

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-0039**

**ADOPT EMERGENCY REGULATIONS TO PROVIDE AN INTERIM VARIANCE
FOR UNDERGROUND STORAGE TANK SYSTEMS STORING CERTAIN
BIODIESEL BLENDS FROM THIRD-PARTY MATERIAL COMPATIBILITY TESTING
AND APPROVAL REQUIREMENTS**

WHEREAS:

1. Chapter 6.7 of the Health and Safety Code requires that the primary containment of an underground storage tank (UST) be compatible with the stored substance, and that the secondary containment be constructed to prevent structural weakening as a result of contact with any released substance.
2. To implement Chapter 6.7 of the Health and Safety Code, the State Water Resources Control Board (State Water Board) promulgated regulations which require that: a) A UST be approved by an independent testing organization; b) An owner or operator use system components made of, or lined with, materials that are compatible with the hazardous substances stored in the UST; c) The components approved for the installation of a UST system, on and after July 1, 2004, include a list of compatible products tested and the measured permeation rate of those products; and d) The release detection equipment be tested by an independent testing laboratory and be approved to function with the substance stored.
3. With the exception of biodiesel blends up to 5 percent biodiesel (B5), USTs manufactured to date and in use in California have not received independent testing organization approvals for biodiesel or other biodiesel blends as required under the State Water Board regulations. The estimated time period to obtain independent testing organization approval is two years from when the UST manufacturer submits the product to the testing organization.
4. Release detection method approvals have not been obtained for biodiesel or any blend of biodiesel. The estimated time period for obtaining approval of a release detection method is 12 months from when the material is submitted.
5. In 2007, Governor Schwarzenegger signed [Executive Order S-01-07](#), which states, among other things, that greenhouse gas (GHG) emissions pose a serious threat to the health of California's citizens and the quality of the environment and that alternative fuels can reduce GHG emissions.
6. The federal Energy Policy Acts of 1992 and 2005 require the use of renewable fuels and/or alternative fuel vehicles (AFVs) by certain light duty vehicle fleets. Fleets can earn credits through the purchase and use of biodiesel blends containing at least 20 percent biodiesel (B20) in lieu of purchasing AFVs. Many California fleets are attempting to comply with the provisions of the Energy Policy Acts through the use of B20.
7. Storage issues have contributed to the delay of more widespread use of biodiesel in California. Allowing a temporary variance from independent organization testing requirements will authorize and facilitate the use of biodiesel blends up to B20 in California.

8. The proposed regulations provide for an interim variance for UST systems storing biodiesel blends up to B20 from independent organization approval requirements. The variance criteria are designed to facilitate the use of biodiesel blends up to B20 while minimizing any risk of an unauthorized release to the environment.
9. Government Code section 11346.1 provides for the adoption of emergency regulations when there is a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.
10. The State Water Board has determined that it is appropriate to adopt the proposed regulation on an emergency basis because facilitating and expediting the use of biodiesel blends up to B20 will assist the State in reducing GHG emissions and meeting requirements under the federal Energy Policy Acts.
11. Adoption of this regulation is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., as a project to protect natural resources and the environment (California Code of Regulations, title 14, §§ 15307 and 15308).

THEREFORE BE IT RESOLVED THAT:

1. A condition of emergency exists for the purposes of Government Code section 11346.1, subdivision (b) justifying the immediate adoption of the proposed regulations in order to avoid serious harm to the public peace, health and safety, or general welfare.
2. The proposed addition of section 2631.2 to Title 23, California Code of Regulations, Division 3, Chapter 16 ([Attachment](#)) is adopted on an emergency basis, and the Executive Director is authorized to transmit the emergency regulation to the Office of Administrative Law for filing with the Secretary of State, and to make any non-substantive revisions to the regulation to facilitate the review process.

CERTIFICATION


The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 5, 2009.

AYE: Chairman Charles R. Hoppin
 Vice Chair Frances Spivy-Weber
 Board Member Arthur G. Baggett, Jr.

NAY: Board Member Tam M. Doduc

ABSENT: None

ABSTAIN: None



 Jeanine Townsend
 Clerk to the Board