

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

Chapter 1200-1-15
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.

This rule will not adversely affect small businesses. For a copy of the Economic Impact Statement or 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:

New Rule

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1200-1-15-.14 Record Retention by the Division.

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- (1) Notification and tank ownership records. The division shall maintain both tank registration/notification information and responsible party information that has been provided to the division or otherwise obtained by the division. Documents containing notification, tank registration and/or responsible party information shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:
 - (a) Tank ownership records must be available should petroleum contamination be discovered sometime in the future, requiring the division to make determinations concerning fund eligibility and/or responsible parties, because:
 1. Timely registration or notification, in accordance with rule 1200-1-15-.03, is required for establishment of fund eligibility in accordance with rule 1200-1-15-.09(4)(a);
 2. The tank owner at the time of a release is a responsible party in accordance with Tennessee Code Annotated § 68-215-103(17)(B);

3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by rule 1200-1-15-.07(5)(a); and/or
 4. Some petroleum underground storage tanks regulated under T.C.A. § 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites; and
- (b) Some of these records include copies of deeds to real property, causing them to have permanent value.
- (2) Fee payment records. The division shall maintain fee payment information that has been provided to the division or otherwise obtained by the division. Records documenting the fee payment history associated with a petroleum site shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:
- (a) Fee payment records must be available should petroleum contamination be discovered sometime in the future, requiring the division to make determinations concerning fund eligibility, because:
1. Fee payment is required for establishment and maintenance of fund eligibility per rule 1200-1-15-.09(4)(a) and (b);
 2. The determination of fund eligibility is based, in part, on fee payment records in accordance with T.C.A. § 68-215-111(e)1(A); and/or
 3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by rule 1200-1-15-.07(5)(a).
- (3) Release response, remediation and risk management records. Records documenting the actions taken to assess, remediate and/or manage petroleum contamination at a petroleum site caused by a release from a UST system shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:
- (a) These records pertain to real property, causing them to have permanent value.
1. These records may contain copies of Notices of Land Use Restrictions, which have been attached to the deed to real property, in accordance with rule 1200-1-15-.06(8)(c) and T.C.A. § 68-212-225.
- (b) Risk based cleanup levels are required to be based on current and reasonably anticipated use of the property and location of receptors in accordance with rule 1200-1-15-.06(5)(b)4.
1. If a person is contemplating a future use that was not anticipated at the time the site assessment and remediation was done in accordance with rule 1200-1-15-.06, new risk calculations may need to be made taking into consideration the historical documents; and

2. If a person is contemplating the future location of receptors that were not anticipated at the time the site assessment and remediation was done in accordance with rule 1200-1-15-.06, new risk calculations, including the risk of human exposure to carcinogens, may need to be made taking into consideration the historical documents.
- (4) Reimbursement records. Records documenting fund eligibility determinations and/or fund reimbursement payment history associated with a petroleum site shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:
- (a) These records have fiscal value, causing them to have permanent value.
 - (b) For any fund eligible release there is a maximum reimbursable amount of one million dollars (\$1,000,000) less the deductible for that release, as set forth in rule 1200-1-15-.09(8), for taking corrective actions. Reimbursement records contain information concerning the portion of this reimbursement amount which has been expended and the balance, if any, available for future reimbursement for corrective actions which might need to be taken in the future for previously undetected contamination.
1. Post tank closure discovery of residual contamination.
 - (i) There may be some residual petroleum contamination that is not discovered during the site assessment at tank closure required by rule 1200-1-15-.07(5)(a).
 - (ii) Some petroleum underground storage tanks regulated under T.C.A. § 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites and may be discovered many years after the tanks were permanently closed.
 2. Discovery of residual contamination post closure of a contamination case.
 - (i) Previously undetected residual petroleum contamination may be discovered years after assessment and remediation activities have been completed in accordance with rule 1200-1-15-.06.
 - (ii) Additional remediation activities may be needed after assessment and remediation activities have been completed in accordance with rule 1200-1-15-.06 if the risk at the site has changed, as described in subparagraph (3)(b) of this rule.
- (5) Tank closure records. The division shall maintain tank closure information that has been provided to the division or otherwise obtained by the division. Records documenting tank closure as well as the site assessment records associated with tank closure shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:
- (a) These records pertain to real property, causing them to have permanent value; and

- (b) In accordance with rule 1200-1-15-.07(4)(b) petroleum underground storage tanks may be closed in place if they are filled with an inert substance or removed from the ground. It is important, when future use of the petroleum site is being considered, to know which tank closure option was utilized.

- (6) Orders for correction and/or assessment, and cost recovery actions. Records documenting enforcement actions that result in the issuance of an administrative order, under the provisions of Tennessee Code Annotated § 68-215-114, and/or the issuance of an administrative order for the assessment of civil penalties, under the provisions of Tennessee Code Annotated § 68-215-121, and records relating to cost recovery actions, under the provisions of Tennessee Code Annotated § 68-215-115, shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:
 - (a) These records have legal value; and
 - (b) These records have fiscal value. These records may contain information concerning uncollected debts owed to the State of Tennessee, for example, when a respondent moves after being served with an administrative order and leaves no forwarding address.

- (7) Maintenance of records.
 - (a) All division records, including the permanent records specified in this rule, may be maintained as paper records, compact disks, microfilm records, electronic records, photographic records, and/or other forms that allow access for review and duplication.
 - (b) The form of the record at the time of submittal to the division shall not limit or otherwise prescribe the form in which that record may be permanently maintained.
 - (c) Nothing in this rule shall be construed to mean that the division is required to accept record submittals in any form other than that prescribed by the division.

Authority: T.C.A. §§ 4-5-202, 68-215-107, 68-215-113

The proposed rules set out herein were properly filed in the Department of State on the 26th day of April, 2007, 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 28th day of August, 2007. (FS 04-25-07, DBID 2523)