

Proposed Rules
of the
Department of Environment and Conservation
Division of Underground Storage Tanks

Chapter 1200-01-15
Underground Storage Tank Program

Presented herein are proposed rules of the Department of Environment and Conservation submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Environment and Conservation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Department of Environment and Conservation, Division of Underground Storage Tanks, 4th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1541, and in the Department of State, 8th Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rules and amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed rules, contact: Donna L. Washburn, Deputy Director, Division of Underground Storage Tanks, Department of Environment and Conservation, 4th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1541, 615-532-0987, fax 615-532-9759, or e-mail at Donna.Washburn@state.tn.us.

The text of the proposed rules is as follows:

Amendments

Parts (c)2 and 3 of paragraph (2) Program scope: applicability of Rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information are amended by replacing the words “the effective date of this rule” with the words “July 24, 2007”, so that the amended parts shall read as follows:

2. New tanks or pressurized piping components of an emergency generator UST system installed on or after July 24, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rules 1200-01-15-.02(2)(a) and (b).
3. Tank or piping components of an emergency generator UST system replaced on or after July 24, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rules 1200-01-15-.02(2)(a) and (b) and (6). However, if the replacement piping meets the requirements for suction piping set forth in rule 1200-01-15-.04(2)(b)2, the piping components do not have to be secondarily contained.

Authority: T.C.A. § 4-5-201 et seq.; T.C.A. § 68-215-101 et. seq., T.C.A. § 68-215-107, T.C.A. § 68-215-108, and T.C.A. § 68-215-113.

Rule 1200-01-15-.02 UST Systems: Installation and Operation is amended as follows:

Subparagraph (c) of paragraph (1) Installation is amended by replacing the words “the effective date of this rule” with the words “July 24, 2007”, so that the amended subparagraph shall read as follows:

- (c) All tanks, pressurized piping and/or motor fuel dispensers installed on or after July 24, 2007, shall be secondarily contained in accordance with paragraph (2) of this rule.

Part (a)5 of paragraph (2) Secondary Containment is amended by adding the wording “in accordance with part 2 of this subparagraph” to the end of the existing language so that the amended part shall read as follows:

- 5. Tanks shall be monitored for a release at least every thirty (30) days in accordance with part 2 of this subparagraph.

Part (b)2 of paragraph (3) Spill and overfill prevention. is amended by replacing “and/operators” with “and/or operators”, so that the amended part shall read as follows:

- 2. Owners and/or operators shall keep spill catchment basins free of water, dirt, debris, and/or other substances that could interfere with the ability of the catchment basin to prevent spills.

The introductory language in Paragraph (6) Replacement is amended by replacing the words “the effective date of this rule” with the words “July 24, 2007”, so that the amended introductory language in this paragraph shall read as follows:

- (6) Replacement. Tank owners and/or operators replacing any tanks, piping and/or motor fuel dispensers on or after July 24, 2007, shall comply with the following:

Paragraph (6) is further amended in subparagraph (b) by replacing the term “subparagraph (b)” with the term “subparagraph (a)”, so that the amended subparagraph shall read as follows:

- (b) In the case of the replacement of an existing underground storage tank or existing piping connected thereto, the requirements in subparagraph (a) of this paragraph shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes located at the underground storage tank facility.

Paragraph (6) is further amended in subparagraph (e) by replacing the word “above” with the word “below” in part 1 and in part 2, so that the amended subparagraph shall read as follows:

- (e) Replacement of a motor fuel dispenser has occurred and is subject to the provisions of this paragraph as well as the requirements in subparagraph (2)(c) of this rule if the existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the piping is replaced. Connecting equipment includes one of the following:
 - 1. Components beneath the dispenser that are below the shear valve in a pressurized piping system; or
 - 2. Components beneath the dispenser that are below the union in a suction piping system.

Authority: T.C.A. § 4-5-201 et seq; T.C.A. § 68-215-101 et seq.; and T.C.A. § 68-215-107.

Subparagraph (a) of paragraph (1) General requirements of Rule 1200-01-15-.06 Petroleum Release Response, Remediation and Risk Management is amended by replacing the term “rule 1200-01-15-.09(7)(a)” with the language “rule 1200-01-15-.09(6)(a)”, so that the amended subparagraph shall read as follows:

- (a) Owners and/or operators of petroleum UST systems shall, in response to a confirmed release from a UST system, comply with the requirements of this rule. A petroleum site owner who elects to perform release response activities shall comply with the requirements of this rule to receive authorized disbursements from the fund in accordance with rule 1200-01-15-.09(6)(a)

Authority: T.C.A. §68-215-107 and §4-5-201 et seq.

Paragraph (2) of Rule 1200-01-15-.07 Out-of-Service UST Systems and Closure is amended by replacing the term “rule 1200-01-15-.02(2) and (3)” with “rule 1200-01-15-.02(3) and (4)”, so that the amended paragraph shall read as follows:

- (2) Substandard UST Systems. Unless directed to do otherwise by the division owners and/or operators of an UST system which does not meet the requirements in rule 1200-01-15-.02(3) and (4) shall permanently close the substandard UST system in accordance with paragraphs (4) and (5) of this rule, except that parts (4)(a)6 and 7 of this rule shall not apply to a substandard UST system. The substandard UST system shall complete the permanent closure, including submittal of the Permanent Closure Report, within sixty (60) days of division approval of the Application for Permanent Closure of Underground Storage Tanks.

Authority: T.C.A. §4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107.

Rule 1200-01-15-.09 Administrative Guidelines and Procedures for the Tennessee Petroleum Underground Storage Tank Fund is amended as follows:

Subparagraph (a) of paragraph (3) Fund Eligibility Requirements is amended by deleting the subparagraph in its entirety and replacing it with the following:

- (a) Establishment of fund eligibility. Owners and/or operators satisfying the requirements of this subparagraph will have established fund eligibility.
 - 1. Registration of each petroleum underground storage tank:
 - (i) For tanks installed on or after July 1, 1988, within thirty (30) days of the installation of that tank; or
 - (ii) For tanks installed prior to July 1, 1988, by June 30, 1989.
 - 2. Payment of the annual fee for the tank and/or tank compartments for the first year for which fees are or were required in accordance with rule 1200-01-15-.10.
 - 3. Before the owner and/or operator or petroleum site owner will receive fund benefit, the applicable entry level amount to the fund must be expended as approved costs by the owner and/or operator or petroleum site owner and/or financial assurance provider. The applicable entry level is the entry level in effect on the date of the release as set forth in subparagraph (7)(b) of this rule.

Subparagraph (c) of paragraph (10) Requirements for fund coverage of corrective action costs is amended by replacing the words “On the effective date of this rule” with “On or after April 20, 1998” so that the subparagraph shall read as follows:

- (c) Effective December 22, 1998, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-01-15-.05(1) through rule 1200-01-15-.05(3), the owner and/or operator shall submit documentation to the division verifying

that the tanks are in compliance with the upgrading and performance standards set forth in rule 1200-01-15-.02(3)(a) and (4)(a) and (b). On or after April 20, 1998, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-01-15-.05(1) through rule 1200-01-15-.05(3), the owner and/or operator shall submit documentation to the division verifying the performance of release detection as required by rule 1200-01-15-.04 at the time of the release. The owner and/or operator shall submit this documentation to the division within thirty (30) days of the date the release is confirmed.

Subparagraph (c) of paragraph (11) Requirements for coverage of third party claims is amended by replacing the term “paragraph (14)” with the term “paragraph (12)”, so that the subparagraph shall read as follows:

- (c) Copies of the invoices for all costs for which payment is sought together with a copy of the bid proposal submitted to the owner and/or operator or petroleum site owner by the corrective action contractor retained to perform the corrective action shall be provided to the division with the application for reimbursement as set forth in paragraph (12) of this rule.

Authority: T.C.A. §4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-110; T.C.A. § 68-215-111; T.C.A. § 68-215-115; T.C.A. § 68-215-129.

Subparagraph (a) of paragraph (4) Failure to pay the annual petroleum underground storage tank fee of Rule 1200-01-15-.10 Fee Collection and Certification Issuance is amended by adding new language to the end of the second sentence, so that the amended subparagraph shall read as follows:

- (a) Any petroleum underground storage tank owner and/or operator of tanks for which the lawfully levied petroleum underground storage tank fee is owed will be assessed a monthly late payment penalty of five percent (5%) of the amount owed. Such penalty shall be assessed monthly until the fee and all associated penalties are paid; however, the total of the late payment penalties shall not exceed three (3) times the amount of the original fee. The tank owner and/or operator may file with the commissioner a written petition requesting a reduction in the penalties assessed under this subparagraph, setting forth in the petition the grounds and reasons for such a request. At the commissioner’s sole discretion, the commissioner may reduce the penalties that otherwise accrue if, in the commissioner’s opinion, the failure to pay fees was due to inadvertent error or excusable neglect. However, in no event shall the penalties be reduced to an amount less than ten percent (10%) per annum, plus statutory interest.

Authority: T.C.A. § 4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-106; T.C.A. § 68-215-109.

Rule 1200-01-15-.12 Indicia of Ownership is amended as follows:

Subparagraph (b) of paragraph 1200-01-15-.12(2) Notification by the holder is amended by replacing the words “, provided in Appendix 1” with the words “prescribed by the division.”, so that the subparagraph shall read as follows:

- (b) If at any time after foreclosure, the holder causes a change in the status of the tanks at a petroleum UST facility, the holder shall report the change within thirty (30) days. This includes but is not limited to change of ownership, upgrading, or replacement of tanks, changes in mailing address and changes in service. Such reports shall be made using an amended notification form prescribed by the Division.

Subparagraph (2)(c) is amended by replacing the words “provided in Appendix 3” with the words “prescribed by the Division” so that the subparagraph shall read as follows:

- (c) In the case of a sale of petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located or the sale of the security interest in such petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located, which occurs at any time after foreclosure, the holder must submit the notification form prescribed by the Division and must also inform the buyer of the notification requirements.

Subparagraph (b) of paragraph (3) Fund Eligibility Requirements is amended by replacing the term “Rule 1200-01-15-.09(8)(b)” with “rule 1200-01-15-.09(7)(b)” so that the subparagraph shall read as follows:

- (b) A holder who is eligible for reimbursement from the state Fund must satisfy the financial responsibility requirements as required by rule 1200-1-1-5-.09(7)(b).

Subparagraph (3)(c) is amended by replacing the term “Rule 1200-01-15-.10(6)” with “rule 1200-01-15-.10(5)” so that the amended subparagraph shall read as follows:

- (c) For a petroleum underground storage tank system, which was Fund Eligible at the time of foreclosure, to remain Fund Eligible after the holder has sold or otherwise disposed of his interest therein, the holder must have paid annual tank fees in a timely manner in accordance with Rule 1200-01-15-.10(5).

Subparagraph (3)(e) is amended by replacing the term “Rule 1200-01-15-.09(5)(c) or (d)” with “rule 1200-01-15-.09(4)(c) or (d)” so that the amended subparagraph shall read as follows:

- (e) If annual tank fees are not timely paid for the petroleum underground storage tanks, Fund Eligibility has not been established on the tanks, or Fund Eligibility has been lost for any other reason, the purchaser of such tanks from a holder must follow the requirements of rule 1200-01-15-.09(4)(c) or (d) to establish or reestablish Fund Eligibility for the UST systems.

Paragraph (4) Fee Payment. is amended by replacing the term “Rule 1200-01-15-.12(3)” with “rule 1200-01-15-.12(2)”, so that the amended paragraph shall read as follows:

- (4) Fee Payment. Annual tank fees may be paid after foreclosure either by the holder or by an operator who is in charge of the daily operation of the UST systems provided that the holder has properly registered the tanks in accordance with Rule 1200-01-15-.12(2).

Authority: T.C.A. §4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-201 et seq.

Subparagraph (a) of paragraph (1) Registration of Rule 1200-01-15-.13 Voluntary Registry is amended by replacing the term “rule 1200-01-15-.12(2)” with “1200-01-15-.01(4)”, so that the amended subparagraph shall read as follows:

- (a) Any person that owns an interest in a petroleum site, including without limitation, owners in fee simple and holders, as defined in rule 1200-01-15-.01(4), may register with the voluntary registry maintained by the division.

Authority: T.C.A. §§68-215-107, 68-215-130 and T.C.A. §§4-5-201 et seq.

The proposed rules set out herein were properly filed in the Department of State on the 28th day of March, 2008, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 29th day of July, 2008. (FS 03-23-08; DBID 2852)

Economic Impact Statement

- (1) Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Type or types of small business:	Owners and/or operators of petroleum underground storage tanks not exempt from the provisions of T.C.A. § 68-215-101 et seq. or the rules promulgated thereunder. This may include, but not be limited to: (1) gas stations (2) convenience stores (3) nursing homes (4) car dealerships or rental facilities (5) farms (6) contractors (7) funeral homes (8) florists
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Estimate of the number of small businesses:	There are approximately 2,900 owners of petroleum underground storage tanks registered with the Division of Underground Storage Tanks. Numbers of employees are not reported to the Division. The Division estimates that anywhere from 71 to 94 percent of these tank owners or operators are small business owners; that is between 2,059 and 2,726 small businesses.
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- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments to rules 1200-01-15-.01, .02, .06, .07, .09, .10, .12 and .13.

- (3) A statement of the probable effect on impacted small businesses and consumers:

The amendment to rule 1200-01-15-.02(6)(e)1. and 2. will decrease the number of tank owner small businesses that will have to install a containment sump beneath a motor fuel dispenser when replacing the dispenser. This will save some small business owners money.

The amendment to rule 1200-01-15-.09(3)(a) will increase the number of tank owner small businesses that will have access to the Tennessee Petroleum Underground Storage Tank Fund.

The amendment to rule 1200-01-15-.10(4)(a) inserts a new statutory provision from the Public Acts of 2007, Public Chapter No. 362, Section 35, which caps late payment penalties on annual fees.

Four (4) of the changes replace a reference to the effective date of a rule with the actual date. This should make it easier for the small business owner to determine the exact effective date of the requirement.

Eleven (11) of the changes update cross references to other regulatory language, thus making the rules easier for small businesses and consumers to navigate the regulations.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

The amendment to rule 1200-01-15-.02(6)(e)1. and 2. is a less burdensome, less intrusive and less costly alternative to the parts of the rule that are currently in effect. Where applicable, the saving in equipment costs ranges from approximately \$1,560 to \$2,000 (for single wall dispenser sumps, entry boots and sump penetration fittings). There would be additional savings for the cost of labor and for the cost of breaking concrete. Also, there could very well be a savings in the area of business not lost due to construction activities at the petroleum underground storage tank facility.

The amendment to rule 1200-01-15-.09(3)(a) is a less stringent requirement than the sentence in the rule which is being replaced by this rulemaking.

- (5) A comparison of the proposed rule with any federal or state counterparts:

The amendment to rule 1200-01-15-.02(6)(e)1. and 2. has been compared to the Grant Guidelines To States For Implementing The Secondary Containment Provision Of The Energy Policy Act of 2005, issued by the U.S. Environmental Protection Agency in November of 2006. This amendment does not alter the fact that the Tennessee Petroleum Underground Storage Tank Regulations meet or exceed the minimum standards for secondary containment requirements as set forth in the federal grant guidelines.

The amendment to rule 1200-01-15-.09(3)(a) allows more tank owner small businesses to meet the federal financial responsibility requirements for owners and/or operators of underground storage tanks.

- (6) Analysis of the effect of the possible exemption of small business from all or any part of the requirements contained in the proposed rule:

Since these are either housekeeping changes or minor amendments to existing requirements and since these minor amendments are beneficial to tank owner small businesses, the possible effect of exemption from these beneficial changes would be to place small business owners back under the existing rules, which are more burdensome, more restrictive and more costly for tank owners.