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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Underground Storage Tanks and Solid Waste Disposal Control Board
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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-.05	Release Reporting, Investigation and Confirmation
0400-18-01-.07	Out-of-Service UST Systems and Closure
0400-18-01-.08	Financial Responsibility
0400-18-01-.09	Petroleum Underground Storage Tank Fund
0400-18-01-.10	Fee Collection
0400-18-01-.12	Indicia of Ownership

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-18-01
Underground Storage Tank Program

Amendments

Subparagraph (c) of paragraph (1) of Rule 0400-18-01-.05 Release Reporting, Investigation and Confirmation is amended by deleting it its entirety and substituting instead the following:

- (c) To determine the applicable deductible amount pursuant to part (6)(b)7 of Rule 0400-18-01-.09, a tank owner or operator or petroleum site owner shall submit documentation demonstrating compliance with the rules listed in subparts (6)(b)7(i) through (iii) of Rule 0400-18-01-.09 within 30 days following the Division's request for such documentation.

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

Subparagraph (a) of paragraph (1) of Rule 0400-18-01-.07 Out-of-Service UST Systems and Closure is amended by deleting it in its entirety and substituting instead the following:

- (a) When a UST system is temporarily closed, owners, operators, and/or other responsible parties shall continue operation and maintenance of spill and overfill prevention and corrosion protection in accordance with paragraphs (3) and (4) of Rule 0400-18-01-.02, and any release detection in accordance with Rule 0400-18-01-.04 and Rule 0400-18-01-.17. 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 and release detection operation and maintenance testing and inspections in Rule 0400-18-01-.02 and Rule 0400-18-01-.04 are 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 2.5 centimeters (one inch) of residue remains in the system. In addition, testing and inspections regarding operation and maintenance of spill and overfill prevention in Rule 0400-18-01-.02 are not required as long as the UST system is empty.

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

Paragraph (5) of Rule 0400-18-01-.08 Financial Responsibility is amended by deleting it in its entirety and substituting instead the following:

- (5) Tennessee Petroleum Underground Storage Tank Fund.

- (a) Corrective action costs.

Tank owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the Division in accordance with subparagraph (3)(e) of Rule 0400-18-01-.09.

1. If a fund-eligible tank owner or operator claims financial inability to pay the 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, in the discretion of the Commissioner, to pay the deductible for taking corrective action.
 - (i) The tank owner or operator shall supply documentation of inability to pay the deductible amount 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 deductible amount 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 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 deductible amount 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 150% of the costs expended by the fund as the result of the failure to take proper action.

(b) Third party claims.

Tank owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the 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)(g) of Rule 0400-18-01-.09.

1. If a fund-eligible tank owner or operator cannot pay the amount of the deductible 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)(g) 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 the owner's or operator's inability to pay the deductible amount 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 operator for the deductible amount 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 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 operator for the deductible amount paid by the fund to satisfy the third party claim.

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

0400-18-01-.09 Petroleum Underground Storage Tank Fund is amended by deleting it in its entirety and substituting instead the following:

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 tank owners and operators and petroleum site owners 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) All applications for payment of costs of cleanup shall be received by the Division within one year of the performance of the task or tasks covered by that application in order to be eligible for payment from the fund.

(3) Fund Eligibility Requirements.

- (a) Except as provided for in subparagraph (b) of this paragraph, release occurrences will be fund eligible if the Division has received notification registering the tank prior to the release occurrence.
- (b) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks required to meet the requirements of Rule 0400-18-01-.17, satisfying the requirements of this subparagraph will establish fund eligibility for release occurrences after October 13, 2021:
 - 1. Comply with subparagraph (1)(c) of Rule 0400-18-01-.17;
 - 2. Demonstrate through a Division approved site check, conducted in accordance with Division guidance, that 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
 - 3. The Division will conduct an inspection of the petroleum site and underground storage tank systems. Any noted deficiencies or violations discovered by Division personnel during this inspection shall be corrected, to the satisfaction of the Division, within 45 days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the tank owner or operator or petroleum site owner.
- (c) Within 30 days of the date the Division determines the requirements to establish fund eligibility have been met in accordance with subparagraph (b) of this paragraph, the Division will notify the tank owner or operator or petroleum site owner 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 that occurred during the time of fund ineligibility.
- (d) Except as provided for in subparagraph (5)(d) of this rule, before the tank owner or operator or petroleum site owner will receive fund benefit, the applicable deductible amount shall be expended as approved costs by the tank owner or operator or petroleum site owner. The applicable deductible amount is set forth in subparagraph (6)(b) of this rule.
- (e) The tank owner or operator or petroleum site owner shall timely submit an Application for Fund Eligibility to the Division before the applicable deadline set forth in T.C.A. § 68-215-111(f)(7) and in subparagraph (4)(b) 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 the Division determines that fund eligibility was not established at the time of discovery of a release in accordance with subparagraph (3)(a) or (b) of this rule, corrective action costs and third-party damages associated with that release are not eligible for reimbursement by the fund.
- (b) 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 90 days of the discovery of evidence of a suspected release that is subsequently confirmed in accordance with Rules 0400-18-01-.04 or 0400-18-01-.05. The 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 60 days of a release that was identified in any manner other than the process for confirmation of a

suspected release in accordance with Rule 0400-18-01-.04 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 tank owner or operator or petroleum site owner has a release of petroleum from an underground storage tank and the tank owner or operator or petroleum site owner satisfies the requirements of 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 and 0400-18-01-.06;
 - 2. The rehabilitation of sites contaminated by a release of petroleum, which may consist of cleanup 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 eligible UST release against a tank owner or operator or petroleum site owner who receives reimbursement from the fund 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. Title 68, Chapter 215, Part 1 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. Title 68, Chapter 215, Part 1, in this rule, and in paragraph (5) of Rule 0400-18-01-.08.
 - 1. If a tank owner or operator or petroleum site owner claims financial inability to pay the deductible set forth in paragraph (6) of this rule 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 or petroleum site owner shall supply documentation of inability to pay the deductible amount for taking corrective action to the Division upon request.
 - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or operator or petroleum site owner for the deductible amount paid by the fund for taking corrective action.
 - 2. If a fund-eligible tank owner or operator or petroleum site owner fails, without sufficient cause, to perform the release response, remediation, 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 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 operator or petroleum site owner for the amount of the 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 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 or petroleum site owner cannot pay the amount of the applicable fund deductible 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)(g) of this rule, the fund may be utilized to pay the deductible for satisfying the third-party claim.
 - (i) The tank owner or operator or petroleum site owner shall supply documentation of inability to pay the fund 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 operator or petroleum site owner for the amount of the deductible paid by the fund to satisfy the third-party claim.
 4. If a fund-eligible tank owner or operator or petroleum site owner fails, without sufficient cause, to pay the applicable 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 operator or petroleum site owner for the amount of the deductible paid by the fund to satisfy the third party claim.
 - (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:
 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 tank owner or operator or petroleum site owner receives payment from another insurance carrier or other source.
 - (h) If fund dollars have been expended in accordance with the provisions of subparagraph (d) 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 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 tank owners or operators or petroleum site owners, who satisfy the requirements of paragraphs (10) and (11) of this rule, 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 chapter.
 - (b) Tank owners or operators or petroleum site owners who qualify for fund reimbursement shall meet the per site per occurrence fund deductible requirements specified in parts 1 through 7 of this subparagraph 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 tank owners or operators or petroleum site owners for taking corrective action will be \$75,000 and compensation of third parties will be \$150,000.

2. If the date of release was on or after July 1, 1988 and on or before June 30, 1989, the deductible requirements for eligible tank owners or operators or petroleum site owners for taking corrective action will be \$75,000 and compensation of third parties will be \$150,000.
3. If the date of release was on or after July 1, 1989 and on or before April 30, 1990, the deductible requirements for eligible tank owners or operators or petroleum site owners for taking corrective action will be \$50,000 and compensation of third parties will be \$150,000.
4. If the date of release was on or after May 1, 1990 and on or before April 4, 1995, the deductible requirements for eligible tank owners or operators or petroleum site owners for corrective action and for compensation for third party claims will be as follows based on the number of tanks owned or operated:
 - (i) 1 to 12 tanks, \$10,000 for taking corrective actions and \$10,000 for compensation of third parties;
 - (ii) 13 to 999 tanks, \$20,000 for taking corrective actions and \$37,500 for compensation of third parties; or
 - (iii) 1,000 or more tanks, \$50,000 for taking corrective actions and \$225,000 for compensation of third parties.
5. If the date of release was on or after April 5, 1995 and on or before June 30, 2005, the deductible requirements for eligible tank owners 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, 10% of the total corrective action costs expended in an amount not to exceed \$10,000;
 - (II) 13 to 999 tanks, 20% of the total corrective action costs expended in an amount not to exceed \$20,000; or
 - (III) 1,000 or more tanks, \$50,000;
 - (ii) For compensation of third party claims:
 - (I) 1 to 12 tanks, \$10,000 for compensation of third parties;
 - (II) 13 to 999 tanks, \$37,500 for compensation of third parties; or
 - (III) 1,000 or more tanks, \$225,000 for compensation of third parties.
6. If the date of the release was on or after July 1, 2005 and before the effective date of this rule, the deductible for eligible tank owners or operators or petroleum site owners for taking corrective action will be \$20,000 and compensation of third parties will be \$20,000.
7. If the date of the release was on or after the effective date of this rule, the deductible for eligible tank owners or operators or petroleum site owners for taking corrective action will be \$5,000 and for compensation of third parties will be \$5,000, except that the highest applicable deductible shall apply as follows:
 - (i) The deductible will be \$10,000 for taking corrective action and \$10,000 for compensation of third parties for tank owners or operators or petroleum site

owners who fail to demonstrate that all of the UST systems located at the facility are in compliance with all the following rules:

- (I) Rule 0400-18-01-.02(2)(b)2 and 5;
 - (II) Rule 0400-18-01-.02(3)(a)1, 3, and 4;
 - (III) Rule 0400-18-01-.02(3)(b)6;
 - (IV) Rule 0400-18-01-.02(3)(c)1 and 2;
 - (V) Rule 0400-18-01-.02(4)(a)3(iii);
 - (VI) Rule 0400-18-01-.02(4)(c)1 and 2(ii);
 - (VII) Rule 0400-18-01-.02(8);
 - (VIII) The requirements of Rule 0400-18-01-.04(1)(a)2 through 5 regarding piping;
 - (IX) Rule 0400-18-01-.04(2)(b)1(ii) and 2;
 - (X) Rule 0400-18-01-.04(3)(b)1 and 2;
 - (XI) Rule 0400-18-01-.04(4); and
 - (XII) The requirements of Rule 0400-18-01-.04(5)(b)1 regarding piping and tank tightness test results.
- (ii) The deductible will be \$20,000 for taking corrective action and \$20,000 for compensation of third parties for tank owners or operators or petroleum site owners who fail to demonstrate that all of the UST systems located at the facility are in compliance with all of the following rules:
- (I) Rule 0400-18-01-.02(1)(c) and (d)3;
 - (II) Rule 0400-18-01-.02(2)(a)1, 2, and 5;
 - (III) Rule 0400-18-01-.02(2)(b)1;
 - (IV) Rule 0400-18-01-.02(4)(a)1 through 3(i);
 - (V) Rule 0400-18-01-.02(4)(b) regarding piping, except flex connectors;
 - (VI) Rule 0400-18-01-.02(4)(c)6(ii);
 - (VII) Rule 0400-18-01-.02(5)(a);
 - (VIII) Rule 0400-18-01-.02(6)(a) and (c);
 - (IX) The requirements of Rule 0400-18-01-.04(1)(a)1, 2, 4, and 5 regarding tanks;
 - (X) Rule 0400-18-01-.04(1)(c) and (d);
 - (XI) Rule 0400-18-01-.04(2)(a);
 - (XII) Rule 0400-18-01-.04(2)(b)1(i);
 - (XIII) Rule 0400-18-01-.04(3)(a)1 and 2;

- (XIV) Rule 0400-18-01-.04(3)(c)1(i) and 2(i);
- (XV) Rule 0400-18-01-.04(3)(d);
- (XVI) Rule 0400-18-01-.04(3)(e)1 and 2;
- (XVII) Rule 0400-18-01-.04(3)(f)1 and 3;
- (XVIII) Rule 0400-18-01-.04(5)(b) for tanks; and
- (XIX) Rule 0400-18-01-.07(2).

(iii) The deductible will be \$30,000 for taking corrective action and \$30,000 for compensation of third parties for tank owners or operators or petroleum site owners who fail to timely submit all documentation within 30 days following the Division's request as required by Rule 0400-18-01-.05(1)(c) or who fail to report a release, including:

- (I) Suspected releases in accordance with Rules 0400-18-01-.04(1)(b), 0400-18-01-.04(3)(a)2(v), 0400-18-01-.04(3)(b)4, 0400-18-01-.04(3)(c)1(ii), 0400-18-01-.04(3)(c)2(ii), 0400-18-01-.04(3)(e)6, 0400-18-01-.04(4)(d)6, and 0400-18-01-.05(1)(a);
- (II) Spills and overfills in accordance with Rules 0400-18-01-.02(3)(b)5 and 0400-18-01-.05(4); and
- (III) Confirmed releases in accordance with Rule 0400-18-01-.06.

Table 3

Tank Owner Or Operator Or Petroleum Site Owner Deductible Per Site Per Occurrence

Date Of Release	Number Of Tanks		
	1 - 12 Tanks	13 - 999 Tanks	1000+ Tanks
After January 1, 1974 and Before July 1, 1988 *	\$75,000 Cleanup/ \$150,000 third party	\$75,000 Cleanup/ \$150,000 third party	\$75,000 Cleanup/ \$150,000 third party
On or after July 1, 1988 And on or before June 30, 1989	\$75,000 Cleanup/ \$150,000 third party	\$75,000 Cleanup/ \$150,000 third party	\$75,000 Cleanup/ \$150,000 third party
On or after July 1, 1989 and on or before April 30, 1990	\$50,000 Cleanup/ \$150,000 third party	\$50,000 Cleanup/ \$150,000 third party	\$50,000 Cleanup/ \$150,000 third party
On or after May 1, 1990 and on or before April 4, 1995	\$10,000 Cleanup/ \$10,000 third party	\$20,000 Cleanup/ \$37,500 third party	\$50,000 Cleanup/ \$225,000 third party
On or after April 5, 1995 and on or before June 30, 2005	10% of Cleanup Cost not to exceed \$10,000/ \$10,000 third party	20% of Cleanup cost not to exceed \$20,000/ \$37,500 third party	\$50,000 Cleanup/ \$225,000 third party
On or after July 1, 2005 and before the effective date of this rule	\$20,000 Cleanup/ \$20,000 third party	\$20,000 Cleanup/ \$20,000 third party	\$20,000 Cleanup/ \$20,000 third party
On or after the effective	\$5,000 Cleanup/	\$5,000 Cleanup/	\$5,000 Cleanup/

Date Of Release	Number Of Tanks		
	1 - 12 Tanks	13 - 999 Tanks	1000+ Tanks
date of this rule **	\$5,000 third party	\$5,000 third party	\$5,000 third party

* Releases that 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 tank owner or operator or petroleum site owner incurred eligible expenses for assessment or remediation.

** The deductible may be increased for cleanup or third-party claims from \$5,000 to \$10,000, \$20,000, or \$30,000 based on the tank owner's or operator's or petroleum site owner's compliance with Rules 0400-18-01-.02 through 0400-18-01-.06 as described in part 7 of this subparagraph.

- (c) The fund shall reimburse eligible tank owners or operators or petroleum site owners, who satisfy the requirements of paragraphs (10) and (11) of this rule, for eligible corrective action costs above the deductible to the fund in an amount not to exceed:
1. \$2,000,000 per site per occurrence for sites still undergoing corrective action on July 1, 2015, or releases that occur on or after July 1, 2015;
 2. \$1,000,000 per site per occurrence for site cleanups closed on or before June 30, 2015:
or
 3. \$1,000,000 per site per occurrence for court awards involving third party claims.
- (d) If the date of the release is on or after September 1, 2005, the tank owner or operator or petroleum site owner may apply for a reduction of the deductible requirement for corrective action set forth in part (b)6 and (b)7 of this paragraph, unless the deductible has been increased pursuant to part (b)7 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 or operator or petroleum site owner 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; 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 50%.

Criteria	Percentage Reduction
Double Wall Tank(s) Installed Before July 24, 2007	10 %
Secondary Containment Chase Piping Enclosing Fiberglass Primary Piping or Flexible Plastic Piping with Containment Sumps at Piping Joints Installed Before July 24, 2007	10 %
Containment Sumps at Submersible Turbine Pumps Installed Before July 24, 2007	10 %
Containment Sumps under Dispensers Installed Before July 24, 2007	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 system 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 or operator or petroleum site owner has met one or more of the criteria for reduction of the deductible set forth in the table in this subparagraph, the tank owner or operator or petroleum site owner will be sent correspondence setting forth the new reduced 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 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 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 that are expended at a given site or equipment required to 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 that could not be charged to a specific site would include: drilling rigs, earth moving equipment, groundwater sampling pumps, and photoionization detectors. Examples of equipment that 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 tank owner 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 tank owner 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 operator or petroleum site 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.
- (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 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
 4. 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.
 - (c) 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 reimbursement of corrective action costs.

An eligible tank owner or operator or petroleum site owner conducting UST corrective actions is entitled to reimbursement of reasonable costs from the fund, subject to the provisions set forth in this paragraph.

- (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, tank owners 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 prevent continuing damage to the environment.
 - (b) Upon confirmation 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 tank owner or operator or petroleum site owner shall select a contractor from the Division's list of approved contractors if the tank owner or operator or petroleum site owner expects to apply for reimbursement from the fund. The tank owner or operator or petroleum site owner shall notify the Division in writing of such a selection within 30 days or another time frame specified by the Division. A contractual agreement shall be established between the tank owner or operator or petroleum site owner and the contractor in accordance with the requirements of T.C.A. § 68-215-129. The tank owner or operator or petroleum site owner shall provide the Division a copy of the contractual agreement.
 - (c) Corrective actions performed prior to acceptance of an associated cost proposal as required under Rule 0400-18-01-.06 may not be eligible for reimbursement.
 - (d) If the cost of completing any of the corrective actions is expected to exceed the amount of an accepted cost proposal, an amended cost proposal shall be submitted to the Division and approval obtained to allow additional funds to be obligated.
 - (e) Any corrective action that is carried out in response to any discharge, release, or threatened release of petroleum from a UST shall be conducted in accordance with the requirements of Rules 0400-18-01-.06 and subparagraphs (a) and (b) of this paragraph.
 - (f) The tank owner 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 years after corrective action has been completed for a site.
 - (g) 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 tank owner or operator or petroleum site owner to be eligible for the reimbursement of costs.
 - (h) The tank owner 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 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 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.
 - (i) To avoid a conflict of interest, if the tank owner or operator or 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 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 reimbursement of third-party claims.

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

- (a) Notify the Division in writing within 21 days upon the receipt of written notice of the third-party liability suit. Thereafter, the tank owner or operator or petroleum site owner shall submit to the Division a report that accurately reflects the status of the lawsuit every four months, until the litigation is resolved. The tank owner or operator or petroleum site owner shall also notify the Division in writing 14 days in advance of any settlement conference or settlement agreement;
 - (b) The release is fund eligible pursuant to paragraph (3) of this rule;
 - (c) Submit to the Division 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 has obtained against the tank owner or operator or petroleum site owner a final judgment enforceable in Tennessee or pursuant to a settlement reviewed and approved by the Division. The tank owner 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 applicable fund deductible amount in effect on the date of release.
 - (f) The tank owner 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 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 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 that includes an itemization of all charges broken down according to labor hours and rates, analytical charges, equipment charges, and other categories that 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.”

 1. The tank owner 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 tank owner 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 that 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 or risk management activities which were authorized by the Division;
 6. Advanced risk-based modeling development which was authorized by the Division; 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 60 days following initiation of work to implement the Corrective Action Plan and at 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 year of performance of the task or tasks covered by that application in order to be eligible for payment from the fund.
- (g) For payment of third party claims, the tank owner or operator or petroleum site owner shall submit an application to the Division, using the approved form, attaching the original or a certified copy of a final judgment (enforceable in Tennessee) with proof of payment of the applicable fund deductible for compensation of third parties as specified in subparagraph (6)(b) of this rule. The tank owner 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 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 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's written application shall be subject to the approval of the Division and shall state the conditions that warrant an extension of submittal time.
 3. Only the following third-party claims 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 or in a settlement approved by the Division; and
 - (ii) Awards for bodily injury to third parties made by a court of suitable jurisdiction in Tennessee or in a settlement approved by the Division.

(13) Settlement of third-party claims.

- (a) No settlement of a third-party claim shall be made by a tank owner 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 tank owner 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 a tank owner or operator or petroleum site owner for payment of the judgment in any amount exceeding a settlement offer rejected by the tank owner 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 tank owner 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 tank owner 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 tank owner or operator or petroleum site owner in cases where the tank owner or operator or petroleum site owner submits documentation verifying the tank owner 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 tank owner 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.
 - (d) Contingent upon availability of funds, the Division shall process all applications for payment as soon as possible upon receipt of application. If the Division determines all costs are reasonable and eligible for reimbursement, payment will be issued within 90 days once costs have been determined to be reasonable and eligible for reimbursement. If the Division determines certain costs are not reasonable or eligible for reimbursement, the Division may issue a check for the amount of the approved costs and provide a 45-day period in which the tank owner 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 tank owner 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 or operator of the petroleum underground storage tank(s) that caused the release of petroleum to the environment or a petroleum site owner, provided that each contractor/subcontractor working for the owner or operator or petroleum site owner shall be a properly licensed contractor pursuant to T.C.A. Title 62, Chapter 6, Part 1.
 - (b) CACs will be approved to perform fund-eligible work upon satisfaction of the following:
 - 1. The CAC files an application in a format established by the Division to become an approved corrective action contractor with the Division.
 - (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 the CAC;
 - (III) The name of a contact person for the CAC;
 - (IV) Address(es) of the CAC's office;
 - (V) Office phone number(s) of the CAC;
 - (VI) Office facsimile number of the CAC;
 - (VII) Electronic mail address of the CAC;
 - (VIII) Type of business (including, but not limited to, Limited Liability Company, Corporation, Partnership, Sole Proprietorship, Tank Owner, or Individual; and
 - (IX) Other information requested by the Division.

2. The CAC submits a sworn statement with the 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 General Services, Chapter 0690-03-01, Comprehensive Rules and Regulations of the Central Procurement Office;
- (ii) The CAC shall have written contract(s) with all contractors/subcontractors, and those contract(s) shall contain provisions that the contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of General Services, Chapter 0690-03-01, Comprehensive Rules and Regulations of the Central Procurement Office. 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 and Workforce Development;
- (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 and Workforce Development;
- (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 or operator of the tank that caused the release or the petroleum site owner, the CAC shall have a written contract with the tank owner or operator or petroleum site owner. 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 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 or operator of the tank which caused the release or the petroleum site owner, the CAC shall have a written contract with all contractors/subcontractors. 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 tank owner or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site;

- (vii) The CAC's 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 fund;
- (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 or any person the CAC employs or contracts with to engage in the practice of engineering shall be appropriately licensed/registered under T.C.A. Title 62, Chapter 2, and rules promulgated thereunder;
- (xi) The CAC shall assure that any and all work defined as contracting in the Tennessee Contractors Licensing Act of 1994 (T.C.A. Title 62, Chapter 6, Part 1) shall be performed by a licensed contractor(s) with appropriate classification and monetary limitation;
- (xii) The CAC shall assure that the CAC or any person the CAC employs or contracts with to perform professional geologic work shall be appropriately registered under the Geologist Licensure Act of 2007 (T.C.A. Title 62, Chapter 36); 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, 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, 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, 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, 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)(h) 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 CAC shall be properly licensed with an S-B Underground Storage Tanks and an S-E Air, Water, or Soil Remediation 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 \$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 or renewals of the CAC's Tennessee contractor's license. (There shall be no fund reimbursement for those expenses that exceed the contractor's monetary limitation.)
 - (ii) All contractors and their subcontractors and employees shall have any 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>
Workers' 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 that will be utilized by the CAC as a part of the assessment and remediation of UST sites in Tennessee.
- (i) The list shall include, but not necessarily be limited to, the following information for each employee on the list:
 - (I) Job description;
 - (II) Primary and secondary billing titles;
 - (III) Level of education, including any college degrees, and date(s) of graduation;
 - (IV) Tennessee professional registration(s) and license number(s);
 - (V) Office location;
 - (VI) Electronic mail address; and
 - (VII) Telephone number(s).
 - (ii) The list of employees shall be submitted with the application described in part 1 of this subparagraph and annually with a due date of April 1 of each year thereafter.

- (iii) When a new employee begins working for a CAC, within 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 consisting of Division staff members;
 - 2. Within ten days of receipt of a complaint, the review committee shall inform the CAC via certified mail of receipt of the complaint and identify whether the complaint was filed by a person in accordance with T.C.A. § 68-215-123 or by the Board, Department, or its officials and employees acting in their official capacity;
 - 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 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 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 30-day period; or
 - (ii) The CAC files a written appeal or petition for declaratory order with the Division within the 30-day period requesting a hearing to appeal the decision of the review committee to, or obtain a declaratory order from, the Board.
 - 7. If the Division removes a CAC from the list of Approved CAC's the CAC may either:
 - (i) Petition the Board for a hearing on its removal pursuant to Rule 0400-18-01-.11, if the complaint against the CAC was filed by a person in accordance with T.C.A. § 68-215-123. 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; or
 - (ii) Petition the Board for a declaratory order on its removal pursuant to T.C.A. §§ 4-5-223 to -225 if the complaint against the CAC was filed by the Board, Department, or its officials and employees acting in their official capacity. The filing of a petition will postpone actions to remove a CAC from the list of Approved CACs until the petition is heard by the Board.

8. If the Division does not remove a CAC from the list of Approved CAC's, the complainant may petition the Board for a hearing on the decision pursuant to T.C.A. § 68-215-123;
 9. 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);
 10. If an appeal, referenced in subpart 7(i) of this subparagraph, is not filed during the thirty (30) day period, the decision of the review committee will be final;
 11. 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 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 the review committee that the CAC has done any of the following:
1. The CAC charged the State or tank owner or operator or petroleum site owner 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.
 - (vi) T.C.A. § 39-14-103 Theft of property.
 - (vii) T.C.A. Title 68, Chapter 211, Part 1 Solid Waste Disposal Act.
 - (viii) T.C.A. Title 68, Chapter 212, Part 1 Hazardous Waste Management Act.
 - (ix) T.C.A. Title 69, Chapter 3, Part 1 Water Quality Control Act.
 - (x) Other environmental regulatory legislation.
 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. Title 62, Chapter 2, Part 1; Title 62, Chapter 6, Part 1; Title 62, Chapter 36, Part 1; 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 that spreads contamination in the environment;
 - (ii) The CAC files a plan, including, but not limited to, a Free Product Investigation Plan 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 rules in this chapter; 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:
 - (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 a rule in this chapter.
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, 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, 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 CACs.
 - 1. The review committee shall inform the CAC via certified mail that removal shall be seven 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-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 the CAC can meet all the 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) A tank owner or operator or petroleum site owner may perform corrective actions for releases of petroleum from USTs the tank owner or operator owns or operates, or, in the case of a petroleum site owner, from USTs on a petroleum site owned by the petroleum site owner, provided that the tank owner or operator or petroleum site owner submits an application with documentation as described in subparagraphs (b) and (c) of this paragraph and the application is approved by the Division. The tank owner or operator or petroleum site owner may use qualifications of subcontractor(s) in addition to qualifications of the tank owner or operator or petroleum site owner in applying for approved corrective action contractor status. If a tank owner or operator or petroleum site owner 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 tank owner or operator or petroleum site owner shall notify the Division; the tank owner or operator or petroleum site owner shall be removed from approved corrective action contractor status. The tank owner or operator or petroleum site owner 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 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 tank owner or operators or petroleum site owners covered by the fund and the entire amount from tank owner or operators or petroleum site owners 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. 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 the party's 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 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.

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.

Rule 0400-18-01-.10 Fee Collection is amended by deleting it in its entirety and substituting instead the following:

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 operators of petroleum underground storage tanks or tank compartments required to be reported under the requirements of T.C.A. Title 68, Chapter 215, Part 1, as follows:
 - 1. All petroleum underground storage tanks and tank compartments that are actively storing petroleum;
 - 2. All petroleum underground storage tanks and tank compartments that are reported as in service at the start of the annual billing cycle (July 1 for underground storage tanks and tank compartments in East Tennessee, October 1 for underground storage tanks and tank compartments in Middle Tennessee, and January 1 for underground storage tanks and tank compartments in West Tennessee); and

3. All petroleum underground storage tanks and 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 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 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 or operator.

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

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	\$100.00	Per Tank
July 1, 1990 to June 30, 2005	\$125.00	Per Tank
July 1, 2005 to June 30, 2013	\$250.00	Per Tank Compartment
July 1, 2013 to June 30, 2021	\$125.00	Per Tank Compartment
July 1, 2021 to June 30, 2026	Suspended	Suspended
July 1, 2026 forward	\$125.00	Per Tank Compartment

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

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	\$25.00	Per Tank
July 1, 1990 to June 30, 2005	\$25.00	Per Tank
July 1, 2005 to June 30, 2013	\$250.00	Per Tank Compartment
July 1, 2013 to June 30, 2021	\$125.00	Per Tank Compartment
July 1, 2021 to June 30, 2026	Suspended	Suspended
July 1, 2026 forward	\$125.00	Per Tank Compartment

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

(e) If an annual fee is paid on an existing underground storage tank that is subsequently permanently closed in accordance with Rule 0400-18-01-.07 and replaced by a new underground storage tank installed at the same site in accordance with paragraph (1) or (6) of Rule 0400-18-01-.02 no additional annual fee will be required, provided that the replacement tank has the same number of tank compartments as the existing tank. If the replacement tank has more tank compartments than the existing tank, an additional annual fee of:

1. \$250 per compartment shall be paid if the tank was replaced before July 1, 2013; or
2. \$125 per compartment shall be paid if the tank was replaced on or after July 1, 2013, unless storage tank fees are suspended pursuant to subparagraph (b) of this paragraph on the date that the tank was replaced, in which case this fee shall be suspended as well.

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 tank compartments in service or temporarily out of service during any portion of the current billing year. Except as provided in T.C.A. § 68-215-109(g), tanks and tank compartments placed into

service after the current billing year begins or tanks and 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 or operator for which the lawfully levied petroleum underground storage tank fee is owed will be assessed a monthly late payment penalty of 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 times the amount of the original fee. The tank owner 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 10% per annum, plus statutory interest.
 - (b) To refuse or fail to pay the annual fee per tank 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.
 - (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 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 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 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 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 or tank compartments at a facility if the Division has taken one or more of the following actions:
 - 1. A tag or notice has been affixed to the dispensers;
 - 2. A tag has been affixed to the fill ports; or
 - 3. Notice has been given on the department's web site.
 - (b) Placing petroleum into a tank 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 or tank compartment as well as for the person having product put into the underground storage tank or tank compartment.

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

Subparagraph (d) of paragraph (3) of Rule 0400-18-01-.12 Indicia of Ownership is amended by deleting it in its entirety.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Stacey Cothran (Solid/Hazardous Waste Management Industry)					
Pat Flood, P.E. (Commissioner's Designee, Dept. of Environment and Conservation)					
Dr. George Hyfantis, Jr. (Institution of Higher Learning)					
Alan M. Leiserson (Environmental Interests)					
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)					
David Martin (Working in a field related to Agriculture)					
Jeff McCormick (Municipal Government)					
Richard "Ric" Morris (Single Facility with less than 5 Underground Storage Tanks)					
William "Will" Ownby (Manufacturing experienced with Underground Storage Tanks/Hazardous Waste)					
Brian Parnell (Petroleum Business with at least 15 Underground Storage Tanks)					
DeAnne Redman (Petroleum Management Business)					
The Honorable Bob Rial (County Government)					
Jimmy West (Commissioner's Designee, Dept. of Economic and Community Development)					
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 02/03/2021, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/07/2020

Rulemaking Hearing(s) Conducted on: (add more dates). 12/01/2020

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Agency/Board/Commission: Underground Storage Tanks and Solid Waste Disposal Control Board

Rule Chapter Number(s): 0400-18-01

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Comment: The proposed rules are well-received by industry and will also provide a benefit to the public. In particular, the waiver of annual fees for five years will help businesses that are struggling in light of a decline in retail and fuel sales. The proposed formula to reduce the deductible and link the deductible amount to compliance will facilitate the clean-up of more spills and benefit the environment in Tennessee.

Response: No response required.

2. Comment: The commenter expressed appreciation for the waiver of fees for five years. This part of the rules could not be more timely as the covid pandemic has reduced retail and fuel sales. Many retailers are struggling right now and we anticipate this will continue into 2021. The decision of the UST Division to propose rules that will reduce fees and costs to retailers at this juncture is very well received by retailers.

Response: No response required.

3. Comment: The commenter expressed agreement with the decision of the division and the UST/SW Board to reduce the deductible and to tie the deductible to compliance by the tank owner. The idea of making all release cleanups fund eligible is environmentally sound. The industry most wants to see the UST fund spent for its intended purpose – to cleanup petroleum spills and improve the environment for all Tennesseans. The new proposed formula does all of that.

Response: No response required.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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

Tank owners and operators and petroleum site owners will directly benefit from the proposed rule. Any small business owning USTs would be subject to the rules, which the Board estimates would include 2,472 tank owners who own three or fewer facilities.

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

There should be no cost for reporting, recordkeeping or other administrative costs. This rule reduces the expense tank owners, operators, or petroleum site owners would incur to clean up fund eligible releases that were not fund covered under the current version of the rules. The average cost to remediate a release is \$360,000. This rule will require tank owners, operators, and petroleum site owners to only pay a deductible of no more than \$30,000 per fund eligible release. It will also suspend annual tank fees for five years.

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

This rule benefits small businesses by reducing the amount of clean-up costs for releases that were previously fund eligible but not fund covered. It also suspends annual tank fees for five years.

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

The revisions will make the rules less burdensome on the regulated community by providing coverage to all eligible releases and suspending annual tank fees.

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

Surrounding states have varying requirements for fund coverage. Four of the surrounding states determine fund coverage based on extent of compliance and three states have no requirements. This rule will put Tennessee in the category of not having requirements to be fund covered. The deductible for surrounding states ranges from \$0 to \$75,000. This rule will put Tennessee within the mid-range of the surrounding states.

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

An exemption of small businesses would be detrimental to those businesses as this rule is beneficial to all tank owners, including small businesses.

Impact on Local Governments

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

The Board does not anticipate an impact on local governments from this rulemaking.

Additional Information Required by Joint Government Operations Committee

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

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

These amendments provide two major changes to the rules. First, the current rules make fund coverage for a fund eligible release dependent upon an owner or operator's compliance history. With these amendments, all fund eligible releases will be entitled to reimbursement from the fund; however, an owner or operator's compliance history will now determine the amount of the fund deductible. Second, the amendments will suspend annual tank fees from July 1, 2021 through June 30, 2026. The rules also provide general cleanup revisions to Rules 0400-18-01-.09 and 0400-18-01-.10 and an amendment to subparagraph (1)(a) of Rule 0400-18-01-.07 to reflect an EPA interpretation of an analogous federal rule that spill and overfill prevention shall continue to be operated and maintained while a petroleum underground storage tank (UST) system is temporarily out-of-service though testing and inspection regarding operation and maintenance of spill and overfill prevention are not required as long as the UST system is empty.

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

Rules 0400-18-01-.09 and 0400-18-01-.10 are not required to comply with current state or federal law. The amendment to subparagraph (1)(a) of Rule 0400-18-01-.07 reflects an EPA interpretation of an analogous federal rule, 40 C.F.R. § 280.70, that spill and overfill prevention shall continue to be operated and maintained while a petroleum underground storage tank (UST) system is temporarily out-of-service though testing and inspection regarding operation and maintenance of spill and overfill prevention are not required as long as the UST system is empty.

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

Tank owners and operators and petroleum site owners are most directly affected by this rule and support its adoption.

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

There have been no opinions from the attorney general and reporter and no judicial ruling that directly relate to the rule.

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

The fee suspension will result in a decrease in revenue of approximately \$2 million per year, and the removal of compliance as a prerequisite to fund coverage will have an initial impact of less than \$100,000 per year. This regulatory relief rulemaking will help reduce the balance of the UST Fund in a manner that gives back directly to the regulated community while increasing the number of petroleum releases entitled to reimbursement from the fund. This increased coverage will minimize delays in corrective action and reduce the Division's and TDEC's need to utilize resources that often get spent on appeals and declaratory orders when fund coverage is denied.

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

Kate Harper and Rhonda Key

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

Horace Tipton
Legislative Liaison
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-5339
Horace.Tipton@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

These amendments provide two major changes to the rules. First, the current rules make fund coverage for a fund eligible release dependent upon an owner or operator's compliance history. With these amendments, all fund eligible releases will be entitled to reimbursement from the fund; however, an owner or operator's compliance history will now determine the amount of the fund deductible. Second, the amendments will suspend annual tank fees from July 1, 2021 through June 30, 2026. The rules also provide general cleanup revisions to Rules 0400-18-01-.09 and 0400-18-01-.10 and an amendment to subparagraph (1)(a) of Rule 0400-18-01-.07 to reflect an EPA interpretation of an analogous federal rule that spill and overfill prevention shall continue to be operated and maintained while a petroleum underground storage tank (UST) system is temporarily out-of-service though testing and inspection regarding operation and maintenance of spill and overfill prevention are not required as long as the UST system is empty.

The statutory authority for the rule falls under Tenn. Code Ann. §§ 68-215-107(f), 68-215-109(b)(2), 68-215-110(e), 68-215-111(f)(3)(A)-(B), 68-215-111(f)(4), and 68-215-111(g)(2)-(3).

All necessary components are already in place to implement the rule.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

There should be no additional cost to TDEC administer or enforce this rule. This rule also reduces the expense tank owners, operators, or petroleum site owners would incur to clean up fund eligible releases that were not fund covered under the current version of the rules and will suspend annual tank fees for five years.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

The benefits of these rules outweigh any costs. The UST Fund is healthy and can afford the regulatory relief provided by the rulemaking. This regulatory relief rulemaking will help reduce the balance of the UST Fund in a manner that gives back directly to the regulated community. In addition to the fee suspension, these rules will increase cleanup of petroleum-contaminated sites. By introducing scaled deductibles and removing the compliance prerequisite, the regulated community saves money and mobilizes more UST Fund dollars to be used in the field for cleanup activities. These cleanup activities also provide additional economic stimulus by generating more work for UST contractors, utilizing local utilities, and addressing blighted properties.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action utilizes public and private resources in the most efficient way.

- (5) A determination of the effect of the action on competition.

This rule will not influence competition in the marketplace.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

This rule will not impact the cost of living in Tennessee.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

By introducing scaled deductibles and removing the compliance prerequisite, the regulated community saves money and mobilizes more UST Fund dollars to be used in the field for cleanup activities. These cleanup activities also provide additional economic stimulus by generating more work for UST contractors, utilizing local utilities, and addressing blighted properties.

- (8) The source of revenue to be used for the action.

There should be no additional cost to administer or enforce this rule. All necessary components are already in place.

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

The State will bear the costs of the action in lost revenue. However, the UST Fund is healthy and can afford the regulatory relief provided by the rulemaking.

Tank owners and operators and petroleum site owners will directly benefit by saving money. Furthermore, more UST Fund dollars will be mobilized to be used in the field for cleanup activities. These cleanup activities also provide additional economic stimulus by generating more work for UST contractors, utilizing local utilities, and addressing blighted properties.