

**RULES  
OF  
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

**CHAPTER 0400-18-01  
UNDERGROUND STORAGE TANK PROGRAM**

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**0400-18-01-.01 PROGRAM SCOPE, DEFINITIONS AND PROPRIETARY INFORMATION.**

(1) Program scope: general.

(a) Purpose, scope, and applicability.

This rule provides definitions of terms, general standards and procedures, as well as overview information applicable to these rules.

(b) Use of number and gender.

As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders;
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

(c) Rule structure.

These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

l. subitem

A. section

(Rule 0400-18-01-.01, continued)

(A) subsection

(2) Program scope: applicability.

(a) The requirements of this chapter apply to all owners and/or operators of an UST system as defined in paragraph (4) of this rule except as otherwise provided in subparagraph (b) and (c) of this paragraph. Any UST systems listed in subparagraph (b) of this paragraph shall meet the requirements of paragraph (3) of this rule.

(b) Deferrals.

Rules 0400-18-01-.02 through 0400-18-01-.05 and 0400-18-01-.07 through 0400-18-01-.10 and 0400-18-01-.16 do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;
2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);
3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;
4. Airport hydrant fuel distribution systems;
5. UST systems with field-constructed tanks;
6. Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
7. Any UST system whose capacity is 110 gallons or less;
8. Any UST system that contains a de minimis concentration of petroleum; or
9. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Deferrals – Emergency generator UST systems.

1. Except as provided for in part 2 of this subparagraph, release detection requirements in Rule 0400-18-01-.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 subparagraphs (2)(a) and (b) and paragraph (6) of Rule 0400-18-01-.02. However, if the new or replacement piping meets the requirements for safe suction piping set forth in part (2)(b)2 of Rule 0400-18-01-.04, the piping components do not have to be secondarily contained.

(3) Interim prohibition for deferred UST systems.

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

(Rule 0400-18-01-.01, continued)

1. Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
  2. Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any petroleum; and
  3. Is constructed or lined with material that is compatible with the petroleum.
- (b) Notwithstanding subparagraph (a) of this paragraph, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and/or operators shall maintain records that demonstrate compliance with the requirements of this subparagraph for the remaining life of the tank.
- (4) Definitions.

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

“Access” means the ability and opportunity to gain knowledge of proprietary information in any manner whatsoever.

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

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

“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.

“Authorized person” means any person, including members of the board, authorized to receive proprietary information. Except for members of the board, such authorization shall be granted in writing by the commissioner.

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

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

“Beneath the surface of the ground” means beneath the ground surface or otherwise covered with earthen materials.

(Rule 0400-18-01-.01, continued)

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

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

"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.

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

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

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

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

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

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

"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.

(Rule 0400-18-01-.01, continued)

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.

“Class A Operator” means any person having primary responsibility for on-site operation and maintenance of underground storage tank systems and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 0400-18-01-.16.

“Class B Operator” means any person having daily on-site responsibility for the operation and maintenance of underground storage tank systems and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 0400-18-01-.16.

“Class C Operator” means any on-site employee having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 0400-18-01-.16.

“Commissioner” means Commissioner of Environment and Conservation, his authorized representatives, or in the event of his absence or a vacancy in the commissioner’s office, the Deputy Commissioner.

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

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

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

“Consumption” with respect to heating oil means consumed on the premises where stored.

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

“Continuous in-tank leak detection system” means a release detection system that allows an underground storage tank to operate continuously or nearly continuously without interruption for release detection tests. However, the system may default to a standard or shut down test, requiring the tank to be taken briefly out of service at the end of the month if sufficient good data has not been obtained over the month. These methods include continuous automatic tank gauging systems and continual reconciliation systems.

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

(Rule 0400-18-01-.01, continued)

“Corrective action contractor” or “CAC” means a person who is carrying out any corrective action, including a person retained or hired by such person to provide services relating to a corrective action.

“Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall submit documentation for review by the division that they have accreditation or certification as a corrosion specialist or senior corrosion technologist by the National Association of Corrosion Engineers (NACE) or have education and a minimum of four (4) years responsible charge work experience in the corrosion field. If it is determined by the division that a person has sufficient experience and education to be qualified to take responsible charge in corrosion control of buried or submerged metal piping systems and metal tanks, then that person shall be classified by the division as a corrosion expert for the purposes of this rule.

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

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

“De minimis” means very low concentrations of petroleum.

“Department” means the Tennessee Department of Environment and Conservation.

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

“Director” means the director of the division.

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

“Division” means the division designated by the commissioner of the Department of Environment and Conservation as the agency to implement the Underground Storage Tank Program in Tennessee.

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

“Document control number” means the unique number assigned by the document control officer to any document containing proprietary information.

“Document control officer” means the individual authorized by the commissioner in writing to be responsible for all incoming and outgoing documents identified as containing proprietary information.

(Rule 0400-18-01-.01, continued)

“Drinking water supply” means any aquifer or water source whose chemical characteristics meet the primary and secondary drinking water standards as defined under Chapter 1200-05-01 and provides a yield of at least one-half gallon per minute. This shall also include any water supply used for drinking by the citizens of the state.

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

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

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

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

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

“Facility is operating”, for purposes of Rule 0400-18-01-.16, means normal or extended business hours when product can be dispensed from UST systems. This does not include periods when a facility is closed for business, nor when a facility is closed, but deliveries can be made to UST systems.

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

“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.

“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:

(Rule 0400-18-01-.01, continued)

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.

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

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

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

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

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

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

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

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.



(Rule 0400-18-01-.01, continued)

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

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

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

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

“Information” means knowledge which can be communicated by any means.

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

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

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

“Legal defense cost” 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.

“Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may

(Rule 0400-18-01-.01, continued)

temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

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

“Motor fuel” means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, biodiesel, ultra low sulphur diesel, or any grade of gasohol, and is typically used in the operation of a motor engine.

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

“Monthly” means at least once during a calendar month.

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

“Noncommercial purposes”, with respect to motor fuel, means not for resale.

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

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

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

“Operational life” refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Rule 0400-18-01-.07.

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

“Operator Training”, for purposes of Rule 0400-18-01-.16, means a program recognized by the division as meeting the specific requirements for each operator class as published by EPA in the Final Grant Guidelines To States For Implementing The Operator Training Provision Of The Energy Policy Act Of 2005, August, 2007.

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

“Owner” means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of petroleum; and
2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

(Rule 0400-18-01-.01, continued)

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

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

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

“Petroleum” means crude oil or any fraction thereof that is liquid at standard temperature and pressure (sixty degrees (60°) Fahrenheit and 14.7 pounds per square inch absolute). The term petroleum includes but is not limited to petroleum and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

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

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

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

“Pipe” or “piping” means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

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

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

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

“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.

(Rule 0400-18-01-.01, continued)

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

1. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between the disclosure and the harm?
2. What measures have you taken to guard against undesired disclosure of the information to others?
3. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?
4. Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

“Provider of financial assurance” means an entity that provides financial assurance to an owner or operator of an underground storage tank through a mechanism or mechanisms allowed by subparagraph (4)(a) of Rule 0400-18-01-.08, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the State of Tennessee.

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

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

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

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

“Repair” means:

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;

(Rule 0400-18-01-.01, continued)

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.

“Residential tank” is a tank located on property used primarily for dwelling purposes.

“Retraining” means any remedial training approach imposed by the division when significant operational compliance violations are discovered at a facility. Retraining may be directed to any or all operator classes assigned to a facility and may include requirements to successfully complete additional education, testing, and/or training, or be subject to other administrative or enforcement options at the discretion of the division.

“Risk Based Cleanup Level” or “RBCL” means the concentration of a chemical(s) of concern in soils or ground water in the source area(s) that will assure an acceptable risk at the point of exposure, based upon conservative non-site-specific assumptions and default parameters.

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

“SARA” means the Superfund Amendments and Reauthorization Act of 1986.

“Secondary containment” means a system designed and installed so that any material that is released from the primary containment is prevented from reaching the soil or ground water outside the system.

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

“Septic tank” is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

“Site specific cleanup level” or “SSCL” means the concentration of a chemical(s) of concern in soils or ground water in the source area(s) that will assure an acceptable risk at the point of exposure, based upon site specific conditions.

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

(Rule 0400-18-01-.01, continued)

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

“Submersible turbine pump” or “STP” means pump located inside a petroleum underground storage tank, positioned near the bottom of the tank, thereby “submerged” in the petroleum.

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

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

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

“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.

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

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

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

“Underground release” means any below ground release.

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

1. Farm or residential tank of eleven hundred (1,100) gallons or less capacity used for storing motor fuel for non-commercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored;

(Rule 0400-18-01-.01, continued)

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

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

“Unmanned facility” means an unattended emergency generator or a facility that dispenses fuel without the presence of an attendant who monitors the pumps, such as card lock fleet facilities or an unattended service station.

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

“UST facility” means any location at which one or more regulated underground storage tank systems are located.

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

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

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

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

(Rule 0400-18-01-.01, continued)

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

(5) Proprietary information.

(a) General.

1. Purpose, scope and applicability.

Any information which is supplied to the division as required or necessitated by the Tennessee Petroleum Underground Storage Tank Act or the regulations promulgated pursuant thereto or which is supplied by other governmental agencies and which is designated proprietary information (as defined in paragraph (4) of this rule) shall be handled by the division as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary at the time it is first delivered to the division together with the supporting information required by paragraph (4) of this rule, any claim that it is proprietary is waived and any information supplied to the division under or relating to these rules shall be available for public review at any time during the division's normal business hours, subject to availability and scheduling limitations set by the division, without further notice to any person supplying the information or having an interest in the information.

2. Policy.

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

(b) Responsibilities.

1. Commissioner.

The commissioner is responsible for:

- (i) Designating a document control officer;
- (ii) Assuring that all division employees receiving and handling proprietary information receive instruction as to their responsibility for controlling proprietary information;
- (iii) Maintaining a record which lists all employees who have authorized access to proprietary information;
- (iv) Obtaining a “Confidentiality Agreement” from all employees having access to proprietary information;
- (v) Obtaining a “Confidentiality Agreement upon Transfer or Termination” from all employees having access to proprietary information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;
- (vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combination;



(Rule 0400-18-01-.01, continued)

- (vii) Taking appropriate disciplinary action concerning any division employees who fail to comply with the requirements of this paragraph; and
- (viii) Notifying the person submitting proprietary information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document control officer.

The document control officer is responsible for the maintenance, control and distribution of all proprietary information received by the division as follows:

- (i) Logging of all proprietary information as received by the division, both incoming and outgoing;
- (ii) Assigning a document control number to each document received containing proprietary information;
- (iii) Maintaining a system which identifies employees authorized to receive proprietary information;
- (iv) Releasing proprietary information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;
- (v) Maintaining a system to insure that any proprietary information transmitted to field locations is received;
- (vi) Maintaining at division offices a system for retrieval of documents that are furnished to other program offices;
- (vii) Authorizing and supervising the reproduction and destruction of proprietary information; and
- (viii) Assuring that recipients of proprietary information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released proprietary information the same day.

3. Employees.

Employees are responsible for:

- (i) Controlling all proprietary information entrusted to them;
- (ii) Only discussing proprietary information with authorized persons;
- (iii) Never leaving the proprietary information unattended when not properly stored;
- (iv) Never discussing the proprietary information over the telephone except upon approval of the document control officer should the proprietary information be needed in an emergency situation;
- (v) Storing the proprietary information as specified in part (c)5 of this paragraph when not in use and at the close of business;

(Rule 0400-18-01-.01, continued)

- (vi) Not reproducing proprietary information documents. Additional copies shall be obtained through the document control officer; and
- (vii) Reporting immediately possible violations of these regulations to the commissioner.

(c) Procedures.

1. Receipt and handling.

The document control officer shall:

- (i) Receive all information claimed as proprietary and confidential which is submitted to the division;
- (ii) Log in all proprietary information received by the division;
- (iii) Assign a document control number to all proprietary information;
- (iv) Attach a proprietary information cover sheet to the document;
- (v) Release proprietary information only to authorized persons; and
- (vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions in the definition of proprietary information in paragraph (4) of this rule and other information as may be required, determine whether to approve or deny it, in part or in whole.

2. Transmission.

- (i) Proprietary information shall be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope shall reflect the address of the recipient with the following wording on the front side of the inner envelope:  
  
"Confidential Business – To Be Opened By Document Control Officer Only."  
  
The outer envelope shall reflect the normal address without the additional wording.
- (ii) All requests to the document control officer for proprietary information shall be in writing and signed by the requesting employee.
- (iii) Proprietary information may be hand carried to other division facilities by authorized persons provided the dispatching document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried shall be packaged as described in subpart (i) of this part.
- (iv) Proprietary information within a division office shall be hand delivered only by an authorized person. At no time shall proprietary information be transmitted through inner office mailing channels.

(Rule 0400-18-01-.01, continued)

3. Reproduction.

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

4. Destruction.

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

5. Storage.

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

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

(d) Transmittal outside division offices.

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

(e) Release to EPA.

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

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15. Amendments filed June 28, 2012; effective September 26, 2012.

**0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.**

(1) Installation.

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

(Rule 0400-18-01-.02, continued)

1. Submit a pre-installation notification form in accordance with part (1)(a)1 of Rule 0400-18-01-.03 for all the petroleum underground storage tanks and/or UST systems for which installation and/or construction is planned; and
  2. Submit annual tank fees for all tanks, tank compartments and/or UST systems, which are listed in the pre-installation notification form, in accordance with paragraph (3) of Rule 0400-18-01-.10.
- (b) All tanks and piping shall be installed in accordance with the manufacturer's installation instructions.
- (c) All tanks, pressurized piping and/or suction piping that do not meet the requirements of subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04, and/or motor fuel dispensers installed on or after July 24, 2007, shall be secondarily contained in accordance with paragraph (2) of this rule.
- (d) The following requirements take effect when a petroleum product is being placed into a tank, tank compartment and/or UST system either during or following installation:
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 (a)1 of this paragraph.
  2. Prior to placing product into the tank, tank compartment and/or UST system, spill and overfill prevention measures shall be implemented in accordance with paragraph (3) of this rule.
  3. Prior to placing product into the tank or tank compartment an air pressure test or a vacuum test shall be conducted in accordance with the manufacturer's recommendations. The results of this test shall be maintained for the operational life of the underground storage tank system. The test results shall contain at a minimum the following information:
    - (i) The name of the manufacturer whose pressure test recommendations have been applied to the tank;
    - (ii) The name of the person performing the test and the name of the company that person represents;
    - (iii) The date of the pressure test;
    - (iv) The identification number assigned to the facility by the division;
    - (v) The amount of pressure applied to the tank;
    - (vi) The duration of the test period; and
    - (vii) The results of the test.
  4. Begin release detection in accordance with Rule 0400-18-01-.04 immediately if the tank or tank compartment contains more than two and one-half (2.5) centimeters (one (1) inch) of product.
  5. Immediately protect against corrosion in accordance with paragraph (4) of this rule.

(Rule 0400-18-01-.02, continued)

6. A line tightness test in accordance with subparagraph (4)(b) of Rule 0400-18-01-.04 and a tank tightness test in accordance with subparagraph (3)(c) of Rule 0400-18-01-.04 shall be performed upon completion of the installation and prior to the dispensing of fuel from the UST system. The results of this tightness test shall be maintained for the operational life of the underground storage tank system. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.
- (e) Installation shall be certified in accordance with part (1)(d)1 of Rule 0400-18-01-.03 within fifteen (15) days following completion of the installation.
- (2) Secondary Containment.
  - (a) Tanks.

Tanks that are required to be secondarily contained in accordance with subparagraph (2)(c) of Rule 0400-18-01-.01, with subparagraph (1)(c) of this rule, or with paragraph (6) of this rule shall comply with the following:

    1. Tanks shall be double-walled or jacketed and shall have an interstitial space;
    2. Tanks shall meet the interstitial monitoring requirements of part (3)(g)1 of Rule 0400-18-01-.04;
    3. Tanks shall prevent the release of petroleum to the environment for the operational life of the underground storage tanks;
    4. Tanks shall contain a release until detected and removed; and
    5. Tanks shall be monitored for a release at least every thirty (30) days in accordance with part 2 of this subparagraph.
  - (b) Piping.

Pressurized piping or suction piping that does not meet the requirements of subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04 that is required to be secondarily contained in accordance with subparagraph (2)(c) of Rule 0400-18-01-.01, 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 (c)1 through 3 of this paragraph;
    2. Piping shall meet the interstitial monitoring requirements of part (3)(g)1 of Rule 0400-18-01-.04;
    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

(Rule 0400-18-01-.02, continued)

5. Piping shall be monitored for a release at least every thirty (30) days.

(c) Motor fuel dispensers.

Motor fuel dispensers that are required to be secondarily contained in accordance with subparagraph (1)(c) of this rule or with paragraph (6) of this rule shall comply with the following:

1. The containment sump shall be liquid tight on the sides, the bottom and at any penetrations;
2. The containment sump shall be compatible with the petroleum products stored in the UST system; and
3. The containment sump shall be designed to allow for a visual inspection and access to the components of containment systems, including that used for piping, and shall be monitored in accordance with subparagraph (1)(g) of Rule 0400-18-01-.04.

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in part 2 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:
  - (i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
  - (ii) Overfill prevention equipment that will:
    - (I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;
    - (II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or
    - (III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.
2. Owners and/or operators are not required to use the spill and overfill prevention equipment specified in part 1 of this subparagraph if:
  - (i) Alternative equipment is used that is determined by the division to be no less protective of human health and the environment than the equipment specified in subpart 1(i) or (ii) of this subparagraph; or
  - (ii) The UST system is filled by transfers of no more than twenty-five (25) gallons at one time.

(b) Operating requirements.

(Rule 0400-18-01-.02, continued)

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 paragraph (4) of Rule 0400-18-01-.05.

(4) Corrosion protection.

(a) Tank construction.

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

1. The tank is constructed of fiberglass-reinforced plastic.
2. The tank is constructed of steel which is cathodically protected in the following manner:
  - (i) The tank is coated with a suitable dielectric material unless cathodic protection has been added to the tank for the purpose of upgrading;
  - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
  - (iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph;
  - (iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the division to provide equivalent protection against corrosion, provided that such determination is made by the division prior to installation and/or operation; and

(Rule 0400-18-01-.02, continued)

- (v) If cathodic protection was initially installed for the purpose of upgrading subsequent to UST system installation, the integrity of the tank has been ensured using one of the following methods:
  - (I) Internal inspection and assessment ensured that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system.
  - (II) At the time of installation of the cathodic protection system, the tank had been installed for less than ten (10) years and monthly monitoring was being conducted in accordance with subparagraphs (3)(d) through (h) of Rule 0400-18-01-.04.
  - (III) The tank was assessed for corrosion holes by conducting two (2) tightness tests that met the requirements of subparagraph (3)(c) of Rule 0400-18-01-.04:
    - I. The first tightness test was conducted no more than one hundred twenty (120) days prior to installing the cathodic protection system.
    - II. The second tightness test was conducted between three (3) and six (6) months following the first operation of the cathodic protection system.
  - (IV) The tank was assessed for corrosion holes by a method determined by the division, prior to assessment, to be no less protective of human health and the environment than items (I) through (III) of this subpart.
- 3. The tank, which is constructed of steel and was installed on or before December 22, 1988, was lined subsequent to installation of the tank and has satisfied the following requirements:
  - (i) The lining was installed in accordance with at least the following procedures and practices:
    - (I) The lining was installed so as to effectively prevent releases for the operational life of the tank;
    - (II) The lining material is compatible with the product to be stored;
    - (III) The tank shell was structurally sound prior to lining;
    - (IV) Lining manufacturers directions were followed during installation of lining;
    - (V) After the tank was lined and before the tank was returned to service, the tank was tank tightness tested according to subparagraph (3)(c) of Rule 0400-18-01-.04; and
    - (VI) Records that demonstrate compliance with this part shall be maintained for the remaining operational life of the tank. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer; and



(Rule 0400-18-01-.02, continued)

- (ii) Within ten (10) years after lining, and every five (5) years thereafter, the lined tank is/was internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. However, tanks which use lining in combination with cathodic protection systems operated in accordance with subparagraph (c) of this paragraph do not have to be internally inspected subsequent to addition of cathodic protection.
  - (iii) Lining may be used in combination with cathodic protection if the cathodic protection system meets the requirements of subparts 2(ii) through (v) of this subparagraph.
  - (iv) Unless directed to do otherwise by the division, a tank shall be permanently closed in accordance with Rule 0400-18-01-.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.
4. The tank is constructed of a steel-fiberglass-reinforced-plastic composite.
  5. The tank is constructed of metal without additional corrosion protection measures provided that:
    - (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life; and
    - (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the tank. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.
  6. The tank construction and corrosion protection are determined by the division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than parts 1 through 5 of this subparagraph.

(b) Piping construction.

Piping that routinely contains petroleum and is in contact with the ground 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:

1. Piping, whether rigid or flexible in design, that is constructed of nonmetallic materials, and complies with subparts (i) and (ii) of this part.

(Rule 0400-18-01-.02, continued)

- (i) Piping installed on or after November 1, 2005, shall meet or exceed the Standard for Safety established by Underwriters Laboratory in UL 971 - "Non-Metallic Underground Piping for Flammable Liquids", July 1, 2005. This requirement shall apply to all new and/or replacement piping.
  - (ii) Pipe marking or labeling shall comply with the Underwriters Laboratory standard referenced in subpart (i) of this part. Piping shall, at a minimum, be permanently and legibly marked with the following information at ten (10) foot intervals:
    - (I) The manufacturer's name, trade name, trademark, or other information that identifies the manufacturer;
    - (II) Manufacturing date, or a verifiable date code, accurate to at least the quarter of a year in which the pipe was manufactured;
    - (III) The nominal size of the pipe and a number identifying the pipe, such as a catalog, model or part number;
    - (IV) The maximum pressure rating (psig) and the statement: Underground Use Only;
    - (V) The type of pipe system(s), which may be abbreviated, and which may include, but not be limited to:
      - I. Primary Carrier;
      - II. Secondary Containment;
      - III. Integral Primary/Secondary;
      - IV. Normal Vent; and/or
      - V. Vapor Recovery;
    - (VI) The flammable liquid group rating(s), which may be abbreviated, and which may include, but not be limited to:
      - I. Motor Vehicle Fuels;
      - II. Concentrated Fuels;
      - III. High Blend Fuel; and/or
      - IV. Aviation and Marine Fuels.
2. The piping, whether rigid or flexible in design, including flex connectors, is constructed of steel and cathodically protected in the following manner:
- (i) The piping is coated with a suitable dielectric material unless cathodic protection was added for the purpose of upgrading;
  - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(Rule 0400-18-01-.02, continued)

- (iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph; and
  - (iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the division to provide equivalent protection against corrosion, provided that such determination is made by the division prior to installation and/or operation of the cathodic protection system.
3. The piping is constructed of metal without additional corrosion protection measures provided that:
- (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operational life; and
  - (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the piping. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.
4. The piping construction and corrosion protection are determined by the division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than the requirements in parts 1 through 3 of this subparagraph.
5. Fill piping used for introducing petroleum into an underground storage tank system shall not be required to have cathodic protection if it is lined with a drop tube.
- (c) Operation and maintenance of corrosion protection.

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

1. All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground 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.
2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
  - (i) Frequency. All cathodic protection systems shall be tested within six (6) months of installation and at least every three (3) years thereafter;
  - (ii) The cathodic protection system shall be functioning as designed and is effectively preventing corrosion; and
  - (iii) Test results shall be recorded in a format established by the division, completed in accordance with guidance provided by the division, and

(Rule 0400-18-01-.02, continued)

maintained by the owner and/or operator to demonstrate compliance with this subparagraph.

3. All UST systems to which sacrificial anodes have been added for the purpose of replacing or enhancing an existing cathodic protection system shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of Rule 0400-18-01-.04. The tightness test shall be conducted no later than six (6) months, but no sooner than three (3) months, following the addition of the anodes.
4. UST systems with impressed current cathodic protection systems shall also be inspected every sixty (60) days to ensure the equipment is running properly. The results of the inspection shall be recorded in a format established by the division and in accordance with the instructions provided by the division.
5. For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained, in accordance with paragraph (2) of Rule 0400-18-01-.03, to demonstrate compliance with the performance standards in this paragraph. These records shall be maintained in accordance with the following:
  - (i) The results of testing from the last two inspections required in part 2 of this subparagraph shall be retained;
  - (ii) A record of the addition of sacrificial anodes to an existing cathodic protection system shall be retained for the remaining operational life of the underground storage tank system and such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer;
  - (iii) The results of tightness testing required in part 3 of this subparagraph shall be retained for the remaining operational life of the underground storage tank system. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer; and
  - (iv) The results of the last three inspections required in part 4 of this subparagraph shall be retained.
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 0400-18-01-.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.

(5) Compatibility.

(Rule 0400-18-01-.02, continued)

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

(6) Replacement.

Tank owners and/or operators replacing any tanks, piping and/or motor fuel dispensers on or after July 24, 2007, shall comply 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 subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04 and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule.
- (b) In the case of the replacement of an existing underground storage tank or existing piping connected thereto, the requirements in subparagraph (a) of this paragraph shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes located at the underground storage tank facility.
- (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 subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04, the piping does not have to be secondarily contained.
- (d) Piping repairs:
  1. The division may authorize a repair of underground piping, which shall not be considered a replacement;
  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;
  3. The division may request additional information about the proposed repair as deemed necessary; and
  4. Requests for division authorization of piping repairs shall be approved or denied by the division.
- (e) Replacement of a motor fuel dispenser has occurred and is subject to the provisions of this paragraph as well as the requirements in subparagraph (2)(c) of this rule if the existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the piping is replaced. Connecting equipment includes one of the following:
  1. Components beneath the dispenser that are below the shear valve in a pressurized piping system; or

(Rule 0400-18-01-.02, continued)

2. Components beneath the dispenser that are below the union in a suction piping system.
  - (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 subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04, the piping components do not have to be secondarily contained.
- (7) Repairs allowed.

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

- (a) Repairs to UST systems shall be conducted so as to effectively prevent releases for the operational life of the tank system.
- (b) Repairs to fiberglass-reinforced plastic tanks shall be made by the manufacturer's authorized representatives or in accordance with the manufacturer's specifications.
- (c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced 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.
- (d) Repaired tanks and/or piping shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of Rule 0400-18-01-.04 within thirty (30) days following the date of the completion of the repair except as provided in parts 1 through 3 of this subparagraph:
  1. The repaired tank is internally inspected prior to placing product in the tank; or
  2. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in subparagraphs (3)(d) through (h) of Rule 0400-18-01-.04; 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 0400-18-01-.04 shall no longer meet the requirements of this rule; in addition, on or after January 1, 2010, the monitoring method in subparagraph (3)(e) of Rule 0400-18-01-.04 shall no longer meet the requirements of this rule; or
  3. Another test method is used, provided that prior to use in the State of Tennessee that method is determined by the division to be no less protective of human health and the environment than those listed in parts 1 and 2 of this subparagraph.
- (e) Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with parts (4)(c)2 and 3 of this rule to ensure that it is operating properly.
- (f) UST system owners and/or operators shall maintain records of each repair that demonstrate compliance with the requirements of this paragraph for the remaining

(Rule 0400-18-01-.02, continued)

operating life of the UST system. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

### 0400-18-01-.03 NOTIFICATION, REPORTING AND RECORD KEEPING.

(1) Notification requirements.

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

1. Pre-installation notification form.

Notification shall be made fifteen (15) days prior to commencement of installation of such underground storage tank systems by submitting a pre-installation notification form to the division. The pre-installation notification form shall include, but not be limited to, the following information: the property address; the business name; the tank owner's name and address; and the number of compartments in each tank. This information shall be submitted in a format established by the division and the pre-installation notification form shall be completed in accordance with instructions provided by the division.

2. Notification form for newly installed tanks.

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

(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.

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

(d) All owners 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;

(Rule 0400-18-01-.03, continued)

- (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 paragraph (1) of Rule 0400-18-01-.02 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 paragraph (1) of Rule 0400-18-01-.02.
- (f) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser at the time of sale of such tank of the owner's obligations for notification prior to installation under subparagraph (a) of this paragraph. The seller shall place the statement contained in Appendix 0400-18-01-.03-A on all invoices and shipping tickets.
- (g) Any change in the status of the tanks at a petroleum UST facility shall be reported within thirty (30) days of said change. This includes but is not limited to changes of ownership, upgrading or replacement of tanks, changes in mailing address, permanent closure of a tank compartment, and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks, the seller shall submit the notification form designated by the division, completed in accordance with instructions provided by the division, and shall also inform the buyer of the notification requirement.
- (h) Any change in Class A, or Class B Operators shall be reported to the division within thirty (30) days of said change in the division's web based training database.
- (2) Reporting and record keeping.

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

(a) Reporting.

Owners, operators, and/or other responsible parties shall submit the following information to the division:

1. Notification for all UST systems (paragraph (1) of this rule, which includes certification of installation for new UST systems (subparagraphs (1)(d) and (e) of this rule);
2. Reports of all releases including suspected releases (paragraph (1) of Rule 0400-18-01-.05), spills and overfills (paragraph (4) of Rule 0400-18-01-.05), and confirmed releases (Rule 0400-18-01-.06);
3. Corrective actions planned or taken including, but not limited to, initial response measures (paragraph (3) of Rule 0400-18-01-.06), hazard management measures (paragraph (4) of Rule 0400-18-01-.06), initial site characterization and exposure assessment (paragraph (5) of Rule 0400-18-01-.06), corrective action



(Rule 0400-18-01-.03, continued)

plan (paragraph (10) of Rule 0400-18-01-.06), and as otherwise directed by the division;

4. A notification before permanent closure or change-in-service (paragraphs (3) and (4) of Rule 0400-18-01-.07); and
5. Tank closure activities including site assessment results (paragraph (5) of Rule 0400-18-01-.07).

(b) Record keeping.

Owners, operators, and/or other responsible parties shall maintain the following information:

1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (part (4)(a)5 of Rule 0400-18-01-.02; part (4)(b)3 of Rule 0400-18-01-.02);
2. Documentation of operation of corrosion protection equipment (subparagraph (4)(c) of Rule 0400-18-01-.02);
3. Documentation of UST system repairs (subparagraph (7)(f) of Rule 0400-18-01-.02);
4. Recent compliance with release detection requirements (paragraph (5) of Rule 0400-18-01-.04); and
5. Results of the site investigation conducted at permanent closure (paragraph (5) of Rule 0400-18-01-.07).

(c) Availability and maintenance of records.

1. Owners, operators, and/or other responsible parties shall keep the records required either:
  - (i) At the UST site and immediately available for inspection by the division; or
  - (ii) At a readily available alternative site and be provided for inspection to the division upon request; or
  - (iii) In the case of permanent closure records required under paragraph (7) of Rule 0400-18-01-.07, owners, operators, and/or other responsible parties are also provided with the additional alternative of mailing closure records to the division if they cannot be kept at the site or an alternative site as indicated in subparts (i) or (ii) of this part.
2. If an inspection is scheduled by the division in advance of the date of that inspection, all records shall be present and available for review during the scheduled inspection.

(d) Records transfer.

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

(Rule 0400-18-01-.03, continued)

Appendix 0400-18-01-.03-A

Statement for shipping tickets and invoices.

**Note:** A federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated state or local agencies by May 8, 1986, of the existence of their tanks. The Tennessee Petroleum Underground Storage Tanks Act (T.C.A. § 68-215-101 et seq.) also contains notification requirements. Notifications for tanks brought into use after July 1, 1989 shall be made fifteen (15) days in advance of installation. Consult EPA's regulations, issued on November 8, 1985 (40 CFR Part 280), state law (T.C.A. §68-215-101 et seq.) and state regulations (Chapter 1200-01-15) to determine if you are affected by these laws and regulations.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

**0400-18-01-.04 RELEASE DETECTION.**

- (1) General requirements for release detection.
  - (a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:
    1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;
    2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
    3. Meets the performance requirements of paragraph (3) or (4) of this rule, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in subparagraphs (3)(b), (c), and (d) or (4)(a) and (b) of this rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.
  - (b) When a release detection method operated in accordance with the performance standards in paragraphs (3) and (4) of this rule indicates a release may have occurred, owners and/or operators shall notify the division in accordance with Rule 0400-18-01-.05. If more than one method of release detection is operated on a UST system, a suspected release shall be reported to the division in accordance with Rule 0400-18-01-.05 if any one of the release detection methods indicates a release may have occurred.
  - (c) Owners and/or operators of newly installed USTs shall comply with the release detection requirements of this rule immediately upon installation.
  - (d) If a method of release detection that complies with the requirements of this rule cannot be applied to and/or operated for any UST system, the owner and/or operator of that UST system shall complete the closure procedures in Rule 0400-18-01-.07.
  - (e) If a release detection method selected by the owner and/or operator cannot meet the performance standards in paragraph (3) and (4) of this rule to the satisfaction of the

(Rule 0400-18-01-.04, continued)

division, then the owner and/or operator shall select another method of release detection.

- (f) The dispenser cover shall be opened and a visual inspection for petroleum releases, including seeps and drips, shall be performed 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.
  - (g) Under-dispenser containment sumps for motor fuel dispensers required by subparagraph (1)(c) or paragraph (6) of Rule 0400-18-01-.02 to be secondarily contained in accordance with subparagraph (2)(c) of Rule 0400-18-01-.02 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.
- (2) Requirements for petroleum UST systems.

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

(a) Tanks.

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

1. UST systems that meet the performance standards in Rule 0400-18-01-.02, and the manual tank gauging requirements in subparagraph (3)(b) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule) at least every five (5) years until ten (10) years after the tank was installed or upgraded in compliance with the performance standards in Rule 0400-18-01-.02. UST systems installed before July 24, 2007 that meet the performance standards in Rule 0400-18-01-.02, and the monthly inventory control requirements in subparagraphs (3)(a) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule), until December 31, 2008. However, tanks which were over ten (10) years old when the cathodic protection system was added in accordance with item (4)(a)2(v)(III) of Rule 0400-18-01-.02 shall use a monthly monitoring method of release detection in accordance with subparagraphs (3)(d) through (i) of this rule.
2. Tanks which meet the volume, diameter and test duration requirements as set forth in subpart (3)(b)1(i) of this rule may use manual tank gauging (conducted in accordance with subparagraph (3)(b) of this rule).
3. On or after January 1, 2009, the monitoring methods in part (3)(d)1 of this rule, subparagraph (3)(f) of this rule, and parts (3)(g)2 and 3 of this rule shall no longer meet the requirements of this rule.
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.

(b) Piping.

(Rule 0400-18-01-.04, continued)

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

1. Pressurized piping.

Underground piping that conveys petroleum under pressure shall:

- (i) Be equipped with an automatic line leak detector conducted in accordance with subparagraph (4)(a) of this rule; and
- (ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

2. Suction piping.

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

- (i) The below-grade piping operates at less than atmospheric pressure;
- (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (iii) Only one check valve is included in each suction line;
- (iv) The check valve is located directly below and as close as practical to the suction pump; and
- (v) A method is provided that allows compliance with subparts (b)2(ii) through (iv) of this part to be readily determined.

(3) Methods of release detection for tanks.

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

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

- 1. Inventory volume measurements for petroleum inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- 2. The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;
- 3. Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;
- 4. The petroleum inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(Rule 0400-18-01-.04, continued)

5. Deliveries are made through a drop tube that extends to within one (1) foot of the tank bottom;
6. Product level measurements which are taken using a gauge stick shall be taken through a drop tube;
7. Petroleum dispensing is metered and recorded to within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of petroleum withdrawn, and the meters are calibrated at least annually;
8. The measurement of any water level in the bottom of the tank is made and recorded to the nearest one-eighth of an inch at least once a month; and
9. A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monthly total of either daily overages or shortages is greater than one percent (1.0%) of the total monthly flow-through plus one hundred thirty (130) gallons.

(b) Manual tank gauging.

1. Manual tank gauging shall only be applicable to tanks as set forth below:
  - (i) Tanks which meet the volume, diameter and test duration requirements as set forth below may use manual tank gauging as the sole method of release detection:

Nominal Capacity	Tank Diameter	Minimum Duration Of Test
up to 550 gallons	*	36 hours
551 – 1000 gallons	64 inches	44 hours
551 – 1000 gallons	48 inches	58 hours

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

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

(Rule 0400-18-01-.04, continued)

- (i) Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank;
- (ii) Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the required period;
- (iii) The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;
- (iv) Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;
- (v) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Capacity	Tank Diameter	Minimum Duration Of Test	Weekly Standard (One Test)	Monthly Standard (Average Of 4 Tests)
Up to 550 gallons		36 hours	10 gallons	5 gallons
551 – 1000 gallons		36 hours	13 gallons	7 gallons
551 – 1000 gallons	64 inches	44 hours	9 gallons	4 gallons
551 – 1000 gallons	48 inches	58 hours	12 gallons	6 gallons
1001 – 2000 gallons		36 hours	26 gallons	13 gallons

(c) Tank tightness testing.

1. Tank tightness testing shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains petroleum while accounting for the effects of thermal expansion or contraction of the petroleum, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
2. Tank tightness testing devices, automatic tank gauging devices or other equipment may be used provided that the testing meets the performance criteria set forth in part 1 of this subparagraph.
3. The information relating to the tank tightness test shall be reported in a format established by the division. The tank tightness test report shall include, but is not necessarily limited to the following information:
  - (i) Information which identifies the tank and the facility;
  - (ii) Information which identifies the test method and test conditions established by the manufacturer's specifications and/or required by the third party certification of the method;

(Rule 0400-18-01-.04, continued)

- (iii) Information which identifies the person and/or company performing the test;
  - (iv) Data gathered during the performance of the test; and
  - (v) Results expressed as follows:
    - (I) Leak rate in gallons per hour and as "Pass" or "Fail" for volumetric test methods; or
    - (II) "Pass" or "Fail" for non-volumetric test methods.
4. A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the method detects a release rate greater than the performance standard for the method as established by the manufacturer's specifications and/or third party certification.
- (d) Automatic tank gauging.

Equipment for automatic tank gauging shall be permanently installed in the tank and shall meet one of the following requirements:

1. For automatic tank gauging devices which were installed prior to December 22, 1990, and which do not meet the requirements of parts 2 or 3 of this subparagraph:
  - (i) Inventory control (or another test of equivalent performance) shall be conducted in accordance with the requirements of subparagraph (3)(a) of this rule; and
  - (ii) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monthly total of either daily overages or shortages is greater than 1.0 percent of the total monthly flow-through plus one hundred thirty (130) gallons.
2. For automatic tank gauging devices capable of detecting at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains petroleum:
  - (i) The monitor shall be placed in the leak test mode at least once per month; and
  - (ii) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monitoring results indicate that the underground storage tank has had a release above the established threshold of the automatic tank gauging device as determined through third party certification.
3. For automatic tank gauging systems which are capable of continuous statistical release detection:
  - (i) The automatic tank gauging system shall be placed in the leak test mode at least once per month if a test cannot be obtained during any one month period, except for those systems which also use statistical inventory reconciliation in accordance with subparagraph (3)(h) of this rule; and
  - (ii) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monitoring results indicate that the underground storage tank

(Rule 0400-18-01-.04, continued)

has had a release above the established threshold of the automatic tank gauging device as determined through third party certification, except that those systems also using statistical inventory reconciliation shall report suspected releases in accordance with subparagraph (3)(h) of this rule.

(e) Vapor monitoring.

Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:

1. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
2. The stored petroleum, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
3. The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty (30) days;
4. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
5. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
6. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 4 of this subparagraph and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains petroleum;
7. Monitoring wells are:
  - (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 subparagraph (3)(d) of Rule 0400-18-01-.06 and/or hazard management in accordance with part (4)(b)3 of Rule 0400-18-01-.06 in the event of a release petroleum from the UST system; and
8. A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if:



(Rule 0400-18-01-.04, continued)

- (i) An automatic and/or continuous monitoring device signals an alarm; or
  - (ii) Any liquid product is observed during manual monitoring; or
  - (iii) Any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance or a tracer compound placed in the tank system is detected by a monitoring device.
- (f) Groundwater monitoring.

Testing or monitoring for liquids on the ground water shall meet the following requirements:

1. Ground water monitoring shall not be allowed in areas where the tank excavation zone has encountered bedrock;
2. The petroleum stored is immiscible in water and has a specific gravity of less than one (1);
3. Ground water is never more than twenty (20) feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (for example, the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
4. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of petroleum on the water table into the well under both high and low ground water conditions;
5. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
6. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
7. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;
8. Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 6 of this subparagraph and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains petroleum;
9. Monitoring wells are:
  - (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:

(Rule 0400-18-01-.04, continued)

- (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 subparagraph (3)(d) of Rule 0400-18-01-.06 and/or hazard management in accordance with part (4)(b)3 of Rule 0400-18-01-.06 in the event of a release petroleum from the UST system; and
10. A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if:
- (i) An automatic and/or continuous monitoring device signals an alarm; or
  - (ii) Any liquid product is observed on top of the groundwater in the monitoring well during manual monitoring.
- (g) Interstitial monitoring.

Interstitial monitoring between the UST system and a secondary barrier immediately around 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.
2. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; provided that the following conditions are met:
  - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  cm/sec for the petroleum stored) to direct a release to the monitoring point and permit its detection;
  - (ii) The barrier is compatible with the petroleum stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
  - (iii) For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;
  - (iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days;

(Rule 0400-18-01-.04, continued)

- (v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
  - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
3. For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
- (h) Statistical inventory reconciliation.

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

1. Inventory control shall be conducted in accordance with the requirements of parts (3)(a)1 through 8 of this rule;
2. A report shall be generated monthly, within ten (10) days after the end of the data collection for that time period. The report shall include, but is not limited to the following:
  - (i) The inventory records used, that is, the raw data; and
  - (ii) The statistical inventory reconciliation determination;
3. For quantitative statistical inventory reconciliation methods, the numerical leak rate shall be reported unless the statistical inventory reconciliation determination results in an "Inconclusive" under the provisions of subpart 4(iii) of this subparagraph;
4. The statistical inventory reconciliation determination shall be reported using the term "Pass", "Fail" or "Inconclusive". For quantitative statistical inventory reconciliation methods the applicable term shall be used in accordance with subparts (i) through (iii) of this part:
  - (i) If the calculated leak rate does not exceed 0.10 gallons per hour, the results shall be reported as a "Pass";
  - (ii) If the calculated leak rate exceeds 0.10 gallons per hour, the results shall be reported as a "Fail";
  - (iii) If the leak rate cannot be calculated using the available data, the results shall be reported as an "Inconclusive";
5. If the statistical inventory reconciliation method used requires more than one (1) month of data for initial evaluation, another method of release detection shall be conducted during that initial data collection period;
6. If there are too few operational days for statistical inventory reconciliation to successfully analyze during any month, then another method of release detection shall be utilized during that month; and
7. The owner and/or operator shall report a suspected release in accordance with Rule 0400-18-01-.05:

(Rule 0400-18-01-.04, continued)

- (i) When the statistical inventory reconciliation determination is reported as a "Fail"; or
    - (ii) When two consecutive "Inconclusive" statistical inventory reconciliation determinations are reported.
  - (i) Other methods 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 (12) 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 subparagraph (7)(c) of Rule 0400-18-01-.07.
      - (ii) The written approval shall be valid for two (2) years. The written approval must be renewed every two (2) 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.
- (4) Methods of release detection for piping.

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

- (a) Automatic line leak detectors.

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

- (b) Line tightness testing.

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

- (c) Applicable tank methods.

Any of the methods in subparagraphs (3)(e) through (i) of this rule may be used if they are designed to detect a release from any portion of the underground piping that

(Rule 0400-18-01-.04, continued)

routinely contains petroleum, except that the method in subparagraph (3)(f) and in part (3)(g)2 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.

(5) Release detection record keeping.

All UST system owners and/or operators shall maintain records in accordance with paragraph (2) of Rule 0400-18-01-.03 demonstrating compliance with all applicable requirements of this rule. Release detection information shall be recorded in a format established by the division and in accordance with instructions provided by the division. These records shall include the following:

- (a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five (5) years from the date of installation or until such time as the release detection method to which the performance claim pertains is no longer used at the facility, whichever is later; 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 (12) 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
- (c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one (1) year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five (5) years from the date of installation or until such time as the release detection method to which the schedule of required calibration and maintenance pertains is no longer used at the facility, whichever is later.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

**0400-18-01-.05 RELEASE REPORTING, INVESTIGATION AND CONFIRMATION.**

(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 paragraph (3) of Rule 0400-18-01-.05 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

(Rule 0400-18-01-.05, continued)

3. Monitoring results from a release detection method required under paragraph (2) of Rule 0400-18-01-.04 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 subparagraph (10)(c) of Rule 0400-18-01-.09, an owner and/or operator shall submit release detection records as well as documentation to demonstrate compliance with corrosion protection and spill and overflow and secondary containment requirements within thirty (30) days of the discovery of a suspected release.
- (2) Investigation due to environmental impacts.

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

- (3) Release Investigation and Confirmation Steps.

Unless corrective action is initiated in accordance with Rule 0400-18-01-.06, owners and/or operators shall immediately investigate and confirm all suspected releases of petroleum requiring reporting under paragraph (1) of this rule 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 subparagraphs (3)(c) and (4)(b) of Rule 0400-18-01-.04) 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 0400-18-01-.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.

(Rule 0400-18-01-.05, continued)

3. Owners and/or operators shall conduct a site check as described in subparagraph (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 0400-18-01-.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;

(Rule 0400-18-01-.05, continued)

- (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.
- (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. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.06 PETROLEUM RELEASE RESPONSE, REMEDIATION AND RISK MANAGEMENT.**

- (1) General requirements.
- (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 subparagraph (5)(a) of Rule 0400-18-01-.09.
  - (b) Field activities and environmental data.
- During the course of responding to the release, conducting remediation, and/or managing risk, a tank owner and/or operator shall comply with the following:
1. Notice of Field Activities.
    - (i) Tank owners and/or operators shall notify the division at least one (1) working day in advance of any routine field activity. Routine field activities include, but are not limited to, placement of soil borings, construction of monitoring wells, sample collection events, field surveys, such as water use surveys or land use surveys, installation and/or start-up of treatment systems.
    - (ii) Tank owners and/or operators shall notify the division by no later than one (1) working day after any non-routine field activity, such as emergency response activities.



(Rule 0400-18-01-.06, continued)

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.
- (2) Applicability.
- (a) This rule shall apply to all newly reported and/or discovered releases from petroleum underground storage tanks.
  - (b) Unless directed otherwise by the division, this rule shall apply to all previously reported releases from petroleum underground storage tanks.
    1. Data which has previously been gathered shall be utilized by the tank owner and/or operator to comply with this rule, provided that such data is valid and is representative of the site. The fund shall not reimburse the tank owner and/or operator for the cost of generating duplicate data.
    2. Any requirements of this rule that have not previously been satisfied, shall be satisfied by the tank owner and/or operator unless directed otherwise by the division.
- (3) Initial Response.

(Rule 0400-18-01-.06, continued)

Upon confirmation of a release in accordance with paragraph (3) of Rule 0400-18-01-.05 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 subparagraph (3)(a) of Rule 0400-18-01-.05, a systems test may be required by the division; if required, the test shall be conducted in accordance with subparagraphs (3)(c) and (4)(b) of Rule 0400-18-01-.04;
  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 0400-18-01-.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.

(4) Hazard Management.

When human health hazards, such as impacted drinking water, petroleum vapors, and/or free product are discovered in the vicinity of the petroleum site, the following actions shall be taken to manage such hazards:

- (a) Notification.

(Rule 0400-18-01-.06, continued)

Report the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards to the division within seventy-two (72) hours using a Hazard Notification Report form established by the division. The form shall be completed in accordance with guidance provided by the division. The form may be submitted by facsimile machine or electronic mail.

(b) Abatement Measures.

1. Impacted Drinking Water. Upon discovery and/or confirmation of impacted drinking water, immediately provide an alternate drinking water supply to replace the impacted drinking water unless directed to do otherwise by the division.

(i) A temporary source of drinking water may be used in the short term to satisfy the requirement of this part, such as providing bottled water or installing a water filtration system. However, a proposal for providing a permanent source of alternate drinking water shall be supplied as required in subpart (ii) of this part unless otherwise directed by the division.

(ii) A proposal for providing a permanent source of potable drinking water, including a cost proposal, shall be submitted to the division. The proposal shall be in a format established by the division and shall recommend that one of the following methods be utilized:

(I) Install a connection to a public water supply system;

(II) Install a drinking water well into a deeper, non-impacted aquifer;

(III) Restore the impacted aquifer utilizing active remediation measures;  
or

(IV) Utilize another means of supplying a permanent source of potable drinking water.

(iii) Upon approval by the division of a proposal for providing a permanent source of potable drinking water, the tank owner and/or operator shall take such actions as are necessary to implement the approved proposal for providing a permanent source of potable drinking water.

2. Vapor hazards.

Upon discovery and/or confirmation of vapor hazards in a basement, sewer, utility or other confined space, immediate actions shall be taken to eliminate the vapor hazard in that area unless directed to do otherwise by the division.

(i) Vapor hazard control shall, at a minimum, prevent explosion and fire hazards as well as preventing the completion of a human health inhalation exposure pathway.

(ii) After confirmation of a vapor hazard or potential hazard, vapor levels shall be monitored in accordance with guidance provided by the division and in accordance with a schedule established by the division.

3. Free Product.

(Rule 0400-18-01-.06, continued)

- (i) Upon confirmation of free product, interim free product removal measures shall be taken immediately to control the migration of the free product associated with recent releases or for free product present in excavations, unless directed to do otherwise by the division.
- (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.

- (iii) Based on the results of the Free Product Investigation Report required under the authority of subpart (ii) of this part, the division may require a tank owner and/or operator to submit a Free Product Removal Plan (FPRP) in a format and in accordance with a schedule established by the division. The FPRP shall be completed in accordance with guidance provided by the division. Unless directed otherwise by the division, the FPRP shall include, but not be limited to, the following:

- (I) Both the long term and the short term objectives of free product recovery at this site, for example, hydraulic containment, limited draw-down with limited smearing, or other objectives, as well as performance measures;

(Rule 0400-18-01-.06, continued)

- (II) The design of the free product recovery system or systems, if two or more types of systems are to be used during the course of free product recovery, and a strategy for future integration of the free product recovery system(s) with any soil and/or ground water treatment determined to be necessary;
  - (III) An operation and maintenance schedule;
  - (IV) Schedules for monitoring and reporting;
  - (V) A list of actionable causes which would result in the re-evaluation of the continued need for and/or the redesign and/or termination of the free product recovery system;
  - (VI) A schedule and conditions for post termination monitoring; and
  - (VII) A cost proposal.
- (iv) Upon approval of the Free Product Removal Plan, the tank owner and/or operator shall implement the approved plan in accordance with the provisions of the plan.
  - (v) All reporting requirements contained in the plan shall be followed and the reports shall be submitted to the division in accordance with the schedule contained in the approved plan.
4. Take appropriate actions, approved in advance by the division, to abate any other identified hazards.

(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.

(5) Initial Site Characterization and Exposure Assessment.

Unless directed to do otherwise by the division, the owner and/or operator shall, in accordance with this paragraph, assess the characteristics of the site as well as the nature of the release and shall identify risk to human health, safety and the environment associated with the petroleum release.

(a) Site Assessment.

(Rule 0400-18-01-.06, continued)

1. In accordance with guidance provided by the division, the owner/operator shall conduct an assessment of the petroleum site by installing four (4) soil borings completed as ground water monitoring wells. The soil and the ground water shall be sampled for laboratory evaluation to determine the presence and the levels of the chemicals of concern in each sample.
2. If the tank owner and/or operator concludes that more than four (4) soil borings and/or monitoring wells are necessary for site characterization and/or risk assessment, the tank owner and/or operator may submit a proposal. Such a proposal shall include a cost proposal and a justification statement for review and approval by the division. This may be done during the initial site characterization or at any time subsequent thereto.
3. The division may require the installation of more than four (4) soil borings and/or monitoring wells for site characterization and/or risk assessment. This may be done during the initial site characterization or at any time subsequent thereto.

(b) Initial Site Characterization Report.

A report shall be prepared and submitted to the division in a format and in accordance with a schedule established by the division. Data collection, risk analysis and report completion shall be done in accordance with guidance provided by the division. The Initial Site Characterization Report shall include but not be limited to the following:

1. A site history, including the types of petroleum products stored, used and/or dispensed on the site, set forth in a chronology of site events;
2. A release history, including any of the following that are known or can be obtained or determined:
  - (i) The source of the release;
  - (ii) The type(s) of petroleum product(s), including additives, released;
  - (iii) Records of release detection conducted at the site that, at a minimum, include the twelve (12) consecutive months immediately preceding the date of the release;
  - (iv) The date of the release;
  - (v) The volume of the release;
  - (vi) The cause of the release; and
  - (vii) Levels of chemicals of concern at or in the vicinity of the petroleum site;
3. Petroleum site conditions, including, but not limited to, the following:
  - (i) A site map;
  - (ii) Location of utilities;
  - (iii) Land conditions, including current land use, both inside and outside of the facility property boundaries;

(Rule 0400-18-01-.06, continued)

- (iv) Ground water conditions and use, both inside and outside of the facility property boundaries, including the water use survey conducted in accordance with subparagraph (3)(e) of this rule; and
  - (v) Surface water conditions, including current surface water use, both inside and outside of the facility property boundaries;
4. Risk factors including, but not necessarily limited to, the following:
- (i) Current and reasonably anticipated receptors shall be identified and located on a site map. Receptors shall include, but not necessarily be limited to:
    - (I) Human receptors: adult, child, residential, commercial/industrial worker;
    - (II) Ecological; and/or
    - (III) Physical receptors, such as: drinking water wells and springs, buildings and basements, utilities, surface water; and
  - (ii) Current and reasonably anticipated exposure pathways between the source area(s) and the identified receptors shall be identified. The exposure pathways shall include ingestion and inhalation; and
5. A Risk Analysis Report (RAR) spreadsheet completed in accordance with guidance and instructions provided by the division and using computational software provided by the division. The RAR shall be used to determine cleanup levels, either Risk Based Cleanup Levels (RBCLs) or Site Specific Cleanup Levels (SSCLs), for the site based on risk to human health, safety and the environment.
- (6) Contamination Case Closure or No Further Action.

If the maximum concentrations of the chemicals of concern at the site are at or below the RBCLs and/or the SSCLs for the site as determined in the Risk Analysis Report section of the Initial Site Characterization Report, then contamination case closure activities shall be completed in accordance with a schedule established by the division and in accordance with guidance provided by the division. Contamination case closure activities may include, but are not limited to, the following:

- (a) Closure monitoring;
  - (b) Proper abandonment of monitoring wells; and/or
  - (c) Report submittal.
- (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.

(Rule 0400-18-01-.06, continued)

- (a) If the tank owner and/or operator concludes that the use of specific additional measures will result in a more cost effective approach to case management and/or in faster contamination case closure, the tank owner may submit a proposal. Such a proposal shall include a cost proposal and a justification statement.
  - (b) If the division concludes that the use of specific additional measures will result in a more cost effective approach to case management and/or in faster contamination case closure, the tank owner shall, at the direction of the division, submit a proposal, including a cost proposal. However, a tank owner and/or operator who is not also the petroleum site owner shall not be required to establish institutional controls in accordance with subparagraph (8)(c) of this rule.
  - (c) The cost of additional measures taken prior to division approval of a proposal will not be reimbursed by the fund.
- (8) Interim Remediation and/or Risk Management.

In accordance with the provisions of paragraph (7) of this rule the division may require or allow the tank owner and/or operator to take interim remediation and/or risk management measures. After taking any interim remediation action or risk management measure, the tank owner and/or operator shall reevaluate the risk in accordance with guidance provided by the division. Interim remediation or risk management may include, but is not limited to:

- (a) Source removal.
  - 1. Source removal activities shall not spread contamination into previously uncontaminated or less contaminated areas through improper storage, improper treatment, untreated discharges, or improper disposal.
  - 2. Soil removal.

The excavated soil shall be handled in a manner that prevents human exposure to contaminated soil and that prevents soil exposure to precipitation that may cause surface runoff. The excavation pit shall be secured in a manner that prevents accidental or intentional entry by the public;
- (b) Risk reduction.

Actions that eliminate or reduce risk include, but are not limited to, the following activities:

  - 1. Supplying a permanent source of potable water to replace impacted drinking water; and/or
  - 2. Re-routing utility lines or replacing vulnerable portions of utility lines with materials that can withstand the impacts of petroleum;
- (c) Establishing institutional controls in accordance with the following:
  - 1. A Notice of Land Use Restrictions, which satisfies the requirements of T.C.A. § 68-212-225, shall be filed in the register of deeds office in the appropriate county.
  - 2. The Notice of Land Use Restrictions may include, but is not limited to, restrictions on the current and future uses of the land, use of the property, current and future uses of ground water, building, filling, grading and/or excavating; and/or



(Rule 0400-18-01-.06, continued)

- (d) Employing engineering controls.
- (9) Advanced Risk-Based Modeling.

In accordance with the provisions of paragraph (7) of this rule, the division may require or allow advanced risk based modeling:

- (a) The tank owner and/or operator shall submit predictive modeling information in a format and in accordance with a schedule established by the division and in accordance with guidance provided by the division.
  - (b) The modeling information shall be accompanied by or include a conclusion as to the course of action which should be taken to address the petroleum contamination at the site provided that such course of action takes into account both adequate risk management and cost effectiveness.
- (10) Corrective Action Plan.

In accordance with the provisions of paragraph (7) of this rule, the division may require or allow the tank owner and/or operator to submit a Corrective Action Plan (CAP).

- (a) The CAP shall be in a format established by the division and completed in accordance with guidance provided by the division. The corrective action plan shall be submitted in accordance with a schedule established by the division.
- (b) The Corrective Action Plan shall include, but not be limited to, the following:
  - 1. General requirements applicable to all Corrective Action Plans, unless the division specifically instructs the tank owner and/or operator that certain requirements do not apply to the petroleum site. The general requirements shall include, but not be limited to, the following:
    - (i) Corrective action system tasks, repairs, maintenance, record keeping, and/or evaluations;
    - (ii) Performance measurement of site remediation;
    - (iii) Monitoring events, monitoring tasks and/or monitoring results reporting; and
    - (iv) Causes for modification and/or termination; and
  - 2. Site-specific requirements, which shall include, but not be limited to, the following:
    - (i) The applicable site specific clean-up level for each chemical of concern in soil and/or ground water;
    - (ii) The proposed corrective action(s) for soil and/or ground water remediation;
    - (iii) A schedule for planned operation and maintenance as well as a contingency plan for unscheduled operation and maintenance activities;
    - (iv) A cost proposal; and
    - (v) Performance measures.

(Rule 0400-18-01-.06, continued)

- (c) Upon approval of the Corrective Action Plan the tank owner and/or operator shall implement the approved plan in accordance with the provisions of the plan.
  - (d) All reporting requirements contained in the plan shall be followed and the reports shall be submitted to the division in accordance with the schedule contained in the approved plan.
- (11) Public participation.
- (a) For each confirmed release for which a Corrective Action Plan has been required or allowed, the tank owner and/or operator shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.
  - (b) The division shall ensure that site release information and decisions concerning the Corrective Action Plan are made available to the public for inspection upon request.
  - (c) Before approving a Corrective Action Plan, the division may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.
  - (d) The tank owner and/or operator shall, at the direction of the division, give public notice that complies with subparagraph (a) of this paragraph if implementation of an approved Corrective Action Plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the division.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.07 OUT-OF-SERVICE UST SYSTEMS AND CLOSURE.**

- (1) Temporary closure.
  - (a) When an UST system is temporarily closed, owners, operators, and/or other responsible parties shall continue operation and maintenance of corrosion protection in accordance with paragraph (4) of Rule 0400-18-01-.02, and any release detection in accordance with Rule 0400-18-01-.04. Rule 0400-18-01-.05 and Rule 0400-18-01-.06 shall be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than two and one-half (2.5) centimeters (one (1) inch) of residue remains in the system.
  - (b) When an UST system is temporarily closed for three (3) months or more, owners, operators, and/or other responsible parties shall also comply with the following requirements:
    - 1. Leave vent lines open and functioning;
    - 2. Cap and secure all other lines, pumps, manways, and ancillary equipment; and
    - 3. File an amended notification form showing the tank system as temporarily out of use.

(Rule 0400-18-01-.07, continued)

(2) Substandard UST systems.

Unless directed to do otherwise by the division, owners, operators, and/or other responsible parties of an UST system which does not meet the requirements in paragraphs (3) and (4) of Rule 0400-18-01-.02 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. Owners, operators, and/or other responsible parties 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.

(3) Tank compartment closure.

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

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

1. An Application for Closure of Tank Compartment(s) shall be submitted in a format established by the division. The application shall be completed according to the instructions provided by the division.
2. The Application for Closure of Tank Compartment(s) shall be accompanied by a written statement provided by either the tank manufacturer or a Registered Professional Engineer certifying the following:
  - (i) The planned closure of the tank compartment(s) will not cause structural damage to the tank; and
  - (ii) The corrosion protection system will continue to function as designed and will continue to effectively prevent corrosion of the tank following completion of the planned closure of the tank compartment(s).
3. The tank owner, operator, and/or other responsible party shall obtain division approval of the Application for Closure of Tank Compartment(s) prior to closing the tank compartment(s).
4. The application shall constitute a plan for tank compartment(s) closure.
5. Tank compartment(s) closure activities shall be conducted in accordance with the plan contained in the approved Application for Closure of Tank Compartment(s). If alterations to the plan are required, an amended Application for Closure of Tank Compartment(s) shall be submitted to the division for approval.
6. The approved Application for Closure of Tank Compartment(s) shall be available for inspection upon request at the petroleum site at the time of tank compartment closure.
7. Division approval of the Application for Closure of Tank Compartment(s) shall be valid for twelve (12) months following such approval. However, such approval

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shall not be transferable to another person during that twelve (12) month approval time.

8. If tank compartment(s) closure is not completed within twelve (12) months, the tank owner, operator, and/or other responsible parties shall submit a new Application for Closure of Tank Compartment(s) to the division for approval at least thirty (30) days before beginning tank compartment closure.
- (b) The required site assessment under paragraph (5) of this rule shall be performed after receipt of division approval of the Application for Tank Compartment(s) Closure, but before completion of the tank compartment closure. Results of all samples taken during the closure of the tank compartment must be reported to the department within sixty (60) days of collection. Samples may be taken while the compartments of the underground storage tank system that are not being permanently closed are in operation. However, samples may not be taken while the tank compartment that is being permanently closed is still in operation.
  - (c) To permanently close a tank compartment, owners, operators, and/or other responsible parties shall empty and clean the compartment which is to be closed by removing all liquids and accumulated sludges. All tank compartments taken out of service permanently shall be filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material must have a specific gravity greater than one (1.0).
  - (d) Tank compartment closure activities shall not damage those portions of the underground storage tank system that are not being permanently closed.
  - (e) Tank compartment closure activities shall not cause or allow a release of petroleum from the underground storage tank system into the environment.
  - (f) Paragraphs (4) and (5) of this rule shall be followed when the final tank compartment is permanently closed.
- (4) Permanent closure and changes-in-service.
- (a) At least thirty (30) days before beginning either permanent closure of any portion of an underground storage tank system or a change-in-service under subparagraphs (b) and (c) of this paragraph, owners, operators, and/or other responsible parties shall apply for permanent closure, unless such action is in response to corrective action. Application for permanent closure or change in service shall meet the following requirements:
    1. An Application for Permanent Closure of Underground Storage Tank Systems shall be submitted in a format established by the division. The application shall be completed according to the instructions provided by the division.
    2. The tank owner, operator and/or other responsible party shall obtain division approval of the Application for Permanent Closure prior to permanently closing the UST system or any portion thereof or effecting a change in service of the UST system, unless tank compartment closure is conducted in accordance with paragraphs (3) and (5) of this rule.
    3. The application shall constitute a plan for closure or change in service of the UST system, or any portion thereof.
    4. Change in service or closure activities shall be conducted in accordance with the plan contained in the approved Application for Permanent Closure. If alterations

(Rule 0400-18-01-.07, continued)

- to the plan are required, an amended Application for Permanent Closure shall be submitted to the division for approval.
5. The approved Application for Permanent Closure of Underground Storage Tank Systems shall be available for inspection upon request at the petroleum site at the time of closure.
  6. Division approval of the Application for Permanent Closure shall be valid for twelve (12) months following such approval. However, such approval shall not be transferable to another person during that twelve (12) month approval time.
  7. If permanent closure or change-in-service is not completed within twelve (12) months, the tank owner, operator, and/or other responsible parties shall submit a new Application for Permanent Closure to the division for approval at least thirty (30) days before beginning underground storage tank system closure.
- (b) To permanently close a tank, owners, operators, and/or other responsible parties shall empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently shall also be either removed from the ground or filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material shall have a specific gravity greater than 1.0.
  - (c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners, operators, and/or other responsible parties shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with paragraph (5) of this rule.
  - (d) Should an owner, operator, and/or other responsible parties elect to excavate and remove a tank from the site, such excavation and removal shall be done in accordance with Appendix 0400-18-01-.07-A.
  - (e) Once a tank has been excavated, it may be stored on-site or transported off-site for storage or disposal. Excavated tanks which have not been cut into sections for disposal shall be considered in storage and shall at all times, while in storage, be maintained in a vapor-free state and stored in accordance with Appendix 0400-18-01-.07-A.
  - (f) Tanks shall not be stored at a UST facility unless they are maintained in a vapor-free state, stored in accordance with Appendix 0400-18-01-.07-A, and one of the following conditions are met:
    1. (i) Tanks have been cleaned by removal of all liquids and accumulated sludges; and
    - (ii) Tanks have been purged of vapors so that any explosive levels do not exceed twenty percent (20%) of the lower explosive limit for the regulated substance; and
    - (iii) Tanks have an opening or openings installed which comprise a minimum of ten percent (10%) of the total tank surface area. Such openings will not be considered openings if they are in contact or contiguous with the ground or surface on which the tank may be resting; or

(Rule 0400-18-01-.07, continued)

2. Subparts 1(i) and (ii) of this subparagraph have been complied with and there are no remaining USTs either in use or in a temporarily closed condition at the facility; or
  3. Tanks which are removed from a UST facility and are intended for reuse at the same or another facility as USTs may be stored at a UST facility if the owner, operator, and/or other responsible parties meets the conditions described in subparts 1(i) and (ii) of this subparagraph, and either removes the tank off-site from a UST facility or puts it back into service within thirty (30) days of excavation.
- (g) Tanks shall be stored in a manner which does not pose safety hazards. Tanks shall be stored in a position with the tank's center of gravity closest to the ground. Tanks shall not be stacked. Tanks shall be secured so that they will not roll or slide across a level or sloping ground surface.

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

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

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

- (a) Before permanent closure of a tank or a tank compartment or a change-in service is completed, owners, operators, and/or other responsible parties shall measure for the presence of a release where contamination is most likely to be present at the UST site. Sampling shall meet the following requirements:
1. In selecting sample types, sample locations, and measurement methods, owners, operators, and/or other responsible parties shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release.
  2. At least one day before samples are taken, the owner, operator, and/or other responsible parties shall notify the division concerning the schedule for sample collection.
- (b) Results of all samples taken during change in service or closure of the underground storage tank system or closure of a tank compartment shall be reported to the division within sixty (60) days of collection. Samples shall not be taken while the underground storage tank system is in operation, except when tank compartment closure is being conducted in accordance with paragraph (3) of this rule. Sample results shall be submitted as an attachment to either a Permanent Closure Report for Underground Storage Tank Systems or a Permanent Closure Report for Tank Compartments.
- (c) The Permanent Closure Report for Underground Storage Tank Systems shall be submitted in a format established by the division. The Permanent Closure Report for Underground Storage Tank Systems shall be completed in accordance with the instructions provided by the division.

(Rule 0400-18-01-.07, continued)

- (d) The Permanent Closure Report for Tank Compartments shall be submitted in a format established by the division. The Permanent Closure Report for Tank Compartments shall be completed in accordance with the instructions provided by the division.
  - (e) The report, either the Permanent Closure Report for Underground Storage Tank Systems or the Permanent Closure Report for Tank Compartments, shall include, but not be limited to, the following information:
    - 1. The facility identification number assigned to the facility by the division;
    - 2. Facility name and address;
    - 3. An updated post-closure site map;
    - 4. Sampling, including field screening and laboratory analytical results;
    - 5. Information concerning the removal, storage and/or disposal of tanks, piping and other ancillary underground equipment; and
    - 6. Information concerning the removal, remediation and/or disposal of petroleum, petroleum waste, petroleum contaminated soil and/or ground water.
  - (f) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under subparagraph (a) of this paragraph, or by any other manner, owners, operators, and/or other responsible parties shall begin release response and corrective action in accordance with Rule 0400-18-01-.06.
- (6) Applicability to previously closed UST systems.

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

- (7) Closure records.

Owners, operators, and/or other responsible parties shall maintain records in accordance with paragraph (2) of Rule 0400-18-01-.03 that are capable of demonstrating compliance with closure requirements under this rule. The results of the site assessment required in paragraph (5) of this rule shall be maintained for at least three (3) years after completion of permanent closure or change-in-service in one of the following ways:

- (a) By the owners, operators, and/or other responsible parties who took the UST system out of service;
- (b) By the current owners, operators, and/or other responsible parties of the UST system site; or
- (c) By mailing these records to the division if they cannot be maintained at the closed facility.

#### APPENDIX 0400-18-01-.07–A

#### REMOVAL OF UNDERGROUND TANKS.

- (1) Preparation.

(Rule 0400-18-01-.07, continued)

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

NOTE: (The Federal Resource Conservation and Recovery Act (RCRA) 42 U.S.C. Section 6901 et seq., and the Tennessee Hazardous Waste Management Act (HWMA) Part 1 T.C.A. § 68-212-101 et seq. place restrictions on disposal of certain residues that may be present in some underground storage tanks. Residues from tanks that have held leaded gasoline should be treated with extreme caution. Lead compounds and other residues in the tank may be classified as hazardous wastes).

- (c) Excavate to the top of tank.
  - (d) Remove the fill pipe, gauge pipe, vapor recovery truck connection, submersible pumps, and other tank fixtures. Remove the drop tube, except when it is planned to vapor-free the tank by using an eductor. Cap or remove all non-product lines, such as vapor recovery lines, except the vent line. The vent line shall remain connected until the tank is purged. Temporarily plug all other tank openings so that all vapors will exit through the vent line during the vapor-freeing process.
- (2) Purging.
- (a) Remove flammable vapors by one of the methods described in subparagraphs (b) through (e) of this paragraph, or as required by local codes. These methods provide a means for temporary vapor-freeing of the tank atmosphere. However, it is important to recognize that the tank may continue to be a source of flammable vapors even after following the vapor-freeing procedures described in subparagraphs (b) through (e) of this paragraph. For this reason, caution shall always be exercised when handling or working around tanks that have stored flammable or combustible liquids. Before initiating work in the tank area or on the tank, a combustible gas indicator shall be used to assess vapor concentrations in the tank and work area. All work shall be done in accordance with Paragraph (3), "Testing".
  - (b) Vent all vapors from the tank at a minimum height of twelve (12) feet above grade and three (3) feet above any adjacent roof lines until the tank is purged of flammable vapors. The work area shall be free from sources of ignition.
  - (c) Flammable and combustible vapors may be purged with an inert gas such as carbon dioxide (CO<sub>2</sub>) or nitrogen (N<sub>2</sub>). This method is not to be utilized if the tank is to be entered for any reason, as the tank atmosphere will be oxygen deficient. The inert gas is to be introduced through a single tank opening at a point near the bottom of the tank at the end of the tank opposite the vent. When inert gases are used, they shall be introduced under low pressure to avoid the generation of static electricity. When using CO<sub>2</sub> or N<sub>2</sub>, pressures in the tank shall not exceed five (5) pounds per square inch gauge.

Caution: The process of introducing compressed gases into the tank may create a potential ignition hazard as the result of the development of static electrical charges. The discharging device shall therefore be grounded. Explosions have resulted from the discharging of CO<sub>2</sub> fire extinguishers into tanks containing a flammable vapor-air mixture. CO<sub>2</sub> extinguishers shall not be used for inerting flammable atmospheres.



(Rule 0400-18-01-.07, continued)

- (d) If the method described in subparagraph (c) of this paragraph is not practical, the vapors in the tank may be displaced by adding solid carbon dioxide (dry ice) to the tank in the amount of at least one and one-half (1.5) pounds per one hundred (100) gallons of tank capacity. The dry ice should be crushed and distributed evenly over the greatest possible area in the tank to promote rapid evaporation. As the dry ice vaporizes, flammable vapors will flow out of the tank and may surround the area. Therefore, where practical, plug all tank openings except the vent after introducing the solid CO<sub>2</sub> and continue to observe all normal safety precautions regarding flammable or combustible vapors. Make sure that all of the dry ice has evaporated before proceeding.
  - (e) Flammable vapors may be exhausted from the tank by one of two methods of tank ventilation listed below:
    - 1. Ventilation using an eductor-type air mover usually driven by compressed air. The eductor-type air mover shall be properly bonded to prevent the generation and discharge of static electricity. When using this method, the fill (drop) tube shall remain in place to ensure ventilation at the bottom of the tank. Tanks equipped with fill (drop) tubes that are not removable should be purged by this method. An eductor extension shall be used to discharge vapors a minimum of twelve (12) feet above grade and at least three (3) feet above any adjacent roof line.
    - 2. Ventilation with a diffused air blower. When using this purging method, it is imperative that the air-diffusing pipe is properly bonded to prevent the discharge of a spark. Fill (drop) tubes shall be removed to allow proper diffusion of the air in the tank. Air supply should be from a compressor that has been checked to ensure a clean air supply and is free from volatile vapors. Air pressure in the tank shall not exceed five (5) pounds per square inch gauge.
- (3) Testing.
- (a) The tank atmosphere and the excavation area are to be regularly tested for flammable or combustible vapor concentrations until the tank is removed from both the excavation and the site. Such tests are to be made with a combustible gas indicator which is properly calibrated according to the manufacturer's instructions and which is thoroughly checked and maintained in accordance with the manufacturer's instructions. Persons responsible for testing shall be completely familiar with the use of the instrument and the interpretation of the instrument's readings.
  - (b) The tank vapor space is to be tested by placing the combustible gas indicator probe into the fill opening with the drop tube removed. Readings should be taken at the bottom, middle, and upper portions of the tank, and the instrument should be cleared after each reading. If the tank is equipped with a non-removable fill tube, readings are to be taken through another opening. Liquid product shall not enter the probe. Readings of twenty percent (20%) or less of the lower flammable limit shall be obtained before the tank is considered safe for removal from the ground.
  - (c) Tanks purged with an inert gas shall be sampled with an oxygen indicator and the oxygen content shall be considered while interpreting combustible gas indicator results.
- (4) Removal.
- (a) After the tank has been freed of vapors and before it is removed from the excavation, plug or cap all accessible holes. One plug shall have a one-eighth of an inch vent hole

(Rule 0400-18-01-.07, continued)

to prevent the tank from being subjected to excessive differential pressure caused by temperature changes. The tank shall always be positioned with this vent plug on top of the tank during subsequent transport and storage.

- (b) Excavate around the tank to uncover it for removal. Remove the tank from the excavation and place it on a level surface. Use wood blocks to prevent movement of the tank after removal and prior to loading on a truck for transportation. Use screwed (boiler) plugs to plug any corrosion holes in the tank shell.
- (c) Precautions shall be taken to assure any vapors left in the tank do not reach a combustible level. If this situation occurs, the tank shall be purged according to paragraph (2) of this appendix.
- (d) Before the tank is removed from the site, the tank atmosphere shall be checked with a combustible gas indicator to ensure that it does not exceed twenty percent (20%) of the lower flammable limit.
- (e) The tank shall be secured on a truck for transportation to the storage or disposal site with the one-eighth of an inch vent hole located at the uppermost point on the tank. Tanks shall be transported in accordance with all applicable local, state, and federal laws and regulations.
- (f) Tanks shall be labeled after removal from the ground but prior to removal from the site. Regardless of the condition of the tank, the label shall contain a warning against certain types of reuse. The former contents and present vapor state of each tank, including vapor-freeing treatment and data shall also be indicated. The label shall be similar to the following in legible letters at least two (2) inches high:

Tank Has Contained Leaded Gasoline\*

Not Vapor Free

Not Suitable For Storage Of Food Or Liquids

Intended For Human Or Animal Consumption

Date Of Removal: Month/Day/Year

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

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

Tank Has Contained Leaded Gasoline

Lead Vapors May Be Released If Heat

Is Applied To The Tank Shell

- (5) Storage Of Used Tanks.

Storage Procedures.

- (a) Tanks shall be vapor-freed before being placed in storage. Tanks shall also be free of all liquids and residues. All tank openings shall be tightly plugged or capped, with one

(Rule 0400-18-01-.07, continued)

plug having a one-eighth of an inch vent hole to prevent the tank from being subjected to excessive differential pressure caused by temperature changes. Tanks shall be stored with the vented plug at the highest point on the tank. All tanks shall be labeled.

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

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.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 subparagraph (2)(b) of Rule 0400-18-01-.01.
- (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).

(Rule 0400-18-01-.08, continued)

(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 0400-18-01-.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

(Rule 0400-18-01-.08, continued)

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 0400-18-01-.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:

(Rule 0400-18-01-.08, continued)

- (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 0400-18-01-.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 paragraph (3) of Rule 0400-18-01-.09 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 subparagraph (3)(c) of Rule 0400-18-01-.09.

- 1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in paragraph (6) of Rule 0400-18-01-.09 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.

(Rule 0400-18-01-.08, continued)

- (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 0400-18-01-.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 Rule 0400-18-01-.09 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 paragraph (6) of Rule 0400-18-01-.09 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 subparagraph (12)(h) of Rule 0400-18-01-.09.

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 subparagraph (12)(h) of Rule 0400-18-01-.09, 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.

(Rule 0400-18-01-.08, continued)

(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.



(Rule 0400-18-01-.08, continued)

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;

(Rule 0400-18-01-.08, continued)

- (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:

(Rule 0400-18-01-.08, continued)

- (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.

(Rule 0400-18-01-.08, continued)

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.

(Rule 0400-18-01-.08, continued)

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.

(Rule 0400-18-01-.08, continued)

- (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.

(Rule 0400-18-01-.08, continued)

- (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.

(Rule 0400-18-01-.08, continued)

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.



(Rule 0400-18-01-.08, continued)

7. The insurance policy shall guarantee that funds shall be available for taking corrective action in accordance with Rule 0400-18-01-.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 11(v)(I) through (IV) 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

(Rule 0400-18-01-.08, continued)

- (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

(Rule 0400-18-01-.08, continued)

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 0400-18-01-.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

(Rule 0400-18-01-.08, continued)

- (V) The Commissioner issues an Order of Forfeiture as a result of the occurrence of one or more of the conditions set forth in items (I) through (III) of this subpart.
  - (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.

(Rule 0400-18-01-.08, continued)

(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 0400-18-01-.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

(Rule 0400-18-01-.08, continued)

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 Conservation; or

(Rule 0400-18-01-.08, continued)

- (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 0400-18-01-.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.

(Rule 0400-18-01-.08, continued)

- (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.



(Rule 0400-18-01-.08, continued)

- (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) 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) 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.

(Rule 0400-18-01-.08, continued)

- (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

(Rule 0400-18-01-.08, continued)

- 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

(Rule 0400-18-01-.08, continued)

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;

(Rule 0400-18-01-.08, continued)

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

(Rule 0400-18-01-.08, continued)

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 0400-18-01-.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 0400-18-01-.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.

(Rule 0400-18-01-.08, continued)

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 paragraphs (4) and (5) of Rule 0400-18-01-.07; 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. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.09 PETROLEUM UNDERGROUND STORAGE TANK FUND.**

(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.

(2) Applicability.

- (a) Requirements of this rule apply to all owners and/or operators of an underground storage tank system as defined in paragraph (4) of Rule 0400-18-01-.01 except as otherwise provided for in subparagraph (2)(b) of Rule 0400-18-01-.01. However, the requirements of this rule do not apply to those tanks owned by state and federal entities whose debts and liabilities are the debts and liabilities of a state or the United States.
- (b) Petroleum site owners eligible for fund reimbursement shall only be reimbursed for those fund eligible and reasonable costs which accrued on or after July 1, 2002.

(3) Fund Eligibility Requirements.

- (a) 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 0400-18-01-.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.

(Rule 0400-18-01-.09, continued)

- (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.
- (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) of this rule, 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 subparagraphs (3)(c) and (4)(b) of Rule 0400-18-01-.04 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 0400-18-01-.04 and/or 0400-18-01-.05. The



(Rule 0400-18-01-.09, continued)

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 0400-18-01-.04 and/or 0400-18-01-.05, for example, during closure activities performed in accordance with Rule 0400-18-01-.07.

(5) Authorized disbursements from the fund.

- (a) Whenever, in the commissioner's determination, an eligible owner and/or operator or petroleum site owner has a release of petroleum from an underground storage tank and the owner and/or operator or petroleum site owner has been found to 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:
  1. Emergency response activities, investigation, and assessment of sites contaminated by a release of petroleum in accordance with the requirements of Rules 0400-18-01-.05 through 0400-18-01-.06;
  2. The rehabilitation of sites contaminated by a release of petroleum, which may consist of clean-up of affected soil and groundwater, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with release response, remediation and risk management requirements of Rule 0400-18-01-.06;
  3. The interim replacement and permanent restoration of potable water supplies.
- (b) Monies held in the fund may be disbursed for making payments to third parties who bring suit relative to an UST release against 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.
- (c) Costs incurred by the division in the administration of the provisions of this rule or authorized under T.C.A. §68-215-101 et seq. shall be charged to the fund.
- (d) The fund shall be available to the board and the Commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of petroleum sites and for third party claims within the state as provided in T.C.A. §68-215-101 et seq., in this rule and in paragraph (5) of Rule 0400-18-01-.08.
  1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in paragraph (6) of Rule 0400-18-01-.09 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.

(Rule 0400-18-01-.09, continued)

- (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 0400-18-01-.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 subparagraph (12)(h) of Rule 0400-18-01-.09, 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.
- (e) The commissioner may enter into contracts and use the fund for those purposes directly associated with identification, investigation, containment, and cleanup, including monitoring and maintenance prescribed above including:

(Rule 0400-18-01-.09, continued)

1. Hiring consultants and personnel;
  2. Purchase, lease or rental of necessary equipment; and
  3. Other necessary expenses.
- (f) The commissioner will pay each approved claim of the fund in chronological order based upon the date the claim is submitted for payment.
- (g) The commissioner will not authorize any disbursement from the fund for costs for which the owner and/or operator or petroleum site owner receives payment from another insurance carrier or other source. Further, the division shall acquire by subrogation the right of the owner and/or operator or petroleum site owner to recover the amount of damages paid to the third party from any person, other than the owner and/or operator of the underground storage tank system from which the release occurred or the petroleum site owner, responsible or liable for the release.
- (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 0400-18-01-.08.
- (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

(Rule 0400-18-01-.09, continued)

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

(Rule 0400-18-01-.09, continued)

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/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party
Between July 1, 1988 and June 30, 1989	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party
Between July 1, 1989 and April 30, 1990	\$50,000 Clean-up/ \$150,000 third party	\$50,000 Clean-up/ \$150,000 third party	\$50,000 Clean-up/ \$150,000 third party
Between May 1, 1990 And April 4, 1995	\$10,000 Clean-up/ \$10,000 third party	\$20,000 Clean-up/ \$37,500 third party	\$50,000 Clean-up/ \$225,000 third party
Between April 5, 1995 And June 30, 2005	10% of Clean-up Cost not to exceed \$10,000/ \$10,000 third party	20% of Clean-up cost not to exceed \$20,000/ \$37,500 third party	\$50,000 Clean-up/ \$225,000 third party
On or after July 1, 2005	\$20,000 Clean-up/ \$20,000 third party	\$20,000 Clean-up/ \$20,000 third party	\$20,000 Clean-up/ \$20,000 third party

\* 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%).

(Rule 0400-18-01-.09, continued)

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 part (2)(c)2 or 3 of Rule 0400-18-01-.01 or paragraph (2) or (6) of Rule 0400-18-01-.02, there shall be no reduction in the deductible.

(7) Removal, Replacement or Repair of Property Improvements.

- (a) In accordance with paragraph (7) of Rule 0400-18-01-.06, 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 0400-18-01-.02.
- (b) If the division evaluation of the cost proposals submitted in accordance with part (a)2 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

(Rule 0400-18-01-.09, continued)

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.
- (8) Fund ineligible costs.
- (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.
  - (b) The cost of equipment purchases other than routinely required supplies which are expended at a given site or equipment which shall be installed at a site to implement a Corrective Action Plan shall not be charged as a lump sum to the cost of rehabilitating any given site at which funds are being claimed for containment, investigative, or corrective action costs. Examples of equipment which could not be charged to a specific site would include: drilling rigs, earth moving equipment, ground water sampling pumps, and photoionization detectors. Examples of equipment which could be charged to a specific site would include: bailers, sample containers, etc. Hourly charges for equipment may be established in the cost proposal submitted for each major phase of work. These hourly rates shall be competitive with similar charges by other approved contractors, or they may be rejected by the division if they are determined to represent unreasonable costs.
  - (c) The owner 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 0400-18-01-.07 shall not be eligible for fund payment or reimbursement.
  - (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.
- (9) Fund obligations.

(Rule 0400-18-01-.09, continued)

- (a) Contingent upon availability of funds, the commissioner will make obligations from the fund when:
    - 1. A cost proposal for containment, investigative, or corrective actions, submitted in accordance with paragraph (10) of this rule, is approved by the division;
    - 2. A judgment for a third party claim is submitted for payment in accordance with paragraphs (6), (11) and (12) of this rule;
    - 3. A payment application is received for containment, investigative, or corrective action work performed from July 1, 1988 until April 15, 1990, subject to a determination of reasonable costs by the division. Fund eligibility from July 1, 1988 until April 15, 1990 shall be determined by fee payment as required by the Tennessee Petroleum Underground Storage Tank Act;
    - 4. A payment application is received for initial release response, abatement measures, and initial free product removal under the terms of subparagraph (10)(d) of this rule;
    - 5. A payment application is received and approved by the division for costs associated with providing an alternate water supply to a person whose water supply has been contaminated by a release of petroleum; or
    - 6. The commissioner or board determines it is necessary to provide for containment, investigation, identification, reasonable and safe cleanup, and as otherwise provided in the Tennessee Petroleum Underground Storage Tank Act.
  - (b) If the unobligated balance of the fund is less than the total amount associated with payment applications, cost proposals, and third party judgments which have been accepted by the commissioner, to the extent allowed by available funds, funds will be obligated in the chronological order in which the claims were submitted, except for the provisions of subparagraph (c) of this paragraph.
  - (c) Obligations of funds required for satisfying fund eligible payment applications for work performed under part (a)3 of this paragraph or judgments for third party claims which were rendered prior to April 15, 1990, for releases discovered from July 1, 1988 until April 15, 1990, will be given priority over payment applications and cost proposals for releases which occur after April 15, 1990.
  - (d) All claims against the fund are clearly obligations only of the fund and not of the State, and any amounts required to be paid under this part are subject to the availability of sufficient monies in the fund. The full faith and credit of the State shall not in any way be pledged or considered to be available to guarantee payment from such fund.
- (10) Requirements for fund coverage of corrective action costs.

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



(Rule 0400-18-01-.09, continued)

- (a) Upon confirmation of a release in accordance with paragraph (3) of Rule 0400-18-01-.05 or after a release from the UST system is identified in any other manner, owners and/or operators or petroleum site owners shall comply with the requirements of Rule 0400-18-01-.06 as necessary to investigate the release, characterize the site and control any hazards posed by the release in order to stabilize the site, prevent significant risk to human health and safety, and/or continuing damage to the environment.
- (b) Upon confirmation and reporting of a release in accordance with the requirements of paragraphs (1) through (3) of Rule 0400-18-01-.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 0400-18-01-.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 paragraphs (3) and (4) of Rule 0400-18-01-.02;
  - 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 0400-18-01-.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 0400-18-01-.01, subparagraph (1)(c) of Rule 0400-18-01-.02 and paragraphs (2) and (6) of Rule 0400-18-01-.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 0400-18-01-.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.

(Rule 0400-18-01-.09, continued)

- (e) Following completion of necessary site stabilization actions as described in subparagraph (d) of this paragraph, subsequent investigation, risk evaluation, and remediation shall be performed by approved contractors and in accordance with the requirements of Rule 0400-18-01-.06. Unless directed to do otherwise by the division, prior to initiating any subsequent investigation, risk evaluation or remediation, the owner and/or operator or the petroleum site owner shall, through the assistance of the selected approved contractor, prepare and submit to the division a cost proposal for conducting the proposed investigation, risk evaluation or remediation. Cost proposals shall be prepared in accordance with guidance provided by the division and in a format established by the division.
- (f) Upon review of a cost proposal submitted in accordance with subparagraph (e) of this paragraph the division may:
  - 1. Accept the cost proposal and authorize work to be initiated; or
  - 2. Request a modification to or clarification of the cost proposal if projected costs are determined not to be reasonable.
- (g) Unless directed to do otherwise by the division, in addition to the requirements of subparagraphs (d) and (e) of this paragraph, the owner and/or operator or petroleum site owner shall upon submittal of a cost proposal for a site investigation, also submit an estimate of the total cost of remediation for the site in a format required by the division, which shall be used solely for the purpose of the board and the division in projecting future funding requirements for the fund. The total estimated cost of remediation for a site shall be updated by the owner and/or operator or petroleum site owner in accordance with a schedule required by the division and as more complete information regarding a site becomes available.
- (h) Upon acceptance of a cost proposal by the division, sufficient monies will be obligated from the fund for completion of the particular phase of work for which the cost proposal was submitted and authorization will be provided for the initiation of the proposed action. Obligation of funds shall be subject to the availability of funds at the time of acceptance of the cost proposal.
- (i) Corrective actions performed prior to acceptance of an associated cost proposal may not be eligible for reimbursement.
- (j) If the cost of completing any of the corrective actions of subparagraph (e) of this paragraph is expected to exceed the amount of an accepted cost proposal, an amended cost proposal shall be submitted and accepted to allow additional funds to be obligated.
- (k) Any corrective action which is carried out in response to any discharge, release, or threatened release of petroleum from an UST shall be conducted in accordance with the requirements of Rules 0400-18-01-.06 and subparagraphs (a) through (e) of this paragraph.
- (l) The owner and/or operator or petroleum site owner or the selected corrective action contractor shall keep and preserve detailed records demonstrating compliance with approved investigative and corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be kept for at least three (3) years after corrective action has been completed for a site.

(Rule 0400-18-01-.09, continued)

- (m) Any approved corrective action shall be implemented in a manner acceptable to the division in accordance with an approved corrective action plan, if applicable, in order for the owner and/or operator or petroleum site owner to be eligible for the reimbursement of costs.
  - (n) An eligible owner and/or operator conducting UST response actions from July 1, 1988 until April 15, 1990, relative to any discharge, release or threatened release of petroleum from an UST, is entitled to reimbursement of reasonable costs above entry level from the fund but is exempted from the requirements of subparagraphs (b) through (j) of this paragraph, provided that corrective actions were carried out in accordance with a plan approved by the division.
  - (o) If corrective actions which were initiated during the time period referenced in subparagraph (n) of this paragraph are still continuing on April 15, 1990, the division may require submittal of cost proposals for any remaining phases of work and for the total projected cost of the remediation.
  - (p) If the contractor performing corrective actions as described in subparagraph (o) of this paragraph is not an approved contractor, the division may authorize the continued use of that contractor.
  - (q) If a contractor is performing corrective action at a site prior to development of an approved contractor list, the division may authorize the continued use of that contractor.
  - (r) The tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall fully cooperate with any audit which the commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the department for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall produce any records, data, documents, information, and personnel for interviews as necessary in the commissioner's determination to fully and completely conduct an audit.
  - (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.
- (11) Requirements for fund coverage of third party claims.

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

(Rule 0400-18-01-.09, continued)

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

- (a) Notify the division in writing within twenty-one (21) days upon the receipt of written notice of the third party liability suit. Thereafter, the owner and/or operator or petroleum site owner shall submit to the division a report which accurately reflects the status of the lawsuit every four (4) months, until the litigation is resolved. The owner and/or operator or petroleum site owner shall also notify the division in writing fourteen (14) days in advance of any settlement conference or settlement agreement;
  - (b) The owner 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.
  - (d) The third party obtains a final judgment enforceable in Tennessee or pursuant to a settlement reviewed and approved by the division. The underground storage tank system owner and/or operator or petroleum site owner shall file a motion with the court requesting that the final judgment specify the type and amount of all damages awarded to the third party(ies);
  - (e) The final judgment is for an amount greater than the fund entry level in effect on the date of release.
  - (f) The tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall gather and maintain documentation and records necessary to verify 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.
- (12) Applications for payment.
- (a) Applications for reimbursement for costs of corrective actions shall be submitted on a form established by the division which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the division, or which the applicant may wish to provide.
  - (b) The following statement shall be signed in accordance with the requirements of either part 1 or 2 of this subparagraph:

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

(Rule 0400-18-01-.09, continued)

1. The owner and/or operator or petroleum site owner and the approved CAC or an authorized representative of the approved CAC shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of subparagraph (14)(a) of this rule.
  2. The owner and/or operator or petroleum site owner shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of subparagraph (14)(b) of this rule.
- (c) Applications for payments may be submitted following acceptance by the division of completed corrective actions. Such corrective actions may include but are not limited to the following:
1. Completion of hazard management activities, which were authorized by the division, including, but not limited to, provision of an alternate water supply;
  2. Completion and submittal of a Hazard Management Report;
  3. Development and submittal of an Initial Site Characterization Report;
  4. Development and submittal of a Risk Analysis Report;
  5. Implementation of interim remediation and/or risk management activities which were authorized by the division;
  6. Advanced risk-based modeling development which was authorized by the division; and/or
  7. Development and/or implementation of a Corrective Action Plan which was authorized by the division.
- (d) Applications for payments for the implementation of corrective action may be submitted sixty (60) days following initiation of work to implement the Corrective Action Plan and at sixty (60) day intervals thereafter until completion of the authorized activities. Upon request, the division may approve interim payments at more frequent intervals.
- (e) All payments shall be subject to approval by the division. Should a site inspection or other information available to the division reveal a discrepancy between the work performed and the work addressed by a payment application, the division may deny payment or may require the fund to be reimbursed.
- (f) All applications for payment of costs of cleanup shall be received by the division within one (1) year of performance of the task or tasks covered by that application in order to be eligible for payment from the fund.
- (g) Except for the situations provided for in subparagraph (10)(a) of this rule, payment shall not be made for corrective actions performed at a site until the division has reviewed and accepted a cost proposal for that work and until funds have been obligated from the fund for completion of that particular stage of work.
- (h) For payment of third party claims, the UST owner 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

(Rule 0400-18-01-.09, continued)

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.

1. The division may require additional information to determine the eligibility of a cost for payment.
2. If the application is determined to be incomplete, the division shall notify the applicant of the deficiencies. The applicant shall submit supplemental information to correct the deficiencies within forty-five (45) days of receipt of notice. The applicant may submit a written request for an extension of time for submittal of information to the division. The applicant shall state and the division shall approve the conditions which warrant an extension of submittal time.
3. Only the following costs shall be eligible for payment or reimbursement from the fund:
  - (i) Awards for property damage to third parties made by a court of suitable jurisdiction in Tennessee; and
  - (ii) Awards for bodily injury to third parties made by a court of suitable jurisdiction in Tennessee.

(13) Settlement of third party claims.

- (a) No settlement of a third party claim shall be made by an owner and/or operator or petroleum site owner without the prior approval of the division. The fund shall not be obligated to pay any claim for reimbursement if the owner and/or operator or petroleum site owner enters into a settlement without the prior approval of the division.
- (b) The fund shall not be obligated to pay any final and enforceable third party judgment or reimburse an owner and/or operator or petroleum site owner for payment of the judgment in any amount exceeding a settlement offer rejected by the owner and/or operator or petroleum site owner which was submitted to the division, reviewed and approved by the division for payment.

(14) Fund payment procedures.

- (a) Where the owner and/or operator or petroleum site owner has submitted an acceptable application for payment for corrective actions or third party claims, but has not paid for these activities or claims, payments will be made by a check written to both the eligible owner and/or operator or petroleum site owner and the provider of the corrective action services or third party.
- (b) Payments from the fund will be made directly to the eligible owner 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.
- (c) The owner and/or operator or petroleum site owner is responsible for final payment to the contractor who performed the corrective actions and for payment of judgments to third parties.

(Rule 0400-18-01-.09, continued)

- (d) Contingent upon availability of funds, the department shall process all applications for payment as soon as possible upon receipt of application. If all costs are considered to be reasonable and eligible for reimbursement, payment will be issued within ninety (90) days once costs have been determined to be reasonable and eligible for reimbursement. If certain costs are considered as not being reasonable or eligible for reimbursement, the division may issue a check for the amount of the application not in question and provide a forty-five (45) day period in which the owner and/or operator or petroleum site owner or contractor may present such information as is necessary to justify the disallowed costs. Following review of such information, the division may agree to pay the previously disallowed costs, or any portion thereof, or may again disallow the costs for payment. If the division disallows costs upon a second review, the owner and/or operator or petroleum site owner may petition the board for a hearing on the disallowance pursuant to Rule 0400-18-01-.11.
- (15) Approval of corrective action contractors.
- (a) The CAC is the person responsible for conducting and overseeing the corrective action at a petroleum underground storage tank site. There shall be only one CAC for each site.
    - 1. The CAC shall be either:
      - (i) A properly licensed contractor, licensed engineer, registered geologist, or other licensed environmental professional; or
      - (ii) An owner and/or operator of the petroleum underground storage tank(s) which caused the release of petroleum to the environment or petroleum site owner, provided that each contractor/subcontractor working for the owner and/or operator or petroleum site owner shall be a properly licensed contractor pursuant to T.C.A. § 62-6-101 et seq.
  - (b) CACs will be approved to perform fund eligible work upon satisfaction of the following:
    - 1. The CAC files a written application to become an approved corrective action contractor with the division via certified mail or personal service.
      - (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.

(Rule 0400-18-01-.09, continued)

2. The CAC submits a sworn statement with the written application in part 1 of this subparagraph, including the following provisions:
  - (i) The CAC shall abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal, Professional and Consulting Services Contracts.
  - (ii) The CAC shall have written contract(s) with all contractors/subcontractors, and contract(s) shall contain provisions that contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal, Professional and Consulting Services Contracts. Contract(s) between the CAC and contractors/subcontractors shall also contain provisions that all site workers working under authority of contractors/subcontractors shall have applicable health and safety training when required by the Tennessee Department of Labor;
  - (iii) Site workers working under authority of the CAC shall have the applicable health and safety training when required by the Tennessee Department of Labor;
  - (iv) The CAC understands that reimbursement from the fund shall be in accordance with the reasonable rate schedule as established by the division;
  - (v) If the CAC is not the owner and/or operator of the tank that caused the release or petroleum site owner, the CAC shall have a written contract with the UST owner and/or operator or petroleum site owner, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The corrective action contractor will/will not (mark one) use the division's reasonable rate schedule when invoicing the owner and/or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site.
  - (vi) If the CAC is the owner and/or operator of the tank which caused the release or petroleum site owner, the CAC shall have a written contract with all contractors/subcontractors, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The contractor/subcontractor (mark one) will/will not (mark one) use the division's reasonable rate schedule when invoicing the owner and/or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site;
  - (vii) The CACs services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of their profession practicing in the State of Tennessee, under similar conditions, and at the time the services were rendered. The CAC shall not knowingly or willfully cause the spread of contamination nor inhibit corrective action at the site;
  - (viii) The CAC shall gather and maintain documentation and records necessary for filing a claim with the Tennessee Petroleum Underground Storage Tank Fund;



(Rule 0400-18-01-.09, continued)

- (ix) The CAC shall, at a minimum, follow Quality Assurance/Quality Control Standard Operating Procedures supplied by the division, unless alternate Quality Assurance/Quality Control is approved in writing in advance by the division;
  - (x) The CAC shall assure that the CAC and/or any person the CAC employs or contracts with to engage in the practice of engineering shall be appropriately licensed/registered under the Tennessee Architects, Engineers, Landscape Architects and Interior Designers Law and Rules T.C.A. § 62-2-101 et seq.;
  - (xi) The CAC shall assure that any and all work defined as contracting in Tennessee Contractor's License Law (T.C.A. § 62-6-101 et seq.) shall be performed by a licensed contractor(s) with appropriate classification and monetary limitation;
  - (xii) The CAC shall assure that the CAC and/or any person the CAC employs or contracts with to perform professional geologic work shall be appropriately registered under the Tennessee Geologists Act (T.C.A. § 62-36-101 et seq.); and
  - (xiii) The CAC 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 Chapter, that is Chapter 0400-18-01, 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 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 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 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.
3. The CAC has any applicable license(s) and registration(s) required in the State of Tennessee; and
- (i) If the CAC is a licensed contractor, the contractor shall be properly licensed with an S-Underground Tank Installers, Removal, and

(Rule 0400-18-01-.09, continued)

Remediation of Pollutants or other applicable classification with a monetary limitation as required under rule 0680-01-.13 and established by the board for Licensing Contractors of the Tennessee Department of Commerce and Insurance in the amount of at least three hundred fifty thousand dollars (\$350,000). Date of license expiration shall be included. The CAC shall submit requirements of this part with the application required in part 1 of this subparagraph and shall submit documentation of any changes, renewals, renovations, etc. of the CAC's Tennessee license. (There shall be no fund reimbursement for those expenses which exceed the contractor's monetary limitation.)

- (ii) All contractors and their subcontractors and employees shall have other applicable license(s) and registration(s).
4. The CAC shall maintain liability insurance coverage of the types and in the amounts described in the Table below, or the equivalent, and shall provide certification, with the division listed as a certificate holder, to the division of such coverage with the application described in part 1 of this subparagraph on April 1 of each year thereafter, or more frequently if necessary, to keep the division updated as to the CAC's current insurance coverage.

<u>TYPE OF POLICY</u>	<u>Limits of Liability</u>	<u>Description</u>
Worker's Compensation	Statutory	All states
Employer's Liability	\$500,000	
Automobile Liability	\$1,000,000 combined single limit (bodily injury and property damages)	All owned, non-owned, and hired vehicles
General Liability	\$1,000,000 combined single limit	Broad Form Comprehensive General Liability

5. The CAC 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.

(Rule 0400-18-01-.09, continued)

- (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.
- (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 0400-18-01-.11.
- (d) At any time other than when the division compiles the new year's approved CAC list after the submission of information each April 1, a CAC will be removed from the division's approved CAC list when it has been determined that the CAC has failed to satisfactorily maintain the requirements of subparagraph (b) of this paragraph or has committed one or more of the violations listed in subparagraph (e) of this paragraph.
  - 1. The removal process shall be initiated when a complaint is referred to the division's review committee;
  - 2. The review committee shall inform the CAC via certified mail of receipt of a complaint;
  - 3. The division's review committee may request the CAC to appear at a meeting to show cause why the department should not remove the CAC from the list of approved CACs;
  - 4. The CAC may request a meeting with the review committee;
  - 5. The review committee shall notify the CAC of its decision via certified mail within sixty (60) days of dispatch of the certified letter referenced in part 2 of this subparagraph;
  - 6. If the review committee decides to remove the CAC from the list of approved CACs, removal shall be effective thirty (30) days after dispatch to the last known address on file with the division unless:
    - (i) The CAC corrects the non-compliance to the satisfaction of the review committee during the thirty (30) day period; or
    - (ii) The CAC files a written appeal with the division within the thirty (30) day period requesting a hearing to appeal the decision of the review committee to the board.
  - 7. If the division removes a CAC from the list of approved CAC's the CAC may petition the board for a hearing on its removal pursuant to Rule 0400-18-01-.11. The filing of an appeal will postpone actions to remove a CAC from the list of approved CACs until the appeal is heard by the board;

(Rule 0400-18-01-.09, continued)

8. Once the review committee has dispatched a Notice of Removal to a CAC via certified mail, the division will approve no additional plans, scopes of work, or cost proposals if such approval will cause division personnel to violate T.C.A. § 62-6-120(c)(1);
  9. If an appeal is not filed during the sixty (60) day period, the decision of the review committee will be final;
  10. A CAC removed from the approved CAC list may reapply for approval as provided for in subparts (i) or (ii) of this part:
    - (i) A CAC who was removed from the approved CAC list due to failure to satisfactorily maintain the requirements of subparagraph (b) of this paragraph may reapply under subparagraphs (b) and (c) of this paragraph once the requirements of subparagraph (b) of this paragraph have been met;
    - (ii) A CAC who was removed from the approved CAC list due to one or more of the violations listed in (e) below may reapply after one (1) year. The CAC shall submit evidence showing the reasons why the CAC should be reinstated for evaluation by the review committee. The CAC shall reapply under the provisions of subparagraphs (15)(b) and (c) of this rule.
- (e) A CAC may be removed from the list of Approved Corrective Action Contractors if it is determined by a review committee consisting of division staff members that the CAC has done any of the following:
1. The CAC charged the state or owner and/or operator for unnecessary or unapproved work or work which was not performed;
  2. The CAC filed false information with the department;
  3. The CAC has been found guilty of violating any of the following or a comparable law in another jurisdiction:
    - (i) T.C.A. § 39-16-503 Tampering with or fabricating evidence;
    - (ii) T.C.A. § 39-16-504 Destruction of and tampering with governmental records;
    - (iii) T.C.A. § 39-14-130 Destruction of valuable papers with intent to defraud;
    - (iv) T.C.A. § 39-14-114 Forgery;
    - (v) T.C.A. § 39-14-104 Theft of services, or
    - (vi) T.C.A. § 39-14-103 Theft of property;
    - (vii) T.C.A. § 68-211-101 et seq. Solid Waste Disposal Act;
    - (viii) T.C.A. § 68-212-101 et seq. Hazardous Waste Management Act;
    - (ix) T.C.A. § 69-3-101 et seq. Water Quality Control Act;
    - (x) Other environmental regulatory legislation.

(Rule 0400-18-01-.09, continued)

4. The CACs or an employee(s), principal(s), or officer(s) of the CAC is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. § 62-2-101 et seq., § 62-6-101 et seq., and § 62-36-101 et seq., or a comparable law in another jurisdiction by the appropriate regulatory agency or court.
5. Due to the quality of work performed by the CAC, the CAC has significantly delayed or inhibited progress in achieving appropriate corrective action at a site(s). This shall include, but shall not be limited to, the following:
  - (i) The CAC performs a non-approved action which spreads contamination in the environment;
  - (ii) The CAC files a plan, 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
  - (iii) The CAC fails to supply recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions supported by the following:
    - (I) The physical and chemical characteristics of petroleum, including its toxicity, persistence, and potential for migration;
    - (II) The hydrogeologic characteristics of the petroleum site and the surrounding land;
    - (III) The proximity, quality, and current and future uses of groundwater;
    - (IV) An exposure assessment;
    - (V) The proximity, quality, and current and future uses of surface waters;
    - (VI) Applicable regulations in Chapter 0400-18-01; and
    - (VII) The magnitude and extent of petroleum contamination at the petroleum site and the surrounding land.
  - (iv) The CAC supplies recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions not supported by items (iii)(I) through (VII) of this part.
6. The CAC filed plan(s) or report(s) which do not bear the appropriate signature and Tennessee license/registration number of a Registered Professional Engineer or Professional Geologist.
7. The CAC performed work which did not have the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance.
8. The CAC has deviated from an approved plan or scope of work without the approval of the division. This includes, but is not limited to, the following:

(Rule 0400-18-01-.09, continued)

- (i) Failure to follow Quality Assurance and Quality Control approved in the plan, or
    - (ii) Failure to follow the schedule for implementation approved in the plan.
  - 9. The CAC has failed to follow Quality Assurance/Quality Control (QA/QC) procedures supplied by the division without having alternate QA/QC approved in advance in writing by the division.
  - 10. The CAC has failed to follow UST regulations promulgated in Chapter 0400-18-01.
  - 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 Chapter, and/or a plan approved by the division. The certification shall include a listing of how the work performed varies from this Chapter, the approved plan, and/or the work approved of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation.
- (f) A CAC that fails to comply with the requirements of parts (b)1, 4, or 5 of this paragraph on April 1 of any year will not be eligible to remain on the list of approved contractors.
- 1. The review committee shall inform the CAC via certified mail that removal shall be seven (7) days after dispatch to the last known address on file with the division unless the CAC corrects the non-compliance to the satisfaction of the review committee during the seven (7) day period.
  - 2. A CAC that fails to correct this noncompliance as provided in part 1 of this subparagraph, may reapply to be on the approved CAC list under subparagraphs (b) and (c) of this rule once it can meet all of those requirements.
- (g) No CAC shall be placed on the Approved Corrective Action Contractors list if the CAC is on a list of contractors banned from usage on federally funded projects. If a CAC on the Approved Corrective Action Contractors list is placed on the list of contractors banned from usage on federally funded projects, that CAC will be removed from the Approved Corrective Action Contractors list. When the CAC is removed from the list of contractors banned from usage on federally funded projects, the CAC may apply to be added to the Approved Corrective Action Contractors list according to procedures outlined in subparagraphs (b) and (c) of this paragraph. A CAC on a list of contractors banned from usage on federally funded projects cannot work as a subcontractor to an approved corrective action contractor.
- (h) The appearance of a CAC on the division's list of Approved Corrective Action Contractors shall in no way establish liability or responsibility on the part of the division, the fund, or the State of Tennessee in regards to the services provided by the CAC or circumstances which may occur as a result of such services.
- (i) An owner and/or operator may perform corrective actions for releases of petroleum from USTs he owns and/or operates provided that he submits an application with documentation as described in subparagraphs (b) and (c) of this paragraph and the application is approved by the division. The owner and/or operator may use

(Rule 0400-18-01-.09, continued)

qualifications of subcontractor(s) in addition to qualifications of the owner and/or operator in applying for approved corrective action contractor status. If an owner and/or operator uses a subcontractor(s) in qualifying for an approved corrective action contractor classification and there is a change of a subcontractor whose qualifications were used in the application or documentation, then the owner and/or operator shall notify the division; the owner and/or operator shall be removed from approved corrective action contractor status. The owner and/or operator shall submit a new application with documentation and be approved as discussed in subparagraphs (b) and (c) of this paragraph to continue work as an approved corrective action contractor.

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

(16) Recovery of costs by state - apportionment of liability.

- (a) Making use of any and all appropriate existing state legal remedies, the Commissioner may commence court action to recover the amount expended by the state from any and all responsible parties for each site investigated, identified, contained or cleaned up, including up to the limits of 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.
- (b) In any action under this rule, no responsible party shall be liable for more than that party's apportioned share of the amount expended by the state for such site. The responsible party has the burden of proving his apportioned share. Such apportioned share shall be based solely on the liable party's portion of the total volume of the petroleum at the petroleum site at the time of action under this chapter. Any expenditures required by the provisions of this chapter made by a responsible party (before or after suit) shall be credited toward any such apportioned share.
- (c) In no event shall the total moneys recovered from the responsible party or parties exceed the total expenditure by the state for each site.
- (d) Any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for such portion.
- (e) If the trier of the fact finds evidence insufficient to establish such party's portion of costs or expenditures in such a cost recovery, the court shall apportion such costs or expenditures among the defendants, to the extent practicable, according to equitable principles.

(17) Failure to take proper action.

Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the state as a result of such failure to take proper action. The commissioner may recover this penalty in an action commenced under T.C.A. § 68-215-115, paragraph (16) of this rule, or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter.

(18) Severability.

(Rule 0400-18-01-.09, continued)

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

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.10 FEE COLLECTION.**

(1) Purpose.

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

(2) Applicability.

Requirements of this rule apply to the following persons:

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

1. All petroleum underground storage tanks and/or tank compartments that are actively storing petroleum;
2. All petroleum underground storage tanks and/or tank compartments that are reported as in service at the start of the annual billing cycle (July 1 for underground storage tanks and/or tank compartments in East Tennessee, October 1 for underground storage tanks and/or tank compartments in Middle Tennessee, and January 1 for underground storage tanks and/or tank compartments in West Tennessee); and
3. All petroleum underground storage tanks and/or tank compartments taken temporarily out of service after June 30, 1988, and not properly closed in accordance with paragraphs (3) through (5) of Rule 0400-18-01-.07.

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

(3) Annual petroleum underground storage tank fees.

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

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



(Rule 0400-18-01-.10, continued)

- (d) The amount of the annual administrative service fee for agencies and functions of the U.S. Government having sovereign immunity shall be either:
1. Two hundred fifty dollars (\$250) per year for each non-compartmentalized tank; or
  2. Two hundred fifty dollars (\$250) per year per compartment for each compartmentalized tank.

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

- (e) If an annual fee is paid on an existing underground storage tank which is subsequently permanently closed in accordance with Rule 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 two hundred fifty dollars (\$250) per compartment shall be paid. If the replacement tank has fewer tank compartments than the existing tank, no refund of the annual fee or any portion thereof is due, as stated in subparagraph (f) of this paragraph.
- (f) Payment of the entire amount of the annual fee is required for underground storage tanks and/or tank compartments in service or temporarily out of service during any portion of the current billing year. Tanks and/or tank compartments placed into service after the current billing year begins or tanks and/or tank compartments which are permanently closed before the current billing year ends are not due a refund of the annual fee or any portion thereof.
- (4) Failure to pay the annual petroleum underground storage tank fee.
- (a) Any petroleum underground storage tank owner and/or operator of tanks for which the lawfully levied petroleum underground storage tank fee is owed will be assessed a monthly late payment penalty of five percent (5%) of the amount owed. Such penalty shall be assessed monthly until the fee and all associated penalties are paid; however, the total of the late payment penalties shall not exceed three (3) times the amount of the original fee. The tank owner and/or operator may file with the commissioner a written petition requesting a reduction in the penalties assessed under this subparagraph, setting forth in the petition the grounds and reasons for such a request. At the commissioner's sole discretion, the commissioner may reduce the penalties that otherwise accrue if, in the commissioner's opinion, the failure to pay fees was due to inadvertent error or excusable neglect. However, in no event shall the penalties be reduced to an amount less than ten percent (10%) per annum, plus statutory interest.
- (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.

(Rule 0400-18-01-.10, continued)

- (c) If a lawfully levied fee has not been paid within a reasonable time allowed by the Commissioner, the commissioner may proceed in the Chancery Court of Davidson County to obtain judgment and seek execution of such judgment against the tank owner and/or operator.
- (5) Petroleum underground storage tank annual fee notices.
- (a) Prior to the due date of the annual underground storage tanks fee, the division shall issue fee notices to the owner or operator of the petroleum underground storage tanks. Fee notices and due dates shall be staggered using the three grand divisions of the State of Tennessee.
    - 1. Tank fees for underground storage tanks and/or tank compartments in the following East Tennessee counties shall be due on July 31 of each year:

Johnson, Sullivan, Carter, Washington, Unicoi, Hancock, Hawkins, Greene, Claiborne, Grainger, Hamblen, Cocke, Scott, Campbell, Union, Anderson, Knox, Jefferson, Sevier, Morgan, Roane, Loudon, Blount, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, Sequatchie, Hamilton, Bradley, Polk, Franklin, and Marion.
    - 2. Tank fees for underground storage tanks and/or tank compartments in the following Middle Tennessee counties shall be due October 31 of each year:

Stewart, Montgomery, Robertson, Sumner, Macon, Clay, Pickett, Houston, Hickman, Cheatham, Davidson, Wilson, Trousdale, Smith, Jackson, Overton, Fentress, Putnam, Cumberland, White, DeKalb, Van Buren, Warren, Cannon, Rutherford, Williamson, Dickson, Humphreys, Perry, Wayne, Lewis, Lawrence, Maury, Giles, Marshall, Lincoln, Moore, Bedford, and Coffee.
    - 3. Tank fees for underground storage tanks and/or tank compartments in the following West Tennessee counties shall be due January 31 of each year:

Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll, Benton, Lauderdale, Tipton, Shelby, Haywood, Fayette, Madison, Hardeman, Henderson, Chester, McNairy, Decatur, and Hardin.
  - (b) The annual fee shall be paid on or before the due date.
  - (c) For any underground storage tank system brought into use after the effective date of this rule, the current year's annual fee shall be submitted with the notice of existence of such tank system required in part (1)(a)2 of Rule 0400-18-01-.02.
  - (d) For any underground storage tank system not previously reported to the division, the current year's annual fee shall be submitted with the required notice of existence of such tank system.
- (6) 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

(Rule 0400-18-01-.10, continued)

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 (a)1 through 3 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.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.11 APPEALS.**

- (1) Any responsible party, tank owner, tank operator, CAC or person who has a right to appeal a determination of the Commissioner by these Rules shall comply with the procedure set forth in this part to perfect an appeal. Such responsible party, tank owner, tank operator, CAC, or person may petition the Board for a hearing provided a written petition is submitted to and received by the Commissioner within thirty (30) days of receipt of the division's determination. The division's determination and action shall be final and not subject to review unless the written petition for hearing is submitted and received by the Commissioner within this time frame. The written petition shall set forth the basis for the appeal as required by the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. and the rules promulgated thereunder, in particular, Rule 1360-04-01-.05.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.12 INDICIA OF OWNERSHIP.**

- (1) Applicability.
  - (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.
  - (b) Holders are subject to these requirements if they became holders on or after April 12, 1996.
- (2) Notification by the Holder.
  - (a) Within thirty (30) days after foreclosure or its equivalent is completed, the holder shall notify the Department of the foreclosure. The holder shall use a notification form prescribed by the division. Holders shall complete the notification form accurately and in its entirety.
  - (b) If at any time after foreclosure, the holder causes a change in the status of the tanks at a petroleum UST facility, the holder shall report the change within thirty (30) days. This includes but is not limited to change of ownership, upgrading, or replacement of tanks, changes in mailing address and changes in service. Such reports shall be made using an amended notification form prescribed by the division.
  - (c) In the case of a sale of petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located or the sale of the security interest in such petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located, which

(Rule 0400-18-01-.12, continued)

occurs at any time after foreclosure, the holder must submit the notification form prescribed by the division and must also inform the buyer of the notification requirements.

(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 0400-18-01-.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 0400-18-01-.09.
- (b) A holder who is eligible for reimbursement from the state Fund must satisfy the deductible requirements as required by subparagraph (6)(b) of Rule 0400-18-01-.09.
- (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 0400-18-01-.06, then assessment and remediation, in accordance with the requirements of Rule 0400-18-01-.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 subparagraph (4)(b) of Rule 0400-18-01-.09 to establish Fund Eligibility for the UST systems.

(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. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

**0400-18-01-.13 VOLUNTARY REGISTRY.**

(1) Registration.

- (a) Any person that owns an interest in a petroleum site, including without limitation, owners in fee simple and holders, as defined in paragraph (4) of Rule 0400-18-01-.01, may register with the voluntary registry maintained by the division.
- (b) Any person intending to become a registrant shall register by completing and submitting to the division the registration form designated by the division. The form shall be completed accurately and in its entirety in accordance with instructions provided by the division. At a minimum the registration form shall provide:
  - 1. Name, address and phone number of the person submitting the registration form, and
  - 2. The facility identification number assigned to the UST facility by the division and the location and/or the address of the facility.
- (c) Notification of Registration in the Voluntary Registry shall be dispatched as set forth in parts 1 and 2 of this subparagraph.

(Rule 0400-18-01-.13, continued)

1. The registrant shall be notified by the division of current registration in the Voluntary Registry. This notification shall also set forth the due date for the annual fee for renewal of registration.
  2. The owner of the tanks at the facility provided in the registration form shall be sent notification of the registration in the Voluntary Registry. The notification shall inform the tank owner that the registrant shall be sent copies of all notices sent to the tank owner in accordance with paragraph 3 of this rule.
- (d) Registration shall be amended by the registrant whenever the pertinent information contained in the registration form has changed by re-submitting to the division a registration form with revised information.
- (2) Fees
- (a) All registrants shall pay an annual fee of \$500 per site.
  - (b) The annual fee shall be paid upon initial registration and annually thereafter by the first day of July until the registration is removed or withdrawn as provided in this rule.
    1. Each year, the department shall send the registrant an invoice at least sixty (60) days prior to the annual fee due date.
    2. If the registrant has not renewed the annual registration for the subsequent year, the department shall send the registrant a second invoice by certified mail at least thirty (30) days prior to the fee due date.
  - (c) Payment of the entire amount of the annual fee is required for any portion of the current year, which extends from July 1 through June 30. Initial registration after the current year begins or withdrawal of registration before the current year ends shall not result in a refund of the annual fee or any portion thereof.
  - (d) The division may remove a registrant from the Voluntary Registry in the event that the annual fee is not paid when due. The registrant shall be notified that he has been removed from the Voluntary Registry. Restoration to the Voluntary Registry shall be accomplished by fee payment and submittal of a new registration form.
- (3) Notices to Registrants
- (a) A copy of each notice issued to the tank owner, tank operator or petroleum site owner by the division, which concerns the underground storage tank facility provided in the registration form in accordance with part (1)(b)2 of this rule, shall be sent to the registrant.
  - (b) Each copy of a notice to the registrant shall be sent by the division simultaneously with the original notice to the owner and/or operator or petroleum site owner, and delivered in the same manner as the original notice.
  - (c) Notices to be copied to the registrant include, but are not limited to, invoices for tank and/or compartment fees, letters establishing deadlines for compliance with release response requirements, notices of violation and notices relating to loss of fund eligibility.
  - (d) Copies of notices sent to the registrant shall be sent to the current address appearing in the registration, as amended by the registrant due to change of address.

(Rule 0400-18-01-.13, continued)

- (4) Withdrawal of Registration
- (a) A registrant may have their name removed from the Voluntary Registry at any time by requesting removal in writing.
  - (b) An owner and/or operator of a UST on a petroleum site or the owner of the petroleum site may petition the division for removal of a registration if such owner and/or operator or petroleum site owner can demonstrate that the registrant does not have a current interest in that petroleum site. Prior to making any determination on the removal of a registration based on the petition of the owner or operator or petroleum site owner, the division shall notify the registrant and the registrant shall have an opportunity to confirm its current interest in the petroleum site.
  - (c) A registrant whose only interest in a petroleum site is as a holder shall withdraw or otherwise approve the removal of its registration no later than thirty (30) days following the satisfaction of the secured debt.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.14 RECORD RETENTION BY THE DIVISION.**

- (1) Notification and tank ownership records.

The division shall maintain both tank registration/notification information and responsible party information that has been provided to the division or otherwise obtained by the division. Documents containing notification, tank registration and/or responsible party information shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) Tank ownership records must be available should petroleum contamination be discovered sometime in the future, requiring the division to make determinations concerning fund eligibility and/or responsible parties, because:
  - 1. Timely registration or notification, in accordance with Rule 0400-18-01-.03, is required for establishment of fund eligibility in accordance with subparagraphs (3)(a) and (b) of Rule 0400-18-01-.09;
  - 2. The tank owner at the time of a release is a responsible party in accordance with T.C.A. § 68-215-103(17)(A);
  - 3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by subparagraph (5)(a) of Rule 0400-18-01-.07; and/or
  - 4. Some petroleum underground storage tanks regulated under T.C.A. § 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites; and
- (b) Some of these records include copies of deeds to real property, causing them to have permanent value.

- (2) Fee payment records.

(Rule 0400-18-01-.14, continued)

The division shall maintain fee payment information that has been provided to the division or otherwise obtained by the division. Records documenting the fee payment history associated with a petroleum site shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) Fee payment records must be available should petroleum contamination be discovered sometime in the future, requiring the division to make determinations concerning fund eligibility, because:
  - 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
  - 3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by subparagraph (5)(a) of Rule 0400-18-01-.07.
- (3) Release response, remediation and risk management records.

Records documenting the actions taken to assess, remediate and/or manage petroleum contamination at a petroleum site caused by a release from a UST system shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) These records pertain to real property, causing them to have permanent value.
  - 1. These records may contain copies of Notices of Land Use Restrictions, which have been attached to the deed to real property, in accordance with subparagraph (8)(c) of Rule 0400-18-01-.06 and T.C.A. § 68-212-225.
- (b) Risk based cleanup levels are required to be based on current and reasonably anticipated use of the property and location of receptors in accordance with part (5)(b)4 of Rule 0400-18-01-.06.
  - 1. If a person is contemplating a future use that was not anticipated at the time the site assessment and remediation was done in accordance with Rule 0400-18-01-.06, new risk calculations may need to be made taking into consideration the historical documents; and
  - 2. If a person is contemplating the future location of receptors that were not anticipated at the time the site assessment and remediation was done in accordance with Rule 0400-18-01-.06, new risk calculations, including the risk of human exposure to carcinogens, may need to be made taking into consideration the historical documents.

- (4) Reimbursement records.

Records documenting fund eligibility determinations and/or fund reimbursement payment history associated with a petroleum site shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) These records have fiscal value, causing them to have permanent value.

(Rule 0400-18-01-.14, continued)

(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 paragraph (6) of Rule 0400-18-01-.09, 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.

1. Post tank closure discovery of residual contamination.

(i) There may be some residual petroleum contamination that is not discovered during the site assessment at tank closure required by subparagraph (5)(a) of Rule 0400-18-01-.07.

(ii) Some petroleum underground storage tanks regulated under T.C.A. § 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites and may be discovered many years after the tanks were permanently closed.

2. Discovery of residual contamination post closure of a contamination case.

(i) Previously undetected residual petroleum contamination may be discovered years after assessment and remediation activities have been completed in accordance with Rule 0400-18-01-.06.

(ii) Additional remediation activities may be needed after assessment and remediation activities have been completed in accordance with Rule 0400-18-01-.06 if the risk at the site has changed, as described in subparagraph (3)(b) of this rule.

(5) Tank closure records.

The division shall maintain tank closure information that has been provided to the division or otherwise obtained by the division. Records documenting tank closure as well as the site assessment records associated with tank closure shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

(a) These records pertain to real property, causing them to have permanent value; and

(b) In accordance with subparagraph (4)(b) of Rule 0400-18-01-.07 petroleum underground storage tanks may be closed in place if they are filled with an inert substance or removed from the ground. It is important, when future use of the petroleum site is being considered, to know which tank closure option was utilized.

(6) Orders for correction and/or assessment, and cost recovery actions.

Records documenting enforcement actions that result in the issuance of an administrative order, under the provisions of T.C.A. § 68-215-114, and/or the issuance of an administrative order for the assessment of civil penalties, under the provisions of T.C.A. § 68-215-121, and records relating to cost recovery actions, under the provisions of T.C.A. § 68-215-115, shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

(a) These records have legal value; and



(Rule 0400-18-01-.14, continued)

- (b) These records have fiscal value. These records may contain information concerning uncollected debts owed to the State of Tennessee, for example, when a respondent moves after being served with an administrative order and leaves no forwarding address.
- (7) Maintenance of records.
- (a) All division records, including the permanent records specified in this rule, may be maintained as paper records, compact disks, microfilm records, electronic records, photographic records, and/or other forms that allow access for review and duplication.
  - (b) The form of the record at the time of submittal to the division shall not limit or otherwise prescribe the form in which that record may be permanently maintained.
  - (c) Nothing in this rule shall be construed to mean that the division is required to accept record submittals in any form other than that prescribed by the division.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

#### **0400-18-01-.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. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15.

**0400-18-01-.16 CERTIFIED OPERATOR PROGRAM.**

- (1) Operator Designation Requirements.
  - (a) Effective August 8, 2012 every facility having one or more petroleum UST systems subject to the requirements of Chapter 0400-18-01 must have one or more persons who have been designated by the tank owner as Class A, Class B, and Class C Operator(s).
  - (b) A Class A, Class B, or Class C Operator is not necessarily considered the same as "operator" defined in paragraph (4) of Rule 0400-18-01-.01, although the same individual may hold both positions.
  - (c) A Class A, Class B, or Class C Operator is not necessarily the same as "owner" as defined in paragraph (4) of Rule 0400-18-01-.01, unless such a person also owns these petroleum underground storage tanks.
- (2) Operator Training Requirements
  - (a) Persons to be classified as Class A, Class B, or Class C Operators must log on to the division's web based training database and indicate how operator training requirements are met for each applicable classification by indicating successful completion of at least one of the following:
    1. Applicable portions of the division's web-based operator training program designed to meet Class A, Class B, and/or Class C Operator training requirements, or
    2. Obtaining a passing score on the applicable UST System Operator Examination administered by the International Code Council and submitting the records to the division every two years, or
    3. Obtaining a passing score on a UST operator training program examination administered by the division.
  - (b) Class C Operator training may be provided by the tank owner, a trained Class A or Class B Operator in accordance with guidance published by the division, or by successful completion of Class C Operator training using the division's web-based operator training program.
  - (c) Class C Operators must be trained before assuming responsibility for responding to emergencies.
- (3) Tank Owner Responsibilities.
  - (a) Tank owners must register a Class A, and Class B Operator(s) for each facility where petroleum UST systems are located using the division's web-based operator training database on or before August 8, 2012.
  - (b) Tank owners must verify in the division's web-based operator training database that a trained individual meeting the requirements for a Class C Operator will be on site whenever the facility is operating.
  - (c) If a UST facility has a person(s) on site, at least one person on site must be a Class C Operator whenever the facility is operating. No later than August 8, 2012 a sign or

(Rule 0400-18-01-.16, continued)

instruction manual must be placed where the Class C operator would be expected to see it during the normal course of their work. At a minimum, it must include the following:

1. Employee's role in responding to spills and overfills, and
  2. Procedures for handling warnings, alarms, and response from leak detection console (if applicable), and
  3. Name and number of contact person for emergencies and monitoring equipment alarms, and
  4. Local emergency numbers, and
  5. An instruction to maintain a safe distance from any potential hazards.
- (d) Unmanned facilities as defined in paragraph (4) of Rule 0400-18-01-.01, must have a designated Class A and Class B Operator, but are not required to have designated operators on site. Class C operator requirements for unmanned facilities may be met by the designated Class B Operator who is also trained as the designated Class C Operator. The designated Class B/C Operator must respond to all emergencies and alarms caused by spills or releases from the underground storage tank facility.
- (e) A facility that is unmanned part of the time will be required to follow subparagraph (c) of this paragraph during the times the facility is manned and subparagraph (d) of this paragraph during the time the facility is unmanned.
- (f) Tank owners may elect to replace Class A or Class B Operators at any time by providing proper notice to the division in accordance with subparagraph (1)(h) of Rule 0400-18-01-.03. Notice to the division is not required when replacing a designated Class C Operator.
- (g) It will be unlawful to operate a petroleum UST facility without a Class A, Class B, and Class C Operator designations after August 8, 2012.
- (4) Retraining

If a significant operational compliance violation is discovered at any time, then successful completion of operator retraining appropriate to the level of the operator Class must be completed within a time frame determined by the division.

**Authority:** T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15. Repeal and new rule filed June 28, 2012; effective September 26, 2012.