

**Department of State**  
**Division of Publications**  
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**For Department of State Use Only**

Sequence Number: 05-09-11  
 Rule ID(s): 4953  
 File Date: 05/25/2011  
 Effective Date: 08/23/2011

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Malcolm H. Butler
<b>Address:</b>	9 <sup>th</sup> Floor L & C Annex 401 Church Street Nashville, Tennessee
<b>Zip:</b>	37243-1531
<b>Phone:</b>	615-532-0600
<b>Email:</b>	<a href="mailto:Malcolm.Butler@tn.gov">Malcolm.Butler@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1200-03-18	Volatile Organic Compounds
Rule Number	Rule Title
1200-03-18-.29	Petroleum Liquid Storage in Fixed Roof Tanks

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1200-03-18  
Volatile Organic Compounds

Amendment

Subparagraph (b) of paragraph (4) of rule 1200-03-18-.29 Petroleum Liquid Storage in Fixed Roof Tanks is amended by deleting it in its entirety and replacing it with the following subparagraph (b):

- (b) Perform a complete inspection of the cover and seal whenever the tank is emptied and degassed or at least every 10 years, whichever is more frequent. To qualify for the 10 year inspection interval, the primary seal must be either a liquid-mounted or mechanical shoe primary seal. Otherwise if the above mentioned controls are not in place, a complete inspection of the cover and seal must be performed whenever the tank is emptied and degassed or at least every 5 years, whichever is more frequent.

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

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				J. Ronald Bailey
Tracy R. Carter	✓				Tracy R. Carter
Dr. Brian Christman	✓				Brian Christman
Dr. Wayne T. Davis					Wayne Davis
Dr. Mary English				✓	
Stephen R. Gossett	✓				Stephen R. Gossett
Honorable Mayor Tommy Green, Jr.	✓				Tommy Green
Dr. Shawn A. Hawkins	✓				Shawn Hawkins
Helen S. Hennon				✓	
Richard M. Holland	✓				Richard Holland
John R. Roberts, Sr.	✓				John R. Roberts
Alicia M. Wilson	✓				Alicia Wilson
Honorable Mayor Larry Waters	✓				Larry Waters

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control (board/commission/ other authority) on 11/10/2010 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/16/10

Rulemaking Hearing(s) Conducted on: (add more dates). 09/09/10

Date: December 2, 2010

Signature: [Handwritten Signature]

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: December 2, 2010

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Robert E. Cooper, Jr.  
Attorney General and Reporter

5-19-11

Date

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Filed with the Department of State on: 5/25/11

Effective on: 8/23/11

[Handwritten Signature]

Tre Hargett  
Secretary of State

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## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A request to change the proposed rule amendment to assure consistency with the federal regulations. The proposed amendment's use of the phrase "nonoperational reasons" is vague and could cause confusion. Additionally, the proposed amendment could be interpreted by the EPA as being less stringent than the federal rules, which has provisions for a 10-year complete seal inspection frequency for internal floating roof tanks equipped with specific type(s) of primary seals. A request that subparagraph (b) of paragraph (4) of rule 1200-3-18-.29 Petroleum Liquid storage in fixed Roof Tanks be amended by deleting it in its entirety and replacing it with the following subparagraph (b):

"(b) Perform a complete inspection of the cover and seal whenever the tank is emptied and degassed or at least every 10 years, whichever is more frequent. To qualify for the 10 year inspection interval, the primary seal must be either a liquid-mounted or mechanical shoe primary seal. Otherwise if the above mentioned controls are not in place, a complete inspection of the cover and seal must be performed whenever the tank is emptied and degassed or at least every 5 years, whichever is more frequent."

Response: The Board agrees and the subparagraph is amended as suggested.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (1) The 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, or directly benefit from the proposed rule.

This proposed rule impacts petroleum refineries with fixed roof tanks and currently there is only one large business that will be impacted by this rule change.

- (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.

The proposed rule extends the inspection frequency for fixed roof tanks at petroleum refineries from every five years to every ten years provided the qualifying conditions are met. Therefore, the operating costs would be reduced at a qualifying refinery. There are no small businesses impacted by this proposed rule.

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

There are no small businesses or consumers impacted by this proposed rule.

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

There are no small businesses or consumers impacted by this proposed rule; therefore, there are no alternatives to this proposed rule.

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

The proposed rule is substantially equivalent to proposed federal regulations and to other state programs.

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

An exemption is unnecessary since this proposed rule does not currently apply to any small business.

### **Impact on Local Governments**

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This amendment does not have any impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The current rule requires a complete inspection of cover and seal whenever the fixed roof tank is emptied for non-operational reasons or at least every 5 years, whichever is more frequent. On September 4, 2007, EPA proposed an amendment to the national emission standards of petroleum refineries, 40 CFR 63 subpart CC, revising this requirement to every 10 years rather than every 5 years.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

40 CFR 63 subpart CC and 40 CFR subpart WW, National Emission Standards for Storage Vessels (Tanks) – Control Level 2 for storage vessels with internal floating roofs.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Valero Refining Company-Tennessee, LLC has requested a variance from the current subparagraph (4)(b) of Rule 1200-03-18-.29 and has obtain a variance to require such inspections at least every 10 years until such time as the subparagraph is revised. On September 4, 2007, EPA proposed an amendment to the national emission standards for petroleum refineries, 40 CFR 63 subpart CC, revising this requirement to every 10 years. This is consistent with 40 CFR 63 subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 for storage vessels with internal floating roofs. The company urges adoption of this rule amendment.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department in not aware of any.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Malcolm H. Butler  
Division of Air Pollution Control  
9<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, Tennessee 37243-1531

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson  
Legal Services Director  
Department of Environment and conservation

**(H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel  
Department of Environment and conservation  
20<sup>th</sup> Floor L & C Tower  
Nashville, Tennessee 37243-1548  
(615) 532-0131  
[Alan.Leiserson@tn.gov](mailto:Alan.Leiserson@tn.gov)

**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.

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1200-03-18	Volatile Organic Compounds
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Chapter 1200-03-18  
Volatile Organic Compounds

Amendment in redline

Subparagraph (b) of paragraph (4) of rule 1200-03-18-.29 Petroleum Liquid Storage in Fixed Roof Tanks is amended by deleting it in its entirety and replacing it with the following subparagraph (b):

- (b) Perform a complete inspection of the cover and seal whenever the tank is emptied ~~for non-operational reasons and degassed~~ or at least every ~~5~~ 10 years, whichever is more frequent. ~~To qualify for the 10 year inspection interval, the primary seal must be either a liquid-mounted or mechanical shoe primary seal. Otherwise if the above mentioned controls are not in place, a complete inspection of the cover and seal must be performed whenever the tank is emptied and degassed or at least every 5 years, whichever is more frequent.~~

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