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# Rulemaking Hearing Rule(s) Filing Form

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

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | Tennessee Department of Environment and Conservation                            |
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

| Chapter Number | Chapter Title   |
|----------------|---|
| 1200-01-15     | Underground Storage Tank Program                            |
| Rule Number    | Rule Title  |
| 1200-01-15-.01 | Program Scope, Definitions and Proprietary Information      |
| 1200-01-15-.02 | UST System: Installation and Operation                      |
| 1200-01-15-.03 | Notification, Reporting and Record Keeping                  |
| 1200-01-15-.04 | Release Detection   |
| 1200-01-15-.05 | Release Reporting, Investigation, and Confirmation          |
| 1200-01-15-.06 | Petroleum Release Response, Remediation and Risk Management |
| 1200-01-15-.07 | Out-of-Service UST Systems and Closure                      |
| 1200-01-15-.08 | Financial Responsibility                                    |
| 1200-01-15-.09 | Petroleum Underground Storage Tank Fund                     |
| 1200-01-15-.10 | Fee Collection  |
| 1200-01-15-.12 | Indicia of Ownership  |
| 1200-01-15-.14 | Record Retention by the Division                            |
| 1200-01-15-.15 | Petroleum Product Delivery                                  |

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

Chapter 1200-01-15  
Underground Storage Tank Program

Amendments

The Table of Contents for Chapter 1200-01-15 is amended by deleting and replacing the rule names for rule 1200-01-15-.09 and rule 1200-01-15-.10. The Table of Contents for Chapter 1200-01-15 is further amended by adding a new rule, 1200-01-15-.15, and rule title. The amended Table of Contents reads as follows:

|                |   |                |   |
|----------------|---|----------------|---|
| 1200-01-15-.01 | Program Scope, Definitions and Proprietary Information      | 1200-01-15-.09 | Petroleum Underground Storage Tank Fund |
| 1200-01-15-.02 | UST System: Installation and Operation                      | 1200-01-15-.10 | Fee Collection                          |
| 1200-01-15-.03 | Notification, Reporting and Record Keeping                  | 1200-01-15-.11 | Appeals                                 |
| 1200-01-15-.04 | Release Detection   | 1200-01-15-.12 | Indicia of Ownership                    |
| 1200-01-15-.05 | Release Reporting, Investigation, and Confirmation          | 1200-01-15-.13 | Voluntary Registry                      |
| 1200-01-15-.06 | Petroleum Release Response, Remediation and Risk Management | 1200-01-15-.14 | Record Retention by the Division        |
| 1200-01-15-.07 | Out-of-Service UST Systems and Closure                      | 1200-01-15-.15 | Petroleum Product Delivery              |
| 1200-01-15-.08 | Financial Responsibility                                    |                |   |

Subparagraph (c) of paragraph (2) Program Scope: Applicability of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is deleted in its entirety and replaced with the following:

(c) Deferrals – Emergency generator UST systems.

1. Except as provided for in parts 2 and 3 of this subparagraph, release detection requirements in rule 1200-01-15-.04 do not apply to any UST system that stores fuel solely for use by emergency power generators.
2. New tanks or pressurized piping components of an emergency generator UST system installed on or after July 24, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-01-15-.02(2)(a) and (b).
3. Tank or piping components of an emergency generator UST system replaced on or after July 24, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-01-15-.02(2)(a) and (b) and (6). However, if the replacement piping meets the requirements for suction piping set forth in rule 1200-01-15-.04(2)(b)2, the piping components do not have to be secondarily contained.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is further amended by adding new definitions for the terms “Annual aggregate”, “Assets”, “Bond rating agency”, “Chief

executive office", "Face amount", "Financial statements", "Financial strength ratios", "Penal sum", and "Property improvements" and inserted in alphabetical order, which shall read as follows:

"Annual aggregate" means the total amount of financial responsibility available to cover all obligations that might occur in one year.

"Assets" means properties, tangible or intangible, owned by a business enterprise that have monetary value.

"Bond rating agency" means a financial service entity, such as Moody's and Standard and Poor's, which provide ratings with respect to the overall quality of corporately issued bonds as measured by the safety of the principal and the interest. The ratings are used as indicators of a business' ability to self-assure.

"Chief executive officer" means:

1. In the case of a company or corporation, the highest ranking executive officer within a company or corporation who has responsibility for overall management of its day-to-day affairs under the supervision of a board of commissioners. The term chief executive officer may indicate an officer with dual responsibilities such as chief executive officer and president or chairman of the board and chief executive officer. The chief executive officer makes recommendations to the board on business policy and proposal but can also take specific actions on subsidiary matters. The chief executive officer also appoints most other officers of the corporation with the approval of the board of commissioners.
2. In the case of local government tank owners and operators or guarantors, the individual with the overall authority and responsibility for the collection, disbursement and use of funds by the local government.

"Face amount" or "face value" means the total amount the insurer is obligated to pay under an insurance policy.

"Financial statements" means financial performance data compiled by the subject business that have undergone the review and evaluation of an independent certified public accountant for the purpose of assessing the conformity of the business' accounting practices with generally accepted accounting principles (GAAP). The independent Certified Public Accountant (CPA), issues a statement summarizing his/her assessment or findings.

"Financial strength ratios" mean a financial comparison of the relationship of any two or more performance indicators of a business with the industry standard for the relationship between such performance indicators. The calculation of these ratios and their subsequent comparison to industry norms can be helpful in assessing the ability of a business to provide self-assurance to meet the financial assurance requirements of this rule. These regulations utilize the following three ratios to evaluate a business's ability to self assure:

1. "Total liabilities to net worth" means a ratio that expresses the relationship between capital contributed by creditors and capital contributed by owners. If debt is substantial relative to equity, it means that a relatively small decrease in the value of assets could wipe out the owner's equity and remove protection from creditors who could force the business into bankruptcy.
2. "Net income, depreciation, depletion and amortization to total liabilities" means a ratio that expresses the ability of a business to service its debt, long term and short term, from cash flow from business operations without borrowing money for the repayment of debt.
3. "Current assets to current liabilities" means a ratio that is used to measure the short term solvency of a business. It is the most commonly used ratio and indicates the extent to which the claims of short-term creditors are covered by assets expected to be converted to cash in a period roughly corresponding to the maturity of the claim.

"Penal sum" means a sum to be paid as a penalty especially under the terms of a bond.

"Property improvements" in the context of fund reimbursement includes, but is not limited to, petroleum dispensing equipment, canopies, signage, buildings and outbuildings, underground storage tanks, asphalt and concrete.

In paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information the terms "Controlling interest", "Eligible owner", "Flexible piping", and "Substantial business relationship" and the associated definitions are deleted.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is amended by deleting the definition of the term "Financial reporting year" in its entirety and replacing it with the following:

"Financial reporting year" means the annual period for which a business compiles its performance data for the purpose of the assessment of the business as "a going concern" by its managers, investors, creditors, and government regulators.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is amended by deleting the definition of the term "Impacted drinking water" in its entirety and replacing it with the following:

"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.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is amended by deleting the definition of the term "Legal defense cost" in its entirety and replacing it with the following:

"Legal defense cost" means any expense that an owner or operator, petroleum site owner, or provider of financial assurance incurs in defending against claims or actions brought:

1. By EPA or a state 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.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is further amended by deleting the definition of the term "Provider of financial assurance" in its entirety and replacing it with the following:

"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 1200-01-15-.08(4)(a), including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the State of Tennessee.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is further amended by deleting the definition of the term "Repair" in its entirety and replacing it with the following:

"Repair" means:

1. In the context of UST system operation, to restore the tank or UST system component that has caused the release of petroleum from the UST system;

2. In the context of replacement of piping on or after July 24, 2007, restoration of a portion of piping in lieu of replacement of an entire piping run authorized by the Division in writing; or
3. In the context of fund eligibility of property improvements, restoration of a property improvement to the position and condition it was in immediately prior to removal for the purpose of remediation of the contamination caused by a leaking petroleum underground storage tank system.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is further amended by deleting the definition of the term "Termination" in its entirety and replacing it with the following:

"Termination" in the context of financial responsibility means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

Authority: T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-108; and T.C.A. § 68-215-113.

Subparagraph (c) of paragraph (1) Installation of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

- (c) All tanks, pressurized piping, suction piping that does not meet the requirements of rule 1200-01-15-.04(2)(b)2(i) through (iii), and/or motor fuel dispensers installed on or after July 24, 2007, shall be secondarily contained in accordance with paragraph (2) of this rule.

Part 1 of subparagraph (d) of paragraph (1) Installation of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

1. Petroleum shall not be placed into an underground storage tank, tank compartment and/or UST system until such time as a notification form has been submitted to the Division in accordance with part 1 of subparagraph (a) of this paragraph.

Subparagraph (b) Piping of paragraph (2) Secondary Containment of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

- (b) Piping. Pressurized piping or suction piping that does not meet the requirements of rule 1200-01-15-.04(2)(b)2(i) through (iii) that is required to be secondarily contained in accordance with rule 1200-01-15-.01(2)(c), with subparagraphs (1)(c) of this rule, or with paragraph (6) of this rule shall comply with the following:
  1. Piping shall comply with one of the following:
    - (i) Piping shall be one hundred percent (100 %) double-walled; or
    - (ii) Piping shall be secondarily contained with single-walled piping ends that terminate in tank and dispenser sumps that meet the requirements of parts 1 through 3 of subparagraph (c) of this paragraph;
  2. Piping shall meet the interstitial monitoring requirements of rule 1200-01-15-.04(3)(g)1;
  3. Piping shall prevent the release of petroleum to the environment for the operational life of the piping;
  4. Piping shall contain a release until detected and removed; and
  5. Piping shall be monitored for a release at least every thirty (30) days.

Subparagraph (b) Operating requirements of paragraph (3) Spill And Overfill Prevention of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

(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. Each spill catchment basin shall be provided with a lid that is in good condition and is not in contact with the fill cap.
3. Owners and/or 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.
4. 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. Unless directed or allowed to do otherwise by the Division the log shall be maintained in a format established by the Division and in accordance with guidance provided by the Division.
5. The owner and/or operator shall report, investigate, and clean up any spills and overfills in accordance with rule 1200-01-15-.05(4).

Two new subparts, to be designed as subparts (iv) and (v), are added to part 3 of subparagraph (a) Tank construction of paragraph (4) Corrosion Protection of rule 1200-01-15-.02 UST Systems: Installation and Operation and read as follows:

- (iv) Unless directed to do otherwise by the Division, a tank shall be permanently closed in accordance with rule 1200-01-15-.07 if the internal inspection required in subpart (ii) of this part determines:
  - I. The tank is not structurally sound; and/or
  - II. The lining is not performing in accordance with original design specifications:
- (v) Unless directed to do otherwise by the Division, a tank constructed of steel that was lined on or before December 22, 1999, to which a cathodic protection system was not installed on or before December 22, 2012, shall be permanently closed by December 22, 2012.

The language, which precedes part 1, in subparagraph (b) Piping construction of paragraph (4) Corrosion Protection of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted and replaced with the following [ parts 1 through 5 remain unchanged ]:

- (b) Piping construction. Piping that routinely contains petroleum and is in contact with the ground or with standing water or other liquids shall be properly designed and constructed and/or properly upgraded. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water. Piping shall also utilize at least one of the following methods of corrosion protection:

Part 1 of subparagraph (c) Operation and maintenance of corrosion protection of paragraph (4) Corrosion Protection of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

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 or with standing water or other liquids. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water.

Subpart (iii) of part 2 of subparagraph (c) Operation and maintenance of corrosion protection of paragraph (4) Corrosion Protection of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

- (iii) Test results shall be recorded in a format established by the Division, completed in accordance with guidance provided by the Division, and maintained by the owner and/or operator to demonstrate compliance with this subparagraph.

A new part, which is designated as part 6, is added to Subparagraph (c) Operation and maintenance of corrosion protection of paragraph (4) Corrosion Protection of rule 1200-01-15-.02 UST Systems: Installation and Operation and reads as follows:

6. UST systems with impressed current systems that have failed to provide continuous protection in accordance with part 1 of this subparagraph shall comply with this part in accordance with the following:
  - (i) For UST systems with impressed current systems which have been turned off or inoperable for a period of less than twelve (12) months, unless directed to do otherwise by the Division, the tanks and lines shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of rule 1200-01-15-.04. Another tightness test shall be conducted no later than six (6) months, but no sooner than three (3) months, following the return of the impressed current system to operation.
  - (ii) For UST systems with impressed current systems which have been turned off or inoperable for a period of twelve (12) months or more, unless directed to do otherwise by the Division, the tanks shall be permanently closed.

Subparagraph (a) of paragraph (6) Replacement of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

- (a) Tank owners and/or operators replacing any tanks, piping and/or motor fuel dispensers shall install secondary containment and interstitial monitoring for the replacement tanks, pressurized piping, and suction piping that does not meet the requirements of rule 1200-01-15-.04(2)(b)2(i) through (iii) and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule.

Subparagraph (c) of paragraph (6) Replacement of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

- (c) Unless determined to be a piping repair by the Division in accordance with subparagraph (d) of this paragraph, if piping is being replaced, all piping connected to that particular underground storage tank shall be removed and secondarily contained piping with interstitial monitoring shall be installed in accordance with paragraph (2) of this rule. However, if the replacement piping meets the requirements for suction piping set forth in rule 1200-01-15-.04(2)(b)2(i) through (iii), the piping does not have to be secondarily contained.

Part 2 of subparagraph (d) of paragraph (6) Replacement of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

2. Requests for Division authorization of piping repairs shall be submitted in writing. However, Division authorization shall not be required and the repair shall not be considered replacement if:
  - (i) The repair does not involve replacement of any piping; or
  - (ii) The repair is limited to replacement of a flexible connector;

Subparagraph (f) of paragraph (6) Replacement of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

- (f) Records documenting the replacement of tanks, piping and/or dispensers shall be maintained for the operational life of the UST system. Such records shall document compliance with the design criteria set forth in paragraph (2) of this rule. However, if the replacement piping meets the requirements for suction piping set forth in rule 1200-01-15-.04(2)(b)2(i) through (iii), the piping components do not have to be secondarily contained.

Subparagraph (c) of paragraph (7) Repairs Allowed of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

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

Part 2 of subparagraph (d) of paragraph (7) Repairs Allowed of rule 1200-01-15-.02 UST Systems: Installation and Operation is deleted in its entirety and replaced with the following:

2. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in rule 1200-01-15-.04(3)(d) through (h); however, on or after January 1, 2009, the monitoring methods in part (3)(d)1, subparagraph (3)(f), and parts (3)(g)2 and 3 of rule 1200-01-15-.04 shall no longer meet the requirements of this rule; in addition, on or after January 1, 2010, the monitoring method in rule 1200-01-15-.04(3)(e) shall no longer meet the requirements of this rule; or

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

Paragraph (1) Notification Requirements of rule 1200-01-15-.03 Notification, Reporting And Record Keeping is amended by deleting the "Note" contained in brackets [Note:...] at the end of subparagraph (a).

Subparagraph (b) of paragraph (1) Notification Requirements of rule 1200-01-15-.03 Notification, Reporting And Record Keeping deleted in its entirety and replaced with the following:

- (b) Owners 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.

Subparagraphs (d) and (e) of paragraph (1) Notification Requirements of rule 1200-01-15-.03 Notification, Reporting And Record Keeping are deleted in their entirety and replaced with the following:

- (d) All owners 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;
  - (ii) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;
  - (iii) The installation has been inspected and approved by the Division;
  - (iv) All work listed in the manufacturer's installation checklist has been completed; or
  - (v) The owner has complied with another method for ensuring compliance with rule 1200-01-15-.02(1) that has been determined by the Division prior to installation to be no less protective of human health and the environment.
- (e) All owners 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 1200-01-15-.02(1).

Paragraph (2) Reporting and Record Keeping of rule 1200-01-15-.03 Notification, Reporting And Record Keeping is amended by changing the reference to the statute from "T.C.A. § 68-215-107" to "T.C.A. § 68-215-101 et seq." in the wording before subparagraph (a), so that the wording before subparagraph (a) reads as follows:

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 and/or operator in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. § 68-215-101 et seq.

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

Subparagraph (g) of paragraph (1) General Requirements For Release Detection of rule 1200-01-15-.04 Release Detection is deleted in its entirety and replaced with the following:

- (g) Under-dispenser containment sumps for motor fuel dispensers required by rule 1200-01-15-.02(1)(c) or (6) to be secondarily contained in accordance with rule 1200-01-15-.02(2)(c) shall be visually inspected at least quarterly, that is, at least once every three (3) months. A log of these inspections, showing at a minimum the last twelve (12) months, shall be maintained by the owner and/or operator. The visual inspection shall check for the presence of petroleum and/or water in the sumps. If liquid is observed in the dispenser sump, the liquid shall be removed from the sump in such a manner as to prevent the release of petroleum into the environment.

A new part 4 is added to subparagraph (a) Tank of paragraph (2) Requirements For Petroleum UST Systems of rule 1200-01-15-.04 Release Detection and reads as follows:

4. On or after January 1, 2010, the monitoring method in part (3)(e) of this rule shall no longer meet the requirements of this rule.

Part 7 of subparagraph (e) Vapor monitoring of paragraph (3) Methods Of Release Detection For Tanks of rule 1200-01-15-.04 Release Detection is deleted in its entirety and replaced with the following:

7. Monitoring wells are:
  - (i) Clearly marked and secured to avoid unauthorized access and tampering;

- (ii) Maintained in a manner that reduces risk of environmental contamination; and
- (iii) Properly abandoned in accordance with Division guidance when the monitoring wells are no longer used for release detection, unless:
  - (I) The wells are located in the tank pit and are used as observation wells; or
  - (II) The wells are located outside the tank pit and can reasonably be utilized for initial response in accordance with rule 1200-01-15-.06(3)(d) and/or hazard management in accordance with rule 1200-01-15-.06(4)(b)3 in the event of a release petroleum from the UST system; and

Part 9 of subparagraph (f) Groundwater monitoring of paragraph (3) Methods Of Release Detection For Tanks of rule 1200-01-15-.04 Release Detection is deleted in its entirety and replaced with the following:

- 9. Monitoring wells are:
  - (i) Clearly marked and secured to avoid unauthorized access and tampering;
  - (ii) Maintained in a manner that reduces risk of environmental contamination; and
  - (iii) Properly abandoned in accordance with Division guidance when the monitoring wells are no longer used for release detection, unless:
    - (I) The wells are located in the tank pit and are used as observation wells; or
    - (II) The wells are located outside the tank pit and can reasonably be utilized for initial response in accordance with rule 1200-01-15-.06(3)(d) and/or hazard management in accordance with rule 1200-01-15-.06(4)(b)3 in the event of a release petroleum from the UST system; and

Part 1 of subparagraph (g) Interstitial monitoring of paragraph (3) Methods Of Release Detection For Tanks of rule 1200-01-15-.04 Release Detection as well as the introductory language which preceded part 1 is deleted in its entirety and replaced with the following (parts 2 and 3 are unchanged):

- (g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around 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 monitoring method shall:
    - (i) Be able to detect a release through the inner wall in any portion of the UST system that routinely contains petroleum;
    - (ii) Provide continuous monitoring; and
    - (iii) Be installed, maintained and operated in accordance with guidance provided by the Division.

Subparagraph (i) of paragraph (3) Methods Of Release Detection For Tanks of rule 1200-01-15-.04 Release Detection is deleted in its entirety and replaced with the following:

- (i) Other methods of release detection:
  - 1. Prior to use by the tank owner and/or operator, Division approval shall be obtained in writing for any other type of release detection method, or combination of methods.
    - (i) The written approval shall be kept on file at the facility or at the place of business of the tank owner and/or operator while the method is being utilized for release detection and for at least twelve months thereafter. If the owner and/or operator is unable to maintain the approval document due to closure of the facility, the approval document shall be submitted to the Division with the closure records submitted in accordance with rule 1200-01-15-.07(7)(c).
    - (ii) The written approval shall be valid for two years. The written approval must be renewed every two years thereafter.
  - 2. The Division may approve another method if that method has been third party certified to effectively and consistently detect releases. In reviewing methods for Division approval, the Division shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected as set forth in the third party certification.
  - 3. If the method has been approved in writing by the Division, the owner and/or operator shall comply with any conditions imposed by the Division on its use to ensure the protection of human health and the environment.

Subparagraph (a) Automatic line leak detectors of paragraph (4) Methods Of Release Detection For Piping of rule 1200-01-15-.04 Release Detection is deleted in its entirety and replaced 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 guidance provided by the Division.

Subparagraph (c) Applicable tank methods of paragraph (4) Methods Of Release Detection For Piping of rule 1200-01-15-.04 Release Detection is deleted in its entirety and replaced with the following:

- (c) Applicable tank methods. Any of the methods in subparagraphs (3)(e) through (i) of this rule may be used if they are designed to detect a release from any portion of the underground piping that routinely contains petroleum, except that the method in subparagraph (3)(f) and in part 2 of subparagraph (3)(g) of this rule shall not satisfy the requirements of this rule on or after January 1, 2009 and the method in subparagraph (3)(e) shall not satisfy the requirements of this rule on or after January 1, 2010.

Subparagraphs (a) and (b) of Paragraph (5) Release Detection Record Keeping of rule 1200-01-15-.04 Release Detection are by deleted in their entirety and replaced with 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; for a release detection method that has been approved by the Division under the provisions of subparagraph (3)(i) of this rule, the Division's written approval shall be maintained by the tank owner and/or operator while the method is being utilized for release detection and for at least twelve months thereafter;

- (b) The results of any sampling, testing, or monitoring shall be maintained for at least one (1) year except that the results of tank or line tightness testing conducted in accordance with subparagraphs (3)(c) or (4)(b) of this rule shall be retained until the next test is conducted; and

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

Paragraph (1) Reporting Of Suspected Releases of rule 1200-01-15-.05 Release Reporting, Investigation And Confirmation is deleted in its entirety and replaced with the following:

- (1) Reporting Of Suspected Releases.
  - (a) Owners and/or operators of UST systems shall report to the Division within seventy-two (72) hours and follow the procedures in rule 1200-01-15-.05(3) for any of the following conditions:
    - 1. The discovery by owners and/or operators or others of released petroleum at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).
    - 2. Unusual operating conditions observed by owners and/or operators (such as the erratic behavior of petroleum dispensing equipment, the sudden loss of petroleum from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and
    - 3. Monitoring results from a release detection method required under rule 1200-01-15-.04(2) that indicate a release may have occurred unless:
      - (i) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring within thirty (30) days does not confirm the initial result; or
      - (ii) In the case of inventory control, a second consecutive month of data does not confirm the initial result.
  - (b) In order for the tank owner, tank operator or petroleum site owner to receive reimbursement from the fund, an Application for Fund Eligibility shall be filed within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with this rule.
  - (c) To satisfy the requirements for fund coverage in rule 1200-01-15-.09(10)(c), an owner and/or operator shall submit release detection records as well as documentation to demonstrate compliance with corrosion protection and spill and overfill and secondary containment requirements within thirty (30) days of the discovery of a suspected release.

Paragraph (3) Release Investigation And Confirmation Steps of rule 1200-01-15-.05 Release Reporting, Investigation And Confirmation is deleted in its entirety and replaced with the following:

- (3) Release Investigation And Confirmation Steps. Unless corrective action is initiated in accordance with rule 1200-01-15-.06, owners and/or operators shall immediately investigate and confirm all suspected releases of petroleum requiring reporting under rule 1200-01-15-.05(1) within thirty (30) days in accordance with this paragraph.
  - (a) System test. Owners and/or operators shall conduct tests (according to the requirements for tightness testing in rule 1200-01-15-.04(3)(c) and rule 1200-01-15-.04(4)(b)) that determine whether a leak exists in that portion of the tank that routinely contains petroleum, or the attached delivery piping, or both.

1. Owners and/or operators shall repair, replace or upgrade the UST system, and begin corrective action in accordance with rule 1200-01-15-.06 if the test results for the system, tank, or delivery piping indicate that a leak exists.
  2. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.
  3. Owners and/or operators shall conduct a site check as described in paragraph (b) of this paragraph if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.
- (b) Site check. Owners and/or operators shall measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and/or operators must consider the nature of the stored petroleum, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.
1. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and/or operators must begin corrective action in accordance with rule 1200-01-15-.06;
  2. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.
- (c) Field activities and environmental data. During the course of the release investigation and confirmation activities in subparagraphs (a) and (b) of this paragraph, a tank owner and/or operator shall comply with the following:
1. Tank owners and/or operators shall notify the Division at least one (1) working day in advance of systems test or site check activities.
  2. Soil borings and/or monitoring wells shall be drilled, converted to monitoring wells and/or abandoned in accordance with guidance provided by the Division.
  3. Environmental samples.
    - (i) Samples shall be collected, labeled, handled, and transported in accordance with guidance and instructions provided by the Division. Samples shall satisfy any requirements specific to the required laboratory method that is used to analyze the samples.
    - (ii) Samples shall be analyzed using a method recognized by the United States Environmental Protection Agency or another method that has been approved by the Division prior to the analysis.
    - (iii) Sample analysis reports submitted to the Division shall be original documents unless otherwise specified by the Division. Such reports shall include, but not be limited to, the following information:
      - (I) The facility identification number assigned to the UST facility by the Division;
      - (II) The sampling point, including depth and the unique combination of letters or numbers assigned to the boring or monitoring well at the time that boring or well was installed;
      - (III) The sample collection date;

- (IV) The date the sample analysis was completed;
- (V) The analytical method, including the detection limit for the method, utilized to analyze the sample;
- (VI) The dilution factor used on the sample; and
- (VII) The analytical results expressed as a concentration of the chemical(s) of concern.

Paragraph (4) Reporting And Cleanup Of Spills And Overfills of rule 1200-01-15-.05 Release Reporting, Investigation And Confirmation is deleted in its entirety and replaced with the following:

- (4) Reporting And Cleanup Of Spills And Overfills.
  - (a) Owners and/or operators of UST systems shall contain and immediately clean up a spill or overflow and report to the Division within seventy-two (72) hours and begin corrective action if a spill or overflow of petroleum results in a release to the environment that exceeds twenty-five (25) gallons or that causes a sheen on nearby surface water; or
  - (b) Owners and operators of UST systems shall contain and immediately clean up a spill or overflow of petroleum that is less than twenty-five (25) gallons. If cleanup cannot be accomplished within seventy-two (72) hours owners and/or operators must immediately notify the Division.

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

Subparagraph (a) of paragraph (1) General requirements of rule 1200-01-15-.06 Petroleum Release Response, Remediation And Risk Management is deleted and replaced with the following:

- (a) Owners and/or operators of petroleum UST systems shall, in response to a confirmed release from a UST system, comply with the requirements of this rule. A petroleum site owner who elects to perform release response activities shall comply with the requirements of this rule to receive authorized disbursements from the fund in accordance with rule 1200-01-15-.09(5)(a).

Paragraph (3) Initial Response of rule 1200-01-15-.06 Petroleum Release Response, Remediation And Risk Management is deleted in its entirety and replaced with the following:

- (3) Initial Response. Upon confirmation of a release in accordance with rule 1200-01-15-.05(3) or after a release from a UST system is identified in any other manner, owners and/or operators shall, unless directed to do otherwise by the Division, perform the following initial response actions:
  - (a) Report the release to the Division within seventy-two (72) hours (for example, by telephone, facsimile machine or electronic mail);
  - (b) Take immediate actions to prevent any further release of the petroleum into the environment including, but not limited to:
    1. If the source of the release has not been determined and a systems test has not been performed under the authority of rule 1200-01-15-.05(3)(a), a systems test may be required by the Division; if required, the test shall be conducted in accordance with rule 1200-01-15-.04(3)(c) and rule 1200-01-15-.04(4)(b);
    2. Removing as much of the petroleum from the UST system as is necessary to prevent any further release;

3. Taking the UST system out of service until piping or ancillary equipment associated with the release are replaced or repaired; and/or
  4. Preventing the placing of petroleum product into the leaking UST system;
- (c) Take immediate action to identify fire, explosion, and/or vapor hazards. Report and manage any hazards identified in accordance with paragraph (4) of this rule;
  - (d) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the petroleum into surrounding soils and/or ground water;
  - (e) Perform a water use survey in accordance with guidance provided by the Division. All drinking water supplies, including both wells and springs, located within one-tenth (0.1) mile of the petroleum site shall be investigated and sampled for the presence of a release. The Division may require additional investigation and sampling of drinking water supplies in the area, based on hydro-geological conditions or other physical characteristics in the area. Impacted drinking water shall be reported in accordance with subparagraph (4)(a) of this rule and addressed as required in part (4)(b)1 of this rule; and
  - (f) In order for the tank owner, tank operator or petroleum site owners to receive reimbursement from the fund, an Application for Fund Eligibility shall be filed:
    1. Within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with rule 1200-01-15-.05; or
    2. Within sixty (60) days of a release which was identified in any manner other than the process for confirmation of a suspected release.

Subpart (ii) Free Product Investigation Report of part 3 Free Product of subparagraph (b) Abatement measures of paragraph (4) Hazard Management of rule 1200-01-15-.06 Petroleum Release Response, Remediation And Risk Management is deleted in its entirety and replaced with the following:

- (ii) Free Product Investigation. The Division may require an investigation to be made in response to the discovery of free product at or in the vicinity of the petroleum site.
  - (I) Free Product Investigation Plan.
    - I. If required by the Division, the Free Product Investigation Plan shall be submitted to the Division in a format and with guidance provided by the Division. The Free Product Investigation Plan shall be submitted in accordance with a schedule established by the Division. The plan shall include, but not be limited to:
      - A. A proposal for monitoring well installation and placement; and
      - B. A cost proposal.
    - II. Upon Division approval of the Free Product Investigation Plan, the tank owner and/or operator shall implement the approved plan in accordance with the provisions of the plan.
  - (II) Free Product Investigation Report. A report shall be prepared and submitted to the Division in a format and in accordance with a schedule established by the Division. Unless directed otherwise by the Division, the report shall include, but not be limited to the following:

- I. Site characteristics;
- II. The areal and vertical extent of free product;
- III. An estimation of the volume of free product; and
- IV. The feasibility of recovery of the free product.

Subparagraph (c) Reporting of paragraph (4) Hazard Management of rule 1200-01-15-.06 Petroleum Release Response, Remediation And Risk Management is deleted in its entirety and replaced with the following:

- (c) Reporting. Tank owners and/or operators shall submit a Hazard Management Report detailing the actions that have been taken to address the hazards discovered at or in the vicinity of the petroleum site. Hazard Management Reports shall be submitted in a format and in accordance with a schedule established by the Division and shall be completed in accordance with guidance provided by the Division. Such reports shall include, but not be limited to the following:
  1. An Initial Response Hazard Management Report;
  2. An Impacted Drinking Water Hazard Management Report;
  3. A Vapor Hazard Management Report; or
  4. A Free Product Hazard Management Report.

The language in paragraph (7) Contamination Case Closure or No Further Action of rule 1200-01-15-.06 Petroleum Release Response, Remediation And Risk Management which precedes subparagraph (a) is deleted in its entirety and replaced with the following (subparagraphs (a) through (c) remain unchanged):

- (7) Consideration of Additional Corrective and/or Risk Management Measures. If the maximum concentrations of the chemicals of concern at the site are above the RBCLs and/or the SSCLs for the site as determined in the Risk Analysis Report section of the Initial Site Characterization Report, then it may be necessary to consider additional remediation and/or risk management measures such as those outlined in paragraphs (8) through (10) of this rule.

Authority: T.C.A. §68-215-107.

Paragraph (2) Substandard UST Systems of Rule 1200-01-15-.07 Out-Of-Service UST Systems And Closure is deleted in its entirety and replaced with the following:

- (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 1200-01-15-.02(3) and (4) shall permanently close the substandard UST system in accordance with paragraphs (4) and (5) of this rule, except that parts (4)(a)6 and 7 of this rule shall not apply to a substandard UST system. The owner and/or operator of a substandard UST system shall complete the permanent closure, including submittal of the Permanent Closure Report, within sixty (60) days of Division approval of the Application for Permanent Closure of Underground Storage Tanks.

Authority: T.C.A. § 68-215-101 et seq., and T.C.A. § 68-215-107.

Rule 1200-01-15-.08 Financial Responsibility is deleted in its entirety and replaced with the following:

#### 1200-01-15-.08 FINANCIAL RESPONSIBILITY.

- (1) Purpose. A tank owner or operator is required to pay for corrective action and/or for compensating third parties for bodily injury or property damages caused by accidental releases arising from the operation of petroleum underground storage tank systems. Furthermore, a tank owner or operator is required to demonstrate financial responsibility or the ability to pay for

corrective action and/or for compensating third parties for bodily injury or property damages caused by accidental releases arising from the operation of petroleum underground storage tank systems. The purpose of this rule is to authorize the use of certain financial assurance mechanisms to satisfy the requirement to demonstrate financial responsibility.

(2) Applicability.

- (a) This rule applies to owners and/or operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this paragraph.
- (b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are deemed to meet financial responsibility requirements without having to meet the requirements of this rule.
- (c) The requirements of this rule do not apply to owners and/or operators of any UST system described in rule 1200-01-15-.01(2)(b).
- (d) If the owner and the operator of a petroleum underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

(3) Amount And Scope Of Required Financial Responsibility.

- (a) Per occurrence amounts. Owners or operators of petroleum underground storage tank systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per occurrence amounts:
  - 1. For owners or operators of petroleum underground storage tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand (10,000) gallons of petroleum per month based on annual throughput for the previous calendar year: one million dollars (\$1,000,000).
  - 2. For all other owners or operators of petroleum underground storage tank systems: five hundred thousand dollars (\$500,000).
- (b) Annual aggregate amounts. Owners or operators of petroleum underground storage tank systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems in at least the following annual aggregate amounts:
  - 1. For owners or operators of one (1) to one hundred (100) petroleum underground storage tank compartments: one million dollars (\$1,000,000).
  - 2. For owner or operators of one hundred one (101) or more petroleum underground storage tank compartments: two million dollars (\$2,000,000).
- (c) The amounts of financial assurance required under this paragraph exclude legal defense costs.
- (d) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(4) Allowable Financial Assurance Mechanisms And Combinations Of Mechanisms.

- (a) A tank owner or operator may use one of following financial assurance mechanisms to satisfy the requirements of paragraph (3) of this rule:

1. Tennessee Petroleum Underground Storage Tank Fund in accordance with paragraph (5) of this rule and rule 1200-01-15-.09;
2. Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;
3. Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;
4. Liability Insurance in accordance with paragraph (8) of this rule;
5. Surety Bond or Performance Bond in accordance with paragraph (9) of this rule;
6. Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule;
7. Personal Bond Supported by Certificate of Deposit in accordance with paragraph (11) of this rule;
8. Trust Fund and Agreement in accordance with paragraph (12) of this rule;
9. Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or
10. Local Government Financial Test in accordance with paragraph (14) of this rule.

(b) Standby Trust Fund.

1. If a tank owner or operator uses one of the financial assurance mechanisms listed in this part to meet the requirements of paragraph (3) of this rule, a Standby Trust Fund and Agreement shall be established in accordance with paragraph (15) of this rule at the time the mechanism is established.
  - (i) Liability Insurance in accordance with paragraph (8) of this rule;
  - (ii) Surety Bond or Performance Bond in accordance with paragraph (9) of this rule; or
  - (iii) Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule.
2. If a tank owner or operator uses one of the financial assurance mechanisms listed in this part to meet the requirements of paragraph (3) of this rule, a Standby Trust Fund and Agreement shall be established in accordance with paragraph (15) of this rule if the requirements of the financial test can no longer be met and the owner or operator fails to provide an alternative financial assurance mechanism that meets the requirements of this rule.
  - (i) Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;
  - (ii) Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;
  - (iii) Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or
  - (iv) Local Government Financial Test in accordance with paragraph (14) of this rule.

(c) Use of combinations of financial assurance mechanisms.

1. The following financial assurance mechanisms may be used in combination by a tank owner or operator to satisfy the requirements of subparagraphs (3)(a) and (b) of this rule:
  - (i) Tennessee Petroleum Underground Storage Tank Fund in accordance with paragraph (5) of this rule and rule 1200-01-15-.09;
  - (ii) Liability insurance in accordance with paragraph (8) of this rule;
  - (iii) Surety Bond or Performance Bond in accordance with paragraph (9) of this rule;
  - (iv) Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule;
  - (v) Personal Bond Supported by Certificate of Deposit in accordance with paragraph (11) of this rule; and
  - (vi) Trust Fund and Agreement in accordance with paragraph (12) of this rule.
  
2. The following financial assurance mechanisms shall not be used in combination by a tank owner or operator to satisfy the requirements of subparagraphs (3)(a) and (b) of this rule:
  - (i) Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;
  - (ii) Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;
  - (iii) Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or
  - (iv) Local Government Financial Test in accordance with paragraph (14) of this rule.
  
- (d) The amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subparagraphs (a) and (b) of paragraph (3) of this rule if the owner or operator uses separate mechanisms or separate combinations of mechanisms in accordance with subparagraph (c) of this paragraph to demonstrate financial responsibility for:
  1. Taking corrective action in accordance with rule 1200-01-15-.06; or
  2. Compensating third parties for bodily injury and property damage caused by accidental releases.
  
- (e) The tank owner or operator using a financial assurance mechanism other than the Tennessee Petroleum Underground Storage Tank Fund shall not be considered to have satisfied the financial assurance requirements of this rule until the financial assurance mechanism has been received and approved by the Commissioner.
  
- (f) These financial assurance mechanisms are established for use by the Division for taking corrective action or for paying third party claims in the event the owner or operator fails to take corrective actions or pay third party claims. The financial assurance mechanisms in this rule shall not be used by the owner or operator to satisfy the requirements of corrective action or third party liability claims with the exception of the Tennessee Petroleum Underground Storage Tank Fund authorized by paragraph (5) of this rule.

- (5) Tennessee Petroleum Underground Storage Tank Fund. Tank owners or operators may satisfy the requirements of paragraphs (3) of this rule by establishing fund eligibility in accordance with rule 1200-01-15-.09(3) and with the provisions of this paragraph.
- (a) Corrective action costs. Tank owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the Division in accordance with rule 1200-01-15-.09(3)(c).
1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in rule 1200-01-15-.09(6) at the time an Application for Fund Eligibility is submitted to the Division, the fund may be utilized to pay the deductible for taking corrective action.
    - (i) The tank owner or operator shall supply documentation of inability to pay the fund entry level or deductible for taking corrective action to the Commissioner upon request.
    - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action.
  2. If a fund eligible tank owner or operator fails, without sufficient cause, to perform the release response, remediation and/or risk management actions required in rule 1200-01-15-.06 on order of the Commissioner and fails, without sufficient cause to pay the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the Division, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action. In addition, pursuant to T.C.A. § 68-215-116, the Commissioner may seek a penalty in the amount of one hundred fifty percent (150%) of the costs expended by the fund as the result of the failure to take proper action.
  3. If a fund eligible tank owner or operator has been denied fund coverage of corrective action costs under the provisions of rule 1200-01-15-.09(10)(c) and the owner or operator claims financial inability to pay for part or all of the necessary corrective action, the fund may be utilized to pay for taking corrective action.
    - (i) The tank owner or operator shall supply documentation of inability to pay for corrective action to the Division upon request.
    - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount paid by the fund for taking corrective action.
- (b) Third party claims. Owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the amount of the applicable fund entry level or deductible amount for third party claims set forth in rule 1200-01-15-.09(6) at the time the Division receives an application for payment accompanied by the original or a certified copy of a final judgment in accordance with rule 1200-01-15-.09(12)(h).
1. If a fund eligible tank owner or operator cannot pay the amount of the applicable fund entry level or deductible amount for third party claims at the time an application for payment accompanied by the original or a certified copy of a final judgment is submitted to the Division in accordance with rule 1200-01-15-.09(12)(h), the fund may be utilized to pay the deductible for satisfying the third party claim.

- (i) The tank owner or operator shall supply documentation of their inability to pay the fund entry level or deductible for third party claims to the Division upon request.
    - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for satisfying the third party claim.
  - 2. If a fund eligible tank owner or operator fails, without sufficient cause, to pay the amount of the applicable fund entry level or deductible amount for a third party claim, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for third party damages.
- (6) Financial Test Of Self-Assurance. A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by passing a Financial Test of Self-Assurance in accordance with the provisions of this paragraph.
- (a) A Financial Test of Self-Assurance shall not be used in combination with other financial assurance mechanisms, and shall not be used in cases where an owner or operator has a parent company or any other entity holding majority control of its voting stock.
  - (b) The financial statements of the owner or operator shall be prepared in accordance with generally accepted accounting principles applicable to the United States, and an independent certified public accountant (CPA) shall verify the accuracy of the financial test data relative to the financial statements.
  - (c) In order to demonstrate that the owner or operator meets the requirements of the Financial Test of Self-Assurance as set forth in this paragraph, the Chief Executive Officer or the Chief Financial Officer of the business firm of the owner or operator shall complete and submit a notarized letter, including a Financial Test of Self-Assurance as required in subparagraph (d) of this paragraph, both initially and within ninety (90) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Executive Officer or the Chief Financial Officer of the business firm of the owner or operator shall be in accordance with guidance provided by the Division. The letter shall be in a format established by the Division.
  - (d) Both initially and annually, within ninety (90) days after the close of each succeeding fiscal year, the owner or operator shall demonstrate that the owner or operator has adequate financial strength to provide the guarantee required by subparagraphs (h) and (i) of this paragraph by passing the applicable financial test, that is, either Financial Test of Self-Assurance – Alternative I, completed in accordance with subparagraph (f) of this paragraph, or Financial Test of Self-Assurance – Alternative II, completed in accordance with subparagraph (g) of this paragraph.
  - (e) The financial test alternatives, a comparison of business performance ratios, financial strength ratios, credit ratings, net worth, assets, operating revenues, and bond ratings relative to fixed criteria, shall be in a format established by the Division and completed in accordance with guidance provided by the Division.
  - (f) To use the Financial Test of Self-Assurance - Alternative I as a financial assurance mechanism, the tank owner or operator shall meet the following conditions:
    - 1. The tank owner or operator shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.

2. The tank owner or operator shall have a tangible net worth at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the owner or operator for all other environmental programs or agencies in the State of Tennessee, other states, and federal agencies.
3. The tank owner or operator shall have assets located in the United States which shall amount to at least ninety percent (90%) of the total assets of the owner or operator or at least six (6) times the current amounts of financial assurance covered by the owner or operator through the use of the Financial Test of Self-Assurance - Alternative I.
4. The tank owner or operator shall satisfy at least two (2) of the three (3) ratio standards in subparts (i) through (iii) of this part:
  - (i) The ratio of total liabilities to net worth shall equate to less than 1.5;
  - (ii) The ratio of the sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000) to the total liabilities shall equate to greater than 0.10; and/or
  - (iii) The ratio of current assets to current liabilities shall equate to greater than 1.5.
5. The tank owner or operator shall report the firm's financial position to Dun and Bradstreet annually and have a financial strength rating of 4A or 5A and a composite credit appraisal of 1 by Dun and Bradstreet.
6. The tank owner or operator shall comply with one of the following:
  - (i) The owner or operator shall file financial statements with the U.S. Securities and Exchange Commission annually; or
  - (ii) The owner or operator shall file complete financial statements with the Energy Information Administration annually.
7. The fiscal year-end financial statements of the owner or operator:
  - (i) Shall be examined by an independent certified public accountant (CPA);
  - (ii) Shall be accompanied by the CPA's report of the examination; and
  - (iii) Shall not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
8. Annually the owner or operator shall submit a special report prepared by a CPA. The report shall include statements by the CPA that:
  - (i) The CPA has reviewed the data, specified as having been derived from the latest year-end financial statements of the owner or operator, in the Letter from the Chief Executive Officer or the Chief Financial Officer required by subparagraph (c) of this paragraph;
  - (ii) The CPA has compared the data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements; and
  - (iii) The CPA's comparison of data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-

end financial statements revealed nothing to cause the CPA to believe that the data in the Letter from the Chief Executive Officer or the Chief Financial Officer should be adjusted.

- (g) To use the Financial Test of Self Assurance - Alternative II as a financial assurance mechanism, the tank owner or operator shall meet each of the following conditions:
1. The tank owner or operator shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.
  2. The tank owner or operator shall have a tangible net worth of at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the owner or operator for other environmental programs or agencies of the State of Tennessee, other states, and/or federal agencies.
  3. Assets of the tank owner or operator located in the United States shall amount to at least ninety percent (90%) of the total assets of the owner or operator or at least six (6) times the current amounts of financial assurance covered by the owner or operator through the use of this Financial Test of Self-Assurance – Alternative II.
  4. The tank owner or operator shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.
  5. For purposes of the Financial Test of Self Assurance – Alternative II, bond ratings shall apply to outstanding, rated bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, and that have been issued directly by the owner or operator. Ratings on revenue bonds shall not be used in the financial test. In order to pass the Financial Test of Self-Assurance - Alternative II, the owner or operator shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.
  6. The owner or operator shall file financial statements annually with the U.S. Securities and Exchange Commission.
  7. The fiscal year-end financial statements of the owner or operator shall be examined by an independent certified public accountant (CPA) and shall be accompanied by the CPA's report of the examination. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  8. The owner or operator shall obtain and submit to the Commissioner a special report by a CPA stating that:
    - (i) The CPA has compared the data that the Letter from the Chief Executive Officer or the Chief Financial Officer specifies as having been derived from the latest year-end financial statements of the owner or operator with the amounts in such financial statements; and
    - (ii) In connection with the comparison in subpart (i) of this part, no matters came to the attention of the CPA which caused the CPA to believe that the specified data should be adjusted.
- (h) In accordance with subparagraph (i) of this paragraph an owner or operator shall guarantee that the owner or operator can pay for and carry out corrective actions and/or

compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

- (i) Annually, the owner or operator shall complete and submit a notarized written guarantee stating that the said owner or operator shall comply with all of the terms set forth in this paragraph as requirements governing the use of the Financial Test of Self-Assurance. Such Financial Test of Self-Assurance Guarantee Agreement shall:
  - 1. Be in a format established by the Commissioner and completed in accordance with guidance provided by the Commissioner;
  - 2. Commit the owner or operator to carrying out the required corrective actions and/or compensation to third parties in response to a judgment enforceable in Tennessee;
  - 3. Commit the owner or operator to setting up and funding a standby trust in the amount required in an order issued by the Commissioner, up to the amount set forth in paragraph (3) of this rule;
  - 4. Commit the owner or operator to notifying the Commissioner within ten (10) days following a filing to seek bankruptcy protection from creditors under Title 11 U.S. Code; and
  - 5. Commit the owner or operator to notifying the Commissioner within seventy-two (72) hours following of any reasonable determination that the owner or operator can no longer satisfy the requirement of the Financial Test of Self-Assurance, whether Alternative I or Alternative II; and
  - 6. Commit the owner or operator to complying with one of the following within thirty (30) days of determination that the owner or operator no longer meets the requirement of the Financial Test of Self-Assurance, whether Alternative I or Alternative II:
    - (i) Submittal to the Department of an alternative financial assurance mechanism; or
    - (ii) Establishment of and funding of an irrevocable standby trust in accordance with paragraph (15) of this rule to assure the performance of corrective action and/or compensation of third parties for bodily injury and property damage due to accidental releases arising from the operation of petroleum underground storage tank.
- (7) Corporate Parent Financial Test Guarantee. An owner or operator may satisfy the requirements of paragraph (3) of this rule if a direct or higher tier corporate parent of that owner or operator, through a Corporate Parent Financial Test Guarantee, which complies with the requirements of this paragraph, assumes the responsibility of the owner or operator to fund and carry out corrective action and compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
  - (a) A Corporate Parent Financial Test Guarantee shall not be used in combination with other financial assurance mechanisms, and shall not be used in cases where a corporate parent itself has a higher parent corporation holding majority control of its voting stock.
  - (b) The financial statements of the corporate parent of the owner or operator shall be prepared in accordance with generally accepted accounting principles applicable to the United States, and an independent certified public accountant shall verify the accuracy of the financial test data relative to the financial statements.
  - (c) In order to demonstrate that the corporate parent of the owner or operator meets the requirements of the Corporate Parent Financial Test Guarantee as set forth in this

paragraph, the Chief Executive Officer or the Chief Financial Officer of the parent company of the owner or operator shall complete and submit a notarized letter, including a Corporate Parent Financial Test as required in subparagraph (d) of this paragraph, to the Department both initially and within ninety (90) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Executive Officer or the Chief Financial Officer shall be in accordance with guidance provided by the Division and in a format established by the Division.

- (d) Both initially and annually, within ninety (90) days after the close of each succeeding fiscal year, the corporate parent of the owner or operator shall demonstrate that the corporate parent guarantor has adequate financial strength to provide the guarantee required by subparagraph (i) of this paragraph by passing the applicable financial test, either the Corporate Parent Financial Test – Alternative I, completed in accordance with subparagraph (f) of this paragraph, or Corporate Parent Financial Test – Alternative II, completed in accordance with subparagraph (g) of this paragraph.
- (e) The financial test alternatives, a comparison of accounting ratios, net worth, assets, operating revenues, and bond ratings relative to fixed criteria, shall be in a format established by the Division and completed in accordance with guidance provided by the Division.
- (f) To use the Corporate Parent Financial Test - Alternative I as a financial assurance mechanism, the corporate parent guarantor shall meet the following conditions:
  - 1. The corporate parent guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.
  - 2. The corporate parent guarantor shall have a tangible net worth at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the corporate parent guarantor for all other environmental programs or agencies in the State of Tennessee, other states, and/or federal agencies.
  - 3. The corporate parent guarantor shall have assets located in the United States which shall amount to at least ninety percent (90%) of the total assets of the corporate parent or at least six (6) times the current amounts of financial assurance covered by the corporate parent guarantor through the use of the Corporate Parent Financial Test - Alternative I.
  - 4. The corporate parent guarantor shall satisfy at least two (2) of the three (3) ratio standards in subparts (i) through (iii) of this part:
    - (i) The ratio of total liabilities to net worth shall equate to less than 1.5;
    - (ii) The ratio of the sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000) to the total liabilities shall equate to greater than 0.10; and/or
    - (iii) The ratio of current assets to current liabilities shall equate to greater than 1.5.
  - 5. The corporate parent guarantor shall report the firm's financial position to Dun and Bradstreet annually and have a financial strength rating of 4A or 5A and a composite credit appraisal of 1 by Dun and Bradstreet.
  - 6. The corporate parent guarantor shall comply with one of the following:

- (i) The corporate parent guarantor shall file financial statements with the U.S. Securities and Exchange Commission annually; or
  - (ii) The corporate parent guarantor shall file complete financial statements with the Energy Information Administration annually.
7. The fiscal year-end financial statements of the corporate parent guarantor:
- (i) Shall be examined by an independent certified public accountant (CPA);
  - (ii) Shall be accompanied by the CPA's report of the examination; and
  - (iii) Shall not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
8. Annually, the corporate parent guarantor shall submit a special report prepared by a CPA. The report shall include statements by the CPA that:
- (i) The CPA has reviewed the data, specified as having been derived from the latest year-end financial statements of the corporate parent guarantor, in the Letter from the Chief Executive Officer or the Chief Financial Officer;
  - (ii) The CPA has compared the data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements; and
  - (iii) The CPA's comparison of data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements revealed nothing to cause the CPA to believe that the data in the Letter from the Chief Executive Officer or the Chief Financial Officer should be adjusted.
- (g) To use the Corporate Parent Financial Test - Alternative II as a financial assurance mechanism, the corporate parent guarantor shall meet each of the following conditions:
1. The corporate parent guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.
  2. The corporate parent guarantor shall have a tangible net worth of at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the corporate parent guarantor for other environmental programs or agencies of the State of Tennessee, other states, and/or Federal agencies.
  3. Assets of the corporate parent guarantor located in the United States shall amount to at least ninety percent (90%) of the total assets of the corporate parent guarantor or at least six (6) times the current amounts of financial assurance covered by the corporate parent guarantor through the use of this Corporate Parent Financial Test – Alternative II.
  4. The corporate parent guarantor shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

5. For purposes of the Corporate Parent Financial Test, bond ratings shall apply to outstanding, rated bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, and that have been issued directly by the corporate parent guarantor. Ratings on revenue bonds shall not be used in the financial test. In order to pass this Corporate Parent Financial Test - Alternative II, the corporate parent guarantor shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.
  6. The corporate parent guarantor shall file financial statements annually with the U.S. Securities and Exchange Commission.
  7. The fiscal year-end financial statements of the corporate parent guarantor shall be examined by an independent certified public accountant (CPA) and shall be accompanied by the CPA's report of the examination. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  8. The corporate parent guarantor shall obtain and submit to the Commissioner a special report by a CPA stating that:
    - (i) The CPA has compared the data that the Letter from the Chief Executive Officer or the Chief Financial Officer specifies as having been derived from the latest year-end financial statements of the corporate parent guarantor with the amounts in such financial statements; and
    - (ii) In connection with the comparison in subpart (i) of this part, no matters came to the attention of the CPA which caused the CPA to believe that the specified data should be adjusted.
- (h) In accordance with subparagraph (i) of this paragraph the corporate parent guarantor shall commit to paying for and carrying out the required corrective action and compensation to third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
- (i) Annually, the corporate parent shall complete and submit a notarized written guarantee stating that the corporate parent will comply with all of the terms set forth in this paragraph as requirements governing the use of the Corporate Parent Financial Test Guarantee. Such Corporate Parent Financial Test Guarantee Agreement shall:
1. Be in a format established by the Division and in accordance with guidance provided by the Division;
  2. Commit the corporate parent guarantor to carrying out the required corrective actions and/or compensation of third parties in response to a judgment enforceable in Tennessee;
  3. Commit the corporate parent guarantor to setting up and funding a standby trust in the amount required in an order issued by the Commissioner, up to the amount set forth in paragraph (3) of this rule;
  4. Commit the corporate parent guarantor to notifying the Commissioner within ten (10) days following the filing to seek bankruptcy protection from creditors under Title 11 U.S. Code; and
  5. Commit the corporate parent guarantor to notifying the Commissioner within seventy-two (72) hours following of any reasonable determination that the corporate parent guarantor can no longer satisfy the requirement of the Corporate Parent Financial Test of Self-Assurance, whether Alternative I or Alternative II; and

6. Commit the corporate parent guarantor to complying with one of the following within thirty (30) days of determination that the corporate parent guarantor no longer meets the requirement of the Corporate Parent Financial Test of Self-Assurance, whether Alternative I or Alternative II:
    - (i) Submittal to the Division of an alternative financial assurance mechanism; or
    - (ii) Establishment of and funding of an irrevocable standby trust in accordance with paragraph (15) of this rule to assure the performance of corrective action and/or compensation of third parties for bodily injury and property damage due to accidental releases arising from the operation of petroleum underground storage tank systems in the amount required in an order issued by the Commissioner; up to the amount set forth in paragraph (3) of this rule.
- (8) Liability Insurance. A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by obtaining liability insurance that meets the requirements of this paragraph.
- (a) Standby Trust Fund.
    1. A tank owner or operator who uses an insurance policy as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the policy is issued.
    2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
  - (b) Qualified Insurer. The tank owner or operator shall obtain insurance from a qualified insurer:
    1. The insurer shall be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Tennessee and have an A.M. Best rating of at least "A."
    2. The insurer shall not be a "captive insurance company" as defined in T.C.A. § 56-13-102.
  - (c) Insurance Policies, UST Certificates of Insurance and UST Insurance Endorsements.
    1. Liability insurance may be in the form of an endorsement to an existing insurance policy or a separate insurance policy.
    2. An original UST Certificate of Insurance or UST Insurance Endorsement shall be submitted to the Commissioner.
      - (i) The UST Certificate of Insurance shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
      - (ii) The UST Insurance Endorsement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.

3. A duplicate original of the insurance policy shall be provided to the Commissioner within thirty (30) days of the issuance of a UST Certificate of Insurance or a UST Insurance Endorsement. The insurance policy is subject to review and approval by the Commissioner prior to final acceptance of insurance as financial assurance for the tank owner or operator as required by paragraph (3) of this rule.
4. Each policy shall contain a provision allowing the assignment of the policy to a successor tank owner or operator. Such assignment may be conditional upon the consent of the insurer, provided such consent is not unreasonably withheld.
5. The tank owner or operator shall maintain the insurance policy in full force and effect until the Commissioner releases the tank owner or operator from the requirements for financial assurance as specified in paragraph (21) of this rule or until the owner or operator has substituted an acceptable alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule.
6. The insurance policy shall be issued for a face amount at least equal to the amount required by paragraph (3) of this rule. Actual payment by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
7. The insurance policy shall guarantee that funds shall be available for taking corrective action in accordance with rule 1200-01-15-.06 and/or for compensating third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
8. The insurance policy shall guarantee that the Commissioner is authorized to draw on the policy through claim or forfeiture up to the limits of liability or face value of the policy in the event the insured fails to take corrective action and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
9. Under the terms of the policy, all amounts forfeited by the insurance company, as ordered by the Commissioner, shall be paid to the Division in accordance with subparagraph (20)(e) of this rules or shall be paid directly into the standby trust fund.
10. The policy shall provide that the insurer shall comply with any Order of Forfeiture issued by the Commissioner as a result of the occurrence of any of the events or conditions itemized in items (I) through (IV) of subpart (11)( v) of this subparagraph.
11. Cancellation, Termination or Failure to Renew by the Insurer.
  - (i) The policy shall provide that the insurer shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium in which case the policy is still subject to forfeiture pursuant to subparts (v) and (vi) of this part.
  - (ii) If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy. If the insurer so elects, the insurer shall send notice by certified mail to the insured tank owner or operator and to the Commissioner.
  - (iii) Cancellation, termination, or failure to renew shall not occur until at least one hundred eighty (180) days after the date of receipt of the notice by

the tank owner or operator, as evidenced by the certified mail return receipt.

- (iv) Cancellation, termination or failure to renew shall not occur until the Commissioner has received notice as evidenced by certified mail return receipt.
- (v) Cancellation, termination, or failure to renew shall not occur during the period of coverage of the policy nor at the end of the one hundred eighty (180) days reference in subpart (iii) of this part and the policy shall remain in force and effect in the event that on or before the date of expiration:
  - (I) The Commissioner deems the facility abandoned; or
  - (II) Closure of the facility is ordered by the Commissioner, the board, or a court of competent jurisdiction; or
  - (III) The tank owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or
  - (IV) The premium due is paid; or
  - (V) The Commissioner issues an Order of Forfeiture as a result of the occurrence of conditions itemized in items (I) through (III) of this subpart.
- (vi) Cancellation of the policy for any reason, without the insured's substitution of alternate financial assurance as specified in paragraph (17) of this rule may result in a demand by the Commissioner to the insurer to pay the face value of the policy into a standby trust fund at the end of the one hundred eighty (180) day period of cancellation notification. If the policy is not renewed or replaced by an approved alternative financial assurance mechanism within one (1) year of the funding of the trust, the funds of the standby trust shall be forfeited to the Division in accordance with subparagraph (20)(e) of this rule due to the failure of the insured to maintain financial assurance.

(9) Surety Bond or Performance Bond. A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by obtaining a surety bond that meets the requirements of this paragraph.

(a) Standby Trust Fund.

1. A tank owner or operator who uses a surety bond or performance bond as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the surety bond is acquired.
2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.

(b) Qualified Surety Company. The tank owner or operator shall obtain the surety bond or performance bond from a qualified surety company:

1. The surety company issuing the bond shall be licensed to do business as a surety in the State of Tennessee; and
2. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(c) Surety Bond or Performance Bond.

1. The surety bond or performance bond shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
2. The original of the bond shall be submitted to the Commissioner.
3. The bond shall guarantee that the tank owner or operator shall assume financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
4. The bond shall set forth the per occurrence amount and the annual aggregate amount for taking corrective action, and the per occurrence amount and the annual aggregate amount for third party claims.
5. The penal sum of the bond shall be in an amount at least equal to the amount required for the tank owner or operator as determined by paragraph (3) of this rule.
6. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination by the Commissioner that the owner or operator has failed to so perform, under the terms of the bond, the surety shall perform corrective action in accordance with rule 1200-01-15-.06 and/or provide third-party liability compensation or shall forfeit the amount of the penal sum as ordered by the Commissioner.
7. Under the terms of the bond, all amounts forfeited by the surety, as ordered by the Commissioner, shall be paid to the Division in accordance with subparagraph (20)(e) of this rules or shall be paid directly into the standby trust fund.
8. Cancellation.
  - (i) To effect cancellation under the terms of the bond, the surety shall issue notification of cancellation of the bond by sending the notice by certified mail to the owner or operator and to the Commissioner as evidenced by return receipt.
  - (ii) The notice of cancellation shall be received by the Commissioner by no later than one hundred eighty (180) days prior to the anniversary date of the bond. Cancellation of the bond shall not occur during the one hundred eighty (180) day period.
  - (iii) The tank owner or operator shall submit alternate financial assurance to the Commissioner as specified in paragraph (17) of this rule and obtain the Commissioner's written approval of the alternate financial assurance by no later than sixty-one (61) days prior to the date of cancellation of the bond.
  - (iv) Cancellation, termination, or failure to renew shall not occur at the end of the one hundred eighty (180) days specified in subpart (ii) of this part or at any other time during the period of coverage of the bond and the bond

shall remain in force and effect in the event that on or before the date of expiration:

- (I) The Commissioner deems the facility abandoned; or
  - (II) Closure of the facility is ordered by the Commissioner, the board, or a court of competent jurisdiction; or
  - (III) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or
  - (IV) The premium is paid; or
  - (V) The Commissioner issues an Order of Forfeiture as a result of the occurrence of one or more of the conditions set forth in subpart (I) through (III) of this part.
- (v) Upon notification by the Commissioner that the principal has failed to provide alternative financial assurance within one hundred twenty (120) days after the date of notice of cancellation is received by the principal, the surety(ies) shall at the direction of the Commissioner, by no later than the one hundred seventy ninth (179<sup>th</sup>) day following the date of the notice of cancellation, pay the amount of the penal sum of the bond into a standby trust fund. If the bond is not renewed or replaced by an alternative instrument within one (1) year of the funding of the trust, the funds of the standby trust will be forfeited to the Division in accordance with subparagraph (20)(e) of this rule due to the failure of the tank owner or operator to maintain financial assurance.
- (vii) The tank owner or operator may cancel the bond if the Commissioner has given prior written consent. The Commissioner will provide such written consent when:
- (I) The tank owner or operator substitutes alternative financial assurance as specified in paragraphs (4) and (17) of this rule; or
  - (II) The Commissioner releases the owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.
- (viii) The surety will not be liable for deficiencies in the performance of corrective action and/or third party liability compensation by the tank owner or operator after the Commissioner releases the tank owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.
- (10) Irrevocable Standby Letter of Credit. A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by obtaining an irrevocable standby letter of credit that meets the requirements of this paragraph.
- (a) Standby Trust Fund
1. A tank owner or operator who uses an irrevocable letter of credit as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the surety bond is acquired.

2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
- (b) The issuing institution shall be an entity that has the authority to issue letters of credit in the State of Tennessee and whose letter of credit operations are regulated and examined by the U.S. Federal Reserve or the Tennessee Department of Financial Institutions.
- (c) Letter of Credit.
1. The letter of credit shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
  2. The original of the letter of credit shall be submitted to the Commissioner. The letter of credit shall be accompanied by a letter from the tank owner or operator to the Commissioner referring to the letter of credit by number, issuing institution, and date, and providing the following information:
    - (i) The facility identification number assigned by the Division to each facility covered by the letter of credit;
    - (ii) The address of the location for each facility covered by the letter of credit; and
    - (iii) The specified amount of financial responsibility for taking corrective action and for third party liability compensation provided by the letter of credit.
  3. The letter of credit shall be irrevocable.
  4. The letter of credit shall be issued for a period of at least one (1) year and shall provide that the expiration date shall be automatically extended each year for a period of at least one (1) year unless, at least one hundred eighty (180) days before the expiration date of the current one (1) year period, the issuing institution notifies both the tank owner or operator and the Commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred eighty (180) days shall begin on the date when the owner or operator has received the notice, as evidenced by the return receipt of certification of delivery. However, expiration shall not occur unless the Commissioner has received the notice, as evidenced by the return receipt of certification of delivery.
  5. The letter of credit shall be issued in an amount at least equal to the amount specified in accordance with paragraph (3) of this rule.
  6. The letter of credit may be drawn on by the Commissioner in the event the tank owner or operator fails to take corrective action in accordance with rule 1200-01-15-.06 and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
  7. The letter of credit may be drawn on by the Commissioner in the event of the occurrence of the following events:
    - (i) The Commissioner deems the facility abandoned;
    - (ii) Closure of the facility is ordered by the Commissioner, the board, or a court of competent jurisdiction; or

- (iii) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code.
- 8. The Commissioner may draw on the letter of credit upon forfeiture as provided in paragraph (20) of this rule if the tank owner or operator does not establish alternate financial responsibility as specified in paragraphs (4) and (17) of this rule and obtain written approval of such alternate financial responsibility from the Commissioner within one hundred twenty (120) days after receipt by the tank owner or operator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the expiration date of the current one (1) year period. The Commissioner may delay the drawing if the issuing institution grants a one (1) year extension of the terms of the credit by no later than one hundred twenty (120) days prior to the stated cancellation date. During the last sixty (60) days of any such extension, the Commissioner may draw on the letter of credit if the owner or operator has failed to provide alternate financial responsibility as specified in paragraphs (4) and (17) of this rule and obtain written approval of such financial responsibility from the Commissioner.
- 9. Under the terms of the letter of credit, all amounts forfeited by the financial institution issuing the letter of credit shall be paid directly to the Division in accordance with subparagraph (20)(e) of this rule.
- 10. The Commissioner will return the letter of credit to the issuing institution for termination when:
  - (i) A tank owner or operator substitutes alternative financial assurance as specified in paragraphs (4) and (17) of this rule; or
  - (ii) The Commissioner releases the owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.
- (11) Personal Bond Supported by Certificate of Deposit. A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by obtaining a personal bond supported by a certificate of deposit that meets the requirements of this paragraph.
  - (a) The financial institution holding the funds shall be a commercial financial institution governed by the Federal Reserve and the U.S. Comptroller of the Currency or regulated by the Tennessee Department of Financial Institutions.
  - (b) Statement of Personal Bond.
    - 1. The owner or operator shall submit the Statement of Personal Bond Supported by Certificate of Deposit to the Department concurrent with the issuance of the certificate of deposit.
    - 2. The Statement of Personal Bond Supported by Certification of Deposit shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
  - (c) Certificate of Deposit.
    - 1. The funds of the account shall be pledged irrevocable to the Tennessee Department of Environment and Conservation.
    - 2. The ownership of the certificate of deposit shall be registered as follows:
      - (i) The name of the tank owner or operator and the Tennessee Department of Environment and Conversation; or
      - (ii) The Tennessee Department of Environment and Conservation.

3. The certificate of deposit shall be automatically renewed annually with the earned interest maintained with the principal.
  4. The original certificate of deposit or safekeeping receipt shall be submitted to and held by the Department.
- (d) Accompanying the original certificate of deposit or safekeeping receipt shall be a letter from an officer of the issuing financial institution which attests to the following:
1. No liens or assignments exist on the deposited funds;
  2. The certificate of deposit shall be automatically renewed each year;
  3. The initial funds of the deposit plus the accrued interest are irrevocably assigned to the Department;
  4. The funds shall not be released to the owner or operator without the written consent of the Commissioner or his/her designee; and
  5. The issuing financial institution shall honor the right of the Department to unilaterally redeem the certificate(s) of deposit for cash in the event the Commissioner executes an Order of Forfeiture due to the failure of the owner or operator to take corrective action in accordance with rule 1200-01-15-.06 and/or to compensate third-parties for bodily injury and property damage.
- (12) Trust Fund and Agreement. A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by establishing a trust fund and an associated trust agreement that meets the requirements of this paragraph.
- (a) Trust Fund.
1. Trustee.
    - (i) The trustee shall be an entity that has the authority to act as a trustee.
    - (ii) The operations of the trustee shall be regulated and examined by the State of Tennessee or a federal agency.
    - (iii) The trustee shall invest and reinvest the principal and income of the trust fund, keeping the trust fund as a single fund.
  2. Funding.
    - (i) The trust fund shall be fully funded on its effective date.
    - (ii) If at any point in time the value of the fund drops below the financial assurance amount covered by this mechanism, the grantor (the tank owner or operator) shall make a payment into the fund to return the value of the trust fund to the required amount.
    - (iii) If at any point in time the value of the fund increases above the financial assurance amount covered by this mechanism, the grantor may submit a written request to the Commissioner for release of the excess funds.
    - (iv) Within sixty (60) days of receipt of a written request for release of excess funds submitted in accordance with subpart (iii) of this part, the Commissioner shall review the request and shall decide whether such release of funds is appropriate at the time of the request.

- (I) If the Commissioner determines that a release of funds in the amount requested by the grantor or in a lesser amount is appropriate, the Commissioner shall instruct the trustee to release the funds.
  - (II) If the Commissioner determines that a release of the funds is not appropriate, the Commissioner shall notify the grantor and the trustee of that decision.
- 3. The Division of Underground Storage Tanks of the Department of Environment and Conservation shall be designated as the beneficiary of the trust fund.
- 4. The trust fund shall not be used for any of the following:
  - (i) Any obligation of the grantor (the tank owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
  - (ii) Bodily injury to an employee of the grantor arising from and/or in the course of employment by the grantor;
  - (iii) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - (iv) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the grantor that is not the direct result of a release from a petroleum underground storage tank system; or
  - (v) Bodily injury or property damage for which the grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of paragraph (3) of this rule.
- 5. The trust fund shall be irrevocable and shall continue until terminated at the written direction of both the grantor (the tank owner or operator) and the trustee with the written approval of the Commissioner or by the trustee acting upon written direction by the Commissioner.
  - (b) The trust agreement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
- (13) Local Government Bond Rating Test. A local government tank owner or operator and/or a guarantor may satisfy the requirements of paragraph (3) of this rule by having a currently outstanding issue(s) of bonds that meets the requirements of this paragraph.
  - (a) A local government bond rating test shall not be used in combination with other financial assurance mechanisms.
  - (b) A general purpose local government owner or operator and/or a local government serving as a guarantor shall have a currently outstanding issue(s) of general obligation bonds of one million dollars (\$1,000,000.00) or more, excluding refunded obligations.
    - 1. The local government shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

2. Where the local government has multiple outstanding issues, or where the local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility.
  3. Bonds that are backed by credit enhancements other than municipal bond insurance shall not be considered in determining the amount of applicable bonds outstanding.
- (c) A local government owner or operator and/or a local government serving as a guarantor that is not a general purpose government and does not have the legal authority to issue general purpose bonds shall have a currently outstanding issue(s) of revenue bonds of one million dollars (\$1,000,000.00) or more, excluding refunded issues.
1. The local government shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.
  2. Where the local government has multiple outstanding issues, or where the local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility.
  3. Bonds that are backed by credit enhancements shall not be considered in determining the amount of applicable bonds outstanding.
- (d) The local government owner or operator and/or guarantor shall submit to the Department an original or certified copy of its most recent bond rating published within the last twelve (12) months by Moody's or Standard and Poor's.
- (e) The local government owner or operator and/or guarantor, using the local government bond rating test, shall annually report to the Commissioner the applicable bond ratings within ninety (90) days following the end of the fiscal year of the owner or operator and/or guarantor.
- (f) To demonstrate that the local government tank owner or operator and/or guarantor meets the local government bond rating test, the chief financial officer of the local government owner or operator and/or guarantor shall complete and submit a notarized letter, both initially and within ninety (90) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Financial Officer, whether for a general purpose local government or for a non-general purpose government, shall be in accordance with guidance provided by the Division. The letter shall be in format established by the Division.
- (g) If a local government owner or operator and/or guarantor, using the bond rating test to provide financial assurance, finds that it no longer meets the requirements of the financial bond rating test, it shall obtain and submit to the Commissioner alternate financial assurance within thirty (30) days of its determination that it no longer meets the requirements.
- (h) If the Commissioner has reason to believe that the local government owner or operator and/or guarantor no longer meets the requirements of the local government bond rating test, the Commissioner may require the local government tank owner or operator and/or guarantor to submit reports of its financial condition. The local government owner or operator and/or guarantor shall submit the required financial reports to the Department in accordance with the schedule established by the Commissioner.
- (i) Upon determination by the Commissioner that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements, the local government owner or operator and/or guarantor shall either:

1. Obtain and submit an alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule within thirty (30) days after notification of such a determination by the Commissioner; or
  2. Fund a standby trust in accordance with paragraph (15) of this rule in the amount required by paragraph (3) of this rule for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than thirty (30) days after notification of such a determination by the Commissioner.
- (14) Local Government Financial Test. A local government tank owner or operator may satisfy the requirements of paragraph (3) of this rule by passing a financial test that meets the requirements of this paragraph.
- (a) A local government financial test shall not be used in combination with other financial assurance mechanisms.
  - (b) The local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges.
  - (c) The local government owner or operator shall have the following information available, as shown in the year end financial statements for the latest completed fiscal year:
    1. Total revenues: consisting of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, and others), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but not excluding revenues to funds held in a trust or agency capacity. For purposes of this local government financial test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using this financial test (interfund transfers), liquidation of investments, and issuance of debt.
    2. Total expenditures: consisting of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this local government financial test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).
    3. Local revenues: consisting of total revenues, as set forth in part 1 of this subparagraph, minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
    4. Debt service: consisting of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Debt service includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Debt service excludes payments on non-interest bearing short term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

5. Total funds: consisting of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Total funds includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this local government financial test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.
  6. Population: consisting of the number of people in the area served by the local government.
- (d) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation bonds that are rated at less than investment grade.
  - (e) To demonstrate that it meets the local government financial test, the local government owner or operator shall complete and submit a notarized letter, both initially and within one hundred twenty (120) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Financial Officer shall be in accordance with guidance provided by the Division. The letter shall be in format established by the Division.
  - (f) If a local government owner or operator, using the local government financial test to provide financial assurance, finds that it no longer meets the requirements of the financial test, it shall obtain and submit to the Commissioner alternate financial assurance within thirty (30) days of its determination that it no longer meets the requirements.
  - (g) If the Commissioner has reason to believe that the local government owner or operator no longer meets the requirements of the local government financial test, the Commissioner may require the local government tank owner or operator to submit reports of its financial condition. The local government owner or operator shall submit the required financial reports to the Department in accordance with the schedule established by the Commissioner.
  - (h) Upon the Commissioner's determination that the local government owner or operator no longer meets the local government financial test requirements, the local government owner or operator shall either:
    1. Obtain and submit an alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule within thirty (30) days after notification of such a determination by the Commissioner; or
    2. Fund a standby trust in accordance with paragraph (15) of this rule in the amount required by paragraph (3) of this rule for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than thirty (30) days after notification of such a determination by the Commissioner.
- (15) Standby Trust Fund.
- (a) A tank owner or operator using the financial assurance mechanisms set forth in paragraphs (8), (9) and (10) of this rule shall establish a Standby Trust Fund and Agreement in accordance with this paragraph.
  - (b) A tank owner or operator using the financial assurance mechanisms set forth in paragraphs (6), (7), (13) and (14) of this rule shall establish a Standby Trust Fund and Agreement in accordance with this paragraph if the requirements of the financial test can

no longer be met and the owner or operator or guarantor fails to provide an alternative financial assurance mechanism that meets the requirements of this rule.

- (c) Trustee.
    - 1. The trustee shall be an entity that has the authority to act as a trustee.
    - 2. The operations of the trustee shall be regulated and examined by the State of Tennessee or a federal agency.
    - 3. The trustee shall invest and reinvest the principal and income of the trust fund, keeping the trust fund as a single fund.
  - (d) The Division of Underground Storage Tanks of the Department of Environment and Conservation shall be designated as the beneficiary of the trust fund.
  - (e) The trust fund shall not be used for any of the following:
    - 1. Any obligation of the grantor (the tank owner or operator) under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
    - 2. Bodily injury to an employee of the grantor arising from and/or in the course of employment by the grantor;
    - 3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
    - 4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the grantor that is not the direct result of a release from a petroleum underground storage tank system; or
    - 5. Bodily injury or property damage for which the grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of paragraph (3) of this rule.
  - (f) The trust fund shall be irrevocable and shall continue until terminated at the written direction of both the grantor (the tank owner or operator) and the trustee with the written approval of the Commissioner or by the trustee acting upon written direction by the Commissioner.
  - (g) The trust agreement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
- (16) Record Keeping. A tank owner or operator shall maintain, on site at each facility or at the place of business of the owner or operator, a copy of all financial assurance documents submitted to the Department demonstrating compliance with this rule. This documentation shall be maintained until the owner or operator is released from the financial responsibility requirements by the Commissioner in accordance with paragraph (21) of this rule.
- (17) Substitution of Financial Assurance Mechanisms by the Owner or Operator. In satisfying the requirements of paragraph (3) of this rule, an owner or operator may substitute an alternative financial assurance mechanism for the financial mechanism already on file with the Department. The alternate financial assurance mechanism shall satisfy the requirements of this rule. The financial assurance mechanism already on file with the Department shall not be released and shall be maintained in force until the alternative financial mechanism has been received and approved by the Commissioner. By no later than ten (10) business days following the date of the approval of the alternate financial assurance mechanism by the Commissioner, the prior financial assurance mechanism shall be released to the tank owner or operator.

- (18) Changes of Ownership or Operational Control of UST Facilities. Changes in or the replacement of an existing financial assurance mechanism due to changes of ownership or operational control of a UST facility shall be submitted to the Commissioner concurrent with the change of ownership or operational control of the facility. All submittals shall comply with the requirements of this rule.
- (19) Bankruptcy or Other Incapacity of the Owner or Operator or the Issuer of the Financial Assurance Mechanism.
- (a) Within ten (10) days after the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code, naming a tank owner or operator as debtor, the owner or operator shall notify the Commissioner by certified mail of such commencement.
- (b) An owner or operator who obtains financial assurance by a mechanism other than the Financial Test of Self-Assurance as set forth in paragraph (6) of this rule will be deemed to be without the financial responsibility required by this rule in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of its financial assurance to issue a guarantee, an insurance policy, a surety bond, or a letter of credit. Within ten (10) business days of receiving notice of such bankruptcy or incapacity, the tank owner or operator shall notify the Commissioner, by certified mail, of the same. By no later than thirty (30) days subsequent to the date of receiving notice of such bankruptcy or incapacity, the tank owner or operator shall obtain alternate financial assurance and shall submit the original financial assurance documents comprising or associated with the alternate financial assurance mechanism to the Commissioner in accordance with the provisions of this rule.
- (20) Procedures Governing the Forfeiture of the Financial Assurance of UST Owners and Operators.
- (a) Upon the Commissioner's determination that a tank owner or operator has failed to pay for taking corrective action in accordance with rule 1200-01-15-.06 and/or compensate third parties for bodily injury and property damage caused by an accidental release arising from the operation of a petroleum underground storage tank system, the Commissioner may provide notice of such non-compliance, to be served on the tank owner or operator by hand delivery or by certified mail. The Notice of Non-Compliance shall establish a schedule for coming into compliance with the regulatory requirements.
- (b) If the Commissioner determines that the owner or operator has failed to perform as specified in the Notice of Non-Compliance, or as specified in any subsequent compliance agreement which may have been reached by the owner or operator and the Commissioner, the Commissioner may cause a Notice of Show Cause Meeting to be served upon the owner or operator. The Notice of Show Cause Meeting shall establish the date, the time, and the location of a meeting scheduled to provide the owner or operator with the opportunity to "show cause" why the Commissioner should not pursue forfeiture of the financial assurance filed to guarantee such performance.
- (c) If no mutual compliance agreement is reached at a show cause meeting, or upon the Commissioner's determination that the owner or operator failed to perform as specified in an agreement that was reached, or in lieu of a show cause meeting, the Commissioner may order forfeiture of the financial assurance filed to guarantee such performance. Upon the Commissioner's determination that the procedures of this paragraph have been followed, the Commissioner, at his or her discretion may issue such an order of forfeiture. Upon issuance, a copy of the Order of Forfeiture shall be hand delivered or forwarded by certified mail to the owner or operator and to the issuer of the financial assurance mechanism or guarantor of financial assurance. Any such order issued by the Commissioner shall become effective thirty (30) days after the receipt by the owner or operator unless it is appealed to the Board as provided in rule 1200-01-15-.11.

- (d) If necessary, upon the effective date of the Order of Forfeiture, the Commissioner may give notice to the Attorney General of the State of Tennessee who shall collect the forfeiture.
  - (e) Funds from forfeitures shall be deposited in the Tennessee Petroleum Underground Storage Tank Fund. The forfeited funds shall be earmarked for use in the performance of corrective action or the compensation of third parties due to bodily injury or property damage in connection with the operation of the underground storage tank systems of the owner or operator forfeiting the financial assurance.
- (21) Release of Financial Assurance Mechanisms. The original financial assurance mechanism document(s) shall be held by the Commissioner until replaced by an alternate instrument or until the owner or operator is released by the Commissioner. The Commissioner shall release the financial assurance mechanism to the tank owner or operator or to the issuing financial institution after one of the following has occurred:
- (a) The underground storage tank systems have been closed to the satisfaction of the Division pursuant to rule 1200-01-15-.07(4) and (5); or
  - (b) An alternative financial assurance mechanism has been received and approved by the Commissioner in accordance with paragraph (17) of this rule.

Authority: T.C.A. § 68-215-107.

The rule title of rule 1200-01-15-.09 Administrative Guidelines And Procedures For The Tennessee Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following rule title: Petroleum Underground Storage Tank Fund.

Paragraph (1) Purpose of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

- (1) Purpose. This rule establishes the manner in which disbursements are made from the Tennessee Petroleum Underground Storage Tank Fund and implements the purposes and objectives of the Tennessee Petroleum Underground Storage Tank Act.

Paragraph (3) Fund Eligibility Requirements of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

- (3) Fund Eligibility Requirements.
  - (a) Establishment of fund eligibility for release occurrences prior to July 1, 2008. Owners and/or operators satisfying the requirements of this subparagraph will have established fund eligibility for release occurrences prior to July 1, 2008.
    - 1. Registration of each petroleum underground storage tank:
      - (i) For tanks installed on or after July 1, 1988, within thirty (30) days of the installation of that tank; or
      - (ii) For tanks installed prior to July 1, 1988, by June 30, 1989.
    - 2. Payment of the annual fee for the tank and/or tank compartments for the first year for which fees were required in accordance with rule 1200-01-15-.10.
  - (b) Establishment of fund eligibility for release occurrences on or after July 1, 2008. Releases on or after July 1, 2008 will be fund eligible if the division has received notification registering the tank prior to the release occurrence.
  - (c) Except as provided for in subparagraph (5)(d) of this rule, before the owner and/or operator or petroleum site owner will receive fund benefit, the applicable entry level

amount to the fund shall be expended as approved costs by the owner and/or operator or petroleum site owner. The applicable entry level is the entry level in effect on the date of the release as set forth in subparagraph (6)(b) of this rule.

- (d) An Application for Fund Eligibility shall be timely submitted to the Division before the applicable deadline set forth in T.C.A. § 68-215-111(f)(6) and in subparagraph (4)(d) of this rule. Failure to comply with the applicable deadline shall make the release ineligible for reimbursement from the fund.

Paragraph (4) Loss, Restoration, And Establishment of Fund Eligibility of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced by the following paragraph (4) entitled Fund Ineligibility:

(4) Fund Ineligibility

- (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 (b), corrective action costs and/or third party damages associated with that release are not eligible for coverage by the fund.
- (b) An owner and/or operator who has failed to establish fund eligibility in accordance with the provisions of subparagraph (3)(a) or (b) of this rule shall comply with the following in order to establish fund eligibility:
  - 1. Pay all annual tank fees and late payment penalties owed;
  - 2. Pay all civil penalties owed;
  - 3. Perform and pass a systems tightness test in accordance with rule 1200-01-15-.04(3)(c) and (4)(b) for each UST system in operation at the site;
  - 4. Demonstrate through a Division approved site check, conducted in accordance with Division guidance, there have been no releases from the UST system(s) at this site or that prior releases at the site would not interfere with the discovery of a new release at the site; and
  - 5. 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.
- (c) Within thirty (30) days of meeting the requirements to establish fund eligibility in accordance with subparagraph (b) of this paragraph, the Division will notify the owner and/or operator of the date that fund eligibility was established. 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.
- (d) If there is evidence of a suspected release or a confirmed release on or after July 1, 2004, that release shall be ineligible for reimbursement from the fund if an Application for Fund Eligibility is not timely filed in accordance with the following:
  - 1. An Application for Fund Eligibility shall be filed with the Division within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with rules 1200-01-15-.04 and/or 1200-01-15-.05. The ninety (90) days shall start on the day the evidence of the suspected release is discovered.

2. An Application for Fund Eligibility shall be filed with the Division within sixty (60) days of a release which was identified in any manner other than the process for confirmation of a suspected release in accordance with rules 1200-01-15-.04 and/or 1200-01-15-.05, for example, during closure activities performed in accordance with rule 1200-01-15-.07.

Paragraph (5) Annual Fee Assessment of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and paragraphs (6) and (7) are renumbered as paragraphs (5) and (6).

The paragraph newly designated as paragraph (5) Authorized Disbursements From the Fund of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is amended by deleting the introductory wording in subparagraph (a) before part 1. and replaced with the following wording before part 1 (parts 1 through 3 remain unchanged):

- (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 qualify for fund coverage in accordance with paragraphs (10) and (11) of this rule, the Division shall, subject to the provisions of this rule, disburse monies available in the fund to provide for:

Subparagraph (b) of the paragraph newly designated as paragraph (5) Authorized Disbursements From the Fund of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

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

Subparagraph (d) of the paragraph newly designated as paragraph (5) Authorized Disbursements From the Fund of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

- (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 and for third party claims within the state as provided in T.C.A. §68-215-101 et seq., in this rule and in rule 1200-01-15-.08(5).

1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in rule 1200-01-15-.09(6) at the time an Application for Fund Eligibility is submitted to the Division, the fund may be utilized to pay the deductible for taking corrective action.

- (i) The tank owner or operator shall supply documentation of inability to pay the fund entry level or deductible for taking corrective action to the Division upon request.

- (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action.

2. If a fund eligible tank owner or operator fails, without sufficient cause, to perform the release response, remediation and/or risk management actions required in rule 1200-01-15-.06 on order of the Commissioner and fails, without sufficient cause to pay the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the Division, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action. In addition, pursuant to

T.C.A. § 68-215-116, the Commissioner may seek a penalty in the amount of one hundred fifty percent (150%) of the costs expended by the fund as the result of the failure to take proper action.

3. If a fund eligible tank owner or operator has been denied fund coverage of corrective action costs under the provisions of subparagraph (10)(c) of this rule and the owner or operator claims financial inability to pay for part or all of the necessary corrective action, the fund may be utilized to pay for taking corrective action.
  - (i) The tank owner or operator shall supply documentation of inability to pay for corrective action to the Division upon request.
  - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount paid by the fund for taking corrective action.
4. If a fund eligible tank owner or operator cannot pay the amount of the applicable fund entry level or deductible amount for third party claims at the time an application for payment accompanied by the original or a certified copy of a final judgment is submitted to the Division in accordance with rule 1200-01-15-.09(12)(h), the fund may be utilized to pay the deductible for satisfying the third party claim.
  - (i) The tank owner or operator shall supply documentation of their inability to pay the fund entry level or deductible for third party claims to the Division upon request.
  - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for satisfying the third party claim.
5. If a fund eligible tank owner or operator fails, without sufficient cause, to pay the amount of the applicable fund entry level or deductible amount for a third party claim, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for third party damages.

A new subparagraph designated as (h) is added to the paragraph newly designated as paragraph (5) Authorized Disbursements From the Fund of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund and reads as follows:

- (h) If fund dollars have been expended in accordance with the provisions of subparagraph (d) and/or (e) of this paragraph for the fund deductible for corrective action or third party claims for a fund eligible release occurrence or for the entire cost for non-fund eligible release occurrence, the Commissioner may seek cost recovery and/or assess a penalty in accordance with the provisions of paragraphs (16) and (17) of this rule and paragraph (5) of rule 1200-01-15-.08.

The paragraph newly designated as paragraph (6) Scope of Fund Coverage of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following paragraph (6) entitled Scope of Fund Reimbursement:

- (6) Scope of fund reimbursement.
  - (a) The fund will reimburse eligible owners and/or operators or petroleum site owners for the cost of investigation and corrective action resulting from the accidental release of petroleum from an UST storing petroleum in accordance with the provisions of this rule.

(b) Owners and/or operators of USTs or petroleum site owners who qualify for fund reimbursement shall meet the per site per occurrence fund entry level or deductible 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, and eligible expenditures for assessment or remediation were incurred before April 11, 1990, the deductible requirements for eligible UST owners and/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 deductible requirements for eligible UST owners and/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 deductible requirements for eligible UST owners and/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 deductible requirements for eligible UST owners and/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 deductible requirements for eligible UST owners and/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 party 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 deductible for eligible UST owners and/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 And/Or Operator Or Petroleum Site Owner Deductible 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 * | \$75,000 Clean-up/<br>\$150,000 third party                          | \$75,000 Clean-up/<br>\$150,000 third party                          | \$75,000 Clean-up/<br>\$150,000 third party |
| Between July 1, 1988 and June 30, 1989          | \$75,000 Clean-up/<br>\$150,000 third party                          | \$75,000 Clean-up/<br>\$150,000 third party                          | \$75,000 Clean-up/<br>\$150,000 third party |
| Between July 1, 1989 and April 30, 1990         | \$50,000 Clean-up/<br>\$150,000 third party                          | \$50,000 Clean-up/<br>\$150,000 third party                          | \$50,000 Clean-up/<br>\$150,000 third party |
| Between May 1, 1990 And April 4, 1995           | \$10,000 Clean-up/<br>\$10,000 third party                           | \$20,000 Clean-up/<br>\$37,500 third party                           | \$50,000 Clean-up/<br>\$225,000 third party |
| Between April 5, 1995 And June 30, 2005         | 10% of Clean-up Cost not to exceed \$10,000/<br>\$10,000 third party | 20% of Clean-up cost not to exceed \$20,000/<br>\$37,500 third party | \$50,000 Clean-up/<br>\$225,000 third party |
| On or after July 1, 2005                        | \$20,000 Clean-up/<br>\$20,000 third party                           | \$20,000 Clean-up/<br>\$20,000 third party                           | \$20,000 Clean-up/<br>\$20,000 third party  |

\* Releases which occurred during this time period are only eligible for reimbursement if, prior to April 11, 1990, the release was reported to the Division and the owner and/or operator incurred eligible expenses for assessment or remediation.

- (c) The fund shall be responsible to eligible UST owners and/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 and/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 deductible 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 shall demonstrate to the satisfaction of the Division that each UST system at the facility meets or exceeds the criteria for reduction of the deductible 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 deductible. However, the maximum percentage reduction in the deductible 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 deductible set forth in the table in this subparagraph, the tank owner and/or operator will be sent correspondence setting forth the new reduced deductible.
5. However, if one or more of the criteria in part 2 of this subparagraph was met on or after July 24, 2007, in accordance with the requirements of rule 1200-01-15-.01(2)(c)2 or 3 or rule 1200-01-15-.02(2) or (6), there shall be no reduction in the deductible.

A new paragraph designated as paragraph (7) Removal, Replacement Or Repair of Property Improvements of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is added and reads as follows:

(7) Removal, Replacement Or Repair Of Property Improvements

- (a) In accordance with rule 1200-01-15-.06(7), a recommendation of an option for removal and either disposal, replacement or repair of a property improvement may be made as a part of site remediation using fund dollars.
  1. Division approval to pursue this option shall be obtained prior to taking the action in part 2 of this subparagraph.
  2. Two cost proposals shall be submitted to the Division. The two cost proposals shall be prepared in accordance with guidance provided by the Division and submitted in a format established by the Division.
    - (i) One proposal shall be for the cost of remediation without the removal, disposal, replacement or repair of the property improvement.

- (ii) One proposal shall be for the cost of the removal and either the disposal, replacement or repair of the property improvement plus the cost of remediation without the impediment of the property improvement.
- 3. A recommendation that includes replacement or repair shall be consistent with the requirements of rule 1200-01-15-.02.
- (b) If the Division evaluation of the cost proposals submitted in accordance with part 2 of subparagraph (a) of this paragraph as well as any other pertinent information, that the expenditure of fund dollars for removal and either disposal, replacement or repair of property improvements would result in a substantial reduction of the total cost of cleanup activities at the petroleum site, the Division may approve reimbursement from the fund for removal and either disposal, replacement or repair of property improvements.
- (c) Prior to removal of a property improvement approved for removal in accordance with the provisions of subparagraph (b) of this paragraph, documentation of the condition and location of the property improvement, including, but not limited to, photographs and a scaled site map, shall be provided to the Division in a format and in accordance with guidance provided by the Division.
- (d) Prior to reimbursement by the fund for replacement or repair of a property improvement approved by the Division in accordance with subparagraph (b) of this paragraph, documentation of the condition and location of the property improvement, including, but not limited to, photographs, shall be provided to the Division.
- (e) Unless Division approval has been granted in accordance with subparagraph (b) of this paragraph, the fund shall not reimburse tank owners, tank operators or petroleum site owners for the cost of property improvements.

Subparagraph (a) of paragraph (8) Fund Ineligible Costs of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

- (a) Costs of 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.

Subparagraphs (c) and (d) of paragraph (8) Fund Ineligible Costs of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund are deleted in their entirety and are replaced with the following:

- (c) The owner and/or operator or petroleum site owner fund deductible amounts as specified in subparagraph (6)(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 and/or operator or petroleum site owner fund deductible 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, other than those costs approved in accordance with the provisions of paragraph (7) of this rule, including any expenditure associated with the proper closure of a tank in compliance with rule 1200-01-15-.07 shall not be eligible for fund payment or reimbursement.

A new subparagraph designated as subparagraph (e) of Paragraph (8) Fund Ineligible Costs of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is added and reads as follows:

- (e) Corrective action costs associated with a release of petroleum caused by overt actions taken by the tank owner or his employee(s) will not be eligible for reimbursement from the fund, for example, an overfill release caused by the disabling of an overfill prevention device.

Subparagraphs (b), (c), and (d) of Paragraph (10) Requirements For Fund Coverage Of Corrective Action Costs of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund are deleted in their entirety and replaced with the following:

- (b) Upon confirmation and reporting of a release in accordance with the requirements of paragraphs (1) through (3) of rule 1200-01-15-.05 or after a release from the UST system is identified in any other manner, the owner and/or operator or petroleum site owner shall select a contractor from the Division's list of approved contractors if the owner and/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 and/or operator or petroleum site owner and the contractor in accordance with the requirements of T.C.A. § 68-215-129. The Division shall be provided a copy of the contractual agreement.
- (c) Upon confirmation and reporting of a release in accordance with the requirements of paragraphs (1) through (3) of rule 1200-01-15-.05 or after a release from the UST system is identified in any other manner,
  1. Effective December 22, 1998, 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 1200-01-15-.02(3) and (4);
  2. On or after April 20, 1998, the owner and/or operator shall submit documentation to the Division verifying the performance of release detection as required by rule 1200-01-15-.04 at the time of the release; and
  3. On or after the effective date of these rules, the owner or operator shall submit documentation to the Division verifying compliance with applicable secondary containment requirements as set forth in parts (1)(c)2 and 3 of rule 1200-01-15-.01, subparagraph (1)(c) of rule 1200-01-15-.02 and paragraphs (2) and (6) of rule 1200-01-15-.02.

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 paragraphs (3) and (4) of rule 1200-01-15-.06 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 and/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 Commissioner 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 Commissioner shall be notified of the actions taken by no later than one (1) working day after any such actions.

A new subparagraph, designated as subparagraph (s) of Paragraph (10) Requirements For Fund Coverage Of Corrective Action Costs of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is added and reads as follows:

- (s) To avoid a conflict of interest, if the tank owner and/or operator or the petroleum site owner expects to be reimbursed from the fund for the cost of laboratory analysis of environmental samples, the approved CAC hired by the tank owner and/or operator or petroleum site owner shall not be in control of or controlled by the laboratory performing analysis of environmental samples nor controlled by the same parent company.

Subparagraphs (b) and (c) of paragraph (11) Requirements For Fund Coverage Of Third Party Claims of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund are deleted in their entirety and replaced with the following:

- (b) The owner and/or operator is fund eligible at the time the release occurred;
- (c) Copies of all available documents used to support the claim(s) of property damage(s) or bodily injury(ies), including, but not limited to, invoices, cost estimates or bid proposals, appraisals, medical evaluations, and medical bills.

Subparagraph (f) of paragraph (11) Requirements For Fund Coverage Of Third Party Claims of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund deleted in its entirety and replaced with the following:

- (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 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 Division 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.

Subparagraph (h) of paragraph (12) Applications For Payment of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is amended by deleting the first sentence in subparagraph (h) and replacing it, so that the portion of subparagraph (h) that precedes part 1 (parts 1 through 3 are unchanged) reads as follows:

- (h) For payment of third party claims, the UST owner and/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 fund deductible for compensation of third parties as specified in subparagraph (6)(b) of this rule. The UST owner and/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.

Subparagraph (b) of paragraph (14) Fund Payment Procedures of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund deleted and replaced with the following:

- (b) Payments from the fund will be made directly to the eligible owner and/or operator or petroleum site owner in cases where the owner and/or operator or petroleum site owner submits documentation verifying the owner and/or operator or petroleum site owner has paid in excess of the applicable fund deductible for taking corrective actions as specified in subparagraph (6)(b) of this rule.

Part 1 of subparagraph (b) of paragraph (15) Approval Of Corrective Action Contractors of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with 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.
  - (i) The application shall be updated by April 1 of each year; and
  - (ii) The application shall include the following information:
    - (I) The name of the CAC;

- (II) The principal(s) of CAC;
- (III) The name of a contact person for the CAC;
- (IV) Address(es) of CAC's office;
- (V) Office phone number(s) of CAC;
- (VI) Office facsimile number;
- (VII) Electronic mail address; and
- (VIII) Other information requested by the Division.

Part 2 of subparagraph (b) of paragraph (15) Approval Of Corrective Action Contractors of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is amended by adding the words "of this subparagraph" to the wording preceding subpart (i), so that the wording which precedes subpart (i) reads as follows:

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

Subparts (xiii) and (xiv) of part 2 of subparagraph (b) of paragraph (15) Approval Of Corrective Action Contractors of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund are deleted in their entirety and replaced with the following:

- (xiii) The CAC shall 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 this rule chapter, that is chapter 1200-01-15, and/or according to a plan approved by the Division. The CAC shall 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 shall 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 this rule chapter, 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 this rule chapter, 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 this rule chapter, 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 shall fully and completely cooperate with the Commissioner during any audit by the Commissioner or his authorized representative, and comply with subparagraphs (10)(r) and (11)(f) of this rule.

Part 5 of subparagraph (b) of paragraph (15) Approval Of Corrective Action Contractors of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

5. The CAC shall 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.
  - (i) For each employee the list shall include, but not necessarily be limited to, the following information for each employee on the list:
    - (I) Job description;
    - (II) Job title;
    - (III) Level of education, including any college degrees, and date(s) of graduation;
    - (IV) Professional registration(s) and license number(s);
    - (V) Office location; and
    - (VI) Telephone number(s).
  - (ii) The list of employees shall be submitted with the application described in part 1 of this subparagraph and annually with a due date of April 1 of each year thereafter.
  - (iii) When a new employee begins working for a CAC, within fifteen (15) days of the first day of employment or as soon as their work time will be submitted to the Division for reimbursement, the CAC shall submit the employee information required in subpart (i) of this part to the Division.

Subparagraph (c) of paragraph (15) Approval Of Corrective Action Contractors of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

- (c) For those CACs not approved by the Division for placement on the list of Approved CACs:
  1. CACs who submitted applications but did not meet the 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.
  2. If the Division 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 in accordance with rule 1200-01-15-.11.

Subpart (ii) of part 5 of subparagraph (e) of paragraph (15) Approval Of Corrective Action Contractors of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

- (ii) The CAC files a plan, including, but not limited to, a Free Product Investigation Plan and/or a Corrective Action Plan, which is rejected by the Division as deficient, followed by three subsequent revisions, each of which is rejected by the Division as deficient; or

Part 11 of subparagraph (e) of paragraph (15) Approval Of Corrective Action Contractors of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

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 this rule chapter, and/or a plan approved by the Division. The certification shall include a listing of how the work performed varies from this rule chapter, the approved plan, and/or the work approved of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation.

Subparagraph (a) of paragraph (16) Recovery Of Costs By State: Apportionment of Liability of rule 1200-01-15-.09 Petroleum Underground Storage Tank Fund is deleted in its entirety and replaced with the following:

- (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 the deductible 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.

Authority: T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-110; T.C.A. § 68-215-111; T.C.A. § 68-215-115; and T.C.A. § 68-215-129.

The rule title of rule 1200-01-15-.10 Fee Collection And Certification Issuance Regulations is amended by deleting the words "And Certification Issuance Regulations" so that the rule title reads as following: Fee Collection.

Subparagraph (b) of paragraph (4) Failure To Pay The Annual Petroleum Underground Storage Tank Fee of rule 1200-01-15-.10 Fee Collection is deleted in its entirety and replaced with the following:

- (b) To refuse or fail to pay the annual fee per tank and/or tank compartment to the Division is an unlawful action as described in T.C.A. §68-215-104(3). The Division may take one or more of the following actions to prohibit delivery to any facility at which there is a petroleum underground storage tank for which annual fees or penalties have not been paid:
  - 1. Affix a tag or notice to the dispensers;
  - 2. Affix a tag to the fill ports; or
  - 3. Give notice on the department's web site.

Subparagraph (c) of paragraph (4) Failure To Pay The Annual Petroleum Underground Storage Tank Fee of rule 1200-01-15-.10 Fee Collection is deleted in its entirety. The subsequent subparagraph (d) is redesignated as subparagraph (c).

Paragraph (6) Issuance Of Annual Petroleum Underground Storage Tank Facility Certificates of rule 1200-01-15-.10 Fee Collection is deleted in its entirety.

Paragraph (7) Unlawful Action of rule 1200-01-15-.10 Fee Collection is deleted in its entirety and replaced with the following paragraph designated as paragraph (6) Unlawful Actions, which reads as follows:

- (6) Unlawful Action.
  - (a) It shall be unlawful to put petroleum into underground storage tanks and/or tank compartments at a facility if the Division has taken one or more of the following actions:
    - 1. A tag or notice has been affixed to the dispensers;
    - 2. A tag has been affixed to the fill ports; or
    - 3. Notice has been given on the department's web site.

- (b) Placing petroleum into a tank and/or tank compartment at a facility when the Division has taken one or more of the actions listed in parts 1 through 3 of subparagraph (a) of this paragraph 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.

Paragraph (8) Removal Of Certificates of rule 1200-01-15-.10 Fee Collection is deleted in its entirety.

Authority: T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-106; and T.C.A. § 68-215-109.

Subparagraph (a) of paragraph (1) Applicability of rule 1200-01-15-.12 Indicia Of Ownership is deleted in its entirety and replaced with the following:

- (a) This rule applies to holders of security interests in petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located.

Paragraph (3) Fund Eligibility Requirements of rule 1200-01-15-.12 Indicia Of Ownership is deleted in its entirety and replaced with the following:

- (3) Fund Eligibility Requirements.
  - (a) If a release from a petroleum underground storage tank system would have been eligible for reimbursement from the UST Fund under the provisions of rule 1200-01-15-.09 had there been no foreclosure, then the holder shall be able to take full advantage of the Petroleum Underground Storage Tank Fund. Reimbursement from the Fund shall be in accordance with the provisions of rule 1200-01-15-.09.
  - (b) A holder who is eligible for reimbursement from the state Fund must satisfy the deductible requirements as required by rule 1200-01-15-.09(6)(b).
  - (c) If a Fund Eligible release occurred prior to the time of foreclosure and assessment and remediation activities have been initiated in accordance with the requirements of rule 1200-01-15-.06, then assessment and remediation, in accordance with the requirements of rule 1200-01-15-.06, must be continued for the site to remain Fund Eligible after the holder has sold or otherwise disposed of his interest in it.
  - (d) If it is determined that the tanks are not fund eligible due to failure to timely register the tanks, the purchaser of such tanks from a holder must follow the requirements of rule 1200-01-15-.09(4)(b) to establish Fund Eligibility for the UST systems.

Paragraph (4) Fee Payment of rule 1200-01-15-.12 Indicia Of Ownership is deleted in its entirety and replaced with the following:

- (4) Fee Payment. Annual tank fees may be paid after foreclosure either by the holder or by an operator who is in charge of the daily operation of the UST systems provided that the holder has properly registered the tanks in accordance with paragraph (2) of this rule.

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

Part 1 of subparagraph (a) of paragraph (1) of rule 1200-01-15-.14 Record Retention By The Division is deleted in its entirety and replaced with the following:

- 1. Timely registration or notification, in accordance with rule 1200-01-15-.03, is required for establishment of fund eligibility in accordance with rule 1200-01-15-.09(3)(a) and (b);

Parts 1 and 2 of subparagraph (a) of paragraph (2) Fee Payment Records of rule 1200-01-15-.14 Record Retention By The Division are deleted in their entirety and replaced with the following (part 3 remains unchanged):

1. For releases which occurred prior to July 1, 2008, fee payment was required for establishment and maintenance of fund eligibility;
2. For releases which occurred prior to July 1, 2008, the determination of fund eligibility is based, in part, on fee payment records; and/or

The portion of subparagraph (b) of paragraph (4) of rule 1200-01-15-.14 Record Retention By The Division which precedes part 1 is deleted in its entirety and replaced with the following (parts 1 and 2 are unchanged):

- (b) For any fund eligible release there is a maximum reimbursable amount of one million dollars (\$1,000,000) less the deductible for that release, as set forth in rule 1200-01-15-.09(6), for taking corrective actions. Reimbursement records contain information concerning the portion of this reimbursement amount which has been expended and the balance, if any, available for future reimbursement for corrective actions which might need to be taken in the future for previously undetected contamination.

Authority: T.C.A. § 68-215-107; and T.C.A. § 68-215-113.

#### New Rule

Chapter 1200-01-15 is amended by the addition of a new rule designated as 1200-01-15-.15 and entitled Petroleum Product Delivery. The new rule reads as follows:

#### 1200-01-15-.15 Petroleum Product Delivery

- (1) Delivery prohibition. It shall be unlawful for any person to place or cause to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a tank, if the Division has taken one or more of the following actions:
  - (a) A tag or notice has been affixed to the dispensers;
  - (b) A tag has been affixed to the fill ports; or
  - (c) Notice has been given on the Department's web site.
- (2) Dispensing prohibition. It shall be unlawful for any person to dispense petroleum from a petroleum underground storage tank if the Division has taken one or more of the actions in subparagraphs (1)(a) through (c) of this rule.
- (3) If the Division has prohibited delivery and dispensing of petroleum products in accordance with paragraphs (1) and (2) of this rule, resumption of deliveries of petroleum and dispensing of petroleum shall not occur until:
  - (a) The Division has notified the tank owner and/or operator that the tag may be removed; and
  - (b) The Division has removed the facility from the delivery prohibition list on the Division's section of the Department's website.

Authority: T.C.A. § 68-215-106; T.C.A. § 68-215-107; and T.C.A. § 68-215-113.

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

| Board Member         | Aye | No | Abstain | Absent | Signature (if required) |
|----------------------|-----|----|---------|--------|-------------------------|
| Darlene T. Marsh     |     |    |         | X      |                         |
| Hugh M. Callaway, Jr | X   |    |         |        |                         |
| George Hyfantis, Jr. | X   |    |         |        |                         |
| John Owsley          | X   |    |         |        |                         |
| Allen Barker         |     |    |         | X      |                         |
| Jewel G. Cox         | X   |    |         |        |                         |
| Larry R. Reynolds    | X   |    |         |        |                         |
| Jon G. Roach         | X   |    |         |        |                         |
| Bhag Kanwar          | X   |    |         |        |                         |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Petroleum Underground Storage Tank Board (board/commission/ other authority) on 03/25/2009 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/25/08

Notice published in the Tennessee Administrative Register on: 10/15/08

Rulemaking Hearing(s) Conducted on: (add more dates). 12/04/08

Date: March 25, 2009

Signature: *Hugh M. Callaway, Jr.*

Name of Officer: Hugh M. Callaway, Jr.

Title of Officer: Chairman



Subscribed and sworn to before me on: 3/25/09

Notary Public Signature: *Wanda Powers*

My commission expires on: 11/07/2012

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

*Robert E. Cooper, Jr.*  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
8-18-09  
 Date

Department of State Use Only

Filed with the Department of State on: \_\_\_\_\_

8/19/09

Effective on: \_\_\_\_\_

11/17/09

*Tre Hargett*

Tre Hargett  
Secretary of State

RECEIVED  
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PUBLICATIONS

## Public Hearing Comments

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

Comment: One commenter noted the use of the term "spill bucket" in lieu of the term "spill catchment basin" at one place in the proposed rules [1200-1-15-.02(3)(b)2] and recommended that the term "spill catchment basin" be used so that the terms used are consistently.

Response: The Board agrees with the commenter and recommends this change be made to make the terms consistent throughout the rule.

Comment: Three commenters discussed the difficulties with vapor monitoring as a method of release detection. Problems mentioned were inconsistencies of methodology such as sample collection and data interpretation, possible masking of releases, vague and open-ended existing rules allowing multiple interpretations, lack of existing site assessment information, well construction information, background petroleum concentration information, instrument calibration information, etc. All three commenters supported the proposal to sunset vapor monitoring as a leak detection method, and one suggested a date of June 30, 2009, and another suggested it be done "as soon as possible".

Response: The Board acknowledges support for the proposed changes, however the Board believes the proposed vapor monitoring sunset date of January 1, 2010 is more realistic than the June 30, 2009 date suggested by one commenter.

Comment: One commenter pointed out that the rule contained what was likely an erroneous date in rule 1200-01-15-.02(4)(a)3(v) which would result in unintended consequences of tank owners having to remove tanks which were properly upgraded using tank lining and impressed current cathodic protection.

Response: The Board agrees with the commenter and recommends the date "December 22, 1999" for installing cathodic protection systems be changed to "December 22, 2012".

Comment: Two commenters made comments on existing UST rules that were not part of the proposed rule changes.

Response: The Board appreciates the concerns expressed by the commenters, however since these comments are not about the proposed rule amendments, they cannot be considered at this time, but will be retained for future rulemaking.

### Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (1) Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Businesses affected are primarily retail gas stations and convenience stores. Owners and/or operators of petroleum underground storage tanks regulated by T.C.A. § 68-215-101 et seq. and the rules promulgated there under.

The Division of Underground Storage Tanks does not have the authority to collect information on the number of employees a company has so this estimate assumes that a company owning 4 or more stations is most likely to have 50 or more employees. Our data indicate that there are 2,892 tank owners in Tennessee and 2,718 of those own less than 4 facilities. This means that about 94% of tank owners in Tennessee would be considered small business. However of that number only a very small percentage of those would be affected by the rule. For example, less than 50 tank owners are using vapor monitoring, so less than 2% of those small businesses would be affected by this rule.

- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

We do not anticipate any appreciable addition to reporting, recordkeeping and other administrative costs required for compliance with the proposed rule. There are no additional professional skills required beyond what tank owners are already doing to comply with the rules.

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

The amendments to rule 1200-01-15-.02 requires lids on spill buckets. This is something that should already be present on spill buckets and will affect a very small number of locations where spill buckets may not have lids. Spill bucket lids help preserve the integrity of the spill bucket by keeping water and debris out of it, which is already required by rule. The rule further requires closure of tanks where the internal lining has failed and is not repairable and /or the tank is no longer structurally sound. Such a tank would not be considered in compliance with construction standards for existing tanks and would pose a threat of leaking. The rule further establishes a future date when tanks which were upgraded solely by means of internal lining must close. Internal linings do not affect the rate of external corrosion on buried UST systems and they are subject to continuous corrosion and possible tank failure unless a cathodic protection system is added. Until that future date, tank owners may add cathodic protection systems to their tanks and then may keep them in operation beyond the future date. The Division estimates the impact on those businesses will be minimal if they add cathodic protection systems to lined tanks. Doing so would be less expensive than replacing those tanks.

Amendments to rule 1200-01-15-.04(3)(e) ends the use of vapor monitoring as a release detection method for all tanks, effective January 1, 2010. Owners of tanks using this method could begin using statistical inventory reconciliation ("SIR") as a release detection method. Since vapor monitoring is usually done by a contractor other than the tank owner, the cost difference between vapor monitoring and SIR would be relatively small. The rule requires the removal of water as well as petroleum from under dispensers. Such a practice is merely using a best management practice for tank operation and cost to the tank owner should be negligible. The rule requires interstitial monitoring to be continuous, that is, it precludes using mere visual observation once per month for leak detection. Visual observation is not reliable and may not be done routinely. It may be as long as 30 days or more before a leak might be discovered. Small leaks could go unnoticed and if sumps are not tight, holes in the bottom could easily allow a release to go undetected. Electronic monitoring is reliable and will alert the tank operator as soon as the leak is detected by an electronic sensor. Discovering the leak early should mean smaller releases and less costly cleanups. The rule further requires any leak detection methods that are not specifically authorized by rule to first be reviewed by the Division and approved before they can be used. This helps

ensure that tank owners do not use methods that have not demonstrated that they can detect leaks as effectively as any of the methods authorized in rule.

Amendments to rule 1200-01-15-.06 allows the Division to require tightness testing if the source of the release has not been confirmed and a tightness test was not done as a part of release confirmation. This enables the Division to ascertain if a certain location is the cause of the release.

Amendments to rule 1200-01-15-.08 and 1200-01-15-.09 make changes in the way tank owners comply with financial responsibility requirements. The amendments make the UST fund a "first dollar" fund in that releases may be addressed by the state and funds expended can be recovered if the tank owner is unable to pay the deductible portion. This change allows the state to address cleanups sooner in the case of reluctant owners. The amendments also simplify and reduce the obligation of the tank owner for establishing fund eligibility. The amendments allow the division to pay for removal or replacement of property if the cost of those actions is less than the cost of in situ remediation. This makes the fund more easily accessible, and allows the division to have more flexibility when addressing releases in a more expeditious manner.

Amendments to the other rules can be referred to as "housekeeping" changes that are made for consistency and clarification, and are not expected to have any appreciable effect on small businesses.

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

Tank owners using vapor monitoring are likely already paying a third party for that service. It is likely that if they change to paying a third party for monthly SIR the cost would be comparable.

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

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

Requiring closure of tanks that were upgraded by lining only has been recommended to EPA for federal rule making by a group of state UST regulators. There have been significant numbers of tank linings that have failed in many states and states are interested in getting lined tanks either closed or have further corrosion protection added to tanks. There was little to no oversight of lining companies in the era when tanks were lined, so many lined tanks were not lined properly and as a result when the linings are inspected, they have failed. There was strong support of this on the state stakeholder group, so there is a good chance that EPA will propose a federal rule to address lined tanks in the upcoming rulemaking process.

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

The purpose of these rules is to eliminate the use of a leak detection method which could allow significant losses of petroleum to go undetected, or is implemented incorrectly by many tank owners attempting to use it. Since better methods are available, the intent of these rules is to eliminate the use of this method which is difficult to implement correctly and unreliable for release detection.

Another purpose of these rules is to eliminate tanks which were upgraded through use of an allowable, but less protective method. Over time it has become obvious that confidence in the application of this less protective method was misplaced, and many times the results are that this method has failed to adequately protect the tank from corrosion.

These methods are used by small businesses and exempting small businesses from this rule would not achieve the result intended by the rule.

Amendments to rule 1200-01-15-.08 and 1200-01-15-.09 have a positive effect on small businesses since they make the financial responsibility rules consistent with the 2008 statute changes. Those statute changes ease the financial exposure to small businesses by lowering the standard for state fund eligibility and providing some relief for fund deductibles and does not slow the process of contamination clean-up. These rule changes should be seen by the small business community as having a beneficial effect.

## Additional Information Required by Joint Government Operations Committee

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

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

Rule 1200-01-15-.01, Program Scope, Definitions and Proprietary Information, is being amended by moving all the definitions which apply to financial responsibility from rule .08 into rule .01. The definition for "repair" is being expanded to encompass three very different usages of the word in the rule chapter.

Rule 1200-01-15-.02, UST Systems: Installation and Operation, is being amended to require lids on spill buckets and to require the closure of lined tank that when an internal inspection determines that the lining is not performing in accordance with original design specification or if the tank is no longer structurally sound. In addition, all metal tanks which were upgraded by the addition of a tank lining without additional corrosion protection must be permanently closed by December 22, 2012 unless the owner is directed to do otherwise by the Division. Also, portions of the tank or piping that is in contact with water will have to be protected from corrosion even if there is not contact with the soil.

Rule 1200-01-15-.03, Notification, Reporting and Record Keeping, is being amended to make it clear that the tank owner, not the operator, is required to submit notification forms.

Rule 1200-01-15-.04, Release Detection, is being amended to sunset vapor monitoring as an approved method of release detection as of January 1, 2010. Also, water as well as petroleum must be removed from under dispenser sumps. Interstitial monitoring must be continuous. Finally, other methods of release detection must receive prior approval by the division in writing and such approval must be renewed every 2 years.

Rule 1200-01-15-.05, Release Reporting, Investigation and Confirmation, is being amended by adding a caution about loss of fund eligibility if the suspected release is not reported within 90 days. There is new language about field activities, which includes at least one day's advance notice of field activities.

Rule 1200-01-15-.06, Petroleum Release Response, Remediation and Risk Management, is being amended to allow the Division to require a tightness test if the source of the release has not been confirmed and a tightness test was not done under rule 1200-01-15-.05. A caution about loss of eligibility is added to alert owners and operators and CACs to the 60/90 day requirements for applying for fund eligibility. A new requirement will allow the division to require a Free Product Investigation Plan if determined necessary by the division.

Rule 1200-01-15-.07, Out-of-service UST Systems and Closure, is being amended with one small wording change, so that it is the owner who is required to complete closure instead of the tank.

Rule 1200-01-15-.08, Financial Responsibility, is being deleted and replaced in its entirety to address the changes to the UST Act in 2008 and to bring the UST division into alignment with the departmental goal of having uniform financial assurance mechanism language through-out the department where possible.

Rule 1200-01-15-.09, Petroleum Underground Storage Tank Fund, is being amended to line up with the 2008 amendment to the UST Act.

- (1) Tank registration prior to a release is the only requirement for fund eligibility for releases that occur on or after July 1, 2008.
- (2) The payment of the deductible will have to be demonstrated at the time a reimbursement claim is filed. If a tank owner cannot or will not pay the deductible, the fund can pay the deductible and cost recover against the tank owner.
- (3) The fund can now be used to pay for removal, replacement or restoration of property improvements provided that the remediation, removal and replacement is less than the cost of in situ remediation without moving the canopy, signage, etc.
- (4) The fund will not pay for releases caused by overt actions taken by the tank owner, such as disabling an overfill prevention device.
- (5) Compliance with applicable secondary containment requirements will need to be demonstrated for fund coverage of corrective action costs.
- (6) Tank owners must have environmental samples evaluated at a lab which is not in control of or controlled by the CAC or controlled by the same parent company as the CAC hired by the tank owner.

(7) CACs will have to provide a little more contact information to the division and will need to update employee information more frequently.

Rule 1200-1-15-.10, Fee Collection, is being amended to line up with the 2008 amendment of the UST Act by removal of all references to certificates and the addition of language about tags affixed to dispensers or fill ports and DO NOT DELIVER notice on the UST web site.

Rule 1200-1-15-.12, Indicia of Ownership, is being amended to line up with the 2008 UST Act changes and the changes to other rules in this chapter.

Rule 1200-1-15-.14, Record Retention, is being amended to line up with the 2008 UST Act changes and the changes to other rules in this chapter.

A new Rule 1200-01-15-.15, Petroleum Product Delivery, is being proposed to outline the procedure for delivery prohibition.

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

These amendments and new rule are promulgated under the authority of T.C.A. 68-215-101 - Tennessee Petroleum Underground Storage Tank Act, as amended by the 2008 UST Act.

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

Persons directly affected by this rule are owners and /or operators of petroleum underground storage tanks in Tennessee. No opposition by persons directly affected by the proposed rules was expressed at a public hearing held for the purpose of receiving comments on these proposed rules.

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

The Petroleum Underground Storage Tank Board is not aware of any.

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

Most of these amendments are of a "housekeeping" nature and of benefit to tank owners. The Board does not anticipate any increase or decrease in state or local government revenues as a result of promulgating these rules.

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

Lamar Bradley  
Division of Petroleum Underground Storage Tanks  
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Nashville, Tennessee 37243-1541

O. J. Wingfield,  
Division of Financial Responsibility  
8<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, Tennessee 37243

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

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

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

Office of General Counsel  
Department of Environment and Conservation  
20<sup>th</sup> Floor L & C Tower  
Nashville, Tennessee 37243-1548  
(615) 532-0131

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

The Petroleum Underground Storage Tank Board is not aware of any.