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Sequence Number: 11-26-09
Rule ID(s): 4540
File Date: 11/30/2009
Effective Date: 02/28/2010

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

Agency/Board/Commission:	Environment and Conservation
Division:	Underground Storage Tanks
Contact Person:	Lamar Bradley
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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

(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

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 part 2 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 and 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 rules 1200-01-15-.02(2)(a) and (b) and (6). However, if the new or replacement piping meets the requirements for safe suction piping set forth in rule 1200-01-15-.04(2)(b)2, the piping components do not have to be secondarily contained.

Authority: T.C.A. §§ 68-215-105, 68-215-107 and 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)
Sheri Jacobs				✓	
Hugh M. Callaway, Jr	✓				
George Hyfantis, Jr.	✓				
John Owsley	✓				
Allen Barker	✓				
Jewel G. Cox				✓	
Larry R. Reynolds	✓				
Jon G. Roach	✓				
Bhag Kanwar	✓				

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 08/26/2009 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: 04/23/09

Notice published in the Tennessee Administrative Register on: 05/15/09

Rulemaking Hearing(s) Conducted on: (add more dates). 06/18/09

Date: August 26, 2009

Signature: [Handwritten Signature]

Name of Officer: Hugh M. Callaway, Jr.

Title of Officer: Chairman



My Commission Expires NOV. 7, 2012

Subscribed and sworn to before me on: 8/26/09

Notary Public Signature: Wanda Powers

My commission expires on: 11/7/2012

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.

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
11-23-09
 Date

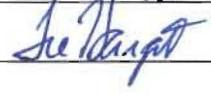
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Filed with the Department of State on: _____

11/30/09

Effective on: _____

2/28/10



Tre Hargett
Secretary of State

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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 pointed out that the draft rule referenced a part 3 that is proposed to be edited out of the rule.

Response: The incorrect reference was amended out of the final document.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th 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:

All businesses owning emergency generator tanks are affected by the amendment, however there are no negative economic impacts to any small business because this rule change is a clarification of existing rules. Not making the change would have an adverse impact on small businesses since the existing rule could be interpreted to require them to do something that the program does not intend to require, so the clarifying language in the amendment will have a positive impact for small businesses.

- (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 reporting, recordkeeping or other administrative costs resulting from this amendment. This rule change is a clarification of existing rules and prevents owners and operators of emergency generator tanks from unintentionally complying with potentially more stringent requirements.

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

This rule change is a clarification of existing rules and prevents owners and operators of emergency generator tanks from complying with unintended requirements. Therefore, the effect on impacted small businesses and consumers is positive.

- (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:

There is no alternative way of achieving the same result without this clarifying rulemaking action.

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

The Board through the Division was encouraged by the EPA to make this regulatory amendment and it is presumed that other state programs are likewise being advised.

- (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:

Exempting small businesses would have the effect of keeping the existing rule in place. The existing rule could be burdensome on small businesses if not interpreted correctly, thus the amendment was needed to avoid these misinterpretations.

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;

Proposed Rule 1200-1-15-.01(2)(c)1 grants a deferral to emergency generator tanks of release detection requirements. Rule 1200-1-15-.01(2)(c)2 grants a deferral to emergency generator tanks of the secondarily contained requirements for new or replacement piping if the piping meets the safe suction requirements. There is no change in the meaning of the rule, it was simply a clarification to the way Rule 1200-1-15-.01(2)(c)1 through 3 were written.

- (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 - 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;

All businesses owning emergency generator tanks are affected by this clarifying amendment. Other than a request to correct an incorrect reference, there were no other comments received.

- (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;

No increase or decrease is anticipated because this rule change is a clarification of existing 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
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 M. Leiserson
Legal Services Director
Department of Environment and Conservation
Alan.Leiserson@tn.gov

- (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
20th 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.