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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

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

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	12 th Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Ruth Neff Conference Room – Side A 17 th Floor, L & C Tower		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	03/13/12		
Hearing Time:	9:00 a.m.	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

The Department is proposing to amend the petroleum underground storage tank (UST) regulations to clarify the requirements for operator training. To correct an oversight, the operator training regulations need to cover the operation of USTs that are currently deferred in subparagraph (2)(b) of Rule 0400-18-01-.01. The International Code Council has notified the Department that it will no longer offer the Tennessee UST System Operator Examination and that it has made changes to the National version of that exam, therefore, subparagraph (2)(a) of Rule 0400-18-01-.16 has been amended. The regulated community requested that the Department define the term “unmanned facilities,” clarify which requirements apply to manned and unmanned facilities, and to amend the regulations to make it easier for the regulated community to confirm training for designated class C operators. The requested clarifications are contained in these proposed amendments.

The Department prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation’s (TDEC’s)

Environmental Field Offices located as follows:

Memphis Environmental Field Office
8383 Wolf Lake Drive
Memphis, TN 38133
(901) 371-3000/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office
Suite 550 - State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
1421 Hampshire Pike
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-5602
(865)594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

The "Draft" rules may also be accessed for review using <http://tn.gov/environment/ust/ppo/>

Draft copies are also available for review at the following address:

Tennessee Department of Environment and Conservation
Division of Underground Storage Tanks
4th Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243-1541
(615) 532-0972

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks; Attention: Rhonda Key, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1541; telephone 615-532-0972 or fax 615-532-9759. However, such written comments must be received by 4:30 PM CST, March 13, 2012, in order to assure consideration. For further information, please contact Rhonda Key at the above address or telephone number or by e-mail at Rhonda.Key@tn.gov.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Commissioner's Redline Version

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

Chapter Number	Chapter Title
0400-18-01	Underground Storage Tank Program
Rule Number	Rule Title
0400-18-01-.01	Program Scope, Definitions and Proprietary Information
0400-18-01-.16	Certified Operator Program

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

Chapter 1200-18-01
Underground Storage Tank Program

Amendments

Subparagraph (b) of paragraph (2) of Rule 0400-18-01-.01 Program Scope, Definitions and Proprietary Information is amended by deleting it in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

(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.

Paragraph (4) of Rule 0400-18-01-.01 Program Scope, Definitions and Proprietary Information is amended by adding in alphabetical order the new definition for “unmanned facilities” to read as follows:

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

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

Rule 0400-18-01-.16 Certified Operator Program is deleted in its entirety and replaced with the following as that, as amended, the rule shall read as follows:

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 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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: January 12, 2012

Signature: _____

Name of Officer: Stanley R. Boyd

Title of Officer: Director

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State