

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
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Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 10-23-12
Rule ID(s): 5381
File Date: 10/23/12
Effective Date: 1/21/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Underground Storage Tanks
Contact Person:	Rhonda Key
Address:	4 th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1541
Phone:	615-532-0989
Email:	Rhonda.Key@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-18-01	Underground Storage Tank Program
Rule Number	Rule Title
0400-18-01-.10	Fee Collection

(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 0400-18-01
Underground Storage Tank Program

Amendments

Paragraph (3) of Rule 0400-18-01-.10 Fee Collection is amended by deleting it in its entirety and replacing it with the following so that, as amended, paragraph (3) shall read as follows:

(3) Annual petroleum underground storage tank fees.

- (a) The required fee shall be submitted in the specified amount, with checks made payable to the Tennessee State Treasurer.
- (b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner and/or operator.
- (c) The amount of the annual petroleum underground storage tanks fee shall be:

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	\$100.00	Per Tank
July 1, 1990 to June 30, 2005	\$125.00	Per Tank
July 1, 2005 to June 30, 2013	\$250.00	Per Tank Compartment
July 1, 2013 forward	\$125.00	Per Tank Compartment

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

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	\$25.00	Per Tank
July 1, 1990 to June 30, 2005	\$25.00	Per Tank
July 1, 2005 to June 30, 2013	\$250.00	Per Tank Compartment
July 1, 2013 forward	\$125.00	Per Tank Compartment

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

- (e) If an annual fee is paid on an existing underground storage tank which is subsequently permanently closed in accordance with Rule 0400-18-01-.07 and replaced by a new underground storage tank installed at the same site in accordance with paragraph (1) or (6) of Rule 0400-18-01-.02 no additional annual fee will be required, provided that the replacement tank has the same number of tank compartments as the existing tank. If the replacement tank has more tank compartments than the existing tank, an additional annual fee of:
 - 1. Two hundred fifty dollars (\$250) per compartment shall be paid if the tank was replaced before July 1, 2013; or
 - 2. One hundred twenty five dollars (\$125) per compartment shall be paid if the tank was replaced on or after July 1, 2013.

If the replacement tank has fewer tank compartments than the existing tank, no refund of the annual fee or any portion thereof is due, as stated in subparagraph (f) of this paragraph.

- (f) Payment of the entire amount of the annual fee is required for underground storage tanks and/or tank compartments in service or temporarily out of service during any portion of the current billing year. Tanks and/or tank compartments placed into service after the current billing year begins or

tanks and/or tank compartments which are permanently closed before the current billing year ends are not due a refund of the annual fee or any portion thereof.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mayor Allen Barker	X				
Jonathan M. Edwards				X	
John C. Harding	X				
Sharon O. Jacobs				X	
Bhag Kanwar	X				
John Owsley	X				
DeAnne Redman	X				
Larry R. Reynolds				X	
Jon Roach				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 on 09/26/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/27/12

Rulemaking Hearing(s) Conducted on: (add more dates). 09/07/12

Date: September 26, 2012

Signature: *Allen Barker*

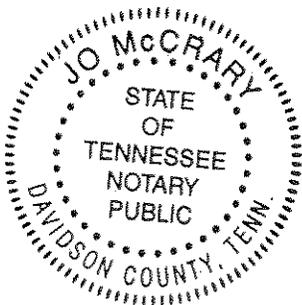
Name of Officer: Allen Barker

Title of Officer: Chairman

Subscribed and sworn to before me on: September 26, 2012

Notary Public Signature: *J McCrary*

My commission expires on: May 3, 2016



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

10-19-12
Date

Department of State Use Only

Filed with the Department of State on: 10/23/12

Effective on: 1/2/13

Tre Hargett by M. H. POA
Tre Hargett
Secretary of State

RECEIVED
2012 OCT 23 PM 12: 59
SECRETARY OF STATE
RECEPTIONS

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.

The commenter stated they fully support the proposal and strongly urged the Board to adopt the proposal.

Regulatory Flexibility Addendum

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

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

This rule change will affect any business that owns regulated underground storage tanks, and will be a reduction in annual costs.

- (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.

There are no additional costs with this proposed rule change.

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

The probable effect will be a reduction in the annual underground storage fees.

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

This is a less costly alternative than the current rule.

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

There are no federal or state counterparts that the Division is aware of.

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

An exemption of small businesses would cause those businesses to pay a higher annual tank fee.

Impact on Local Governments

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

The Department anticipates that these amended rules will have a beneficial financial impact on local governments that own underground storage tanks.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

This rule reduces the annual tank fees from \$250 per tank per compartment to \$125 per tank per compartment.

- (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;

This amendment is promulgated under the authority of T.C.A. §§ 68-215-101 et seq. -- Tennessee Petroleum Underground Storage Tank Act, as amended by the 2008 UST Act and T.C.A. §§ 68-203-101 et seq. -- Tennessee Environmental Protection Fund.

- (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;

All owners of underground storage tanks will be affected by this rule.

- (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;

This rule change will have a positive impact on any local or state governments that own regulated underground storage tanks. This rule change will reduce the Division's fund budget by approximately \$2 million per year; however, the fund balance has improved significantly. Therefore, the Division is passing the benefits on to the tank owners.

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

Rhonda Key
Division of Underground Storage Tanks
4th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1541

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

Alan Leiserson
Legal Services Director
Department of Environment and Conservation

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

Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L&C Tower

Nashville, Tennessee 37243-1548
Phone: (615) 532-0131
Alan.Leiserson@tn.gov

(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.

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Rule Number	Rule Title
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(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 0400-18-01
Underground Storage Tank Program

Amendments

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(3) Annual petroleum underground storage tank fees.

- (a) The required fee shall be submitted in the specified amount, with checks made payable to the Tennessee State Treasurer.
- (b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner and/or operator.

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

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

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	\$100.00	Per Tank
July 1, 1990 to June 30, 2005	\$125.00	Per Tank
July 1, 2005 to June 30, 2013	\$250.00	Per Tank Compartment
July 1, 2013 forward	\$125.00	Per Tank Compartment

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

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

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	\$25.00	Per Tank
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- 1. ~~two~~ Two hundred fifty dollars (\$250) per compartment shall be paid if the tank was replaced before July 1, 2013; or

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

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mayor Allen Barker	X				
Jonathan M. Edwards				X	
John C. Harding	X				
Sharon O. Jacobs				X	
Bhag Kanwar	X				
John Owsley	X				
DeAnne Redman	X				
Larry R. Reynolds				X	
Jon Roach				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 on 09/26/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/27/12

Rulemaking Hearing(s) Conducted on: (add more dates). 09/07/12

Date: September 26, 2012

Signature: _____

Name of Officer: Allen Barker

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

This rule change will affect any business that owns regulated underground storage tanks, and will be a reduction in annual costs.

- (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.

There are no additional costs with this proposed rule change.

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

The probable effect will be a reduction in the annual underground storage fees.

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

This is a less costly alternative than the current rule.

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

There are no federal or state counterparts that the Division is aware of.

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

An exemption of small businesses would cause those businesses to pay a higher annual tank fee.

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This amendment is promulgated under the authority of T.C.A. §§ 68-215-101 et seq. -- Tennessee Petroleum Underground Storage Tank Act, as amended by the 2008 UST Act and T.C.A. §§ 68-203-101 et seq. – Tennessee Environmental Protection Fund.

- (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;

All owners of underground storage tanks will be affected by this rule.

- (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;

This rule change will have a positive impact on any local or state governments that own regulated underground storage tanks. This rule change will reduce the Division's fund budget by approximately \$2 million per year; however, the fund balance has improved significantly. Therefore, the Division is passing the benefits on to the tank owners.

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

Rhonda Key
Division of Underground Storage Tanks
4th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1541

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

Alan Leiserson
Legal Services Director
Department of Environment and Conservation

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

Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
SS-7039 (October 2011)

Nashville, Tennessee 37243-1548
Phone: (615) 532-0131
Alan.Leiserson@tn.gov

(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.

RECEIVED
2012 OCT 23 PM 12:59
SECRETARY OF STATE
PITTSBURGH, PENNSYLVANIA