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

The Tennessee Petroleum Underground Storage Tank Board will hold public hearings 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. These hearings will be conducted as prescribed by the Uniform Administrative Procedures Act T.C.A. § 4-5-201 et. seq.

The first hearing will take place in the 17th Floor Conference Room at the L & C Tower, 401 Church Street, Nashville, Tennessee at 1:00 P.M. CST on Monday, September 19, 2005.

The second hearing will take place in the Ayers Auditorium in the McWherter Center at Jackson State Community College, 2046 North Parkway (Highway 412), Jackson, Tennessee at 9:00 A.M.. CST on Friday, September 23, 2005.

The third_such hearing will take place in the Community Room at the Knox County Health Department, 140 Dameron Avenue, Knoxville 37917 at 9:00 A.M. EST on Tuesday, September 27, 2005.

Written comments will be considered if received by close of business, October 14, 2005, 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.

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, 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. Copies may also be obtained at the Environmental Assistance Centers for the Department of Environment and Conservation, which can be reached by calling 1-888-891-TDEC(8332). 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 the Proposed Rule

The Table of Contents for Chapter 1200-1-15 is being amended by deleting it in its entirety and replacing it with the following:

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Rule 1200-1-15-.01 Program Scope and Minimum Requirements for Tanks is amended by deleting it in its entirety and replacing it with the following:

1200-1-15-.01 Program Scope, Definitions And Proprietary Information .

(1) Program Scope: General

(a) Purpose, Scope, and Applicability - This rule provides definitions of terms, general standards and procedures, as well as overview information applicable to these rules.

(b) Use of Number and Gender - As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and

2. Words in the singular include the plural; and

3. Words in the plural include the singular.

(c) Rule Structure - These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection

(2) Program Scope: Applicability.

(a) The requirements of this chapter apply to all owners and/or operators of an UST system as defined in paragraph (4) of this rule except as otherwise provided in subparagraph (b) and (c) of this paragraph. Any UST systems listed in

subparagraph (b) of this paragraph shall meet the requirements of paragraph (3) of this rule.

(b) Deferrals. Rules 1200-1-15-.02 through 1200-1-15-.05 and 1200-1-15-.07 through 1200-1-15-.10 do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;

2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011and following);

3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;

4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

6. Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

7. Any UST system whose capacity is 110 gallons or less.

8. Any UST system that contains a de minimis concentration of petroleum.

9. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Deferrals. 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.

(3) Interim prohibition for deferred UST systems.

(a) No person may install an UST system for the purpose of storing petroleum unless the UST system (whether of single or double-wall construction):

1. Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

2. Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any petroleum; and

3. Is constructed or lined with material that is compatible with the petroleum.

(b) Notwithstanding subparagraph (a) of this paragraph, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators shall maintain records that

demonstrate compliance with the requirements of this subparagraph for the remaining life of the tank.

(4) Definitions.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the petroleum moves to or from an UST system.

"Access" means the ability and opportunity to gain knowledge of Proprietary Information in any manner whatsoever.

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Ancillary equipment'' means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of petroleum to and from an UST.

"Authorized person" means any person, including members of the Board, authorized to receive Proprietary Information. Except for members of the Board, such authorization shall be granted in writing by the Commissioner.

"Bedrock'' means any rock, solid and continuous, which is exposed at the surface of the earth or overlain by unconsolidated material.

"Below ground release'' means any release to the subsurface of the land or to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the petroleum moves to or from an underground storage tank.

"Beneath the surface of the ground'' means beneath the ground surface or otherwise covered with earthen materials.

"Board" means Tennessee Petroleum Underground Storage Tank Board established under T.C.A. §68-215-101 et seq.

"Bodily injury" means those bodily injuries caused by a release of petroleum from an UST system for which Tennessee law allows recovery.

"Borrower", "debtor" or "obligor" is a person whose petroleum underground storage tank or UST system is encumbered by a security interest. These terms are used interchangeably.

"Cathodic protection'' is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester'' means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Caused" in the context of third party claims means that degree of causation required by Tennessee law to allow recovery for damages caused by a release of petroleum from an UST system.

"CERCLA'' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Chemicals of concern" means those chemicals that have been designated as such by the Division in a chemicals of concern list. The chemicals of concern shall be chemicals that are constituents of or result from the degradation of petroleum product(s) and/or additives released from regulated petroleum underground storage tanks. The list will include those chemicals with the highest risk to human health and/or the environment. The chemicals of concern for diesel fuel will be different from the chemicals of concern for gasoline.

"Commissioner" means Commissioner of Environment and Conservation, his authorized representatives, or in the event of his absence or a vacancy in the Commissioner's Office, the Deputy Commissioner.

"Compartmentalized tank" means an underground storage tank that consists of two or more tank compartments, which are separated from each other by a wall or bulkhead.

"Compatible'' means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping'' means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which petroleum flows. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumption'' with respect to heating oil means consumed on the premises where stored.

"Containment sump" means a liquid-tight compartment that provides containment of any product releases. Containment sumps are typically used underneath product dispensers and/or for enclosing the submersible turbine pump and piping connections at the top of an underground storage tank.

"Continuous In-Tank Leak Detection System" means a release detection system that allows an underground storage tank to operate continuously or nearly continuously without interruption for release detection tests. However, the system may default to a standard or shut down test, requiring the tank to be taken briefly out of service at the end of the month if sufficient good data has not been obtained over the month. These methods include Continuous Automatic Tank Gauging Systems and Continual Reconciliation Systems.

"Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

"Corrective Action" means any activity, including but not limited to evaluation, planning, design, engineering, construction, and ancillary service, which is carried out in response to any discharge, or release of petroleum.

"Corrective Action Contractor" means a person who is carrying out any corrective action, including a person retained or hired by such person to provide services relating to a corrective action.

"Corrosion expert'' means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on

buried or submerged metal piping systems and metal tanks. Such a person shall submit documentation for review by the division that they have accreditation or certification as a corrosion specialist or senior corrosion technologist by the National Association of Corrosion Engineers or have education and a minimum of 4 years responsible charge work experience in the corrosion field. If it is determined by the division that a person has sufficient experience and education to be qualified to take responsible charge in corrosion control of buried or submerged metal piping systems and metal tanks, then that person shall be classified by the division as a Corrosion Expert for the purposes of this rule.

"Damages" in the context of third party claims means the value or cost of bodily injury or property damage caused by the release of petroleum from an UST system as determined by using methods allowed under Tennessee law.

"Date of release" means the earliest date that proof of a release exists. This will be the date a release is reported to or discovered by the division unless an earlier date is determined during the investigation of the release.

"De Minimis" means very low concentrations of petroleum.

"Department" means the Tennessee Department of Environment and Conservation.

"Dielectric material'' means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the Director of the division.

"Dispenser" means a device that discharges petroleum products from underground storage tanks into tanks in motorized vehicles, equipment tanks, or other containers, while simultaneously measuring the amount of petroleum dispensed.

"Division'' means the division designated by the Commissioner of the Department of Environment and Conservation as the agency to implement the Underground Storage Tank Program in Tennessee.

"Document" means any recorded information regardless of its physical form or characteristics, including, but not limited to, written or printed material; processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working papers and notes; reproductions of such things by any means or process; and sound, voice, or electronic recordings in any form.

"Document Control Number" means the unique number assigned by the document control officer to any document containing Proprietary Information.

"Document Control Officer" means the individual authorized by the Commissioner in writing to be responsible for all incoming and outgoing documents identified as containing Proprietary Information.

"Drinking water supply'' means any aquifer or water source whose chemical characteristics meet the primary and secondary drinking water standards as defined under rule 1200-5-1 and provides a yield of at least one-half gallon per minute. This shall also include any water supply used for drinking by the citizens of the state.

"Electrical equipment'' means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Eligible owner" means an owner or operator that is in ``Substantial Compliance''.

"Engineering control" means a modification to a site to reduce or eliminate the potential for migration of, and exposure to, chemicals of concern. An engineering control can be used to eliminate a pathway to reduce future risk. Engineering controls may include, but are not limited to: physical or hydraulic control measures, caps, liners, point-of-use treatments, slurry walls or vapor barriers.

"Excavation zone'' means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure pathway" means the course a chemical(s) of concern takes from a source area(s) to a receptor. Each exposure pathway includes a source area(s), a point of exposure, and an exposure route, and usually a transport/exposure medium or media.

"Farm tank'' is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. ``Farm'' includes fish hatcheries, rangeland and nurseries with growing operations.

"Flexible piping" means piping constructed of flexible thermoplastic material that is typically installed in one continuous run with no inaccessible joints.

"Flow-through process tank'' means a tank whose principle use is not for storage but is primarily used in the manufacture of a product or in a treatment process. Flow-through process tanks form an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Foreclosure" or "foreclosure and its equivalent" means purchase at a foreclosure sale, acquisition or assignment of title in lieu of foreclosure, termination of a lease or other repossession, acquisition of right to title or possession, an agreement in satisfaction of the obligation, or any other formal or informal manner (whether pursuant to law under warranties, covenants, conditions, representations or promise from the borrower) by which the holder acquires title to or possession of secured property.

"Free product'' refers to petroleum that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water.)

"Fund" means petroleum underground storage tank fund established under T.C.A. §68-215-101 et seq. unless the context clearly indicates otherwise.

"Gathering lines'' means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Ground water'' means water below the land surface in a zone of saturation.

"Guidance" means written guidelines and/or guidance documents provided by the Division. Such guidance is not mandatory, but provides information and instruction for achieving regulatory compliance. Other approaches to achieving regulatory compliance may be used in lieu of guidance provided by the Division, if those other approaches are proposed, in writing, by tank owners and/or operators for review and approval by the Division prior to implementation.

"Heating oil'' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel

Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum underground storage tank or UST system. A holder includes the initial holder or purchaser (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market), any subsequent assignee, transferee or purchaser from a holder, guarantor of an obligation, surety or any other person who holds ownership who acts on behalf of or for the benefit of a holder.

"Hydraulic lift tank'' means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and/or other similar devices.

"Impacted drinking water" means a water supply that contains chemicals of concern at levels that do or potentially may place human health at risk and that is being used for human consumption, and/or other human domestic use including, but not limited, to bathing, cooking, and dishwashing.

"Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest or evidence of an interest in real or personal property securing a loan or other obligations, including any legal or equitable title to real or personal property acquired incident to foreclosure and its equivalents. Evidence of such interests includes, but is not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (herein "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure, and its equivalents. Evidence of such interests also includes assignments, pledges or other rights to or other forms of encumbrances against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

"Information" means knowledge which can be communicated by any means.

"Installation" is the process of constructing a UST system for operation.

"Institutional control" means a legal means of limiting exposure to chemicals of concern at a petroleum site with a confirmed release of petroleum.

"Instruction" in the context of proprietary information means fully informing individuals in writing of their responsibilities for safeguarding Proprietary Information and the security procedures they shall follow.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought (1) by EPA or the Commissioner to require corrective action or to recover the costs of corrective action; (2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (3) by any person to enforce the terms of a financial assurance mechanism.

"Liquid trap'' means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance'' means the normal operational upkeep to prevent an underground storage tank system from releasing petroleum.

"Motor fuel'' means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"Month" means from the first day to the last day of the calendar month.

"Monthly" means at least once during a calendar month.

"Monitoring well" means a hole drilled into the earth, by boring or otherwise, constructed for the primary purpose of obtaining information on the elevation or physical, chemical, radiological or biological characteristics of the ground water and/or for the recovery of ground water for treatment.

"Noncommercial purposes'', with respect to motor fuel, means not for resale.

"Occurrence" means the discovery of environmental contamination at a specific time and date, due to the release of petroleum from petroleum underground storage tanks.

"On the premises where stored'' with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operation" means the use, storage, filling or dispensing of petroleum contained in a petroleum underground storage tank or an underground storage tank (UST) system.

"Operational life'' refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under rule 1200-1-15-.07.

"Operator'' means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release'' is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the petroleum to the environment.

"Owner'' means:

(a) in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of petroleum; and

(b) in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner or operator," in the context of financial responsibility, when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Person'' means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this state or any other state or country.

"Petroleum" means crude oil or any fraction thereof that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term petroleum includes but is not limited to petroleum and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion,

upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum UST system'' means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other hazardous substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe'' or ``Piping'' means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities (including gathering lines)'' are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation, but does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as a protection of a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why ownership indicia are held shall be for protection of a security interest.

"Property damage" means those type damages to property caused by the release of petroleum from an UST system for which Tennessee law allows recovery.

"Proprietary Information" means any confidential information that relates to a trade secret, product, apparatus, process, operation, style of work, or financial information which is owned (not necessarily exclusively) by or licensed to a person and claimed by that person to be proprietary and confidential; provided that the claim is accompanied by a written statement from such person relating the reasons why such information should be held confidential. Such information may be submitted to the division by the owner/licensee of the trade secret, product, etc.; or by another governmental agency which has obtained the information. If submitted by the owner/licensee, the written statement accompanying the information claimed proprietary shall, at a minimum, answer the questions in parts 1 through 4 of this definition. If submitted by another governmental agency, the written statement need include only the accompanying statements/reasons obtained by that agency.

1. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between the disclosure and the harm?

2. What measures have you taken to guard against undesired disclosure of the information to others?

3. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?

4. Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through a mechanism or mechanisms allowed by rule 1200-1-15-.08(3), including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the state of Tennessee.

"Reasonable cost" means that monetary amount or range, as determined by the division, to be commensurate with a corrective action. The division's determination is based on an evaluation of typical costs expected for the particular corrective action under review considering the scope and complexity of the activities involved and/or hourly rates which are competitive among approved corrective action contractors.

"Receptor" means a person, structure, surface water body, or drinking water supply that receives or may potentially receive exposure to a chemical of concern as the result of a petroleum release.

"Release'' means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a petroleum substance from an UST including its associated piping, into groundwater, surface water, or subsurface soils.

"Release detection'' means determining whether a release of petroleum has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier immediately around or beneath it.

"Repair'' means to restore a tank or UST system component that has caused a release of petroleum from the UST system.

"Residential tank'' is a tank located on property used primarily for dwelling purposes.
"Risk Based Cleanup Level" means the concentration of a chemical(s) of concern in soils or groundwater in the source area(s) that will assure an acceptable risk at the point of exposure, based upon conservative non-site-specific assumptions and default parameters.

"Routinely contains petroleum" means those parts of the UST system designed to store, transport or dispense petroleum.

"SARA'' means the Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment" means a system designed and installed so that any material that is released from the primary containment is prevented from reaching the soil or groundwater outside the system.

"Security interest" means an interest in a petroleum underground storage tank or UST system or petroleum site which is created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens and title pursuant to lease financing transaction. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, inventory and/or other personal property financing arrangements and consignments, if the transaction creates or establishes an interest in a petroleum underground storage tank or UST system or petroleum site for the purpose of securing a loan or other obligation.

"Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from

such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site Specific Cleanup Level" means the concentration of a chemical(s) of concern in soils or groundwater in the source area(s) that will assure an acceptable risk at the point of exposure, based upon site specific conditions.

"Source" means the source of contamination. Sources may include, but are not limited to, a leaking tank, a leaking underground storage tank system, a spill, an overfill, free product or residual contaminated soil or ground water.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Submersible Turbine Pump" or "STP" means pump located inside a petroleum underground storage tank, positioned near the bottom of the tank, thereby "submerged" in the petroleum.

"Tank" is a stationary device designed to contain an accumulation of petroleum and constructed of non-earthen materials (e.g., wood, concrete, steel, fiberglass) that provide structural support.

"Tank compartment" means a portion of a UST that is separated from other portions of that UST by one or more walls, or bulkheads, creating two (2) or more individual storage spaces within the UST.

"Secondary containment" means a system designed and installed so that any material that is released from the primary containment is prevented from reaching the soil or groundwater outside the system.

"Third Party" means any person except: the owner or operator of an UST system from which a release of petroleum occurred; the owner of the petroleum site; any person in his or her capacity as an agent, servant or employee of such owner or operator or petroleum site owner; the division; the Department; or the Environmental Protection Agency.

"Third Party Claim" means any civil action brought or asserted by third party against any owner or operator for damages resulting in bodily injury or property damages which are caused by a release of petroleum from an UST system.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum, and the volume of which (including the volume of underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for non-commercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored;
3. Septic tank;
4. Pipeline facility (including gathering lines) regulated under:
   (i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
   (ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.),or
   (iii) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subparts 4 (i) or (ii) of this definition;
5. Surface impoundment, pit, pond, or lagoon;
6. Storm-water or wastewater collection system;
7. Flow-through process tank;
8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of petroleum.

"UST system" or "Tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Waters" means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to, and retained within, the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

"Week" means any seven day period, provided that days run consecutively.

"Weekly", in the context of manual tank gauging, means once per week, resulting in a minimum of four weekly tests per month.

(5) Proprietary Information

(a) General

1. Purpose, Scope and Applicability. Any information which is supplied to the division as required or necessitated by the Tennessee Petroleum Underground Storage Tank Act or the regulations promulgated pursuant thereto or which is supplied by other governmental agencies and which is designated proprietary information (as defined in paragraph (4) of this rule) shall be handled by the division as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary at the time it is first delivered to the division together with the supporting information required by paragraph (4) of this rule, any claim that it is proprietary is waived and any information supplied to the division under or relating to these rules

shall be available for public review at any time during the State's normal business hours, subject to availability and scheduling limitations set by the division, without further notice to any person supplying the information or having an interest in the information.

2. Policy. Division employees are prohibited from disclosing, in any manner and to any extent not authorized by law or regulations, any Proprietary Information coming to them in the course of their employment or official duties. Proprietary Information is to be held in confidence, protected in accordance with the procedures described in this paragraph, and released to authorized persons.

(b) Responsibilities

1. Commissioner. The Commissioner is responsible for:

(i) Designating a document control officer;

(ii) Assuring that all division employees receiving and handling Proprietary Information receive instruction as to their responsibility for controlling Proprietary Information;

(iii) Maintaining a record which lists all employees who have authorized access to Proprietary Information;

(iv) Obtaining a "Confidentiality Agreement" from all employees having access to Proprietary Information;

(v) Obtaining a "Confidentiality Agreement upon Transfer or Termination" from all employees having access to Proprietary Information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;

(vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combination;

(vii) Taking appropriate disciplinary action concerning any division employees who fail to comply with the requirements of this paragraph; and

(viii) Notifying the person submitting Proprietary Information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document Control Officer. The Document Control Officer is responsible for the maintenance, control and distribution of all Proprietary Information received by the division as follows:

(i) Logging of all Proprietary Information as received by the division, both incoming and outgoing;

(ii) Assigning a document control number to each document received containing Proprietary Information;

(iii) Maintaining a system which identifies employees authorized to receive Proprietary Information;

(iv) Releasing Proprietary Information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;

(v) Maintaining a system to insure that any Proprietary Information transmitted to field locations is received;

(vi) Maintaining at division offices a system for retrieval of documents that are furnished to other program offices;

(vii) Authorizing and supervising the reproduction and destruction of Proprietary Information; and

(viii) Assuring that recipients of Proprietary Information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released Proprietary Information the same day.

3. Employees. Employees are responsible for:

(i) Controlling all Proprietary Information intrusted to them;

(ii) Only discussing Proprietary Information with authorized persons;

(iii) Never leaving the Proprietary Information unattended when not properly stored;

(iv) Never discussing the Proprietary Information over the telephone except upon approval of the document control officer should the Proprietary Information be needed in an emergency situation;

(v) Storing the Proprietary Information as specified in part (c)5 of this paragraph when not in use and at the close of business;

(vi) Not reproducing Proprietary Information documents. Additional copies shall be obtained through the document control officer; and

(vii) Reporting immediately possible violations of these regulations to the Commissioner.

(c) Procedures

1. Receipt and Handling. The document control officer shall:

(i) Receive all information claimed as proprietary and confidential which is submitted to the division ;

(ii) Log in all Proprietary Information received by the division;

(iii) Assign a document control number to all Proprietary Information;

(iv) Attach a Proprietary Information cover sheet to the document;

(v) Release Proprietary Information only to authorized persons; and

(vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions in the definition of Proprietary Information in paragraph 4 of this rule and other information as may be required, determine whether to approve or deny it, in part or in whole.

2. Transmission

(i) Proprietary Information shall be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope shall reflect the address of the recipient with the following wording on the front side of the inner envelope:

"Confidential Business – To Be Opened By Document Control Officer Only."

The outer envelope shall reflect the normal address without the additional wording.

(ii) All requests to the document control officer for Proprietary Information shall be in writing and signed by the requesting employee.

(iii) Proprietary Information may be hand carried to other division facilities by authorized persons providing the dispatching document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried shall be packaged as described in subpart (i) of this part.

(iv) Proprietary Information within a division office shall be hand delivered only by an authorized person. At no time shall Proprietary Information be transmitted through inner office mailing channels.

3. Reproduction. Proprietary Information shall not be reproduced except upon approval by and under the supervision of the document control officer. Any reproduction shall be limited by a document control system and be subject to the same control requirements as for the original.

4. Destruction. Proprietary Information shall not be destroyed except upon approval by and under the supervision of the document control officer. The document control officer shall keep a record of destruction in the appropriate log and notify the person submitting the Proprietary Information.

5. Storage

(i) Documents containing Proprietary Information shall be stored within a locked cabinet so as to limit access to authorized persons.

(ii) Keys and/or combinations to cabinets and/or rooms where the data is stored shall be issued only to an authorized person.

(d) Transmittal Outside Division Offices. Proprietary Information shall not be transmitted outside division offices without the approval of the Commissioner and such information shall be transmitted by the document control officer in accordance with part (c)2 of this paragraph. The person submitting the Proprietary Information shall be notified when such occurs.

(e) Release to EPA. Notwithstanding any requirement of this paragraph seemingly to the contrary, Proprietary Information may be released to the U.S. Environmental Protection Agency in connection with the Commissioner's or Board's implementation or his or its responsibilities pursuant to the Act or as necessary to comply with federal law. Any such release of Proprietary Information to EPA, however, may be made with a confidentiality claim and shall be accompanied by the written statement received by the division pursuant to the definition of Proprietary Information as set forth in paragraph 4 of this rule. Any transmittal of Proprietary Information to EPA shall be subject to the requirements of subparagraph (d) of this paragraph. The Commissioner shall notify the submitter of Proprietary Information of the release of such information to EPA as soon as practicable, to be no later than five (5) days after such release, following receipt of EPA's request for the information.

Rule 1200-1-15-.02 UST Systems: Design, Construction, Installation and Notification is amended by deleting it in its entirety and replacing it with the following:

1200-1-15-.02 UST Systems: Installation And Operation

(1) Installation.

(a) At least fifteen (15) days prior to the installation of any tank and/or new UST system construction activities at the site, the tank owner shall notify the division in the following manner:

1. Submit a pre-installation site sketch for all the petroleum underground storage tanks and/or UST systems for which installation and/or construction is planned in accordance with rule 1200-1-15-.03(1)(a)1; and

2. Submit annual tank fees for all tanks, tank compartments and/or UST systems, which are shown on the pre-installation site sketch, in accordance with rule 1200-1-15-.10(3).

(b) Installation shall not commence until such time as an underground storage tank certificate has been issued to the tank owner by the division.

(c) All tanks and piping shall be installed in accordance with the manufacturer's installation instructions.

(d) The following requirements take effect when product is being placed into a tank, tank compartment and/or UST system either during or following installation:

1. 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 (2) of this rule.

2. Prior to placing product into the tank or tank compartment an air pressure test or a vacuum test shall be conducted in accordance with the manufacturer's recommendations. The results of this test shall be maintained for the operational life of the underground storage tank system. The test results shall contain at a minimum the following information:

(i) The name of the manufacturer whose pressure test recommendations have been applied to the tank;

(ii) The name of the person performing the test and the name of the company that person represents;

(iii) The date of the pressure test;

(iv) The identification number assigned to the facility by the division;

(v) The amount of pressure applied to the tank;

(vi) The duration of the test period; and

(vii) The results of the test.

3. Begin release detection in accordance with rule 1200-1-15-.04 immediately if the tank or tank compartment contains more than 2.5 centimeters (one inch) of product.

4. Immediately protect against corrosion in accordance with paragraph (3) of this rule.

5. A line tightness test in accordance with rule 1200-1-15-.04(4)(b) and a tank tightness test in accordance with rule 1200-1-15-.04(3)(c) shall be performed upon completion of the installation and prior to the dispensing of fuel from the UST system. The results of this tightness test shall be maintained for the operational life of the underground storage tank system. Such records shall be transferred in accordance with rule 1200-1-15-.03(2)(d) at the time of ownership transfer.

(e) Installation shall be certified in accordance with rule 1200-1-15-.03(1)(d)1 within fifteen (15) days following completion of the installation.

(2) Spill and overfill prevention

(a) Equipment.

1. Except as provided in part 2 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system,

owners and/or operators shall use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full; or

(II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or

(III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.

2. Owners and/or operators are not required to use the spill and overfill prevention equipment specified in part 1 of this subparagraph if:

(i) Alternative equipment is used that is determined by the division to be no less protective of human health and the environment than the equipment specified in subpart 1(i) or (ii) of this subparagraph; or

(ii) The UST system is filled by transfers of no more than twenty-five (25) gallons at one time.

(b) Operating requirements.

1. For as long as the UST system is used to store petroleum owners and/or operators shall ensure that releases due to spilling or overfilling do not occur. The owner and/or operator shall ensure that the volume available in the tank is greater than the volume of petroleum to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

2. Owners and/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.

3. Spill catchment basins shall be visually inspected by the owner and/or operator at least once per month to assure the integrity of the storage space provided for spill containment. A log of these inspections showing at a minimum the last twelve (12) months shall be maintained by the owner and/or operator.

4. The owner and/or operator shall report, investigate, and clean up any spills and overfills in accordance with rule 1200-1-15-.05(4).

(3) Corrosion Protection.

(a) Tank construction. Each tank shall be properly designed and constructed and/or properly upgraded. Any portion underground that routinely contains petroleum shall utilize one of the following methods of corrosion protection:

1. The tank is constructed of fiberglass-reinforced plastic.

2. The tank is constructed of steel which is cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material unless cathodic protection has been added to the tank for the purpose of upgrading;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph;

(iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the division to provide equivalent protection against corrosion, provided that such determination is made by the division prior to installation and/or operation; and

(v) If cathodic protection was initially installed for the purpose of upgrading subsequent to UST system installation, the integrity of the tank has been ensured using one of the following methods:

(I) Internal inspection and assessment ensured that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system.

(II) At the time of installation of the cathodic protection system, the tank had been installed for less than ten (10) years and monthly monitoring was being conducted in accordance with rule 1200-1-15-.04(3)(d) through (h).

(III) The tank was assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of rule 1200-1-15-.04(3)(c):

I. The first tightness test shall be conducted no more than one hundred twenty (120) days

prior to installing the cathodic protection system.

II. The second tightness test shall be conducted between three (3) and six (6) months following the first operation of the cathodic protection system.

(IV) The tank was assessed for corrosion holes by a method determined by the division, prior to assessment, to be no less protective of human health and the environment than items (I) through (III) of this subpart.

3. The tank, which is constructed of steel and was installed on or before December 22, 1988, was lined subsequent to installation of the tank and has satisfied the following requirements:

(i) The lining was installed in accordance with at least the following procedures and practices:

(I) The lining was installed so as to effectively prevent releases for the operational life of the tank.

(II) The lining material is compatible with the product to be stored;

(III) The tank shell shall have been structurally sound prior to lining;

(IV) Lining manufacturers directions were followed during installation of lining;

(V) After the tank was lined and before the tank was returned to service, the tank shall be tank tightness tested according to rule 1200-1-15-.04(3)(c); and

(VI) Records that demonstrate compliance with this part shall be maintained for the remaining operational life of the tank. Such records shall be transferred in accordance with rule 1200-1-15-.03(2)(d) at the time of ownership transfer; and

(ii) Within ten (10) years after lining, and every five (5) years thereafter, the lined tank is/was internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. However, tanks which use lining in combination with cathodic protection systems operated in accordance with subparagraph (c) of this paragraph do not have to be internally inspected subsequent to addition of cathodic protection.

(iii) Lining may be used in combination with cathodic protection if the cathodic protection system meets the requirements of subparts 2(ii) through (v) of this subparagraph.

4. The tank is constructed of a steel-fiberglass-reinforced-plastic composite.

5. The tank is constructed of metal without additional corrosion protection measures provided that:

   (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life; and

   (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the tank. Such records shall be transferred in accordance with rule 1200-1-15-.03(2)(d) at the time of ownership transfer.

6. The tank construction and corrosion protection are determined by the division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than parts 1 through 5 of this subparagraph.

(b) Piping construction. Piping that routinely contains petroleum and is in contact with the ground shall be properly designed and constructed and/or properly upgraded. Piping shall also utilize at least one of the following methods of corrosion protection:

1. The piping, whether rigid or flexible in design, is constructed of nonmetallic materials such as fiberglass-reinforced plastic.

2. The piping, whether rigid or flexible in design, is constructed of steel and cathodically protected in the following manner:

   (i) The piping is coated with a suitable dielectric material unless cathodic protection was added for the purpose of upgrading;

   (ii) Field-installed cathodic protection systems are designed by a corrosion expert;

   (iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph; and

   (iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the division to provide equivalent protection against corrosion, provided that such determination is made by the division prior to installation and/or operation of the cathodic protection system.

3. The piping is constructed of metal without additional corrosion protection measures provided that:

   (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operational life; and

(ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the piping. Such records shall be transferred in accordance with rule 1200-1-15-.03(2)(d) at the time of ownership transfer.

4. The piping construction and corrosion protection are determined by the division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than the requirements in parts 1 through 3 of this subparagraph.

5. Fill piping used for introducing petroleum into an underground storage tank system shall not be required to have cathodic protection if it is lined with a drop tube.

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store petroleum:

1. All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground.

2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) Frequency. All cathodic protection systems shall be tested within six (6) months of installation and at least every three (3) years thereafter;

(ii) The cathodic protection system shall be functioning as designed and is effectively preventing corrosion; and

(iii) The owner and/or operator shall maintain records that demonstrate compliance with this subparagraph.

3. All UST systems to which sacrificial anodes have been added for the purpose of replacing or enhancing an existing cathodic protection system shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of rule 1200-1-15-.04. The tightness test shall be conducted no later than six (6) months, but no sooner than three (3) months, following the addition of the anodes.

4. UST systems with impressed current cathodic protection systems shall also be inspected every sixty (60) days to ensure the equipment is running properly. The results of the inspection shall be recorded in a format established by the division and in accordance with the instructions provided by the division.

5. For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained, in accordance with rule 1200-1-15-.03(2), to demonstrate compliance with the performance standards in this paragraph. These records shall be maintained in accordance with the following:

(i) The results of testing from the last two inspections required in part 2 of this subparagraph shall be retained;

(ii) A record of the addition of sacrificial anodes to an existing cathodic protection system shall be retained for the remaining operational life of the underground storage tank system and such records shall be transferred in accordance with rule 1200-1-15-.03(2)(d) at the time of ownership transfer;

(iii) The results of tightness testing required in part 3 of this subparagraph shall be retained for the remaining operational life of the underground storage tank system. Such records shall be transferred in accordance with rule 1200-1-15-.03(2)(d) at the time of ownership transfer; and

(iv) The results of the last three inspections required in part 4 of this subparagraph shall be retained.

(4) Compatibility.

Owners and/or operators shall use an UST system made of or lined with materials that are compatible with the petroleum stored in the UST system.

(5) Repairs allowed.

Owners and/or operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store petroleum. The repairs shall meet the following requirements:

(a) Repairs to UST systems shall be conducted so as to effectively prevent releases for the operational life of the tank system.

(b) Repairs to fiberglass-reinforced plastic tanks shall be made by the manufacturer's authorized representatives or in accordance with the manufacturer's specifications.

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

(d) Repaired tanks and/or piping shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of rule 1200-1-15-.04 within thirty (30) days following the date of the completion of the repair except as provided in parts 1 through 3 of this subparagraph:

1. The repaired tank is internally inspected prior to placing product in the tank ; or

2. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in rule 1200-1-15-.04(3)(d) through (h); or

3. Another test method is used, provided that prior to use in the State of Tennessee that method is determined by the division to be no less protective of human health and the environment than those listed above.

(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 (3)(c)2 and 3 of this rule to ensure that it is operating properly.

(f) UST system owners and/or operators shall maintain records of each repair that demonstrate compliance with the requirements of this paragraph for the remaining operating life of the UST system. Such records shall be transferred in accordance with rule 1200-1-15-.03(2)(d) at the time of ownership transfer.

Rule 1200-1-15-.03 General Operating Requirements is amended by deleting it in its entirety and replacing it with the following:

1200-1-15-.03 Notification, Reporting And Record Keeping.

(1) Notification requirements.

(a) Any owner who brings a new underground storage tank system into use shall notify the division as follows:

1. Pre-installation site sketch.

Notification shall be made fifteen (15) days prior to commencement of installation of such underground storage tank systems by submitting a pre-installation site sketch to the division. The pre-installation site sketch shall include, but not be limited to the following information: the property address; the business name; the tank owner's name and address; street names; property lines; the number of compartments in each tank; the location of the underground storage tanks and the associated underground piping on the property; the location of utilities including electrical wiring for the dispensers, pumps, cathodic protection systems, release detection systems, etc.; buildings on the property; and an arrow indicating the direction of north. This information shall be submitted in a format established by the division and the pre-installation site sketch shall be completed in accordance with instructions provided by the division.

2. Notification form for newly installed tanks.

The owner of a newly installed tank shall submit notification of the underground storage tank system installation to the division within fifteen (15) days in accordance with subparagraphs (b) through (d) of this paragraph. The owner shall use the notification form designated by the division.

[Note: Owners and/or operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to

notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by EPA on November 8, 1985, (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and/or operators who have not complied with the notification requirements may use the notification form designated by the division.]

(b) Owners and/or operators shall complete the notification form accurately and in its entirety for each tank, tank compartment, and the piping connected thereto, for which notice is required in accordance with part (a)2 of this paragraph. The form shall be completed in accordance with the instructions provided by the division.

(c) Owners required to submit notification under part (a)2 of this paragraph shall provide notification to the division for each tank, and tank compartment, they own. Owners may provide notification for several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.

(d) All owners and operators of UST systems installed after December 22, 1988 shall certify in the notification form compliance with the following requirements:

1. Installation of tanks and piping has been certified using one of the following methods:

   (i) The installer has been certified by the tank and piping manufacturers; or

   (ii) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

   (iii) The installation has been inspected and approved by the division; or

   (iv) All work listed in the manufacturer's installation checklist has been completed; or

   (v) The owner and operator have complied with another method for ensuring compliance with rule 1200-1-15-.02(1) that has been determined by the division prior to installation to be no less protective of human health and the environment.

2. Cathodic protection of steel tanks and piping under rule 1200-1-15-.02(3)(a) and (b);

3. Financial responsibility under rule 1200-1-15-.08; and

4. Release detection under rule 1200-1-15-.04(2).

(e) All owners and operators of UST systems installed after December 22, 1988 shall ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in rule 1200-1-15-.02(1).

(f) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser at the time of sale of such tank of the owner's obligations for notification prior to installation under subparagraph (a) of this paragraph. The seller shall place the statement contained in Appendix 1200-1-15-.03-A on all invoices and shipping tickets.

(g) Any change in the status of the tanks at a petroleum UST facility shall be reported within thirty (30) days of said change. This includes but is not limited to changes of ownership, upgrading or replacement of tanks, changes in mailing address, permanent closure of a tank compartment, and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks, the seller shall submit the notification form designated by the division, completed in accordance with instructions provided by the division, and shall also inform the buyer of the notification requirement.

(2) Reporting and Record Keeping.

Owners and/or operators of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the division, as well as requests for document submission, testing, and monitoring by the owner or operator in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. §68-215-107.

(a) Reporting. Owners and/or operators shall submit the following information to the division:

1. Notification for all UST systems (rule 1200-1-15-.03(1), which includes certification of installation for new UST systems (rule 1200-1-15-.03(1)(d) and (e));

2. Reports of all releases including suspected releases (rule 1200-1-15-.05(1)), spills and overfills (rule 1200-1-15-.05(4)), and confirmed releases (rule 1200-1-15-.06);

3. Corrective actions planned or taken including, but not limited to, initial response measures (rule 1200-1-15-.06(3)),hazard management measures(rule 1200-1-15-.06(4)), initial site characterization and exposure assessment (rule 1200-1-15-.06(5)), corrective action plan (rule 1200-1-15- .06(10)), and as otherwise directed by the division;

4. A notification before permanent closure or change-in-service (rule 1200-1-15-.07(3) and (4); and

5. Tank closure activities including site assessment results (rule 1200-1-15-.07(5)).

(b) Record Keeping. Owners and/or operators shall maintain the following information:

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

2. Documentation of operation of corrosion protection equipment (rule 1200-1-15-.02(3)(c));

3. Documentation of UST system repairs (rule 1200-1-15-.02(5)(f));

4. Recent compliance with release detection requirements (rule 1200-1-15-.04(5)); and

5. Results of the site investigation conducted at permanent closure (rule 1200-1-15-.07(5)).

(c) Availability and Maintenance of Records.

1. Owners and/or operators shall keep the records required either:

(i) At the UST site and immediately available for inspection by the division; or

(ii) At a readily available alternative site and be provided for inspection to the division upon request; or

(iii) In the case of permanent closure records required under rule 1200-1-15-.07(6), owners and/or operators are also provided with the additional alternative of mailing closure records to the division if they cannot be kept at the site or an alternative site as indicated in parts 1 or 2 of this subparagraph.

2. If an inspection is scheduled by the division in advance of the date of that inspection, all records shall be present and available for review during the scheduled inspection.

(d) Records Transfer. Upon transfer of ownership, including, but not limited to, sale of the UST systems, originals and/or copies of all documents required to satisfy the reporting and recordkeeping requirements of this paragraph shall be transferred to the new owner of the USTs at the time of ownership transfer.

Appendix 1200-1-15-.03-A

Statement for Shipping Tickets and Invoices

Note: A Federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated state or local agencies by May 8, 1986, of the existence of their tanks. The Tennessee Petroleum Underground Storage Tanks Act (T.C.A. ⌋68-215-101 et seq.) also contains notification requirements. Notifications for tanks brought into use after July 1, 1989 shall be made fifteen (15) days in advance of installation. Consult EPA's regulations, issued on November 8, 1985 (40 CFR Part 280), state law (T.C.A. ⌋68-215-101 et seq.) and state regulations (Chapter 1200-1-15) to determine if you are affected by these laws and regulations.

Rule 1200-1-15-.04 Release Detection is amended by deleting it in its entirety and replacing it with the following:

1200-1-15-.04 Release Detection.

(1) General requirements for release detection.

(a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;

2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

3. Meets the performance requirements of paragraph (3) or (4) of this rule, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in subparagraphs (3)(b), (c), and (d) or (4)(a) and (b) of this rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in paragraphs (3) and (4) of this rule indicates a release may have occurred, owners and operators shall notify the division in accordance with rule 1200-1-15-.05. If more than one method of release detection is operated on a UST system, a suspected release shall be reported to the division in accordance with rule 1200-1-15-.05 if any one of the release detection methods indicates a release may have occurred.

(c) Owners and/or operators of newly installed USTs shall comply with the release detection requirements of this rule immediately upon installation.

(d) If a method of release detection that complies with the requirements of this rule cannot be applied to and/or operated for any UST system, the owner and/or operator of that UST system shall complete the closure procedures in rule 1200-1-15-.07.

(e) If a release detection method selected by the owner and/or operator cannot meet the performance standards in paragraph (3) and (4) of this rule to the satisfaction of the division, then the owner and/or operator shall select another method of release detection.

(f) The dispenser shall be accessed and inspected for petroleum releases at least monthly. A log of these inspections showing at a minimum the last twelve (12) months shall be maintained by the owner and/or operator.

(2) Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) Tanks. Tanks shall be monitored at least monthly for releases using one of the methods listed in subparagraphs (3)(d) through (i) of this rule, except that:

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 (1)(a)2.(v)(III) shall use a monthly monitoring method of release detection in accordance with subparagraphs (3)(d) through (i) of this rule.

2. Tanks which meet the volume, diameter and test duration requirements as set forth in part (3)(b)1(i) of this rule may use manual tank gauging (conducted in accordance with subparagraph (3)(b) of this rule).

(b) Piping. Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

1. Pressurized piping. Underground piping that conveys petroleum under pressure shall:

(i) Be equipped with an automatic line leak detector conducted in accordance with subparagraph (4)(a) of this rule; and

(ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

2. Suction piping. Underground piping that conveys petroleum under suction shall either have a line tightness test conducted at least every three (3) years and in accordance with subparagraph (4)(b) of this rule, or use a monthly monitoring method conducted in accordance with subparagraph (4)(c) of this rule. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with subparts through (iv) of this part to be readily determined.

(3) Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

(a) Inventory control. Inventory control shall meet the following requirements:

1. Inventory volume measurements for petroleum inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

2. The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;

3. Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;

4. The petroleum inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

5. Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

6. Measurements of the level of petroleum in the tank which are taken using a gauge stick are made through a drop tube;

7. Petroleum dispensing is metered and recorded to within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of petroleum withdrawn, and the meters are calibrated annually;

8. The measurement of any water level in the bottom of the tank is made and recorded to the nearest one-eighth of an inch at least once a month; and

9. A release is suspected and subject to the requirements of rule 1200-1-15-.05 if the monthly total of either daily overages or shortages is greater than one percent (1.0%) of the total monthly flow-through plus one hundred thirty (130) gallons.

(b) Manual tank gauging.

1. Manual tank gauging shall only be applicable to tanks as set forth below:

(i) Tanks which meet the volume, diameter and test duration requirements as set forth below may use manual tank gauging as the sole method of release detection:

| NOMINAL CAPACITY | TANK DIAMETER | MINIMUM DURATION OF TEST |
|---|---|---|
| up to 550 gallons | * | 36 hours |
| 551 – 1000 gallons | 64 inches | 44 hours |
| 551 – 1000 gallons | 48 inches | 58 hours |

* Any diameter of tank up to 550 gallons may use manual tank gauging as the sole method of release detection if the duration of the test is at least 36 hours.

(ii) Manual tank gauging shall not be used as the sole method of release detection for tanks of 551 to 1000 gallons nominal capacity which cannot meet the diameter or test duration requirements as set forth in subpart (i) of this part or for tanks of 1001 to 2000 gallon nominal capacity. These tanks shall use manual tank gauging in combination with tank tightness testing in accordance with subparagraph (2)(a) of this rule.

(iii) Tanks of greater than 2000 gallons nominal capacity shall not use this method to meet the requirements of this rule.

2. Manual tank gauging shall meet the following requirements:

(i) Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank;

(ii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the required period;

(iii) The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;

(iv) Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;

(v) A release is suspected and subject to the requirements of rule 1200-1-15-.05 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

| NOMINAL CAPACITY | TANK DIAMETER | MINIMUM DURATION OF TEST | WEEKLY STANDARD (one test) | MONTHLY STANDARD (Average of 4 Tests) |
|---|---|---|---|---|
| Up to 550 gallons | | 36 hours | 10 gallons | 5 gallons |
| 551 – 1000 gallons | | 36 hours | 13 gallons | 7 gallons |
| 551 – 1000 gallons | 64 inches | 44 hours | 9 gallons | 4 gallons |
| 551 – 1000 gallons | 48 inches | 58 hours | 12 gallons | 6 gallons |
| 1001 – 2000 gallons | | 36 hours | 26 gallons | 13 gallons |

(c) Tank tightness testing.

1. Tank tightness testing shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains petroleum while accounting for the effects of thermal expansion or contraction of the petroleum, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

2. Tank tightness testing devices, automatic tank gauging devices or other equipment may be used provided that the testing meets the performance criteria set forth in part 1 of this subparagraph.

3. The information relating to the tank tightness test shall be reported in a format established by the division. The tank tightness test report shall include, but is not necessarily limited to the following information:

   (i) Information which identifies the tank and the facility;

   (ii) Information which identifies the test method and test conditions established by the manufacturer's specifications and/or required by the third party certification of the method;

   (iii) Information which identifies the person and/or company performing the test;

   (iv) Data gathered during the performance of the test; and

   (v) Results expressed as follows:

      (I) Leak rate in gallons per hour and as "Pass" or "Fail" for volumetric test methods; or

      (II) "Pass" or "Fail" for non-volumetric test methods.

4. A release is suspected and subject to the requirements of rule 1200-1-15-.05 if the method detects a release rate greater than the performance

standard for the method as established by the manufacturer's specifications and/or third party certification.

(d) Automatic tank gauging. Equipment for automatic tank gauging shall be permanently installed in the tank and shall meet one of the following requirements:

1. For automatic tank gauging devices which were installed prior to December 22, 1990, and which do not meet the requirements of parts 2 or 3 of this subparagraph:

   (i) Inventory control (or another test of equivalent performance) shall be conducted in accordance with the requirements of subparagraph (3)(a) of this rule; and

   (ii) A release is suspected and subject to the requirements of rule 1200-1-15-.05 if the monthly total of either daily overages or shortages is greater than 1.0 percent of the total monthly flow-through plus 130 gallons.

2. For automatic tank gauging devices capable of detecting at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains petroleum shall meet the following requirements:

   (i) The monitor shall be placed in the leak test mode at least once per month; and

   (ii) A release is suspected and subject to the requirements of rule 1200-1-15-.05 if the monitoring results indicate that the underground storage tank has had a release above the established threshold of the automatic tank gauging device as determined through third party certification.

3. For automatic tank gauging systems which are capable of continuous statistical release detection shall meet the following requirements:

   (i) The automatic tank gauging system shall be placed in the leak test mode at least once per month if a test cannot be obtained during any one month period, except for those systems which also use Statistical Inventory Reconciliation in accordance with subparagraph (3)(h) of this rule; and

   (ii) A release is suspected and subject to the requirements of rule 1200-1-15-.05 if the monitoring results indicate that the underground storage tank has had a release above the established threshold of the automatic tank gauging device as determined through third party certification, except that those systems also using Statistical Inventory Reconciliation shall report suspected releases in accordance with subparagraph (3)(h) of this rule.

(e) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:

1. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

2. The stored petroleum, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

3. The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty (30) days;

4. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

5. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

6. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 4 of this subparagraph and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains petroleum;

7. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

8. A release is suspected and subject to the requirements of rule 1200-1-15-.05 if:

   (i) An automatic and/or continuous monitoring device signals an alarm:

   (ii) Any liquid product is observed during manual monitoring: or

   (iii) Any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance or a tracer compound placed in the tank system is detected by a monitoring device.

(f) Groundwater monitoring. Testing or monitoring for liquids on the ground water shall meet the following requirements:

1. Ground water monitoring shall not be allowed in areas where the tank excavation zone has encountered bedrock;

2. The petroleum stored is immiscible in water and has a specific gravity of less than one;

3. Ground water is never more than twenty (20) feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST

system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

4. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of petroleum on the water table into the well under both high and low ground water conditions;

5. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

6. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

7. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

8. Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 6 of this subparagraph and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains petroleum;

9. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

10. A release is suspected and subject to the requirements of rule 1200-1-15-.05 if:

    (i) An automatic and/or continuous monitoring device signals an alarm; or

    (ii) Any liquid product is observed on top of the groundwater in the monitoring well during manual monitoring.

(g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a release from any portion of the tank that routinely contains petroleum and also meets one of the following requirements:

1. For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains petroleum;

2. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; provided that the following conditions are met:

    (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least $10^{-6}$ cm/sec for the petroleum

stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the petroleum stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days;

(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in twenty-five (25) year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

3. For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) Statistical inventory reconciliation. Statistical analysis of inventory, delivery and dispensing data collected over a period of time shall meet the following requirements:

1. Inventory control shall be conducted in accordance with the requirements of subparagraph (3)(a) of this rule;

2. A report shall be generated monthly, within ten (10) days after the end of the data collection for that time period. The report shall include, but is not limited to the following:

(i) The inventory records used, i.e., the raw data; and

(ii) The statistical inventory reconciliation determination;

3. For quantitative statistical inventory reconciliation methods, the numerical leak rate shall be reported unless the statistical inventory reconciliation determination results in an "Inconclusive" under the provisions of subpart 4(iii) of this subparagraph;

4. The statistical inventory reconciliation determination shall be reported using the term "Pass", "Fail" or "Inconclusive". For quantitative statistical inventory reconciliation methods the applicable term shall be used in accordance with subparts (i) through (iii) of this part:

(i) If the calculated leak rate does not exceed 0.10 gallons per hour, the results shall be reported as a "Pass";

(ii) If the calculated leak rate exceeds 0.10 gallons per hour, the results shall be reported as a "Fail";

(iii) If the leak rate cannot be calculated using the available data, the results shall be reported as an "Inconclusive";

5. If the statistical inventory reconciliation method used requires more than one month of data for initial evaluation, another method of release detection shall be conducted during that initial data collection period;

6. If there are too few operational days for statistical inventory reconciliation to successfully analyze during any month, then another method of release detection shall be utilized during that month; and

7. The owner/operator shall report a suspected release in accordance with rule 1200-1-15-.05:

(i) When the statistical inventory reconciliation determination is reported as a "Fail"; or

(ii) When two consecutive "Inconclusive" statistical inventory reconciliation determinations are reported.

(i) Other methods. Any other type of release detection method, or combination of methods, can be used if:

1. It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

2. The division may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (c) through (h) of paragraph (3) of this rule. In comparing methods, the division shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the division on its use to ensure the protection of human health and the environment.

(4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of three (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

(b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(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.

(5) Release detection record keeping.

All UST system owners and/or operators shall maintain records in accordance with rule 1200-1-15-.03(2) demonstrating compliance with all applicable requirements of this rule. Release detection information shall be recorded in a format established by the division and in accordance with instructions provided by the division. These records shall include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five (5) years from the date of installation or until such time as the release detection method to which the performance claim pertains is no longer used at the facility, whichever is later;

(b) The results of any sampling, testing, or monitoring shall be maintained for at least one (1) year except that the results of tank tightness testing conducted in accordance with subparagraph (3)(c) of this rule shall be retained until the next test is conducted; and

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five (5) years from the date of installation or until such time as the release detection method to which the schedule of required calibration and maintenance pertains is no longer used at the facility, whichever is later;

Rule 1200-1-15-.05 Release Reporting, Investigation and Confirmation is amended by deleting paragraph (2) in its entirety and replacing it with the following:

(2) Investigation due to environmental impacts.

When required by the division, owners and/or operators of UST systems shall follow the procedures in paragraph (3) of this rule to determine if the UST system is the source of environmental impacts. These impacts include the discovery of petroleum escaping from the UST system, associated containment devices, or any component of a tank, line, dispenser, meter, or line leak detector, not designed for the purpose of dispensing petroleum as well as the discovery of petroleum in the environment (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the division or brought to its attention by another party.

Rule 1200-1-15-.07 Out-of-Service UST Systems and Closure is amended by deleting it in its entirety and replacing it with the following:

1200-1-15-.07 Out-Of-Service UST Systems And Closure.

(1) Temporary closure.

(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(3), 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.

(b) When an UST system is temporarily closed for three (3) months or more, owners and/or operators shall also comply with the following requirements:

1. Leave vent lines open and functioning;

2. Cap and secure all other lines, pumps, manways, and ancillary equipment; and

3. File an amended notification form showing the tank system as Temporarily Out of Use.

(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 1200-1-15-.02(2) and (3) 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.

(3) Tank compartment closure.

For a tank that has more than one (1) tank compartment, one (1) or more of the tank compartments may be permanently closed in accordance with the provisions of this paragraph as well as paragraph (5) of this rule. If all the compartments in a tank are to be permanently closed, the requirements for permanent closure set forth in paragraphs (4) and (5) of this rule shall be followed by the tank owner and/or operator.

(a) At least thirty (30) days before beginning tank compartment closure owners and/or operators shall apply for tank compartment closure. Application for tank compartment closure shall meet the following requirements:

1. An Application for Closure of Tank Compartment(s) shall be submitted in a format established by the division. The application shall be completed according to the instructions provided by the division.

2. The Application for Closure of Tank Compartment(s) shall be accompanied by a written statement provided by either the tank manufacturer or a Registered Professional Engineer certifying the following:

(i) The planned closure of the tank compartment(s) will not cause structural damage to the tank; and

(ii) The corrosion protection system will continue to function as designed and will continue to effectively prevent corrosion of

the tank following completion of the planned closure of the tank compartment(s).

3. The tank owner and/or operator or other responsible party shall obtain division approval of the Application for Closure of Tank Compartment(s) prior to closing the tank compartment(s).

4. The application shall constitute a plan for tank compartment(s) closure.

5. Tank compartment(s) closure activities shall be conducted in accordance with the plan contained in the approved Application for Closure of Tank Compartment(s). If alterations to the plan are required, an amended Application for Closure of Tank Compartment(s) shall be submitted to the division for approval.

6. The approved Application for Closure of Tank Compartment(s) shall be available for inspection upon request at the petroleum site at the time of tank compartment closure.

7. Division approval of the Application for Closure of Tank Compartment(s) shall be valid for twelve (12) months following such approval. However, such approval shall not be transferable to another person during that twelve (12) month approval time.

8. If tank compartment(s) closure is not completed within twelve (12) months, the tank owner and/or operator shall submit a new Application for Closure of Tank Compartment(s) to the division for approval at least thirty (30) days before beginning tank compartment closure.

(b) The required site assessment under paragraph (5) of this rule shall be performed after receipt of division approval of the Application for Tank Compartment(s) Closure, but before completion of the tank compartment closure. Results of all samples taken during the closure of the tank compartment must be reported to the Department within sixty (60) days of collection. Samples may be taken while the compartments of the underground storage tank system that are not being permanently closed are in operation. However, samples may not be taken while the tank compartment that is being permanently closed is still in operation.

(c) To permanently close a tank compartment, owners and/or operators shall empty and clean the compartment which is to be closed by removing all liquids and accumulated sludges. All tank compartments taken out of service permanently shall be filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material must have a specific gravity greater than one (1.0).

(d) Tank compartment closure activities shall not damage those portions of the underground storage tank system that are not being permanently closed.

(e) Tank compartment closure activities shall not cause or allow a release of petroleum from the underground storage tank system into the environment.

(f) Paragraphs (4) and (5) of this rule shall be followed when the final tank compartment is permanently closed.

(4) Permanent closure and changes-in-service

(a) At least thirty (30) days before beginning either permanent closure of any portion of an underground storage tank system or a change-in-service under subparagraphs (b) and (c) of this paragraph owners and/or operators shall apply for permanent closure, unless such action is in response to corrective action. Application for permanent closure or change in service shall meet the following requirements:

1. An Application for Permanent Closure of Underground Storage Tank Systems shall be submitted in a format established by the division. The application shall be completed according to the instructions provided by the division.

2. The tank owner and/or operator or other responsible party shall obtain division approval of the Application for Permanent Closure prior to permanently closing the UST system or any portion thereof or effecting a change in service of the UST system, unless tank compartment closure is conducted in accordance with paragraphs (3) and (5) of this rule.

3. The application shall constitute a plan for closure or change in service of the UST system, or any portion thereof.

4. Change in service or closure activities shall be conducted in accordance with the plan contained in the approved Application for Permanent Closure. If alterations to the plan are required, an amended Application for Permanent Closure shall be submitted to the division for approval.

5. The approved Application for Permanent Closure of Underground Storage Tank Systems shall be available for inspection upon request at the petroleum site at the time of closure.

6. Division approval of the Application for Permanent Closure shall be valid for twelve (12) months following such approval. However, such approval shall not be transferable to another person during that twelve (12) month approval time.

7. If permanent closure or change-in-service is not completed within twelve (12) months, the tank owner and/or operator shall submit a new Application for Permanent Closure to the division for approval at least thirty (30) days before beginning underground storage tank system closure.

(b) To permanently close a tank, owners and/or operators shall empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently shall also be either removed from the ground or filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material shall have a specific gravity greater than 1.0.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and/or operators shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with paragraph (5) of this rule.

(d) Should an owner and/or operator elect to excavate and remove a tank from the site, such excavation and removal shall be done in accordance with Appendix 1200-1-15-.07-A.

(e) Once a tank has been excavated, it may be stored on-site or transported off-site for storage or disposal. Excavated tanks which have not been cut into sections for disposal shall be considered in storage and shall at all times, while in storage, be maintained in a vapor-free state and stored in accordance with Appendix 1200-1-15-.07-A.

(f) Tanks shall not be stored at a UST facility unless they are maintained in a vapor-free state, stored in accordance with Appendix 1200-1-15-.07-A, and one of the following conditions are met:

1. (i) Tanks have been cleaned by removal of all liquids and accumulated sludges; and

   (ii) Tanks have been purged of vapors so that any explosive levels do not exceed twenty percent (20%) of the lower explosive limit for the regulated substance; and

   (iii) Tanks have an opening or openings installed which comprise a minimum of ten percent (10%) of the total tank surface area. Such openings will not be considered openings if they are in contact or contiguous with the ground or surface on which the tank may be resting; or

2. Subparts 1(i) and (ii) of this subparagraph have been complied with and there are no remaining USTs either in use or in a temporarily closed condition at the facility; or

3. Tanks which are removed from a UST facility and are intended for reuse at the same or another facility as USTs may be stored at a UST facility if the owner and/or operator meets the conditions described in subparts 1(i) and (ii) of this_subparagraph, and either removes the tank off-site from a UST facility or puts it back into service within thirty (30) days of excavation.

(g) Tanks shall be stored in a manner which does not pose safety hazards. Tanks shall be stored in a position with the tank's center of gravity closest to the ground. Tanks shall not be stacked. Tanks shall be secured so that they will not roll or slide across a level or sloping ground surface.

[NOTE: Transportation and disposal of tanks will be subject to all applicable Federal, State, and local laws and regulations concerning the safe transportation and proper disposal of such materials.]

(5) Assessing the site at tank closure, tank compartment closure or change-in-service.

The required site assessment shall be performed after receipt of division approval of either an Application for Permanent Closure of Underground Storage Tank System(s) or an Application for Closure of Tank Compartment(s), but before completion of either the permanent closure, tank compartment closure or a change-in-service. The required site assessment shall be performed in accordance with guidance provided by the division.

(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. The requirements of this subparagraph are satisfied if one of the external release detection methods allowed in rule 1200-1-15-.04(3)(e) and (f) is operating in accordance with the requirements in rule 1200-1-15-.04(3) at the time of closure, and indicates no release has occurred. 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.

(b) Results of all samples taken during change in service or closure of the underground storage tank system or closure of a tank compartment shall be reported to the division within sixty (60) days of collection. Samples shall not be taken while the underground storage tank system is in operation, except when tank compartment closure is being conducted in accordance with paragraph (3) of this rule. Sample results shall be submitted as an attachment to either a Permanent Closure Report for Underground Storage Tank Systems or a Permanent Closure Report for Tank Compartments.

(c) The Permanent Closure Report for Underground Storage Tank Systems shall be submitted in a format established by the division. The Permanent Closure Report for Underground Storage Tank Systems shall be completed in accordance with the instructions provided by the division.

(d) The Permanent Closure Report for Tank Compartments shall be submitted in a format established by the division. The Permanent Closure Report for Tank Compartments shall be completed in accordance with the instructions provided by the division.

(e) The report, either the Permanent Closure Report for Underground Storage Tank Systems or the Permanent Closure Report for Tank Compartments, shall include, but not be limited to, the following information:

1. The facility identification number assigned to the facility by the division;

2. Facility name and address;

3. An updated post-closure site map;

4. Sampling, including field screening and laboratory analytical results;

5. Information concerning the removal, storage and/or disposal of tanks, piping and other ancillary underground equipment; and

6. Information concerning the removal, remediation and/or disposal of petroleum, petroleum waste, petroleum contaminated soil and/or ground water.

(f) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under subparagraph (a) of this paragraph, or by any other manner, owners and/or operators shall begin release response and corrective action in accordance with rule 1200-1-15-.06.

(6) Applicability to previously closed UST systems.

When directed by the division, the owner and/or operator of an UST system permanently closed before December 22, 1988 shall assess the site and close the UST system in accordance with this rule if releases from the UST may, in the judgment of the division, pose a current or potential threat to human health and the environment.

(7) Closure records.

Owners and/or operators shall maintain records in accordance with rule 1200-1-15-.03(5) that are capable of demonstrating compliance with closure requirements under this rule. The results of the site assessment required in paragraph (5) of this rule shall be maintained for at least three (3) years after completion of permanent closure or change-in-service in one of the following ways:

(a) By the owners and/or operators who took the UST system out of service;

(b) By the current owners and/or operators of the UST system site; or

(c) By mailing these records to the division if they cannot be maintained at the closed facility.

Appendix 1200-1-15-.07-A

Removal Of Underground Tanks

(1) Preparation

(a) Drain product piping into the tank, being careful to avoid any spillage. Cap or remove product piping.

(b) Remove liquids and residues from the tank by using explosion-proof or air-driven pumps. Pump motors and suction hoses shall be bonded to the tank or otherwise grounded to prevent electrostatic ignition hazards. It may be necessary to use a hand pump to remove the last few inches of liquid from the bottom of the tank.

NOTE: (The Federal Resource Conservation and Recovery Act (RCRA) 42 U.S.C. Section 6901 et seq., and the Tennessee Hazardous Waste Management Act (HWMA) Part 1 T.C.A. §68-46-101 et seq. place restrictions on disposal of certain residues that may be present in some underground storage tanks. Residues from tanks that have held leaded gasoline should be treated with extreme caution. Lead compounds and other residues in the tank may be classified as hazardous wastes).

(c) Excavate to the top of tank.

(d) Remove the fill pipe, gauge pipe, vapor recovery truck connection, submersible pumps, and other tank fixtures. Remove the drop tube, except when it is planned to vapor-free the tank by using an eductor. Cap or remove all non-product lines, such as vapor recovery lines, except the vent line. The vent line shall remain connected until the tank is purged. Temporarily plug all other tank openings so that all vapors will exit through the vent line during the vapor-freeing process.

(2) Purging

(a) Remove flammable vapors by one of the methods described in subparagraphs (b) through (e) of this paragraph, or as required by local codes. These methods provide a means for temporary vapor-freeing of the tank atmosphere. However, it is important to recognize that the tank may continue to be a source of flammable vapors even after following the vapor-freeing procedures described in subparagraphs (b) through (e) of this paragraph. For this reason, caution shall always be exercised when handling or working around tanks that have stored flammable or combustible liquids. Before initiating work in the tank area or on the tank, a combustible gas indicator shall be used to assess vapor concentrations in the tank and work area. All work shall be done in accordance with Paragraph (3), ``Testing"

(b) Vent all vapors from the tank at a minimum height of twelve (12) feet above grade and three (3) feet above any adjacent roof lines until the tank is purged of flammable vapors. The work area shall be free from sources of ignition.

(c) Flammable and combustible vapors may be purged with an inert gas such as carbon dioxide ($CO_2$) or nitrogen ($N_2$). This method is not to be utilized if the tank is to be entered for any reason, as the tank atmosphere will be oxygen deficient. The inert gas is to be introduced through a single tank opening at a point near the bottom of the tank at the end of the tank opposite the vent. When inert gases are used, they shall be introduced under low pressure to avoid the generation of static electricity. When using $CO_2$ or $N_2$, pressures in the tank shall not exceed five (5) pounds per square inch gauge.

Caution: The process of introducing compressed gases into the tank may create a potential ignition hazard as the result of the development of static electrical charges. The discharging device shall therefore be grounded. Explosions have resulted from the discharging of $CO_2$ fire extinguishers into tanks containing a flammable vapor-air mixture. $CO_2$ extinguishers shall not be used for inerting flammable atmospheres.

(d) If the method described in (c) is not practical, the vapors in the tank may be displaced by adding solid carbon dioxide (dry ice) to the tank in the amount of at least 1.5 pounds per 100 gallons of tank capacity. The dry ice should be crushed and distributed evenly over the greatest possible area in the tank to promote rapid evaporation. As the dry ice vaporizes, flammable vapors will flow out of the tank and may surround the area. Therefore, where practical, plug all tank openings except the vent after introducing the solid $CO_2$ and continue to observe all normal safety precautions regarding flammable or combustible vapors. Make sure that all of the dry ice has evaporated before proceeding.

(e) Flammable vapors may be exhausted from the tank by one of two methods of tank ventilation listed below:

1. Ventilation using an eductor-type air mover usually driven by compressed air. The eductor-type air mover shall be properly bonded to

prevent the generation and discharge of static electricity. When using this method, the fill (drop) tube shall remain in place to ensure ventilation at the bottom of the tank. Tanks equipped with fill (drop) tubes that are not removable should be purged by this method. An eductor extension shall be used to discharge vapors a minimum of twelve (12) feet above grade and at least three (3) feet above any adjacent roof line.

2. Ventilation with a diffused air blower. When using this purging method, it is imperative that the air-diffusing pipe is properly bonded to prevent the discharge of a spark. Fill (drop) tubes shall be removed to allow proper diffusion of the air in the tank. Air supply should be from a compressor that has been checked to ensure a clean air supply and is free from volatile vapors. Air pressure in the tank shall not exceed five (5) pounds per square inch gauge.

(3) Testing

(a) The tank atmosphere and the excavation area are to be regularly tested for flammable or combustible vapor concentrations until the tank is removed from both the excavation and the site. Such tests are to be made with a combustible gas indicator which is properly calibrated according to the manufacturer's instructions and which is thoroughly checked and maintained in accordance with the manufacturer's instructions. Persons responsible for testing shall be completely familiar with the use of the instrument and the interpretation of the instrument's readings.

(b) The tank vapor space is to be tested by placing the combustible gas indicator probe into the fill opening with the drop tube removed. Readings should be taken at the bottom, middle, and upper portions of the tank, and the instrument should be cleared after each reading. If the tank is equipped with a non-removable fill tube, readings are to be taken through another opening. Liquid product shall not enter the probe. Readings of twenty percent (20%) or less of the lower flammable limit shall be obtained before the tank is considered safe for removal from the ground.

(c) Tanks purged with an inert gas shall be sampled with an oxygen indicator and the oxygen content shall be considered while interpreting combustible gas indicator results.

(4) Removal

(a) After the tank has been freed of vapors and before it is removed from the excavation, plug or cap all accessible holes. One plug shall have a one-eighth of an inch vent hole to prevent the tank from being subjected to excessive differential pressure caused by temperature changes. The tank shall always be positioned with this vent plug on top of the tank during subsequent transport and storage.

(b) Excavate around the tank to uncover it for removal. Remove the tank from the excavation and place it on a level surface. Use wood blocks to prevent movement of the tank after removal and prior to loading on a truck for transportation. Use screwed (boiler) plugs to plug any corrosion holes in the tank shell.

(c) Precautions shall be taken to assure any vapors left in the tank do not reach a combustible level. If this situation occurs, the tank shall be purged according to Section (2).

(d) Before the tank is removed from the site, the tank atmosphere shall be checked with a combustible gas indicator to ensure that it does not exceed twenty percent (20%) of the lower flammable limit.

(e) The tank shall be secured on a truck for transportation to the storage or disposal site with the one-eighth of an inch vent hole located at the uppermost point on the tank. Tanks shall be transported in accordance with all applicable local, state, and federal laws and regulations.

(f) Tanks shall be labeled after removal from the ground but prior to removal from the site. Regardless of the condition of the tank, the label shall contain a warning against certain types of reuse. The former contents and present vapor state of each tank, including vapor-freeing treatment and data shall also be indicated. The label shall be similar to the following in legible letters at least two (2) inches high:

Tank Has Contained Leaded Gasoline*

Not Vapor Free

Not Suitable For Storage Of Food Or Liquids

Intended For Human Or Animal Consumption

Date Of Removal: Month/Day/Year

*Or other flammable/combustible liquid. Use the applicable designation, for example, DIESEL.

Tanks that have held leaded motor fuels (or whose service history is unknown) shall also be clearly labeled with the following information:

Tank Has Contained Leaded Gasoline

Lead Vapors May Be Released If Heat

Is Applied To The Tank Shell

Storage Of Used Tanks

Storage Procedures

(a) Tanks shall be vapor-freed before being placed in storage. Tanks shall also be free of all liquids and residues. All tank openings shall be tightly plugged or capped, with one plug having a one-eighth of an inch vent hole to prevent the tank from being subjected to excessive differential pressure caused by temperature changes. Tanks shall be stored with the vented plug at the highest point on the tank. All tanks shall be labeled.

(b) Used tanks shall be stored in secure areas where the general public will not have access.

Rule 1200-1-15-.09 Administrative Guidelines and Procedures for the Tennessee Petroleum Underground Storage Tank Fund. is amended by deleting it in its entirety and replacing it with the following:

1200-1-15-.09 Administrative Guidelines And Procedures For The Tennessee Petroleum Underground Storage Tank Fund.

(1) Purpose.

This rule establishes administrative guidelines and procedures to determine the manner in which disbursements are made from the Tennessee Petroleum Underground Storage Tank Fund and to implement the purposes and objectives of the Tennessee Petroleum Underground Storage Tank Act.

(2) Applicability.

(a) Requirements of this rule apply to all owners and operators of an underground storage tank system as defined in rule 1200-1-15-.01(4) except as otherwise provided for in rule 1200-1-15-.01(2)(b). However, the requirements of this rule do not apply to those tanks owned by state and federal entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(b) Petroleum site owners eligible for fund reimbursement shall only be reimbursed for those fund eligible and reasonable costs which accrued on or after July 1, 2002.

(3) Fund Eligibility Requirements.

(a) Every owner of an UST is required to register that tank with the division in accordance with rule 1200-1-15-.03(1). The owner and/or operator is required to annually pay the required fee for each tank compartment described in rule 1200-1-15-.10(2) and rule 1200-1-15-.10(5)(c). Owners and/or operators satisfying the requirements of this paragraph will have established fund eligibility. 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.

(b) Every owner or operator of an UST is required to maintain fund eligibility. Requirements to maintain eligibility are as follows:

1. The owner or operator shall remain in substantial compliance for each UST. If a UST does not remain in substantial compliance, the owner or operator is not eligible for fund benefits for the site containing the non-complying UST.

2. Annual payment of underground storage tank fees for tanks and/or tank compartments is required for each UST until such time as the permanent closure of the tank or the tank compartment or change-in-service requirements of rule 1200-1-15-.07(3) through rule 1200-1-15-.07(5) are satisfied.

3. The owner or operator shall maintain the records as required in Chapter 1200-1-15 and submit or make them available to the division upon request or as directed in regulation.

4. All records maintained as required in part (b)3. of this subparagraph shall be retained by the owner and/or operator until one of the following is accomplished:

(i) Closure requirements of rule 1200-1-15-.07(4) through 1200-1-15-.07(5) are satisfied;

(ii) Ownership of an UST, and all records pertaining thereto, are transferred to a new owner; or

(iii) Owner or operator is instructed otherwise by the division.

(4) Loss, Restoration, and Establishment of Fund Eligibility.

(a) If at the time of discovery of a release, the division determines that an owner and/or operator has failed to establish fund eligibility in accordance with subparagraph (3)(a) or has lost fund eligibility in accordance with subparagraph (4)(b), corrective action costs and/or third party damages associated with that release are not eligible for coverage by the fund.

(b) If at any time the division determines that an owner and/or operator has failed to meet the requirements of paragraph (3) of this rule, the division will provide notice to the owner and/or operator of such non-compliance. The owner and/or operator shall have thirty (30) days after the date of such notice sent by certified mail as evidenced by return receipt to provide evidence of compliance with all fund eligibility requirements, or such other time as the division may allow. If, after this time period, the owner and/or operator fails to resolve the non-compliance, the director shall issue a Notice of Fund Ineligibility and enforcement actions which may include penalty assessment may be initiated. The owner and/or operator shall have sixty (60) days after the date of Notice of Fund Ineligibility sent by certified mail as evidenced by return receipt to place in force alternate financial assurance required in Rule 1200-1-15-.08.

(c) An owner and/or operator who has failed to establish fund eligibility in accordance with the provisions of part (3)(a) of this rule or who has lost fund eligibility in accordance with the provisions of subparagraph (b) of this paragraph shall comply with the following in order to establish or restore fund eligibility:

1. Pay all annual tank fees and late payment penalties owed;

2. Pay all civil penalties owed;

3. Demonstrate through a division approved site check there have been no releases from the UST system(s) at this site; and

4. The division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the division, any noted deficiencies or violations discovered by the division personnel during this inspection within forty-five (45) days, or such other time period as the division may allow, of the date of the notice of such deficiencies to the owner and/or operator.

(e) An owner and/or operator may petition the Board for a hearing of the Commissioner's determination provided a written petition is submitted to and received by the Commissioner within thirty (30) days of receipt of the division's

determination of fund ineligibility or determination that the responsible party has failed to restore fund eligibility, pursuant to the terms of the Act and this Rule. The Commissioner's determination shall be final and not subject to review unless the written petition for hearing is submitted and received within this time frame. The written petition must set forth the basis for the appeal as required by the Administrative Procedures Act. T.C.A. §4-5-101 et seq, and the Rules promulgated thereunder, particularly Rule 1360-4-1-.05

(f) Within thirty (30) days of meeting the requirements to either restore or establish fund eligibility in accordance with subparagraph (c) of this paragraph, the division will notify the owner and/or operator of the date that fund eligibility was restored. The fund will not cover either investigative or corrective action costs or third party liability claims associated with a release which occurred during the time of fund ineligibility.

(5) Annual Fee Assessment.

(a) As part of the eligibility requirements to participate in the liability limitations and reimbursement benefits of the fund, an UST owner or operator shall pay an annual tank and/or tank compartment fee set by the Board.

(b) Each year UST owners or operators will be notified by the division of the amount of the required tank and/or tank compartment fee.

(6) Authorized Disbursements From the Fund.

(a) Whenever, in the Commissioner's determination, an eligible owner and/or operator or petroleum site owner has a release of petroleum from an underground storage tank and the owner and/or operator or petroleum site owner has been found to be eligible for fund coverage, the Department shall, subject to the provisions of this rule, disburse monies available in the fund to provide for:

1. Emergency response activities, investigation, and assessment of sites contaminated by a release of petroleum in accordance with the requirements of rule 1200-1-15-.05 through 1200-1-15-.06;

2. The rehabilitation of sites contaminated by a release of petroleum, which may consist of clean-up of affected soil and groundwater, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with release response, remediation and risk management requirements of rule 1200-1-15-.06;

3. The interim replacement and permanent restoration of potable water supplies.

(b) Monies held in the fund may be disbursed for making payments to third parties who bring suit relative to an UST release against the owner or operator of an UST or petroleum site owner who is eligible for fund coverage when such third party obtains a final judgment in that action enforceable in Tennessee.

(c) Costs incurred by the division in the administration of the provisions of this Rule or authorized under T.C.A. §68-215-101 et seq. shall be charged to the fund.

(d) The fund shall be available to the Board and the Commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of petroleum sites within the state as provided in T.C.A. §68-215-101 et seq.

(e) The Commissioner may enter into contracts and use the fund for those purposes directly associated with identification, investigation, containment, and cleanup, including monitoring and maintenance prescribed above including:

1. Hiring consultants and personnel;

2. Purchase, lease or rental of necessary equipment; and

3. Other necessary expenses.

(f) The Commissioner will pay each approved claim of the fund in chronological order based upon the date the claim is submitted for payment.

(g) The Commissioner will not authorize any disbursement from the fund for costs for which the owner and/or operator or petroleum site owner receives payment from another insurance carrier or other source. Further, the division shall acquire by subrogation the right of the owner and/or operator of the underground storage tank system from which the release occurred or the petroleum site owner, responsible or liable for the release.

(7) Scope of Fund Coverage.

(a) The fund will provide to eligible owners or operators or petroleum site owners coverage for the cost of investigation and corrective action resulting from the accidental release of petroleum from an UST storing petroleum.

(b) Owners or operators of USTs or petroleum site owners who are eligible for fund coverage shall meet the per site per occurrence financial responsibility requirements specified in parts 1 through 6 and illustrated in Table 3.

1. If the date of the release was after January 1, 1974 and before July 1, 1988 and the release was reported to the department before April 11, 1990, the financial responsibility requirements for eligible UST owners or operators or petroleum site owners for taking corrective action will be seventy-five thousand dollars ($75,000) and compensation of third parties will be one hundred fifty thousand dollars ($150,000).

2. If the date of release was between July 1, 1988 and June 30, 1989, the financial responsibility requirements for eligible UST owners or operators or petroleum site owners for taking corrective action will be seventy-five thousand dollars ($75,000) and compensation of third parties will be one hundred fifty thousand dollars ($150,000).

3. If the date of release was between July 1, 1989 and April 30, 1990, the financial responsibility requirements for eligible UST owners or operators or petroleum site owners for taking corrective action will be fifty thousand dollars ($50,000) and compensation of third parties will be one hundred fifty thousand dollars ($150,000).

4. If the date of release was between May 1, 1990 and April 4, 1995, the financial responsibility requirements for eligible UST owners or

operators or petroleum site owners for corrective action and for compensation for third party claims will be as follows based on the number of tanks owned or operated:

(i) 1 to 12 tanks, ten thousand dollars ($10,000) for taking corrective actions and ten thousand dollars ($10,000) for compensation of third parties;

(ii) 13 to 999 tanks, twenty thousand dollars ($20,000) for taking corrective actions and thirty-seven thousand five hundred dollars ($37,500) for compensation of third parties; or

(iii) 1,000 or more tanks, fifty thousand dollars ($50,000) for taking corrective actions and two hundred twenty-five thousand dollars ($225,000) for compensation of third parties.

5. If the date of release was between April 5, 1995 and July 1, 2005, the financial responsibility requirements for eligible UST owners or operators or petroleum site owners shall be as follows based on the number of tanks owned or operated by the tank owner at the time of the release:

(i) For corrective action costs:

(I) 1 to 12 tanks, ten percent (10%) of the total corrective action costs expended in an amount not to exceed ten thousand dollars ($10,000);

(II) 13 to 999 tanks, twenty percent (20%) of the total corrective action costs expended in an amount not to exceed twenty thousand dollars ($20,000); or

(III) 1,000 or more tanks, fifty thousand dollars ($50,000);

(ii) For compensation of third parties claims:

(I) 1 to 12 tanks, ten thousand dollars ($10,000) for compensation of third parties;

(II) 13 to 999 tanks, thirty-seven thousand five hundred dollars ($37,500) for compensation of third parties; or

(III) 1,000 or more tanks, two hundred twenty-five thousand dollars ($225,000) for compensation of third parties.

6. If the date of the release was on or after July 1, 2005, the financial responsibility requirements for eligible UST owners or operators or petroleum site owners for taking corrective action will be twenty thousand dollars ($20,000) and compensation of third parties will be twenty thousand dollars ($20,000).

TABLE 3

OWNER/OPERATOR FINANCIAL RESPONSIBILITY PER SITE PER OCCURRENCE

| DATE OF RELEASE | NUMBER OF TANKS | | |
|---|---|---|---|
| | 1 - 12 Tanks | 13 - 999 Tanks | 1000+ Tanks |
| After January 1, 1974 and Before July 1, 1988 And Reported before April 11, 1990 | $75,000 Clean-up/ $150,000 third party | $75,000 Clean-up/ $150,000 third party | $75,000 Clean-up/ $150,000 third party |
| Between July 1, 1988 and June 30, 1989 | $75,000 Clean-up/ $150,000 third party | $75,000 Clean-up/ $150,000 third party | $75,000 Clean-up/ $150,000 third party |
| Between July 1, 1989 and April 30, 1990 | $50,000 Clean-up/ $150,000 third party | $50,000 Clean-up/ $150,000 third party | $50,000 Clean-up/ $150,000 third party |
| Between May 1, 1990 and April 4, 1995 | $10,000 Clean-up/ $10,000 third party | $20,000 Clean-up/ $37,500 third party | $50,000 Clean-up/ $225,000 third party |
| Between April 5, 1995 And June 30, 2005 | 10% of Clean-up Cost not to exceed $10,000 $10,000 third party | 20% of Clean-up cost not to exceed $20,000 $37,500 third party | $50,000 Clean-up/ $225,000 third party |
| On or after July 1, 2005 | $20,000 Clean-up/ $20,000 third party | $20,000 Clean-up/ $20,000 third party | $20,000 Clean-up/ $20,000 third party |

(c) The fund shall be responsible to eligible UST owners or operators or petroleum site owners for eligible corrective action costs above the entry level to the fund in an amount not to exceed one million dollars ($1,000,000) per site per occurrence. Likewise, the fund shall be responsible to eligible UST owners or operators or petroleum site owners for court awards involving third party claims above the entry level into the fund in an amount not to exceed one million dollars ($1,000,000) per site per occurrence.

(d) If the date of the release is on or after September 1, 2005, the owner and/or operator may apply for a reduction of the financial responsibility requirement for corrective action set forth in part (b)6 of this paragraph. Application shall be made using a format established by the division and in accordance with instructions provided by the division.

1. The tank owner and/or operator must demonstrate to the satisfaction of the division that each UST system at the facility meets or exceeds the criteria for reduction of the financial responsibility amount set forth in the table in this subparagraph. Such demonstration may include, but not be limited to:

(i) Submittal of verifying documentation to the division; and/or

(ii) On-site verification by the division.

2. For each criterion met there shall be an associated reduction in the financial responsibility amount. However, the maximum percentage reduction in the financial responsibility amount per occurrence shall not exceed fifty percent (50 %).

| CRITERIA | PERCENTAGE REDUCTION |
|---|---|
| Double Wall Tank(s) | 10 % |
| Secondary Containment Chase Piping Enclosing Fiberglass Primary Piping or Flexible Plastic Piping with Containment Sumps at Piping Joints | 10 % |
| Containment Sumps at Submersible Turbine Pumps | 10 % |
| Containment Sumps under Dispensers | 10 % |
| Continuous In-Tank Leak Detection System | 10 % |

3. If a criterion is not applicable to one or more of the UST systems at the facility, then the conditions of part 1 of this subparagraph shall have been met if every UST systems at the facility for which the criterion is applicable meets that criterion. For example, the criterion for a containment sump under a dispenser is not applicable to a UST system used to store waste oil or used oil.

4. Upon confirmation by the division that a tank owner and/or operator has met one or more of the criteria for reduction of the financial responsibility amount set forth in the table in this subparagraph, the tank owner and/or operator will be sent correspondence setting forth the new reduced financial responsibility amount.

(8) Fund Ineligible Costs.

(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(2) and (3) shall not be eligible for fund payment or reimbursement. Replacement of asphalt or concrete shall not be eligible for fund payment or reimbursement.

(b) The cost of equipment purchases other than routinely required supplies which are expended at a given site or equipment which shall be installed at a site to implement a Corrective Action Plan shall not be charged as a lump sum to the cost of rehabilitating any given site at which funds are being claimed for containment, investigative, or corrective action costs. Examples of equipment which could not be charged to a specific site would include: drilling rigs, earth moving equipment, ground water sampling pumps, and photoionization detectors. Examples of equipment which could be charged to a specific site would include: bailers, sample containers, etc. Hourly charges for equipment may be established in the cost proposal submitted for each major phase of work. These hourly rates shall be competitive with similar charges by other approved contractors, or they may be rejected by the division if they are determined to represent unreasonable costs.

(c) The owner or operator or petroleum site owner financial responsibility requirements amounts as specified in subparagraph (7)(b) of this rule are not eligible for reimbursement from the fund. Proof of payment of these initial amounts is required prior to reimbursement of any costs. The owner or operator or petroleum site owner financial responsibility requirement for taking corrective action cannot include any cost defined as fund ineligible in subparagraphs (a) and (b) of this paragraph.

(d) Costs of removing underground storage tanks, including any expenditure associated with the proper closure of a tank in compliance with rule 1200-1-15-.07 shall not be eligible for fund payment or reimbursement.

(9) Fund Obligations.

(a) Contingent upon availability of funds, the Commissioner will make obligations from the fund when:

1. A cost proposal for containment, investigative, or corrective actions, submitted in accordance with paragraph (10) of this rule, is approved by the division;

2. A judgment for a third party claim is submitted for payment in accordance with paragraphs (6), (11) and (12) of this rule;

3. A payment application is received for containment, investigative, or corrective action work performed from July 1, 1988 until April 15, 1990, subject to a determination of reasonable costs by the division. Fund eligibility from July 1, 1988 until April 15, 1990 shall be determined by fee payment as required by the Tennessee Petroleum Underground Storage Tank Act;

4. A payment application is received for initial release response, abatement measures, and initial free product removal under the terms of subparagraph (10)(d) of this rule;

5. A payment application is received and approved by the division for costs associated with providing an alternate water supply to a person whose water supply has been contaminated by a release of petroleum; or

6. The Commissioner or Board determines it is necessary to provide for containment, investigation, identification, reasonable and safe cleanup, and as otherwise provided in the Tennessee Petroleum Underground Storage Tank Act.

(b) If the unobligated balance of the fund is less than the total amount associated with payment applications, cost proposals, and third party judgements which have been accepted by the Commissioner, to the extent allowed by available funds, funds will be obligated in the chronological order in which the claims were submitted, except for the provisions of subparagraph (c) of this paragraph.

(c) Obligations of funds required for satisfying fund eligible payment applications for work performed under part (a)3 of this paragraph or judgments for third party claims which were rendered prior to April 15, 1990, for releases discovered from July 1, 1988 until April 15, 1990, will be given priority over

payment applications and cost proposals for releases which occur after April 15, 1990.

(d) All claims against the fund are clearly obligations only of the fund and not of the State, and any amounts required to be paid under this part are subject to the availability of sufficient monies in the fund. The full faith and credit of the State shall not in any way be pledged or considered to be available to guarantee payment from such fund.

(10) Requirements for Fund Coverage of Corrective Action Costs. An eligible owner or operator or petroleum site owner conducting UST corrective actions is entitled to coverage of reasonable costs from the fund, subject to the provisions set forth in this paragraph. The division shall acquire by subrogation the right of the owner and/or operator or petroleum site owner to recover from any person responsible or liable for the release, other than the owner and/or operator of the underground storage tank system from which the release occurred, the amount paid by the fund to the owner and/or operator or petroleum site owner.

(a) Upon confirmation of a release in accordance with rule 1200-1-15-.05(3) or after a release from the UST system is identified in any other manner, owners and operators or petroleum site owners shall comply with the requirements of rule 1200-1-15-.06 as necessary to investigate the release, characterize the site and control any hazards posed by the release in order to stabilize the site, prevent significant risk to human health and safety, and/or continuing damage to the environment.

(b) Upon confirmation and reporting of a release in accordance with the requirement of rule 1200-1-15-.05(1) through rule 1200-1-15-.05(3), the owner or operator or petroleum site owner shall select a contractor from the division's list of approved contractors if the owner or operator or petroleum site owner expects to apply for fund benefits. The division shall be notified in writing of such a selection within thirty (30) days or other time frame specified by the division. A contractual agreement shall be established between the owner or operator or petroleum site owner and the contractor. The division shall be provided a copy of the contractual agreement.

(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(2)(a) and (3)(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.

(d) If initial response or hazard control measures conducted in accordance with rules 1200-1-15-.06(3) through rule 1200-1-15-.06(4), are required to properly stabilize a site and prevent significant continuing damage to the environment or risk to human health, and the cost of such required measures is expected to exceed ten thousand dollars ($10,000), then the owner or operator or petroleum site owner or the approved corrective action contractor may contact the division to obtain verbal or written approval to allow additional expenditures prior to the

submittal of a cost proposal. Additional expenditures may be authorized by the division up to a total of thirty thousand dollars ($30,000) which may be reimbursable from the fund to achieve site stabilization and immediate protection of human health or the environment. Such approval may be given following the actual expenditures if immediate actions were necessary to protect human health or the environment and division personnel were unavailable. In such a case, the division shall be notified of the actions taken by no later than one (1) working day after any such actions.

(e) Following completion of necessary site stabilization actions as described in subparagraph (d) of this paragraph, subsequent investigation, risk evaluation, and remediation shall be performed by approved contractors and in accordance with the requirements of rule 1200-1-15-.06. Unless directed to do otherwise by the division, prior to initiating any subsequent investigation, risk evaluation or remediation, the owner and/or operator or the petroleum site owner shall, through the assistance of the selected approved contractor, prepare and submit to the division a cost proposal for conducting the proposed investigation, risk evaluation or remediation. Cost proposals shall be prepared in accordance with guidance provided by the division and in a format established by the division.

(f) Upon review of a cost proposal submitted in accordance with subparagraph (e) of this paragraph the division may:

1. Accept the cost proposal and authorize work to be initiated; or

2. Request a modification to or clarification of the cost proposal if projected costs are determined not to be reasonable.

(g) Unless directed to do otherwise by the division, in addition to the requirements of (d) and (e) of this paragraph, the owner or operator or petroleum site owner shall upon submittal of a cost proposal for a site investigation, also submit an estimate of the total cost of remediation for the site in a format required by the division, which shall be used solely for the purpose of the Board and the division in projecting future funding requirements for the fund. The total estimated cost of remediation for a site shall be updated by the owner or operator or petroleum site owner in accordance with a schedule required by the division and as more complete information regarding a site becomes available.

(h) Upon acceptance of a cost proposal by the division, sufficient monies will be obligated from the fund for completion of the particular phase of work for which the cost proposal was submitted and authorization will be provided for the initiation of the proposed action. Obligation of funds shall be subject to the availability of funds at the time of acceptance of the cost proposal.

(i) Corrective actions performed prior to acceptance of an associated cost proposal may not be eligible for reimbursement.

(j) If the cost of completing any of the corrective actions of subparagraph (e) of this paragraph, is expected to exceed the amount of an accepted cost proposal, an amended cost proposal shall be submitted and accepted to allow additional funds to be obligated.

(k) Any corrective action which is carried out in response to any discharge, release, or threatened release of petroleum from an UST shall be conducted in accordance with the requirements of rules 1200-1-15-.06 and subparagraphs (a) through (e) of this paragraph.

(l) The owner or operator or petroleum site owner or the selected corrective action contractor shall keep and preserve detailed records demonstrating compliance with approved investigative and corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be kept for at least three years after corrective action has been completed for a site.

(m) Any approved corrective action shall be implemented in a manner acceptable to the division in accordance with an approved corrective action plan, if applicable, in order for the owner or operator or petroleum site owner to be eligible for the reimbursement of costs.

(n) An eligible owner or operator conducting UST response actions from July 1, 1988 until April 15, 1990, relative to any discharge, release or threatened release of petroleum from an UST, is entitled to reimbursement of reasonable costs above entry level from the fund but is exempted from the requirements of subparagraphs (b) through (j) of this paragraph, provided that corrective actions were carried out in accordance with a plan approved by the division.

(o) If corrective actions which were initiated during the time period referenced in subparagraph (n) of this paragraph are still continuing on April 15, 1990, the division may require submittal of cost proposals for any remaining phases of work and for the total projected cost of the remediation.

(p) If the contractor performing corrective actions as described in subparagraph (o) of this paragraph is not an approved contractor, the division may authorize the continued use of that contractor.

(q) If a contractor is performing corrective action at a site prior to development of an approved contractor list, the division may authorize the continued use of that contractor.

(r) The tank owner and/or operator or petroleum site owner, and his/her representative or Corrective Action Contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or Corrective Action Contractor, shall fully cooperate with any audit which the Commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the department for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or Corrective Action Contractor, shall produce any records, data, documents, information, and personnel for interviews as necessary in the Commissioner's determination to fully and completely conduct an audit.

(11) Requirements for Fund Coverage of Third Party Claims.

An eligible owner or operator or petroleum site owner is entitled to fund coverage for third party damages caused by the release of petroleum from an underground storage tank system, subject to the requirements set forth in this paragraph. The division shall acquire by subrogation the right of the owner/operator or petroleum site owner to recover the amount of damages paid to any third party from any person responsible or liable for the release, other than the owner and/or operator of the underground storage tank system from which the release occurred.

To assert a claim for payment or reimbursement of a third party claim, an eligible owner or operator or petroleum site owner shall comply with each of the following:

(a) Notify the division in writing within twenty-one (21) days upon the receipt of written notice of the third party liability suit. Thereafter, the owner and/or operator or petroleum site owner shall submit to the division a report which accurately reflects the status of the lawsuit every four (4) months, until the litigation is resolved. The owner and/or operator or petroleum site owner shall also notify the division in writing fourteen (14) days in advance of any settlement conference or settlement agreement;

(b) The owner or operator is in substantial compliance at the time the release occurred at the time the third party suit is filed, and at the time the application for reimbursement is submitted and provides documentation to the division of substantial compliance;

(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 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 (14) of this rule.

(d) The third party obtains a final judgment enforceable in Tennessee or pursuant to a settlement reviewed and approved by the division. The underground storage tank system owner and/or operator or petroleum site owner shall file a motion with the court requesting that the final judgment specify the type and amount of all damages awarded to the third party(ies);

(e) The final judgment is for an amount greater than the fund entry level in effect on the date of release.

(f) The tank owner and/or operator or petroleum site owner, and his/her representative or Corrective Action Contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or Corrective Action Contractor, shall fully cooperate with any audit which the Commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the department for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or Corrective Action Contractor, shall produce any records, data, documents, information and personnel for interviews as necessary in the Commissioner's determination to fully and completely conduct an audit.

(12) Applications for Payment.

(a) Applications for reimbursement for costs of corrective actions shall be submitted on a form established by the division which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the division, or which the applicant may wish to provide.

(b) The following statement shall be signed in accordance with the requirements of either part 1 or 2 of this subparagraph:

I certify to the best of my knowledge and belief: that the costs presented therein represent actual costs incurred in the performance of response actions at this site during the period of time indicated on this application; that an accidental release has occurred from a petroleum underground storage tank system at this site; and that no charges are presented as part of this application that do not directly relate to the performance of corrective actions related to the release of petroleum at this site.

1. The owner or operator or petroleum site owner and the approved corrective action contractor (CAC) or an authorized representative of the approved CAC shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of subparagraph (14)(a) of this rule.

2. The owner or operator or petroleum site owner shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of subparagraph (14)(b) of this rule.

(c) Applications for payments may be submitted following acceptance by the division of completed corrective actions. Such corrective actions may include but are not limited to the following:

1. Completion of hazard management activities, which were authorized by the division, including, but not limited to, provision of an alternate water supply;

2. Completion and submittal of a Hazard Management Report;

3. Development and submittal of an Initial Site Characterization Report;

4. Development and submittal of a Risk Analysis Report;

5. Implementation of interim remediation and/or risk management activities, which were authorized by the division;

6. Advanced risk-based modeling development, which was authorized by the division; and/or

7. Development and/or implementation of a corrective action plan, which was authorized by the division.

(d) Applications for payments for the implementation of corrective action may be submitted sixty (60) days following initiation of work to implement the Corrective Action Plan and at sixty (60) day intervals thereafter until completion of the authorized activities. Upon request, the division may approve interim payments at more frequent intervals.

(e) All payments shall be subject to approval by the division. Should a site inspection or other information available to the division reveal a discrepancy between the work performed and the work addressed by a payment application, the division may deny payment or may require the fund to be reimbursed.

(f) All applications for payment of costs of cleanup shall be received by the division within one (1) year of performance of the task or tasks covered by that application in order to be eligible for payment from the fund.

(g) Except for the situations provided for in subparagraph (10)(a) of this rule, payment shall not be made for corrective actions performed at a site until the division has reviewed and accepted a cost proposal for that work and until funds have been obligated from the fund for completion of that particular stage of work.

(h) For payment of third party claims, the UST owner or operator or petroleum site owner shall submit an application to the division, using the approved form, attaching the original or a certified copy of a final judgment (enforceable in Tennessee) with proof of payment of the applicable financial responsibility requirement for compensation of third parties as specified in subparagraph (6)(b) of this rule. The UST owner or operator or petroleum site owner shall submit proof that a motion was submitted to the court on their behalf requesting that the type and amounts of all damages awarded to the third party(ies) in the final judgment be specifically listed. This application shall be received by the division no later than thirty (30) days after notification of judgment.

1. The division may require additional information to determine the eligibility of a cost for payment.

2. If the application is determined to be incomplete, the division shall notify the applicant of the deficiencies. The applicant shall submit supplemental information to correct the deficiencies within forty-five (45) days of receipt of notice. The applicant may submit a written request for an extension of time for submittal of information to the division. The applicant shall state and the division shall approve the conditions which warrant an extension of submittal time.

3. Only the following costs shall be eligible for payment or reimbursement from the fund:

(i) Awards for property damage to third parties made by a court of suitable jurisdiction in Tennessee; and

(ii) Awards for bodily injury to third parties made by a court of suitable jurisdiction in Tennessee.

(13) Settlement of Third Party Claims.

(a) No settlement of a third party claim shall be made by an owner or operator or petroleum site owner without the prior approval of the division. The fund shall not be obligated to pay any claim for reimbursement if the owner or operator or petroleum site owner enters into a settlement without the prior approval of the division.

(b) The fund shall not be obligated to pay any final and enforceable third party judgment or reimburse an owner or operator or petroleum site owner for payment of the judgment in any amount exceeding a settlement offer rejected by the owner or operator or petroleum site owner which was submitted to the division, reviewed and approved by the division for payment.

(14) Fund Payment Procedures.

(a) Where the owner or operator or petroleum site owner has submitted an acceptable application for payment for corrective actions or third party claims but has not paid for these activities or claims, payments will be made by a check written to both the eligible owner or operator or petroleum site owner and the provider of the corrective action services or third party.

(b) Payments from the fund will be made directly to the eligible owner or operator or petroleum site owner in cases where the owner or operator or petroleum site owner submits documentation verifying the owner or operator or petroleum site owner has paid in excess of the applicable financial responsibility requirement for taking corrective actions as specified in subparagraph (7)(b) of this rule.

(c) The owner or operator or petroleum site owner is responsible for final payment to the contractor who performed the corrective actions and for payment of judgments to third parties.

(d) Contingent upon availability of funds, the Department shall process all applications for payment as soon as possible upon receipt of application. If all costs are considered to be reasonable and eligible for reimbursement, payment will be issued within ninety (90) days once costs have been determined to be reasonable and eligible for reimbursement. If certain costs are considered as not being reasonable or eligible for reimbursement, the division may issue a check for the amount of the application not in question and provide a forty-five (45) day period in which the owner or operator or petroleum site owner or contractor may present such information as is necessary to justify the disallowed costs. Following review of such information, the division may agree to pay the previously disallowed costs, or any portion thereof, or may again disallow the costs for payment. If the division disallows costs upon a second review, the owner and/or operator or petroleum site owner may petition the Board for a hearing on the disallowance pursuant to rule 1200-1-15-.11.

(15) Approval of Corrective Action Contractors.

(a) The Corrective Action Contractor ("CAC"') is the person responsible for conducting and overseeing the corrective action at a petroleum underground storage tank site. There shall be only one CAC for each site.

1. The CAC shall be either:

(i) A properly licensed contractor, licensed engineer, registered geologist, or other licensed environmental professional; or

(ii) An owner or operator of the petroleum underground storage tank(s) which caused the release of petroleum to the environment or petroleum site owner, provided that each contractor/subcontractor working for the owner or operator or petroleum site owner shall be a properly licensed contractor pursuant to T.C.A. §62-6-101 et seq.

(b) CACs will be approved to perform fund eligible work upon satisfaction of the following:

1. The CAC files a written application to become an Approved Corrective Action Contractor with the division via certified mail or personal service. This application shall be updated by April 1 of each year and

include name of CAC, principal(s) of CAC, address(es) of CAC's office, office phone number(s) of CAC, and other information requested by the division of Underground Storage Tanks.

2. The CAC submits a sworn statement with the written application in part 1., including the following provisions:

(i) The CAC will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-3-3, Personal Services and Consultant Services Contracts. The CAC will abide by Rule 0620-3-3-.03(f)(g)(h)(i)(l)(m), Rule 0620-3-3-.04(a)(b)1,5,6; Rule 0620-3-3-.04(c)2; and Rule 0620-3-3.06(a)(b)(c)(d)(e)(g)(h)(l)(m).

(ii) The CAC will have written contract(s) with all contractors/subcontractors, and contract(s) shall contain provisions that contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-3-3, Rule 0620-3-3-.03(f)(g)(h)(i)(l)(m), Rule 0620-3-3.04(a)(b)1,5,6; Rule 0620-3-3-.04(c)2; and Rule 0620-3-3-.06(a)(b)(c)(d)(e)(g)(h)(l)(m), Personal Services and Consulting Services Contracts. Contract(s) between the CAC and contractors/subcontractors shall also contain provisions that all site workers working under authority of contractors/subcontractors shall have applicable health and safety training when required by the Tennessee Department of Labor;

(iii) Site workers working under authority of the CAC will have the applicable health and safety training when required by the Tennessee Department of Labor;

(iv) The CAC understands that reimbursement from the fund will be in accordance with the reasonable rate schedule as established by the division;

(v) If the CAC is not the owner or operator of the tank that caused the release or petroleum site owner, the CAC will have a written contract with the UST owner and/or operator or petroleum site owner, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The Corrective Action Contractor will/will not (mark one) use the division's reasonable rate schedule when invoicing the owner or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site.

(vi) If the CAC is the owner or operator of the tank which caused the release or petroleum site owner, the CAC will have a written contract with all contractors/subcontractors, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The contractor/subcontractor (mark one) will/will not (mark one) use the division's reasonable rate schedule when invoicing the owner or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site;

(vii) The CACs services will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of their profession practicing in the State of Tennessee, under similar conditions, and at the time the services were rendered. The CAC shall not knowingly or willfully cause the spread of contamination nor inhibit corrective action at the site;

(viii) The CAC will gather and maintain documentation and records necessary for filing a claim with the Tennessee Petroleum Underground Storage Tank Fund;

(ix) The CAC will, at a minimum, follow Quality Assurance/Quality Control Standard Operating Procedures supplied by the division, unless alternate Quality Assurance/Quality Control is approved in writing in advance by the division;

(x) The CAC will assure that the CAC and/or any person the CAC employs or contracts with to engage in the practice of engineering shall be appropriately licensed/registered under the Tennessee Architects, Engineers, Landscape Architects and Interior Designers Law and Rules T.C.A. §62-2-101 et seq.;

(xi) The CAC will assure that any and all work defined as contracting in Tennessee Contractor's License Law (T.C.A. §62-6-101 et seq.) shall be performed by a licensed contractor(s) with appropriate classification and monetary limitation;

(xii) The CAC will assure that the CAC and/or any person the CAC employs or contracts with to perform professional geologic work shall be appropriately registered under the Tennessee Geologists Act (T.C.A. §62-36-101 et seq.); and

(xiii) The CAC will assure that all work done by the CAC had the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance, and the work was done as specified in chapter 1200-1-15 and/or according to a plan approved by the division. The CAC will assure that all plans and reports submitted to the division were prepared and signed by the Registered Professional Engineer or Professional Geologist who prepared or is responsible for the plan or report. The CAC will further assure that a Registered Professional Engineer or Professional Geologist shall make periodic site visits to verify whether or not the work performed was as specified by the Registered Professional Engineer or Professional Geologist, and as

specified in chapter 1200-1-15, and/or according to a plan approved by the division. The CAC shall require a Registered Professional Engineer or Professional Geologist to submit a signed certification based on their personal observation and review of job site records stating whether or not the work was performed as directed by the Registered Professional Engineer or Professional Geologist, and whether or not the work has been performed in accordance with chapter 1200-1-15, and/or a plan approved by the division. If the work was not performed according to the above specifications, the certification shall include a listing of how the work which was performed varies from chapter 1200-1-15, the approved plan, and/or the authorization of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation. The certification shall be submitted according to a schedule and format determined by the division.

(xiv) The CAC will fully and completely cooperate with the Commissioner during any audit by the Commissioner or his authorized representative, and comply with subparagraph (11)(f) of this rule.

3. The CAC has any applicable license(s) and registration(s) required in the State of Tennessee; and

(i) If the CAC is a licensed contractor, the contractor shall be properly licensed with an S-Underground Tank Installers, Removal, and Remediation of Pollutants or other applicable classification with a monetary limitation as required under Rule 0680-1-.13 and established by the Board for Licensing Contractors of the Tennessee Department of Commerce and Insurance in the amount of at least three hundred fifty thousand dollars ($350,000). Date of license expiration shall be included. The CAC shall submit requirements of this part with the application required in part 1 and shall submit documentation of any changes, renewals, renovations, etc. of the CAC's Tennessee license. (There shall be no fund reimbursement for those expenses which exceed the contractor's monetary limitation.)

(ii) All contractors and their subcontractors and employees shall have other applicable license(s) and registration(s).

4. The CAC shall maintain liability insurance coverage of the types and in the amounts described in the Table below, or the equivalent, and shall provide certification, with the division listed as a certificate holder, to the division of such coverage with the application described in part 1. and on April 1 of each year thereafter, or more frequently if necessary to keep the division updated as to the CAC's current insurance coverage.

| Type of Policy | Limits of Liability | Description |
|---|---|---|
| Worker's Compensation | Statutory | All states |
| Employer's Liability | $500,000 | |
| Automobile Liability | $1,000,000 combined single limit (bodily injury and property damages) | All owned, non-owned, and hired vehicles |
| General Liability | $1,000,000 combined single limit | Broad Form Comprehensive General Liability |

5. The CAC will submit a list of the CAC's employees which will be utilized by the CAC as a part of the assessment and remediation of UST sites in the State of Tennessee. This list shall include each employee's job description, title, office, location, and telephone number. This information shall be submitted with the application described in part 1 and annually with a due date of April 1 of each year thereafter.

(c) The Department will provide notice that applications are to be requested by publication of a legal advertisement which will provide interested firms with the information necessary to request instructions for preparation and submittal of applications and supporting documentation. Prior to the development of an Approved Corrective Action Contractors list, the Department will contact consulting firms listed on the unendorsed list titled ``Professional Consulting Firms - Engineers and Geologists" to notify consulting firms of the requirements of subparagraph (b) of this paragraph. Applications received within forty-five (45) days of the date of legal advertisement shall be reviewed prior to establishing a list of Approved Corrective Action Contractors. Applications and supporting documentation shall be independently evaluated by members of a review committee consisting of Division of Underground Storage Tanks staff members according to criteria of subparagraph (b) of this paragraph. Those CACs satisfactorily meeting the requirements of parts (b)1 through 5 of this paragraph shall be placed on the Department's list of UST Approved Corrective Action Contractors. Once a CAC has been approved, they will not be required to requalify except under the provisions of subparagraphs (d), (f), and (h) of this paragraph.

1. Applications received after forty-five (45) days from the date of the legal advertisement shall not be reviewed until a list of Approved Corrective Action Contractors is established. These and subsequent applications shall be reviewed by the review committee and either added to the list of Approved CACs or denied Approved CAC status within ninety (90) days of receipt of the completed application with supporting documentation, or establishment of the Approved CAC list, whichever is later;

2. If the review committee does not approve a CAC and does not place the CAC on the list of Approved CACs, the decision of the review committee may be appealed to the Board;

3. CACs who previously submitted applications but did not meet requirements of parts (b)1 through 5 of this paragraph may submit a

subsequent application for review at such time they feel that the requirements of (b)1 through 5 of this paragraph may have been met.

(d) At any time other than when the division compiles the new year's Approved CAC list after the submission of information each April 1, a CAC will be removed from the division's Approved CAC list when it has been determined that the CAC has failed to satisfactorily maintain the requirements of subparagraph (b) of this paragraph or has committed one or more of the violations listed in subparagraph (e) of this paragraph.

1. The removal process shall be initiated when a complaint is referred to the division's review committee;

2. The review committee shall inform the CAC via certified mail of receipt of a complaint;

3. The division's review committee may request the CAC to appear at a meeting to show cause why the Department should not remove the CAC from the list of Approved CACs;

4. The CAC may request a meeting with the review committee;

5. The review committee shall notify the CAC of its decision via certified mail within sixty (60) days of dispatch of the certified letter referenced in part 2 of this subparagraph;

6. If the review committee decides to remove the CAC from the list of Approved CACs, removal shall be effective thirty (30) days after dispatch to the last known address on file with the division unless:

   (i) the CAC corrects the non-compliance to the satisfaction of the review committee during the thirty (30) day period; or

   (ii) the CAC files a written appeal with the division within the thirty (30) day period requesting a hearing to appeal the decision of the review committee to the Board.

7. If the division removes a CAC from the list of Approved CAC's the CAC may petition the Board for a hearing on its removal pursuant to rule 1200-1-15-.11. The filing of an appeal will postpone actions to remove a CAC from the list of Approved CACs until the appeal is heard by the Board;

8. Once the review committee has dispatched a Notice of Removal to a CAC via certified mail, the division will approve no additional plans, scopes of work, or cost proposals if such approval will cause division personnel to violate T.C.A. §62-6-120(c)(1);

9. If an appeal is not filed during the sixty (60) day period, the decision of the review committee will be final;

10. A CAC removed from the Approved CAC list may reapply for approval as provided for in subparts (i) or (ii) of this part:

   (i) A CAC who was removed from the Approved CAC list due to failure to satisfactorily maintain the requirements of

subparagraph (b) of this paragraph may reapply under subparagraphs (b) and (c) of this paragaraph once the requirements of subparagraph (b) of this paragraph have been met;

(ii) A CAC who was removed from the Approved CAC list due to one or more of the violations listed in (e) below may reapply after one (1) year. The CAC shall submit evidence showing the reasons why the CAC should be reinstated for evaluation by the review committee. The CAC shall reapply under the provisions of subparagraphs (15)(b) and (c) of this rule.

(e) A CAC may be removed from the list of approved Corrective Action Contractors if it is determined by a review committee consisting of division staff members that the CAC has done any of the following:

1. The CAC charged the state or owner/operator for unnecessary or unapproved work or work which was not performed;

2. The CAC filed false information with the Department;

3. The CAC has been found guilty of violating any of the following or a comparable law in another jurisdiction:

| | | |
|---|---|---|
| (i) | T.C.A. §39-16-503 | Tampering with or fabricating evidence; |
| (ii) | T.C.A. §39-16-504 | Destruction of and tampering with governmental records; |
| (iii) | T.C.A. §39-14-130 | Destruction of valuable papers with intent to defraud; |
| (iv) | T.C.A. §39-14-114 | Forgery; |
| (v) | T.C.A. §39-14-104 | Theft of services, or |
| (vi) | T.C.A. §39-14-103 | Theft of property; |
| (vii) | T.C.A. §68-211-101 et seq. | Solid Waste Disposal Act; |
| (viii) | T.C.A. §68-212-101 et seq. | Hazardous Waste Management Act; |
| (ix) | T.C.A. §69-3-101 et seq. | Water Quality Control Act; |
| (x) | Other environmental regulatory legislation. | |

4. The CACs or an employee(s), principal(s), or officer(s) of the CAC is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. §62-2-101 et seq., §62-6-101 et seq., and §62-36-101 et seq., or a comparable law in another jurisdiction by the appropriate regulatory agency or court.

5. Due to the quality of work performed by the CAC, the CAC has significantly delayed or inhibited progress in achieving appropriate corrective action at a site(s). This shall include, but shall not be limited to, the following:

   (i) The CAC performs a non-approved action which spreads contamination in the environment;

   (ii) The CAC files a plan (e.g. Environmental Assessment Plan, Corrective Action Plan, etc.) which is rejected by the division as deficient, followed by three subsequent revisions, each of which is rejected by the division as deficient; or

   (iii) The CAC fails to supply recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions supported by the following:

      (I) The physical and chemical characteristics of petroleum, including its toxicity, persistence, and potential for migration;

      (II) The hydrogeologic characteristics of the petroleum site and the surrounding land;

      (III) The proximity, quality, and current and future uses of groundwater;

      (IV) An exposure assessment;

      (V) The proximity, quality, and current and future uses of surface waters;

      (VI) Applicable regulations in chapter 1200-1-15; and

      (VII) The magnitude and extent of petroleum contamination at the petroleum site and the surrounding land.

   (iv) The CAC supplies recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions not supported by items (I) through (VII) listed in subpart (iii) of this part.

6. The CAC filed plan(s) or report(s) which do not bear the appropriate signature and Tennessee license/registration number of a Registered Professional Engineer or Professional Geologist.

7. The CAC performed work which did not have the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance.

8. The CAC has deviated from an approved plan or scope of work without the approval of the division. This includes, but is not limited to, the following:

(i) Failure to follow Quality Assurance and Quality Control approved in the plan, or

(ii) Failure to follow the schedule for implementation approved in the plan.

9. The CAC has failed to follow Quality Assurance/Quality Control (QA/QC) procedures supplied by the division without having alternate QA/QC approved in advance in writing by the division.

10. The CAC has failed to follow UST regulations promulgated in chapter 1200-1-15.

11. The CAC failed to have a Registered Professional Engineer or Professional Geologist file a signed certification according to a schedule and format required by the division. Said certification shall be based on the Registered Professional Engineer's or Professional Geologist's personal observation and review of job site records. The certification shall state whether or not the work was performed as directed by a Registered Professional Engineer or Professional Geologist, and whether or not the work has been performed in accordance with chapter 1200-1-15, and/or a plan approved by the division. The certification shall include a listing of how the work performed varies from chapter 1200-1-15, the approved plan, and/or the work approved of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation.

(f) A CAC that fails to comply with the requirements of parts (b) 1, 4, or 5 of this paragraph on April 1 of any year will not be eligible to remain on the list of approved contractors.

1. The review committee shall inform the CAC via certified mail that removal shall be seven (7) days after dispatch to the last known address on file with the division unless the CAC corrects the non-compliance to the satisfaction of the review committee during the seven (7) day period.

2. A CAC that fails to correct this noncompliance as provided in part 1 of this subparagraph, may reapply to be on the Approved CAC list under subparagraphs (b) and (c) of this rule once it can meet all of those requirements.

(g) No CAC shall be placed on the Approved Corrective Action Contractors list if the CAC is on a list of contractors banned from usage on federally funded projects. If a CAC on the Approved Corrective Action Contractors list is placed on the list of contractors banned from usage on federally funded projects, that CAC will be removed from the Approved Corrective Action Contractors list. When the CAC is removed from the list of contractors banned from usage on federally funded projects, the CAC may apply to be added to the Approved Corrective Action Contractors list according to procedures outlined in subparagraphs (b) and (c) of this paragraph. A CAC on a list of contractors banned from usage on federally funded projects cannot work as a subcontractor to an Approved Corrective Action Contractor.

(h) The appearance of a CAC on the division's list of Approved Corrective Action Contractors shall in no way establish liability or responsibility on the part of the division, the fund, or the State of Tennessee in regards to the services provided by the CAC or circumstances which may occur as a result of such services.

(i) An owner or operator may perform corrective actions for releases of petroleum from USTs he owns or operates provided that he submits an application with documentation as described in subparagraphs (b) and (c) of this paragraph and the application is approved by the division. The owner or operator may use qualifications of subcontractor(s) in addition to qualifications of the owner or operator in applying for Approved Corrective Action Contractor status. If an owner or operator uses a subcontractor(s) in qualifying for an Approved Corrective Action Contractor classification and there is a change of a subcontractor whose qualifications were used in the application or documentation, then the owner or operator shall notify the division; the owner or operator shall be removed from Approved Corrective Action Contractor status. The owner or operator shall submit a new application with documentation and be approved as discussed in subparagraphs (b) and (c) of this paragraph to continue work as an Approved Corrective Action Contractor.

(j) A CAC working as a subcontractor under contract to an Approved CAC is not required to be classified as an Approved CAC. The subcontractor shall maintain all applicable license(s) and/or registration(s) required in the State of Tennessee for work performed.

(16) Recovery of Costs by State - Apportionment of Liability.

(a) Making use of any and all appropriate existing state legal remedies, the Commissioner may commence court action to recover the amount expended by the state from any and all responsible parties for each site investigated, identified, contained or cleaned up, including up to the limits of financial responsibility for owners and/or operators of petroleum underground storage tanks covered by the fund and the entire amount from owners and/or operators of petroleum underground storage tanks not covered by the fund.

(b) In any action under this rule, no responsible party shall be liable for more than that party's apportioned share of the amount expended by the state for such site. The responsible party has the burden of proving his apportioned share. Such apportioned share shall be based solely on the liable party's portion of the total volume of the petroleum at the petroleum site at the time of action under this chapter. Any expenditures required by the provisions of this chapter made by a responsible party (before or after suit) shall be credited toward any such apportioned share.

(c) In no event shall the total moneys recovered from the responsible party or parties exceed the total expenditure by the state for each site.

(d) Any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for such portion.

(e) If the trier of the fact finds evidence insufficient to establish such party's portion of costs or expenditures in such a cost recovery, the court shall apportion such costs or expenditures among the defendants, to the extent practicable, according to equitable principles.

(17) Failure to Take Proper Action.

Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the state as a result of such failure to take proper action. The Commissioner may recover this penalty in an action commenced under T.C.A. §68-53-115, paragraph (16) of this rule, or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter.

(18) Severability.

If any paragraph, subparagraph, part, subpart, item or subitem, section or subsection of this Rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Rule shall not be affected thereby.

Rule 1200-1-15-.10 Fee Collection and Certification Issuance Regulations is amended by deleting it in its entirety and replacing it with the following:

1200-1-15-.10 Fee Collection And Certification Issuance Regulations.

(1) Purpose.

The purpose of this Rule is to establish a system and schedule for collection of underground storage tank fees.

(2) Applicability.

Requirements of this Rule apply to the following persons:

(a) Owners and/or operators of petroleum underground storage tanks and/or tank compartments required to be reported under the requirements of T.C.A. §68-215-101 et seq., as follows:

1. All petroleum underground storage tanks and/or tank compartments that are actively storing petroleum;

2. All petroleum underground storage tanks and/or tank compartments that are reported as in service at the start of the annual billing cycle (July 1 for underground storage tanks and/or tank compartments in East Tennessee, October 1 for underground storage tanks and/or tank compartments in Middle Tennessee, and January 1 for underground storage tanks and/or tank compartments in West Tennessee); and

3. All petroleum underground storage tanks and/or tank compartments taken temporarily out of service after June 30, 1988, and not properly closed in accordance with rule 1200-1-15-.07(3) through (5).

(b) Any person electing to pay annual fees on behalf of a tank owner and/or operator, including, but not limited to the owner of the petroleum site.

(3) Annual Petroleum Underground Storage Tank Fees.

(a) The required fee shall be submitted in the specified amount, with checks made payable to the Tennessee State Treasurer.

(b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner or operator.

(c) The amount of the annual petroleum underground storage tanks fee shall be either:

1. Two hundred fifty dollars ($250) per year for each non-compartmentalized tank; or

2. Two hundred fifty dollars ($250) per year per compartment for each compartmentalized tank.

(d) The amount of the annual administrative service fee for agencies and functions of the U.S. Government having sovereign immunity shall be either:

1. Two hundred fifty dollars ($250) per year for each non-compartmentalized tank; or

2. Two hundred fifty dollars ($250) per year per compartment for each compartmentalized tank.

Agencies and functions of the U.S. Government are not eligible for benefit or financial assistance from the Tennessee Petroleum Underground Storage Tank Fund.

(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) and 1200-1-15-.02(3) 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.

(f) Payment of the entire amount of the annual fee is required for underground storage tanks and/or tank compartments in service or temporarily out of service during any portion of the current billing year. Tanks and/or tank compartments placed into service after the current billing year begins or tanks and/or tank compartments which are permanently closed before the current billing year ends are not due a refund of the annual fee or any portion thereof.

(4) Failure to Pay the Annual Petroleum Underground Storage Tank Fee.

(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 5 percent (5%) of the amount owed. Such penalty shall be assessed monthly until the fee and all associated penalties are paid. The tank owner 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 that ten percent (10%) per annum, plus statutory interest.

(b) The Division shall not issue a petroleum underground storage tank certificate to any facility where the lawfully levied petroleum underground storage tank fee(s) and/or associated late penalties have not been paid. To refuse or fail to pay the annual fee per tank to the Division is an unlawful action as described in T.C.A. §68-215-104(3).

(c) The Division shall revoke the petroleum underground storage tank certificate for any facility for which the lawfully levied petroleum underground storage tanks fee(s) and late payment penalties have not been paid. If the annual fee(s) have not been paid, following fifteen (15) days from the receipt of written notice that the Division intends to remove the certificate, a Division representative may remove the certificate from a facility.

(d) If a lawfully levied fee has not been paid within a reasonable time allowed by the Commissioner, the Commissioner may proceed in the Chancery Court of Davidson County to obtain judgment and seek execution of such judgment against the tank owner and/or operator.

(5) Petroleum Underground Storage Tank Annual Fee Notices.

(a) Prior to the due date of the annual underground storage tanks fee, the Division shall issue fee notices to the owner and/or operator of the petroleum underground storage tanks. Fee notices and due dates shall be staggered using the three grand divisions of the State of Tennessee.

1. Tank fees for underground storage tanks and/or tank compartments in the following East Tennessee counties shall be due on July 31 of each year:

   Johnson, Sullivan, Carter, Washington, Unicoi, Hancock, Hawkins, Greene, Claiborne, Grainger, Hamblen, Cocke, Scott, Campbell, Union, Anderson, Knox, Jefferson, Sevier, Morgan, Roane, Loudon, Blount, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, Sequatchie, Hamilton, Bradley, Polk, Franklin, and Marion.

2. Tank fees for underground storage tanks and/or tank compartments in the following Middle Tennessee counties shall be due October 31 of each year:

   Stewart, Montgomery, Robertson, Sumner, Macon, Clay, Pickett, Houston, Hickman, Cheatham, Davidson, Wilson, Trousdale, Smith, Jackson, Overton, Fentress, Putnam, Cumberland, White, DeKalb, Van Buren, Warren, Cannon, Rutherford, Williamson, Dickson, Humphreys, Perry, Wayne, Lewis, Lawrence, Maury, Giles, Marshall, Lincoln, Moore, Bedford, and Coffee.

3. Tank fees for underground storage tanks and/or tank compartments in the following West Tennessee counties shall be due January 31 of each year:

Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll, Benton, Lauderdale, Tipton, Shelby, Haywood, Fayette, Madison, Hardeman, Henderson, Chester, McNairy, Decatur, and Hardin.

(b) The annual fee shall be paid on or before the due date.

(c) For any underground storage tank system brought into use after the effective date of this rule, the current year's annual fee shall be submitted with the required notice of existence of such tank system required in Rule 1200-1-15-.02(1)(a)2.

(d) For any underground storage tank system not previously reported to the division, the current year's annual fee shall be submitted with the required notice of existence of such tank system.

(6) Issuance of Annual Petroleum Underground Storage Tank Facility Certificates.

(a) The Division shall issue petroleum underground storage tank facility certificates annually. The certificate will contain the facility identification number, address, number of underground storage tanks, number of tank compartments and the size of said tanks and/or compartments. The color of the certificate will be changed annually in order to assist persons delivering petroleum in determining if the underground storage tank facility has a current certificate.

(b) Certificate issuance shall be staggered using the three grand divisions of the State of Tennessee. Certificates shall be issued as follows:

1. Petroleum underground storage tank facility certificates for East Tennessee shall be issued in the month of September to owner/operators for petroleum underground storage tanks in the following counties:

Johnson, Sullivan, Carter, Washington, Unicoi, Hancock, Hawkins, Greene, Claiborne, Grainger, Hamblen, Cocke, Scott, Campbell, Union, Anderson, Knox, Jefferson, Sevier, Morgan, Roane, Loudon, Blount, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, Sequatchie, Hamilton, Bradley, Polk, Franklin, and Marion.

The annual certificate shall be effective for one year, starting October 1 of the year to September 30 of the following year.

2. Petroleum underground storage tank facility certificates for Middle Tennessee shall be issued in the month of December to owner/operators for petroleum underground storage tanks in the following counties:

Stewart, Montgomery, Robertson, Sumner, Macon, Clay, Pickett, Houston, Hickman, Cheatham, Davidson, Wilson, Trousdale, Smith, Jackson, Overton, Fentress, Putnam, Cumberland, White, DeKalb, Van Buren, Warren, Cannon, Rutherford, Williamson, Dickson, Humphreys, Perry, Wayne, Lewis, Lawrence, Maury, Giles, Marshall, Lincoln, Moore, Bedford, and Coffee.

The annual certificate shall be effective for one year, starting January 1 of the year to December 31 of the same year.

3. Petroleum underground storage tank facility certificates for West Tennessee shall be issued in the month of March to owner/operators for petroleum underground storage tanks in the following counties:

Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll, Benton, Lauderdale, Tipton, Shelby, Haywood, Fayette, Madison, Hardeman, Henderson, Chester, McNairy, Decatur, and Hardin.

The annual certificate shall be effective for one year, starting April 1 of the year to March 31 of the following year.

(7) Unlawful Action.

It shall be unlawful to put petroleum into underground storage tanks and/or tank compartments at a facility without a current petroleum underground storage tank facility certificate. This is a violation for the person putting petroleum into the underground storage tank and/or tank compartment as well as for the person having product put into the underground storage tank and/or tank compartment.

(8) Removal of Certificates.

The Division may remove the petroleum underground storage tank facility certificate from a facility if the owner and/or operator violates the provisions of T.C.A. §68-215-101 et seq. or any regulations promulgated subsequent to this Act. Such removal shall be authorized through issuance of a Commissioner's Order due to violations of the Act or regulations. The owner and/or operator may appeal the Commissioner's Order to the Board.

Rule 1200-1-15-.12 Indicia of Ownership is amended by deleting paragraph (2) in its entirety and renumbering the subsequent paragraphs accordingly.

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 26th day of July, 2005.

Deidre Warner
Notary Public

DEIDRE WARNER
NOTARY PUBLIC AT LARGE
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 27 day of July, 2005.

Riley C. Darnell
Secretary of State

By:

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