regulations may affect small businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the SWRCB must determine that no reasonable alternatives it considered, or that have otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed action.

The SWRCB evaluated the incremental cost-effectiveness of the regulations. The proposed regulations are cost-effective and represent the minimum requirements necessary to adequately implement the legislation. The proposed regulations effectively leverage previous investments by the SWRCB, laboratories and consultants, and minimize additional costs. No alternative considered by the SWRCB is more effective in carrying out the purpose for which the regulations are proposed. No alternative would be as effective and less burdensome to affected private persons than the proposed regulations.

The proposed regulations significantly reduce risks to human health, safety, and the environment from the impacts of MTBE and other hazardous chemicals because they implement statutes enacted for this purpose. The legislation was based on studies conducted by the University of California and presented in a comprehensive report on the “Health and Environmental Assessment of Methyl Tertiary-Butyl Ether (MTBE).” This report was peer reviewed by the Department of Toxic Substance Control, Disease Registry, the United States Geological Survey, as well as other nationally recognized experts. The findings and recommendations of the University of California report, public testimony, and regulatory agencies are that MTBE leaking from underground fuel storage tanks poses an environmental threat to groundwater.

Furthermore, there is a need to expand the scope of the regulations to include other groundwater cleanup sites. The ability to access electronic groundwater data will be valuable for all cleanup sites, regardless of program. Only when the SWRCB’s groundwater cleanup data are centrally located in Geotracker will case managers, stakeholders and the public be aware of nearby groundwater cleanup sites that may affect a particular site. Extending the regulations to all SWRCB’s groundwater cleanup programs will ensure that data are consistently and reliably entered. It will also provide case management tools to greatly enhance our overall ability to manage groundwater improvement efforts in California. Therefore, the benefits to human health, public safety, public welfare, or the environment justify the costs of the regulations.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The SWRCB has prepared for public review: 1) an initial statement of reasons for the proposed amendments; 2) a rulemaking record which contains all of the information upon which the proposed amendments are based, and 3) the text of the proposed amendments. A copy of the initial statement of reasons and a copy of the text and the express terms of the proposed amendments are available upon request by writing to the SWRCB, attention: Deanna Flanagan, Division of Water Quality, Underground Storage Tank Program, 1001 I Street, P.O. Box 2231, Sacramento, CA, 95812. This street address is also the location of public records, including



reports, documentation, and other material related to the proposed amendments. Once it has been prepared, a final statement of reasons will also be available upon request to the SWRCB, attention: Deanna Flanagan, at the above address.

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

After the close of the comment period, the SWRCB may adopt the proposed regulations. If substantive changes are made, the modified text will be made available for comment for at least 15 days prior to adoption, and sent to all persons who testified at the public hearing; all persons who submitted written comments at the public hearing; all persons whose comments were received by the SWRCB during the public comment period; and all persons who requested notification from the SWRCB of the availability of such changes.

### **CONTACT PERSON**

This Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the full text of the proposed regulations may also be viewed at the SWRCB Underground Storage Tank Program website at: <http://www.swrcb.ca.gov/ust/docs/ab2886/index.html>.

Please direct all written comments, procedural inquiries, and technical questions to:

**Diane Trommer**  
**State Water Resources Control Board**  
**Division of Water Quality**  
**1001 I Street,**  
**P.O. Box 2231**  
**Sacramento, CA 95812**  
**(916) 341-5787**  
[trommerd@swrcb.ca.gov](mailto:trommerd@swrcb.ca.gov)

Back-up contact person:

**Hamid Foolad**  
**State Water Resources Control Board**  
**Division of Water Quality**  
**1001 I Street,**  
**P.O. Box 2231**  
**Sacramento, CA 95812**  
**(916) 341-5791**  
[fooladh@swrcb.ca.gov](mailto:fooladh@swrcb.ca.gov)