Rulemaking Hearing Rules
of the
Tennessee Department of Environment and Conservation
Division of Underground Storage Tanks

Chapter 1200-01-15
Underground Storage Tank Program

Amendments

Rule 1200-01-15-.04 Release Detection is amended as follows:

Paragraph (2) is amended by deleting Part 1 of subparagraph (a) in its entirety and by inserting the following new Part 1:

1. UST systems that meet the performance standards in rule 1200-01-15-.02, and the manual tank gauging requirements in subparagraph (3)(b) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule) at least every five (5) years until ten (10) years after the tank was installed or upgraded in compliance with the performance standards in rule 1200-01-15-.02. UST systems installed before July 24, 2007 that meet the performance standards in rule 1200-01-15-.02, and the monthly inventory control requirements in subparagraphs (3)(a) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule), until December 31, 2008. However, tanks which were over ten (10) years old when the cathodic protection system was added in accordance with rule 1200-01-15-.02(4)(a)2.(v)(III) shall use a monthly monitoring method of release detection in accordance with subparagraphs (3)(d) through (i) of this rule.

Subparagraph (a) is further amended by adding a new part 3 that shall read as follows:

3. On or after January 1, 2009, the monitoring methods in part (3)(d)1 of this rule, subparagraph (3)(f) of this rule, and parts (3)(g)2 and 3 of this rule shall no longer meet the requirements of this rule.

Paragraph (4) is amended by deleting subparagraph (c) in its entirety and by inserting the following new subparagraph (c):

(c) Applicable tank methods. Any of the methods in subparagraphs (3)(e) through (i) of this rule may be used if they are designed to detect a release from any portion of the underground piping that routinely contains petroleum, except that the method in subparagraph (3)(f) and in part 2 of subparagraph (3)(g) of this rule shall not satisfy the requirements of this rule on or after January 1, 2009.

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

Paragraph (5) of rule 1200-01-15-.07 Out of Service UST Systems and Closure is amended by deleting subparagraph (a) in its entirety and by inserting the following new subparagraph (a):

(a) Before permanent closure of a tank or a tank compartment or a change-in service is completed, owners and/or operators shall measure for the presence of a release

where contamination is most likely to be present at the UST site. Sampling shall meet the following requirements:

1. In selecting sample types, sample locations, and measurement methods, owners and/or operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release.

2. At least one day before samples are taken, the owner and/or operator shall notify the division concerning the schedule for sample collection.

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

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 17th day of July, 2008, and will become effective on the 30th day of September 2008. (FS 07-09-08; DBID 2918)

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:

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| Type or types of small business: | Businesses affected are primarily retail gas stations and convenience stores. Owners and/or operators of petroleum underground storage tanks regulated by T.C.A. § 68-215-101 et seq. and the rules promulgated thereunder. |
| Estimate of the number of small businesses: | Our data indicate approximately 61 compartments are using groundwater monitoring only and around 890 compartments using inventory control. Assuming 3 compartments per facility, this rule could affect as many as 317 facilities total. Our data indicate that 22 facilities (only 0.4% of the total facilities) would be affected by the change to the groundwater monitoring rules. Existing rules already impact compartments using inventory control and gradually phase this method out between now and 2017.- |

(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-.04 or .07.

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

The amendment to rule 1200-01-15-.04(2)(a)1 ends the opportunity for any tanks installed prior to July 24, 2007 to use inventory control for 10 years as a release detection method. Under current regulations tanks installed after December 1998, may only use inventory control for 10 years when they must switch to a monthly monitoring method. Tanks impacted by this rule change are tanks installed before July 24, 2007 that will not be 10 years old prior to January 1, 2009. Many owners of those tanks did not select inventory control as their method of release detection. The Division estimates the impact on those businesses will be negligible.

The amendment to rule 1200-01-15-.04(2)(a)3 ends the use of the following methods of release detection effective January 1, 2009:

> Automatic tank gauging devices installed before December 22, 1990, and only capable of taking product level measurements for use in doing inventory control for release detection (rule 1200-01-15-.04(3(d)1) – These devices are obsolete and most, if not all, of the manufacturers no longer carry parts for maintenance and/or repair. The Division is unaware of any tank owners still using these obsolete devices, so there would be only a minor impact, if any, on small businesses.
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> Ground water monitoring (rule 1200 -1-15-.04(3)(f)) - Tank owners would likely have some cost difference for using another method of release detection, but that cost difference could be relatively small, depending upon which method they chose.
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> Tank pit liners and internal tank bladders (rule 1200-01-15-.04(3)(g)) - The Division is not aware of any businesses affected by this change.

The amendment to rule 1200-01-15-.04(2)(c) ends the use of ground water monitoring as a release detection method for piping effective January 1, 2009. The same businesses affected by the amendment to rule 1200-01-15-.04(2)(a)3 where it impacts ground water monitoring (rule 1200 -1-15-.04(3)(f)) will be affected by this change. Tank owners would likely have some cost difference for using another method of release detection, but that cost difference could be relatively small, depending upon which method they chose.

The amendment to rule 1200-01-15-.07(5)(a) eliminates the use of monthly leak detection records from vapor monitoring or groundwater monitoring in lieu of collecting soil samples at tank closures. Since the current rules on these methods address “background” contamination, soil sampling is a more accurate and reliable method of determination of petroleum contamination at the time of tank closure, providing a better means of assuring protection of human health and safety and the environment.

(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:

Tank owners using inventory control or groundwater monitoring could consider using Statistical Inventory Reconciliation (SIR) as an alternative. Tank owners using inventory control are already collecting the data necessary for SIR and would need to provide a SIR vendor with the data for analysis. The cost of monthly SIR would be partially offset by the elimination of the requirement for a tank on SIR to have a tightness test every 5 years. Any cost savings/cost avoidance by a tank owner currently using inventory control is only short term, since inventory control is only a temporary leak detection method and can only be used for 10 years under current regulations, both state and federal.

Tank owners doing groundwater monitoring may be attempting to do it themselves or paying a third party. If they are paying a third party, the cost of changing to monthly SIR should be comparable. If they are doing it themselves, there would be a cost of entering into a contract with a SIR provider.

If a tank owner is using groundwater monitoring and cannot substantiate certain site and procedure information already required by rule, then he must spend money to collect that information and document that he is performing the method correctly, or change to another method of leak detection. Tank owners have often found it more cost effective to change to another method, rather than spend money trying to document conditions that may preclude them from being able to use groundwater monitoring at their locations.

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

Federal rules currently allow these methods for existing tanks, but not for new installations. However, there are other states that have regulations which have been requiring interstitial monitoring (and double walled tanks) for several years, this requirement automatically eliminates all other methods of release detection in those states.

(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:

The purpose of these rule changes is to eliminate the use of leak detection methods which:
(1) are less precise and allow for large losses of petroleum to go undetected, thus increasing the economic impact to both tank owners and the UST Reimbursement Fund;
(2) are implemented incorrectly by a majority of tank owners attempting to use them; or
(3) are obsolete or are not currently being utilized by Tennessee tank owners.

Since better methods are available, the intent of these rules are to eliminate the use of these less precise methods and methods which are extremely difficult to implement and unreliable for release detection. These methods are used by primarily by small businesses and exempting small businesses from this rule would not achieve the result intended by the rule.