Notice
of Rulemaking Hearing
Department of Environment and Conservation
Division of Underground Storage Tanks

The Tennessee Petroleum Underground Storage Tank Board will hold a public hearing to receive comments concerning amendments to the Rules of the Department of Environment and Conservation Division of Underground Storage Tanks Chapter 1200-1-15 Underground Storage Tank program pursuant to T.C.A. § 68-215-113. This hearing will be conducted as prescribed by the Uniform Administrative Procedures Act T.C.A. § 4-5-201 et. seq.

The hearing will take place in the 17th Floor Conference Room at the L & C Tower, 401 Church Street, Nashville, Tennessee at 2:00 P.M. CST on Thursday, May 25, 2006.

These rules are being promulgated in response to the requirements in the Underground Storage Tank Compliance Act of 2005 which was a part of the Federal Energy Act. These rules are being promulgated to enable Tennessee to comply with the minimum requirements for secondary containment that are in the federal law. In addition, these rules will require new installations or replacements within one thousand (1,000) feet of a spring that serves as a drinking water supply to meet similar requirements by February 8, 2012.

Written comments will be considered if received by close of business, May 31, 2006, at the office of the Technical Secretary, Tennessee Petroleum Underground Storage Tank Board, 4th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1531. Written comments may also be submitted via e-mail to Donna.Washburn@state.tn.us .

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to the date of the hearing or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation, Kim McCrary, ADA Coordinator, 12th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-0437, 615-532-0211.

For complete copies of the text of the notice or for answers to questions concerning this notice, please contact Donna Washburn, Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, 4th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1531, 615-532-0987. The notice and copies of the proposed rules are posted on the web site for the Division of Underground Storage Tanks, http://www.state.tn.us/environment/ust.

Substance of Proposed Rules

Paragraph (2) Program Scope: Applicability of Rule 1200-1-15-.01 Program Scope, Definitions and Proprietary Information is amended by deleting subparagraph (c) in its entirety and replacing it with the following:

(c) Deferrals – Emergency generator tanks.

1. Except as provided for in parts 2 through 5 of this subparagraph, release detection requirements in rule 1200-1-15-.04 do not apply to any UST system that stores fuel solely for use by emergency power generators.

2. New tanks or piping components of an emergency generator UST system installed on or after February 8, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) if the tank and/or piping is located within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well.

3. Tank or piping components of an emergency generator UST system replaced on or after February 8, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) and (6) if the tank and/or piping is located within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well.

4. New tanks or piping components of an emergency generator UST system installed on or after February 8, 2012, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) if the tank and/or piping is located within one thousand (1,000) feet of a spring being used as a drinking water supply.

5. Tank or piping components of an emergency generator UST system replaced on or after February 8, 2012, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) and (6) if the tank and/or piping is located within one thousand (1,000) feet of a spring being used as a drinking water supply.

Paragraph (4) Definitions of Rule 1200-1-15-.01 Program Scope, Definitions and Proprietary Information is amended by inserting the following definitions in the appropriate locations alphabetically:

"Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

"Potable drinking water well" means any hole, either dug, driven or drilled, that extends into the earth until it meets a ground water bearing formation or aquifer containing water used for or intended for human consumption, whether for public, private or domestic use.

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 1200-1-15-.02 UST Systems: Installation and Operation is amended as follows:

Subparagraph (a) of paragraph (1) Installation is amended by adding a new part, to be designated as part 2, and renumbering the existing part 2 as part 3. The new part shall read as follows:

2. Submit a pre-installation/replacement water use survey conducted in accordance with guidance provided by the division and in a format established by the division for all installations that commence on or after February 8, 2007; and

Paragraph (1) Installation is further amended by inserting two additional subparagraphs, to be designated as subparagraphs (c) and (d), and renumbering the existing subparagraphs (c) and (d) as (e) and (f) respectively. The new subparagraphs shall read as follows:

(c) On or after February 8, 2007, all UST systems installed within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well, as determined by the pre-installation/replacement water use survey performed in accordance with part (a)2 of this paragraph, shall be secondarily contained in accordance with paragraph (2) of this rule.

(d) On or after February 8, 2012, all UST systems installed within one thousand (1,000) feet of a spring being used as a drinking water supply, as determined by the pre-installation/replacement water use survey, shall be secondarily contained in accordance with paragraph (2) of this rule.

Paragraph (1) Installation is further amended by deleting part (c)2 in its entirety and replacing it with the following:

2. Prior to placing product into the tank, tank compartment and/or UST system, spill and overfill prevention measures shall be implemented in accordance with paragraph (3) of this rule.

Paragraph (1) Installation is further amended by deleting part (c)5 in its entirety and replacing it with the following:

5. Immediately protect against corrosion in accordance with paragraph (4) of this rule.

Rule 1200-1-15-.02 is further amended by adding a new paragraph to be designated as paragraph (2). The new paragraph shall read as follows:

(2) Secondary Containment

(a) Tanks. Tanks that are required to be secondarily contained in accordance with rule 1200-1-15-.01(2)(c), with subparagraphs (1)(c) or (d) of this rule, or with paragraph (6) of this rule shall comply with the following:

1. Tanks shall be double-walled;

2. Tanks shall meet the interstitial monitoring requirements of rule 1200-1-15-.04(3)(g)1;

3. Tanks shall prevent the release of petroleum to the environment for the operational life of the underground storage tanks;

4. Tanks shall contain a release until detected and removed; and

5. Tanks shall be monitored for a release at least every thirty (30) days.

(b) Piping. Piping that is required to be secondarily contained in accordance with rule 1200-1-15-.01(2)(c), with subparagraphs (1)(c) or (d) of this rule, or with paragraph (6) of this rule shall comply with the following:

1. Piping shall comply with one of the following:

(i) Piping shall be one hundred percent (100 %) double-walled; or

(ii) Piping shall be secondarily contained with single-walled piping ends that terminate in tank and dispenser sumps that meet the requirements of subparagraph (c) of this paragraph;

2. Piping shall meet the interstitial monitoring requirements of rule 1200-1-15-.04(3)(g)1;

3. Piping shall prevent the release of petroleum to the environment for the operational life of the piping;

4. Piping shall contain a release until detected and removed; and

5. Piping shall be monitored for a release at least every thirty (30) days.

(c) Motor fuel dispensers. Motor fuel dispensers that are required to be secondarily contained in accordance with subparagraphs (1)(c) or (d) of this rule or with paragraph (6) of this rule shall comply with the following:

1. The containment sump shall be liquid tight on the sides, the bottom and at any penetrations;

2. The containment sump shall be compatible with the petroleum products stored in the UST system; and

3. The containment sump shall be designed to allow for a visual inspection and access to the components of containment systems, including that used for piping.

Rule 1200-1-15-.02 is further amended by adding a new paragraph to be designated as paragraph (6). The new paragraph shall read as follows:

(6) Replacement

Tank owners and/or operators initiating any replacement of tanks, piping or motor fuel dispensers that commences on or after February 8, 2007, shall comply with the following:

(a) At least fifteen (15) days prior to replacement of any tanks, piping and/or dispensers, owners and/or operators shall notify the divisions in the following manner:

1. Submit a pre-replacement notification form for all the petroleum underground storage tanks, piping and/or dispensers that are being replaced; and

2. Submit a pre-installation/replacement water use survey conducted in accordance with guidance provided by the division and in a format established by the division prior to any replacement of tanks, piping and/or motor fuel dispensers.

(b) Tank owners and/or operators initiating any replacement of tanks, piping and/or motor fuel dispensers located within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well as determined by the pre-installation/replacement water use survey required by part (a)2 of this paragraph

shall install secondary containment and interstitial monitoring for the replacement tanks and piping and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule for replacements that commence on or after February 8, 2007.

(c) Tank owners and/or operators initiating any replacement of tanks, piping and/or motor fuel dispensers located within one thousand (1,000) feet of a spring being used as a drinking water supply as determined by the pre-installation/replacement water use survey required by part (a)2 of this paragraph shall install secondary containment and interstitial monitoring for the replacement tanks and piping and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule for replacements that commence on or after February 8, 2012.

(d) In the case of the replacement of an existing underground storage tank or existing piping connected thereto, the requirements in subparagraph (b) or (c) 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.

(e) Unless determined to be a piping repair by the division in accordance with subparagraph (f) of this paragraph, if piping is being replaced, all piping connected to that particular underground storage tank shall be removed and secondarily contained piping with interstitial monitoring shall be installed in accordance with paragraph (2) of this rule.

(f) Piping repairs:

1. The division may authorize a repair of underground piping, which shall not be considered a replacement;

2. Requests for division authorization of piping repairs shall be submitted in writing;

3. The division may request additional information about the proposed repair as deemed necessary; and

4. Requests for division authorization of piping repairs shall be approved or denied by the division

(g) 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 a new 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 above the shear valve in a pressurized piping system; or

2. Components beneath the dispenser that are above the union in a suction piping system.

Rule 1200-1-15-.02 is further amended by renumbering the existing paragraphs in the rule as follows: the existing paragraph (2) Spill and Overfill Prevention shall be renumbered as paragraph (3), the existing paragraph (3) Corrosion Prevention shall be renumbered as paragraph (4), the

existing paragraph (4) Compatibility shall be renumbered as paragraph (5), and the existing paragraph (5) Repairs Allowed shall be renumbered as paragraph (7).

The paragraph newly numbered as paragraph (7) Repairs Allowed of rule 1200-1-15-.02 is amended by deleting subparagraphs (c) and (e) in their entirety and replacing them with the following language:

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced in accordance with subparagraphs (6)(a) through (d) of this rule. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(e) Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with parts (4)(c)2 and 3 of this rule to ensure that it is operating properly.

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

Paragraph (1) Notification Requirements of Rule 1200-1-15-.03 Notification, Reporting and Record Keeping shall be amended by deleting part 2 of subparagraph (d) and replacing it in its entirety to read as follows:

2. Cathodic protection of steel tanks and piping under rule 1200-1-15-.02(4)(a) and (b);

Paragraph (1) Notification Requirements of Rule 1200-1-15-.03 Notification, Reporting and Record Keeping is further amended by adding a new paragraph to be designated as paragraph (h), which shall read as follows:

(h) Any owner or operator who replaces a tank, the underground piping associated with an underground storage tank or a motor fuel dispenser, with the replacement commencing on or after February 8, 2007, shall submit a pre-replacement notification form in accordance with rule 1200-1-15-.02(6)(a).

Paragraph (2) Reporting and Record Keeping of Rule 1200-1-15-.03 Notification, Reporting and Record Keeping shall be amended by deleting parts 1, 2 and 3 of subparagraph (b) in their entirety and replacing them so that parts 1 through 3 shall read as follows:

1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (rule 1200-1-15-.02(4)(a)5; rule 1200-1-15-.02(4)(b)3);

2. Documentation of operation of corrosion protection equipment (rule 1200-1-15-.02(4)(c));

3. Documentation of UST system repairs (rule 1200-1-15-.02(7)(f));

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

Rule 1200-1-15-.04 Release Detection is amended by adding a new subparagraph at the end of paragraph (1) General Requirements for Release Detection to be designated as subparagraph (1)(g), which shall read as follows:

(g) Under-dispenser containment sumps for motor fuel dispensers required by rule 1200-1-15-.02(1)(c) or (d) or (6) to be secondarily contained in accordance with rule 1200-1-15-.02(2)(c) shall be visually inspected at least quarterly, that is, at least once every three (3) months. A log of these inspections, showing at a minimum the last twelve (12) months, shall be maintained by the owner and/or operator. The visual inspection shall check for the presence of petroleum in the sumps. If petroleum is observed in the dispenser sump, the petroleum shall be removed from the sump in such a manner as to prevent the release of petroleum into the environment.

Paragraph (2) Requirements for Petroleum UST Systems of rule 1200-1-15-.04 Release Detection is amended by deleting part (a)1 in its entirety and replacing it with the following:

1. UST systems that meet the performance standards in rule 1200-1-15-.02, and the monthly inventory control requirements in subparagraphs (3)(a) or (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 1200-1-15-.02. However, tanks which were over ten (10) years old when the cathodic protection system was added in accordance with rule 1200-1-15-.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.

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

Paragraph (1) Temporary Closure of rule 1200-1-15-.07 Out-Of Service UST Systems and Closure is amended by deleting subparagraph (a) in its entirety and replacing it with the following:

(a) When an UST system is temporarily closed, owners and/or operators shall continue operation and maintenance of corrosion protection in accordance with rule 1200-1-15-.02(4), and any release detection in accordance with rule 1200-1-15-.04. Rule 1200-1-15-.05 and rule 1200-1-15-.06 shall be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than two and one-half (2.5) centimeters (one inch) of residue remains in the system.

Paragraph (2) Substandard UST Systems of rule 1200-1-15-.07 Out-Of Service UST Systems and Closure is amended by deleting the first sentence it in its entirety and replacing it so that the paragraph shall read as follows:

Unless directed to do otherwise by the division owners and/or operators of an UST system which does not meet the requirements in rule 1200-1-15-.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.

Paragraph (8) Fund Ineligible Costs of Rule 1200-1-15-.09 Administrative Guidelines and Procedures for the Tennessee Petroleum Underground Storage Tank Fund is amended by deleting the second sentence in subparagraph (a) in its entirety and replacing it so that subparagraph (a) shall read as follows:

(a) Costs of replacement, repair, removal, maintenance, and/or retrofitting of affected tanks and associated piping and any costs not integral to site rehabilitation shall not be eligible for payment or reimbursement by the fund. Costs of replacement, repair, removal, maintenance, and/or retrofitting of tanks and associated piping to comply with the requirements of rule 1200-1-15-.02(3) and (4) shall not be eligible for fund payment or reimbursement. Replacement of asphalt or concrete shall not be eligible for fund payment or reimbursement.

Paragraph (10) Requirements for Fund Coverage of Corrective Action Costs of Rule 1200-1-15-.09 Administrative Guidelines and Procedures for the Tennessee Petroleum Underground Storage Tank Fund is amended by deleting the first sentence in subparagraph (c) and replacing it so that subparagraph (c) shall read as follows:

(c) Effective December 22, 1998, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-1-15-.05(1) through rule 1200-1-15-.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 1200-1-15-.02(3)(a) and (4)(a) and (b). On the effective date of this rule, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-1-15-.05(1) through rule 1200-1-15-.05(3), the owner and/or operator shall submit documentation to the division verifying the performance of release detection as required by rule 1200-1-15-.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.

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.

Paragraph (3) Annual Petroleum Underground Storage Tank Fees of rule 1200-1-15-.10 Fee Collection and Certificate Issuance Regulations is amended by deleting subparagraph (e) in its entirety and replacing it so that the subparagraph shall read as follows:

(e) If an annual fee is paid on an existing underground storage tank which is subsequently permanently closed in accordance with rule 1200-1-15-.07 and replaced by a new underground storage tank installed at the same site in accordance with rule 1200-1-15-.02(1) or (6) no additional annual fee will be required, provided that the replacement tank has the same number of tank compartments as the existing tank. If the replacement tank has more tank compartments than the existing tank, an additional annual fee of two hundred fifty dollars ($250) per compartment shall be paid. If the replacement tank has fewer tank compartments than the existing tank, no refund of the annual fee or any portion thereof is due, as stated in subparagraph (f) of this paragraph.

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.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Environment and Conservation.

Stanley R. Boyd
Technical Secretary
Tennessee Petroleum Underground Storage Tank Board

Subscribed and sworn to before me this the 29th day of March, 2006.

Deidre Warner
Notary Public

DEIDRE WARNER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

My commission expires the 24th day of November, 2007.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29 day of March, 2006.

Riley C. Darnell
Secretary of State

By: _____

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