

TITLE 23: CALIFORNIA CODE OF REGULATIONS

WATERS

DIVISION 3: STATE WATER RESOURCES CONTROL BOARD

CHAPTER 16: UNDERGROUND STORAGE TANK REGULATIONS

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN THAT THE STATE WATER RESOURCES CONTROL BOARD PROPOSES TO ADOPT AMENDMENTS TO THE UNDERGROUND STORAGE TANK REGULATIONS AFTER CONSIDERING ALL COMMENTS, OBJECTIONS, AND RECOMMENDATIONS REGARDING THE PROPOSED ACTION

PROPOSED REGULATORY ACTION: The State Water Resources Control Board (SWRCB) proposes to amend sections 2611, 2630, 2635, 2636, 2636.1, 2637, 2641, 2643, and 2712, and add sections 2631.1, 2638, and 2715 in Title 23 of the California Code of Regulations (CCR). These sections concern underground storage tanks.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

The SWRCB will hold a public hearing on the proposed regulations at 10:00 a.m., on April 28th, 2003 in the Coastal Hearing Room at 1001 "I" Street, Sacramento, CA. Pursuant to Government Code section 11346.8, reasonable accommodation or sign language interpreting services will be provided upon request. Such requests should be made no later than 15 days prior to the date of the public hearing.

Any written statements, arguments or contentions related to the proposed regulations must be received by 5:00 p.m. on April 28th, 2003. Submit written comments to: Scott Bacon, State Water Resources Control Board, Clean Water Programs, 1001 "I" Street, P.O. Box 944212, Sacramento, CA, 94244-2120. Written comments, arguments, or contentions sent by mail or hand-delivered are requested (but not required) to be submitted in triplicate. Comments by FAX (916-341-5808) must be received before 5:00 p.m. on the last day of the public comment period.

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 HSC sections 25284.1 and 25291.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The SWRCB has amended the definitions of cathodic protection tester and corrosion specialist to include licensing requirements. A cathodic protection tester must be licensed by the National Association of Corrosion Engineers or the International Code Council (ICC).

A corrosion specialist must have a corrosion specialist license issued by the National Association of Corrosion Engineers or be a registered engineer.

Compatibility and permeability testing requirements have been added to clarify existing requirements. For UST systems installed after July 1, 2003, compatibility and permeability testing results must be provided to the local agencies upon request.

Manufacturers of leak detection equipment must provide compatibility results to the UST Program Manager at the SWRCB, upon request. This information is particularly important due to the upcoming formulation changes in motor vehicle fuels that will occur with the phase out of Methyl Tertiary Butyl Ether.

Training and certification requirements have been added for UST owners, operators, installers, service technicians, and inspectors. The new training and certification requirements, along with existing training requirements, have been consolidated into one section for organizational purposes.

By July 1, 2004, UST owners will be required to submit signed statements to local agencies identifying designated UST operators in charge of their facilities. The signed statements must attest to the fact that the owners understand and are in compliance with all regulatory and statutory requirements.

A definition of "Designated UST Operator" has been added to clarify the qualifications and responsibilities of these individuals. Designated UST operators will be responsible for performing and documenting monthly visual compliance checks of the UST system, and for training facility employees. Designated UST operators must obtain a current certificate from the ICC by July 1, 2004.

A definition of "Facility Employee" has been added to clarify the differences in qualifications and responsibilities between facility employees and designated UST operators. Designated UST operators will be required to train their facility employees annually.

By July 1, 2004, installers of UST systems must obtain a current UST Installer certificate from ICC. This requirement is in addition to all existing requirements for UST installers.

The term "Service Technician" has been defined to clarify the tasks that these individuals may perform. By July 1, 2004, service technicians must obtain current Service

Technician certificates from ICC. This requirement is in addition to all existing requirements for UST service technicians.

By January 1, 2005, local agency inspectors who perform UST system compliance inspections must obtain a current certificate issued by the State Water Resources Control Board. This requirement includes special inspectors who are contracted out by local agencies. To address the need for individuals to obtain experience and training prior to certification, inspectors hired after January 1, 2005 will have 180 days to obtain certificates.

Regulations for double walled pressurized piping have been amended to require automatic line leak detectors on all double walled pressurized piping. This will provide additional protection from catastrophic releases from pressurized piping. Amendments are also proposed which describe a monitoring option that is defined as equivalent to the currently required annual 0.1 gallon per hour precision test. In addition, the term "Fail safe" has been defined to clarify the requirements of monitoring double-walled pressurized piping.

Annual certification of monitoring equipment has been moved to a new section. This was done to separate secondary containment testing requirements from the annual monitoring equipment certification requirements, for clarity purposes.

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 USTs will incur additional costs as a result of the following: 1) the proposed new requirements for periodic designated UST operator certification and facility employee training; and 2) additional UST permit fees that may be assessed by local agencies in response to the proposed requirements for periodic local agency inspector training.

The SWRCB estimates that the initial state cost per facility to be approximately \$229 and ongoing cost to be about \$183 annually thereafter. The total first year cost for all affected state agencies is projected by the SWRCB to be approximately \$41,479 and ongoing cost to be about \$33,183 annually thereafter. Furthermore, the SWRCB estimates that the UST permit fees assessed by local agencies will increase about \$9 per facility, resulting in a first year cost for all affected state agencies of approximately \$1629 for permit fee increases. The total cost to state agencies for the requirements and the increased tank owner fees over a five-year period is estimated by the SWRCB to be about \$174,213.

The SWRCB expects that state agencies will be able to absorb these additional costs within their existing budgets and resources.

Other Non-discretionary Costs or Savings to Local Agencies: Local agencies will incur additional costs as a result of the proposed requirements for UST facility inspectors to obtain an inspector certification. [These laws apply uniquely to local agencies.] Local governments can, nevertheless, recover those costs through increased fees under HSC section 25287, subdivision (a).

Additionally, local agencies that own or operate USTs will incur new costs for training staff who are responsible for the operation and maintenance of these UST facilities. 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.

The number of local agencies that own USTs is unknown, therefore the total cost to local agencies for designated UST operator and facility employee training is unknown. However, the cost for this training, per facility, will be approximately the same as for the state.

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

ECONOMIC IMPACT ESTIMATES

Statement of Significant Statewide Adverse Economic Impact Directly Affecting California Businesses: The SWRCB has made an initial determination that the proposed regulations may have a significant statewide adverse impact directly affecting businesses. As such, pursuant to Government Code section 11346.5(a)(7)(C), the SWRCB is required to make the following statement:

The SWRCB has made an initial determination that the adoption/amendment of the proposed regulations may have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The SWRCB has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (1) *The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.*
- (2) *Consolidation or simplification of compliance and reporting requirements for businesses.*
- (3) *The use of performance standards rather than prescriptive standards.*
- (4) *Exemption or partial exemption from the regulatory requirements for businesses.*

However, although the above statement is legally required, the SWRCB has made an initial determination that the proposed regulations will not have a significant impact on the ability of California businesses to compete with businesses in other states. The vast majority of businesses affected by the proposed regulations are retail motor vehicle fueling facilities. At the retail level, motor vehicle fuel is sold locally. Therefore, fueling facilities in other states cannot take away the sales of fuel from California's retail fueling facilities. Furthermore, the cost per facility of implementing the proposed regulations is relatively low (approximately \$243 in the first year, and \$195 annually thereafter).

Types of Businesses Affected: Any business that owns or operates a UST system that is not categorically exempt from the UST regulations may be affected by the proposed regulations. These businesses are mostly retail fuel service stations either owned or leased-out by major petroleum distributors, or small, independently owned facilities. Other businesses affected include those that own or operate USTs for their own use, such as factories, equipment rental yards, construction companies, mines, etc.

Projected Reporting, Record keeping, and Other Compliance Requirements: Businesses that own or operate USTs will be required to submit documentation to the local agency, identifying the designated UST operator for the UST facility. Such businesses will also have to submit UST component compatibility testing results to the local agency upon request. Note that the component manufacturer will typically have produced this documentation as part of the third-party product certification; therefore, the UST operator need only forward existing documentation to the local agency.

Potential Impact on Private Persons or Businesses Directly Affected: Private persons who own USTs for their personal use will be required by the proposed regulations to have a designated UST operator for their facility. The SWRCB estimates cost to become a designated UST operator to be approximately \$160 (\$70 for the exam and 2 1/2 hours of time) on a biannual basis. Additionally, private persons may incur increased UST permitting fees (about \$9 per tank annually) by local agencies attempting to recover the additional costs of inspector training.

The proposed state mandated regulations will cause California businesses (mostly gasoline retail facilities) to incur new costs for designated UST operator certification and facility employee training, and possibly increased UST permit fees. The SWRCB estimates that the cost for UST owner/operator training for California businesses to be about the same per facility as for state and local agencies, with approximately 17,200 private businesses in California projected to be impacted by the proposed regulations. The SWRCB estimates the initial cost per privately owned facility to be approximately \$243 and ongoing cost to be about \$195 annually thereafter. These estimates include a \$9 per tank increase in the annual UST permit fee, which may be assessed by local agencies. The SWRCB estimates the total cost to California businesses as a result of the proposed regulations to be approximately \$17,600,000 over a five-year period. However, due to the relatively low estimated 5-year cost of approximately \$1,020 per facility to comply with the proposed regulations, the SWRCB has determined that it is unlikely that these regulations will cause anyone to go out of business.

Effect on the Creation or Elimination of Jobs within California: Due to the low cost per facility to comply with the proposed regulations, the SWRCB has determined that it is unlikely that these regulations will have any effect on the creation or elimination of jobs within California.

Effect on the Creation of New Businesses or Elimination of Existing Businesses within California: Due to the low cost per facility to comply with the proposed regulations, the SWRCB has determined that it is unlikely that these regulations will have any effect on the creation of new businesses or elimination of existing businesses within California.

Effect on the Expansion of Businesses Currently Doing Business in California: Due to the low cost per facility to comply with the proposed regulations, the SWRCB has determined that it is unlikely that these regulations will have any effect on the expansion of businesses currently doing business in California.

Potential Significant Impact on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The proposed regulations may impact small businesses that own or operate a UST system that is not categorically exempt from the UST regulations, or small businesses that conduct work related to UST construction, monitoring, or maintenance.

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.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The SWRCB has prepared the following 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. Copies of these documents will be available upon request by writing to the SWRCB, attention: Mrs. Barbara August, Division of Water Quality, Underground Storage Tank Program, 1001 "I" Street, 17th Floor, P.O. Box 944212, Sacramento, CA, 94244-2120. This address is also the location of public records, including reports, documentation, and other material related to the proposed amendments. Copies of these documents are also available on the SWRCB Underground Storage Tank Program website at: <http://www.swrcb.ca.gov/cwphome/ust/>. Upon completion of the public comment period for this proposed rulemaking the SWRCB will prepare a final

statement of reasons for proposed amendments, which will also be available upon request at the above address and website.

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 the following persons: 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.

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

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1001 ‘T’ Street, 17th Floor
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