

Volume 36, Number 10
Pages 1217-1440
May 16, 2011

SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015, RSMo Supp. 2010 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

ROBIN CARNAHAN

Administrative Rules Division

James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

DIRECTOR

WAYLENE W. HILES

•

EDITORS

CURTIS W. TREAT

SALLY L. REID

ASSOCIATE EDITOR

SARAH JORGENSON

•

PUBLICATION TECHNICIAN

JACQUELINE D. WHITE

•

ADMINISTRATIVE ASSISTANT

LAUREN A. BAUMAN

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER

Office of the Secretary of State

Administrative Rules Division

PO Box 1767

Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.mo.gov/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.mo.gov/adrules/csr/csr.asp>. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2010. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



IN THIS ISSUE:

PROPOSED RULES

Department of Labor and Industrial Relations
 Division of Employment Security1221

Department of Natural Resources
 Clean Water Commission1222
 Hazardous Waste Management Commission1322
 Petroleum and Hazardous Substance Storage Tanks1344

Department of Insurance, Financial Institutions and Professional Registration
 Insurer Conduct1345

ORDERS OF RULEMAKING

Department of Agriculture
 Animal Health1347

Department of Economic Development
 Public Service Commission1351

Department of Natural Resources
 Clean Water Commission1384

Retirement Systems
 The Public School Retirement System of Missouri1388
 The County Employees' Retirement Fund1388

Department of Insurance, Financial Institutions and Professional Registration
 State Board of Nursing1389

Missouri Consolidated Health Care Plan
 Health Care Plan1389

IN ADDITIONS

Department of Health and Senior Services
 Missouri Health Facilities Review Committee1405

CONSTRUCTION TRANSIENT LIST1406

DISSOLUTIONS1419

SOURCE GUIDES

RULE CHANGES SINCE UPDATE1421
EMERGENCY RULES IN EFFECT1429
EXECUTIVE ORDERS1431
REGISTER INDEX1433

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
January 3, 2011 January 18, 2011	February 1, 2011 February 15, 2011	February 28, 2011 February 28, 2011	March 30, 2011 March 30, 2011
February 1, 2011 February 15, 2011	March 1, 2011 March 15, 2011	March 31, 2011 March 31, 2011	April 30, 2011 April 30, 2011
March 1, 2011 March 15, 2011	April 1, 2011 April 15, 2011	April 30, 2011 April 30, 2011	May 30, 2011 May 30, 2011
April 1, 2011 April 15, 2011	May 2, 2011 May 16, 2011	May 31, 2011 May 31, 2011	June 30, 2011 June 30, 2011
May 2, 2011 May 16, 2011	June 1, 2011 June 15, 2011	June 30, 2011 June 30, 2011	July 30, 2011 July 30, 2011
June 1, 2011 June 15, 2011	July 1, 2011 July 15, 2011	July 31, 2011 July 31, 2011	August 30, 2011 August 30, 2011
July 1, 2011 July 15, 2011	August 1, 2011 August 15, 2011	August 31, 2011 August 31, 2011	September 30, 2011 September 30, 2011
August 1, 2011 August 15, 2011	September 1, 2011 September 15, 2011	September 30, 2011 September 30, 2011	October 30, 2011 October 30, 2011
September 1, 2011 September 15, 2011	October 3, 2011 October 17, 2011	October 31, 2011 October 31, 2011	November 30, 2011 November 30, 2011
October 3, 2011 October 17, 2011	November 1, 2011 November 15, 2011	November 30, 2011 November 30, 2011	December 30, 2011 December 30, 2011

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

Missouri Participating Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2010), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689	Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593	Hearnes Learning Resources Ctr. Missouri Western State University 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802	Library Missouri University of Science and Technology 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007
Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 ext. 160	Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279	Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 ext. 325	Lebanon-Laclede County Library 915 S. Jefferson Ave. Lebanon, MO 65536-3017 (417) 532-2148
St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376	Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757	Spiva Library Missouri Southern State University 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9342	University Library Southwest Baptist University 1600 University Ave. Bolivar, MO 65613-2597 (417) 328-1631
St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742	Riverside Regional Library PO Box 389, 1997 E. Jackson Blvd. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden/Webster Library Eden Theological Seminary/ Webster University 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	James C. Kirkpatrick Library University of Central Missouri 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748	Garnett Library Missouri State University—West Plains 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945
Washington University Law Library Washington University Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 ext. 247	Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 ext. 359	Meyer Library Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533
Library Maryville University 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494	Miller Nichols Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125	
Pickler Memorial Library Truman State University 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Smiley Memorial Library Central Methodist University 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279	
	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 5—Appeals**

PROPOSED AMENDMENT

8 CSR 10-5.010 Appeals to an Appeals Tribunal. The division is amending sections (2) and (5).

PURPOSE: This amendment amends the definition of "appear" in a telephone hearing to conform to the use of a telephone conference bridging system, corrects statutory citations for amended statutes, and inserts necessary punctuation as needed.

(2) For purposes of these regulations, the following definitions apply:

(B) Appear means that the participants—

1. Arrive at the physical location of the hearing at the time and

location set forth on the notice of hearing; or

2. *[Provide]* **Join** the telephone *[numbers]* **conference** as instructed on the notice of hearing *[within the designated time frame and answer]* at the time of the hearing;

(C) Good cause—For the purposes of sections *[288.070.8]* **288.070.10** and 288.130.5, RSMo, and of this chapter, good cause shall be those circumstances in which the party acted in good faith and reasonably under all the circumstances;

(E) Party—The individual, agency, or business entity which has taken action to become an interested party pursuant to **sections** 288.070, 288.130, and 288.160, RSMo;

(5) Time Limit for Appeal.

(A) An appeal to a determination or redetermination under section *[288.070.4]* **288.070.6**, RSMo, shall be filed within thirty (30) calendar days of the date the determination or redetermination was delivered in person or mailed to the appellant's last known address.

(B) An appeal to an *ex parte* determination or redetermination under section 288.130.4, RSMo, shall be filed within thirty (30) calendar days of the date of the mailing of the determination or redetermination to the party's last known address or, in the absence of mailing, the date of personal service to the party.

(C) A petition for reassessment shall be filed within thirty (30) days of the date the assessment was mailed to the petitioner in accordance with section 288.160, RSMo, or, in the absence of mailing, the date of personal service to the petitioner.

(E) Fax transmissions of appeals and petitions for reassessment that are received on a regular workday will be considered as filed on the date of receipt. A fax transmission received on a Saturday, Sunday, or legal holiday will be considered filed on the next regular division workday. Date and time of receipt will be determined by the division's receiving fax machine. Persons filing by fax transmission must retain the receipt with the original document for reference by the hearing officer if so requested.

(F) In computing any period of time prescribed or allowed by these rules, the date of the issuance of a determination, redetermination, assessment, order, or decision shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday, or legal holiday; in which event, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. For the purpose of these rules and Chapter 288, RSMo, legal holiday means:

1. Those dates designated public holidays by Chapter 9, RSMo; and

2. Any other day designated a public or legal holiday by the governor.

AUTHORITY: section[s] 288.190, RSMo 2010 and section 288.220.5, RSMo 2000. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the Code of State Regulations. Amended: Filed April 12, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security, Attn: Gracia Backer, Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division [20]26—[Clean Water Commission]
Petroleum and Hazardous Substance Storage Tanks
Chapter [10]2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.010] **10 CSR 26-2.010 Applicability.** The commission is moving the rule, amending sections (1)–(3), and deleting section (4).

PURPOSE: The commission proposes to clarify the definition of an underground storage tank. The commission proposes to move the rule to 10 CSR 26-2, to amend rule number references, to delete section (4), and to update the citations in the authority section of the rule.

(1) The requirements of this chapter apply to all owners and operators of an underground storage tank (UST) system as defined in *[10 CSR 20-10.012]* **10 CSR 26-2.012**, except as otherwise provided in sections (2)–(4) of this rule. Any UST system listed in section (3) of this rule must meet the requirements of *[10 CSR 20-10.011]* **10 CSR 26-2.011**.

(2) The following UST systems are excluded from the requirements of this chapter:

(A) Any UST system holding hazardous wastes listed or identified in the Missouri Hazardous Waste Management Law, sections 260.350–260.434, RSMo, and the rules promulgated thereunder or a mixture of hazardous waste and other regulated substances, except for waste oil as defined in 10 CSR 25-11.279;

(E) **Any UST system that is installed within a vault, if all exterior surface areas of the tank may be visually inspected without removal of backfill, gravel, sand, or other fill material;**

[(E)](F) Any UST system that contains a *de minimis* concentration of regulated substances; and

[(F)](G) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(3) Deferrals. Rules *[10 CSR 20-10.020–10 CSR 20-10.053]* **10 CSR 26-2.020–10 CSR 26-2.053** and closure requirements in *[10 CSR 20-10.070–10 CSR 20-10.074]* **10 CSR 26-2.060–10 CSR 26-2.064** do not apply to any of the following types of UST systems:

[(4) Deferrals. The release detection requirements of rules 10 CSR 20-10.040–10 CSR 20-10.045 do not apply to any UST systems that store fuel solely for use by emergency power generators.]

AUTHORITY: sections 319.100, 319.105, 319.107, 319.111, and 319.114, RSMo [1994] 2000 and sections 319.109[, 319.132] and 319.137, RSMo Supp. [1995] 2010. This rule originally filed as 10 CSR 20-10.010. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Jan. 2, 1996, effective Aug. 30, 1996. Moved and amended: Filed April 15, 2011.

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions seventy-two thousand dollars (\$72,000) aggregate cost or one thousand eighty dollars (\$1,080) annually, depending on compliance method selected, to comply with the new requirements of this rule.

PRIVATE COST: This proposed amendment is expected to cost private entities one hundred ninety-two thousand dollars (\$192,000) aggregate cost or two thousand eight hundred eighty dollars (\$2,880) annually, depending on compliance method selected, to comply with the new requirements of this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name: 10 CSR 20-10.010 Applicability
Type of Rulemaking: Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Federal, State, County, City owned or affiliated underground storage tank owners	\$72,000 (one time) or \$1,080 (annual)
Missouri Department of Natural Resources	\$0

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires monthly monitoring for tanks that store fuel for emergency generator use. Under the current regulations, tanks that store fuel for emergency generators are not required to monitor their tanks for leaks, even though the tanks, piping, and equipment are typically the same equipment found at a gas station. The proposed change would resolve this inequitable application of the release detection requirement. The following summarizes assumptions used in estimating the cost of the required site characterization activities:

- Based on information submitted to the department, more than 92% of facilities with emergency generator fuel storage tanks already document compliance with these requirements.
- The remaining 8% may actually comply, as well, but did not report these measures as it is not currently required that they do so.
- The cost of compliance with this requirement may range anywhere from \$15 per month for a monthly service to, on average, \$9,000- \$15,000 to purchase an electronic monitoring system.
- At least 25% of the facilities with emergency generator tanks have a public affiliation (federal, state, county or city owned or affiliated). There are approximately 270 facilities with emergency generators.

Total cost for public sites to meet requirements of the amendments to rule 10 CSR 20-10.010:

- 270 facilities x 8% (number that would need changes) x 25% (public sector)= 6 facilities
- 6 facilities x \$12,000 (average electronic monitor) = \$72,000 one time OR
- 6 facilities x \$180 (annual monitoring cost) = \$1080 annually

Please note, by removing this deferral for emergency generator tanks in 10 CSR 20-10.010, the tanks must comply with 10 CSR 20-10.040 through 10 CSR 20-10.045. All of those costs are included in this fiscal note.

Cost of proposed amendments to rule 10 CSR 20-10.010 to the Department of Natural Resources

The Department of Natural Resources' Hazardous Waste Program already tracks these facilities and inspects their entire tank system, including monitoring systems. As such, there would be no additional cost to the department.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name 10 CSR 20-10.010 Applicability
Type of Rulemaking Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of emergency generator tanks <ul style="list-style-type: none"> • Hospitals • Nursing or Health Care facilities • Communication facilities and structures (e.g. cellular phone companies) • Banks • Food storage facilities • Data storage facilities • Other owners and operators of underground storage tank systems 	Approximately 270 facilities	\$192,000 (one time) or \$2,880 (annually)

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires monthly monitoring for tanks that store fuel for emergency generator use. Under the current regulations, tanks that store fuel for emergency generators are not required to monitor their tanks for leaks, even though the tanks, piping, and equipment are typically the same equipment found at a gas station. The proposed change would resolve this inequitable application of the release detection requirement. The following summarizes assumptions used in estimating the cost of the required site characterization activities:

- Based on information submitted to the department, more than 92% of facilities with emergency generator fuel storage tanks already document compliance with these requirements.
- The remaining 8% may actually comply, as well, but did not report these measures as it is not currently required that they do so.
- The cost of compliance with this requirement may range anywhere from \$15 per month for a monthly service to, on average, \$9,000- \$15,000 to purchase an electronic monitoring system.
- A maximum 75% of the facilities with emergency generator tanks are privately owned. There are approximately 270 facilities with emergency generators.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.010:

- 270 facilities x 8% (number that would need changes) x 75% (private sector)= 16 facilities
- 16 facilities x \$12,000 (average electronic monitor) = \$192,000 one time OR
- 16 facilities x \$180 (annual monitoring cost) = \$2,880 annually

Please note, by removing this deferral for emergency generator tanks in 10 CSR 20-10.010, the tanks must comply with 10 CSR 20-10.040 through 10 CSR 20-10.045. All of those costs are included in this fiscal note.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division [20]26—[Clean Water Commission]
Petroleum and Hazardous Substance Storage Tanks
Chapter [10]2—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.011] **10 CSR 26-2.011 Interim Prohibition for Deferred Underground Storage Tank Systems.** The commission is moving the rule and amending sections (1) and (3).

PURPOSE: The commission proposes to amend the rule to update referenced documents. The commission is moving the rule to 10 CSR 26-2, amending rule number references, and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) No person may install an underground storage tank (UST) system listed in [10 CSR 20-10.010(3)] **10 CSR 26-2.010(3)** for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction)—

(3) The determination in section (2) of this rule should comply with the following recommended practice: [*The National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems*] NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org.

AUTHORITY: section[s] 319.105, RSMo [Supp. 1989] 2000 and [644.041, RSMo 1986] section 319.137, RSMo Supp. 2010. This rule originally filed as 10 CSR 20-10.011. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176.

Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division [20]26—[Clean Water Commission]
Petroleum and Hazardous Substance Storage Tanks
Chapter [10]2—Underground Storage Tanks—Technical Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.012] **10 CSR 26-2.012 Definitions.** The commission is moving the rule and amending section (1).

PURPOSE: The commission proposes to amend the rule to define specific words used in this chapter. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Many definitions relevant to this rule are set forth in the underground storage tank law in section 319.100, RSMo. The regulations set forth in 40 CFR part 280.12, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. The definitions set forth in 40 CFR 280.12, [July 1, 1998, are incorporated by reference,] are subject to the following additions, modifications, substitutions, or deletions in the subsections:

(A) Definitions beginning with the letter A. [(Reserved)]

1. "Annual" means recurring, done, or performed every three hundred sixty-five (365) days.

2. "Annually" means at least once every three hundred sixty-five (365) days;

(I) Definitions beginning with the letter I.

1. The definition for "implementing agency" in 40 CFR 280.12 is not incorporated into this rule.

2. The term[s] "in-operation[,]" ["in-service" and "in-use" are equivalent and] means input or output that occurs on a regular basis for the tank's intended purpose. [In determining the status of a tank, the department may consider factors including, but not limited to: routine input or outputs from the tank and the activity status of tank-related operations at the premises where the tank is located.]

3. The terms "in-service" and "in-use" are equivalent and mean that the tank system contains more than one inch (1") of a regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system of regulated substance. A tank is considered to be [in-operation,] in-service[, and in-use beginning with the first input of a regulated substance into the tank system[;].

4. The term "installer" means any person, partnership, corporation, company, business, firm, society, or association that installs part or all of an underground storage tank system;

(M) Definitions beginning with the letter M. [(Reserved);]

1. "Month," unless otherwise stated, means thirty (30) days.

2. "Monthly" means at least once every thirty (30) days;

(O) Definitions beginning with the letter O.

1. In the definition for “operational life” in 40 CFR 280.12 incorporated in this rule, substitute “[10 CSR 20-10.070–10 CSR 20-10.074] 10 CSR 26-2.060–10 CSR 26-2.064” for “Subpart G.”

2. The terms [“out-of-operation,”] “out-of-service” and “out-of-use” are equivalent and mean [input or output activity no longer occurs on a regular basis for the tank’s intended purpose.] that the tank system has been emptied so that no more than one inch (1”) of regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system remains.

3. The definition for “owner” in 40 CFR 280.12[,] is not incorporated in this rule, and the definition in section 319.100(9), RSMo, shall be used instead;

(R) Definitions beginning with the letter R.

1. The definition for “regulated substance” in 40 CFR 280.12 is not incorporated in this rule, and the definition in section 319.100(14), RSMo, shall be used instead.

2. The definition for “release” in 40 CFR 280.12 is not incorporated in this rule, and the definition in section 319.100(15), RSMo, shall be used instead[;].

3. **“Routinely contains regulated substance” means that a regulated substance regularly passes through the piping, but does not necessarily mean that the piping continuously holds a regulated substance. Satellite lines, gravity piping, and remote fill lines, including lines from aboveground storage tank(s) to underground storage tank(s), all routinely contain a regulated substance;**

(T) Definitions beginning with the letter T. [(Reserved);]

1. **“Triennial” means recurring, done, or performed every thirty-six (36) months.**

2. **“Triennially” means at least once every thirty-six (36) months.**

AUTHORITY: sections 319.100, 319.105, 319.107, 319.III, and 319.II4, RSMo [1994] 2000 and [319.100,] sections 319.109[, 319.132] and 319.137, RSMo Supp. [1998] 2010. This rule originally filed as 10 CSR 20-10.012. Original rule filed April 2, 1990, effective Sept. 28, 1990. For intervening history, please consult the Code of State Regulations. Moved and amended: Filed April 15, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division [20]26—[Clean Water Commission]
Petroleum and Hazardous Substance Storage Tanks
Chapter [10]2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

[10 CSR 20-10.020] 10 CSR 26-2.020 Performance Standards for New Underground Storage Tank Systems. The commission is moving the rule and amending section (1).

PURPOSE: The commission proposes to amend the rule to update referenced documents, clarify vague language, and include more relevant, modern equipment descriptions. The commission proposes to amend what may and may not be installed in new systems, specifically changes aimed to help prevent releases to the environment. The commission is moving the rule to 10 CSR 26-2 and updating the citations in the authority section of the rule.

PUBLISHER’S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the underground storage tank (UST) system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements:

(A) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains [product] a **regulated substance** must be protected from corrosion, in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory as follows:

1. The tank is constructed of fiberglass-reinforced plastic and complies with [one (1) or more of the following industry codes:]—

A. Underwriters’ Laboratories Standard 1316, *Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohol and Alcohol-Gasoline Mixtures*, revised 2006. **This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters’ Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; or**

B. [American Society of Testing and Materials Standard D4021-86, *Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks; or] Other standards or publications approved by the department; or*

2. The tank is constructed of steel and cathodically protected in the following manner:

A. The tank is coated with a suitable dielectric material;

B. Field-installed cathodic protection systems are designed by a corrosion expert;

C. Impressed current systems are designed to allow determination of current operating status as required in [10 CSR 20-10.031]10 CSR 26-2.031(1)(C);

D. Cathodic protection systems are operated and maintained in accordance with [10 CSR 20-10.031] 10 CSR 26-2.031 or according to guidelines established by the department; and

E. The following codes and standards may be used to comply with paragraph (1)(A)2. of this rule:

(I) Steel Tank Institute *Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks*, revised 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com/;

(II) Underwriters' Laboratories Standard 1746, *Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com;

(III) *The National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems*/ NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org;

(IV) Underwriters' Laboratories Standard 58, *Standard for Steel Underground Tanks for Flammable and Combustible Liquids*, revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; or

3. The tank is [constructed of a steel, fiberglass-reinforced plastic composite that complies] a composite tank with a steel inner tank and a non-metallic external thick film coating or the tank is a steel inner tank constructed with a non-metallic external jacket forming a secondary wall. Either of these tanks shall comply with one (1) of the following industry codes:

A. Underwriters' Laboratories Standard 1746, *Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; [or]

B. *[The Association for Composite Tanks] Steel Tank Institute's ACT-100, Specification for [the Fabrication of FRP Clad Underground Storage Tanks] External Corrosion Protection of FRP Composite Steel USTs (F894)*, revised June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com;

C. Underwriters' Laboratories Standard 58, *Standard for Safety for Steel Underground Storage Tanks for Flammable and Combustible Liquids*, revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; or

D. Steel Tank Institute's ACT-100-U, *Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks*, F961, June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com; or

4. The tank is constructed of metal without additional corrosion protection measures provided that—

A. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

B. Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (1)(B)4.A. of this rule for the remaining life of the tank; or

5. The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1)(A)1.-4. of this rule;

(B) Piping. The piping that routinely contains regulated substances and is in contact with [the ground] an electrolyte, including but not limited to soil, backfill, and/or water, must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory as follows:

1. The piping is constructed of fiberglass-reinforced plastic;

2. The following codes and standards may be used to comply with paragraph (1)(B)1. of this rule:

A. Underwriters' Laboratories [Subject] Standard 971, *UL Listed [Non-Metal Pipe] Nonmetallic Underground Piping for Flammable Liquids*, revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; and

B. Underwriters' Laboratories Standard 567, *[Pipe Connectors for Flammable and Combustible and LP Gas] Emergency Breakaway Fittings, Swivel Connectors and Pipe Connection Fittings for Petroleum Products and LP-Gas*, revised 2003. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com;

3. The piping is constructed of steel and cathodically protected in the following manner:

A. The piping is coated with a suitable dielectric material;

B. Field-installed cathodic protection systems are designed by a corrosion expert;

C. Impressed current systems are designed to allow determination of current operating status as required in [10 CSR 20-10.031] 10 CSR 26-2.031(1)(C);

D. Cathodic protection systems are operated and maintained in accordance with [10 CSR 20-10.031] 10 CSR 26-2.031; and

E. The following codes and standards may be used to comply with paragraph (1)(B)3. of this rule:

(I) National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org;

(II) *[American Petroleum Institute Publication 1615, Installation of Underground Petroleum Storage Systems]/ American Petroleum Institute's Recommended Practice 1615, Installation of Underground Petroleum Storage Systems*, Fifth Edition, 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/;

(III) American Petroleum Institute Publication 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/; [and]

(IV) *[National Association of Corrosion Engineers Standard RP-01-69] NACE International SP-0169-2007, Control of External Corrosion on Submerged Metallic Piping Systems*,

revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; and

(V) Steel Tank Institute's *Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems (R892)*, revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com;

4. The piping is constructed of metal without additional corrosion protection measures provided that—

A. The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

B. Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (1)(A)4.A. of this rule for the remaining life of the tank;

5. The following codes may be used to comply with paragraph (1)(B)4. of this rule:

A. National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org; and

B. *[National Association of Corrosion Engineers Standard RP-01-69]* NACE International SP-0169-2007, *Control of External Corrosion on Submerged Metallic Piping Systems*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; or

6. The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1)(B)1.-5. of this rule;

(C) Spill and Overfill Prevention Equipment.

1. Except as provided in paragraph (1)(C)2. of this rule, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

A. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin). **All delivery hose-fill pipe connections must be tight, lock-on connections;** and

B. Overfill prevention equipment that will—

(I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;

(II) Alert the operator with a high-level alarm at least one (1) minute before overfilling with an alarm audible in the delivery area; or

(III) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank *[or triggering a high-level alarm]*.

(a) Ball float valves may only be used on tank systems with gravity deliveries, no suction check valves, and no open vapor ports.

(b) Ball float valves are not approved for use in new tank systems installed after December 31, 2011.

(IV) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.]

(IV) For pressurized deliveries, overfill prevention equipment must be compatible and approved for use with pressurized deliveries.

2. Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1)(C)1. of this rule if—

A. Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in subparagraph (1)(C)1.A. or B. of this rule; or

B. The UST system is filled by transfers of no more than twenty-five (25) gallons at one time;

(D) All new tank systems installed after December 31, 2011, must be installed with containment sumps at each tank top suction piping or submersible turbine pump connection, each piping transition/ball valve location, and under each dispenser. The containment sumps must be designed to contain any leak from the primary UST piping system; and

(E) Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory, *[and]* in accordance with *[the]* all manufacturer's instructions, and in accordance with 26-2.019. Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of *[subsection (1)(D) of]* this rule:

1. American Petroleum Institute Publication 1615, *Installation of Underground Petroleum Storage System*, revised 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/; or

2. Petroleum Equipment Institute Publication RP100, *Recommended Practices for Installation of Underground Liquid Storage Systems*, revised 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org/; and]

(E) Certification of Installation. All owners and operators must ensure that one (1) or more of the following methods of certification, testing or inspection is used to demonstrate compliance with subsection (1)(D) of this rule by providing a certification of compliance on the UST notification form in accordance with 10 CSR 20-10.022:

1. The installer has been certified by the tank and piping manufacturers;

2. The installer has been certified or licensed by the department;

3. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

4. The installation has been inspected and approved by the department;

5. All work listed in the manufacturer's installation checklists has been completed; or

6. The owner and operator have complied with another method for ensuring compliance with subsection (1)(D) of this rule that is determined by the department to be no less protective of human health and the environment.]

AUTHORITY: sections 319.105[, RSMo Supp. 1989 and 644.041, RSMo 1986] and 319.107, RSMo 2000 and section 319.137, RSMo Supp. 2010. This rule originally filed as 10 CSR 20-10.020. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions nine thousand eight

hundred thirty-three dollars (\$9,833) annually to comply with the new requirements of this rule.

PRIVATE COST: This proposed amendment is expected to cost private entities eighty-eight thousand five hundred dollars (\$88,500) annually to comply with the new requirements of this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE**PUBLIC COST****I. RULE NUMBER**

Rule Number and Name: 10 CSR 20-10.020 Performance Standards for New Underground Storage Tank Systems
Type of Rulemaking: Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Federal, State, County, City owned or affiliated underground storage tank owners	\$ 9,833 (annual)
Missouri Department of Natural Resources	\$500 (aggregate)

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires containment sumps be installed with all new underground storage tank systems installed. In addition, ball float valves, or flow restrictors, will no longer be allowed on new underground storage tank systems installed. The following assumptions were used for these calculations:

- During an average one year cycle, underground storage tanks are installed at approximately 50 facilities. During that time frame, though, approximately 10% of those installations were installed at publicly owned facilities. The remaining 90% were installed at privately owned facilities.
- In that year, the facilities had from 1 to 6 tanks installed per facility, with an average of 2 tanks being installed per facility.
- Installation of a containment sump at a tank top and two associated dispensers could cost an estimated minimum \$2,500 per tank system during installation. Please note, as with all equipment, more expensive and elaborate options are available. Each system may vary. During the average one year cycle, 2/3 of the new installations installed containment sumps. Only 1/3 of the installs would need to change their installations to include containment sumps to comply with the proposed changes.
- The increased cost of installing a flapper valve, or automatic shutoff valve, instead of a ball float valve, or flow restrictor, may cost \$600 per system. Ball float valves were installed in approximately 25% of the newly installed systems.

Total cost for publicly owned/affiliated sites to meet requirements of the amendments to rule 10 CSR 20-10.020:

- 5 new installations x 2 (average number of tanks per installation) x 1/3 of the facilities x \$2,500 (containment sump cost) per tank = \$8,333 annual cost for compliance with containment sump requirement
- 5 new installations x 2 (average number of tanks per installation) x 25% (percent of sites installing ball float valves) x \$600 (additional increased cost for flapper valve instead of ball float valve) = \$1,500 cost for compliance with overfill prevention equipment requirement
- Total cost for both requirements = \$9,833 annually

A typical new underground storage tank construction can typically range from \$1,000,000 to \$1,500,000. These are one-time costs at the time of installation only. Therefore, the increased cost for compliance with these requirements is less than 1% of the total construction cost.

Furthermore, containment sumps allow for easy access to the tank top and under-dispenser areas. Thus, future repairs and inspections will be easier and, potentially faster, saving time and money in the future. Furthermore, many sites already install containment sumps and automatic shutoff devices in their new underground storage tank systems. These cost-reducing considerations, though, are not included in the calculation above.

Cost of proposed amendments to rule 10 CSR 20-10.020 to the Department of Natural Resources
The Department of Natural Resources' Hazardous Waste Program already tracks and inspects new installation inspections. Minor, one-time changes to the tracking system may be required, but those costs are estimated to be less than \$500.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name 10 CSR 20-10.020 Performance Standards for New Underground Storage Tank Systems
Type of Rulemaking Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of underground storage tank systems <ul style="list-style-type: none"> • Retail automotive fueling stations • Fleet operations • Automotive service and repair facilities • Manufacturing operations • Hospitals • Other owners and operators of underground storage tank systems 	45 installations per year	\$88,500 annually

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed rule requires containment sumps be installed with all new underground storage tank systems installed. In addition, ball float valves, or flow restrictors, will no longer be allowed on new underground storage tank systems installed. The following assumptions were used for these calculations:

- During a average one year cycle, underground storage tanks are installed at approximately 50 facilities. During that time frame, though, approximately 10% of those installations were installed at publicly owned facilities. The remaining 90% were installed at privately owned facilities.
- In that year, the facilities had from 1 to 6 tanks installed per facility, with an average of 2 tanks being installed per facility.
- Installation of a containment sump at a tank top and two associated dispensers could cost an estimated minimum \$2,500 per tank system during installation. Please note, as with all equipment, more expensive and elaborate options are available. Each system may vary. During the average one year cycle, 2/3 of the new installations installed containment sumps. Only 1/3 of the installs would need to change their installations to include containment sumps to comply with the proposed changes.
- The increased cost of installing a flapper valve, or automatic shutoff valve, instead of a ball float valve, or flow restrictor, may cost \$600 per system. Ball float valves were installed in approximately 25% of the newly installed systems.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.020:

- 45 new installations x 2 (average number of tanks per installation) x 1/3 of the facilities x \$2,500 (containment sump cost) per tank = \$75,000 annual cost for compliance with containment sump requirement
- 45 new installations x 2 (average number of tanks per installation) x 25% (percent of sites installing ball float valves) x \$600 (additional increased cost for flapper valve instead of ball float valve) = \$13,500 cost for compliance with overflow prevention equipment requirement
- Total cost for both requirements = \$88,500 annually

A typical new underground storage tank construction can typically range from \$1,000,000 to \$1,500,000. These are one-time costs at the time of installation only. Therefore, the increased cost for compliance with these requirements is less than 1% of the total construction cost.

Furthermore, containment sumps allow for easy access to the tank top and under-dispenser areas. Thus, future repairs and inspections will be easier and, potentially faster, saving time and money in the future. Furthermore, many sites already install containment sumps and automatic shutoff devices in their new underground storage tank systems. These cost-reducing considerations, though, are not included in the calculation above.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division [20]26—[Clean Water Commission]
Petroleum and Hazardous Substance Storage Tanks
Chapter [10]2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

[10 CSR 20-10.021] **10 CSR 26-2.021 Upgrading of Existing Underground Storage Tank Systems.** The commission is moving the rule, deleting section (1), adding new sections (1) and (2), and renumbering and amending the remaining sections.

PURPOSE: The commission proposes to amend the rule for the purpose of eliminating references to the historic December 22, 1998, deadline. In addition, the commission proposes to update referenced documents and include modern standards for testing and evaluating steel tanks to ensure those steel tanks do not leak. The commission is moving the rule to 10 CSR 26-2, amending rule number references, and updating the citations in the authority section of the rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

[(1) Alternatives Allowed. No later than December 22, 1998, all existing underground storage tank (UST) systems must comply with one (1) of the following requirements:

(A) New UST system performance standards in 10 CSR 20-10.020;

(B) The upgrading requirements in sections (2)–(4) of this rule; or

(C) Closure requirements in 10 CSR 20-10.070–10 CSR 20-10.074, including applicable requirements for corrective action in 10 CSR 20-10.060–10 CSR 20-10.067.]

(1) Alternatives Allowed. All underground storage tank (UST) systems which are in-use must comply with one (1) of the following requirements:

(A) New UST system performance standards in 10 CSR 26-2.020; or

(B) The upgrading requirements in sections (3)–(5) of this rule.

(2) Any UST which was not permanently closed by being removed or filled with an inert, solid material before December 22, 1988, and that does not meet the requirements of section (1) shall be permanently closed in accordance with the requirements in 10 CSR 26-2.060 and 10 CSR 26-2.061. If the underground storage tank was taken out of operation by August 28, 1989, but is still in the ground, the person or party responsible for permanently closing the UST is/are the person(s) who owned the UST immediately before the discontinuation of its use.

[(2)](3) Tank Upgrading Requirements. Steel tanks must be upgraded to meet one (1) of the following requirements in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory:

(A) Interior Lining. A tank may be upgraded by internal lining if—

1. The lining is installed in accordance with the requirements of [10 CSR 20-10.033] 10 CSR 26-2.033[;] and the following:

A. Manufacturer installation requirements;

B. An approved national code or standard, including those listed in section (6) of this rule; and

C. For steel tanks, structural integrity determinations are required and must include actual steel tank thickness readings. Approved integrity test methods are included in section (6) of this rule;

2. Within ten (10) years after the initial lining, and every five (5) years after that, whether relined or not, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications; and

3. A tank may only be relined and/or the lining may only be repaired, if the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (6) of this rule;

(B) Cathodic Protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of the performance standards for new UST systems in [10 CSR 20-10.020]10 CSR 26-2.020(1)(A)2.B.–D. and the integrity of the tank is ensured using one (1) of the following methods:

1. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system. Structural integrity evaluations must include steel shell thickness readings and confirmation that the steel shell does not have any holes or perforations. Approved integrity test methods are included in section (6) of this rule;

2. The tank has been installed for less than ten (10) years and is monitored monthly for releases in accordance with release detection methods [10 CSR 20-10.043]10 CSR 26-2.043(1)(D)–(H);

3. The tank has been installed for less than ten (10) years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of release detection method [10 CSR 20-10.043]10 CSR 26-2.043(1)(C). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six (3–6) months following the first operation of the cathodic protection system; or

4. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (2)(B)1.–3. of this rule; and

(C) Internal Lining Combined With Cathodic Protection. A tank may be upgraded by both internal lining and cathodic protection if—

1. The lining is installed in accordance with the requirements of [10 CSR 20-10.033] 10 CSR 26-2.033; and

2. The cathodic protection system meets the requirements of [10 CSR 20-10.020]10 CSR 26-2.020(1)(A)2.B.–D.

[(3)](4) Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with [the ground] an electrolyte, including but not limited to soil, backfill, and/or water, must be cathodically protected in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory and must meet the requirements of [10 CSR 20-10.020]10 CSR 26-2.020(1)(B)3.B.–D.

(A) New piping installed at an existing facility must comply with the requirements of 10 CSR 26-2.020.

[(4)](5) Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in [10 CSR 20-10.020]10 CSR 26-2.020(1)(C).

[(5)](6) The following codes and standards may be used to comply with this rule:

(A) American Petroleum Institute [Publication] Standard 1631, [Recommended Practice for the Interior Lining of Existing Steel] Interior Lining and Periodic Inspection of Underground Storage Tanks, revised 2001. This document is incorporated by

reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/;

(B) *[The National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems]* NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; [and]

(C) American Petroleum Institute Publication 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems*., revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/Standards/;

(D) American Society for Testing and Materials G158- 98 (2010) *Standard Guide for Three Methods of Assessing Buried Steel Tanks*, revised 2010, Method B only. Methods A and C may not be used to evaluate the integrity of a steel tank. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, (610) 832-9500, www.astm.org; and

(E) National Leak Prevention Association Standard 631, *Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection*, revised 1999. This standard may only be used for interior lining application and inspection, not for inspection of the steel tank integrity. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Leak Prevention Association, (815) 301-2785, www.nlpa-online.org.

AUTHORITY: sections 319.105 and 319.107, RSMo [Supp. 1989] 2000 and [644.026, RSMo Supp. 1993] section 319.137, RSMo Supp. 2010. This rule originally filed as 10 CSR 20-10.021. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011.

PUBLIC COST: The department believes that this proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate, because the department believes sites already comply with these modifications.

PRIVATE COST: The department believes that this proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The department contacted the three (3) primary companies that conduct this type of work, all of which confirmed their existing procedures already comply with this proposed amendment; as such, the department concluded there would be no increased cost. The department did calculate a private cost of one hundred thirteen thousand forty dollars (\$113,040) annually to facilities if this assumption is determined to be erroneous.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required; however, anyone who wants to make arrangements to testi-

fy may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name 10 CSR 20-10.021 Upgrading of Existing Underground Storage Tank Systems
Type of Rulemaking Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Owners of underground storage tank systems <ul style="list-style-type: none"> • Retail automotive fueling stations • Fleet operations • Automotive service and repair facilities • Manufacturing operations • Hospitals • Other owners and operators of underground storage tank systems 	Approximately 375 underground storage tanks would require testing every 5 years	The department believes the actual cost is \$0. The department did calculate a potential cost if initial assumptions are erroneous \$113,040 annually

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The proposed amendment involves older steel tanks which were upgraded more than ten years ago with an interior lining. One concern with interior linings is that, while the inside of the tank may be protected, the steel shell of the tank in contact with the soil may corrode, which can lead to holes in the steel tank, which can compromise the entire tank structure. The proposed change would require an integrity test of the steel tank itself anytime a lining must be repaired or replaced; linings are tested every five years. Please note, the current lining companies verified that they already conduct an integrity assessment prior to re-lining a tank. As such, the department contends that there is no cost associated with this "clarification."

In the interest of full disclosure, the department, though, is providing a calculated cost for compliance assuming that a contractor/owner is not already conducting the required integrity assessment. While this is already required by the most commonly used applicable industry standard, and therefore is likely already an incurred cost, this proposed integrity test requirement potentially costs approximately \$1500 per tank.

The following assumptions were used for these calculations:

- 1250 active tanks have interior linings that require inspection.
- Linings must typically be inspected once every five (5) years.
- The average cost for an integrity test is \$1,500 per tank.
- An estimated 30 % of all tanks must be repaired to pass inspection and regulatory standards. These 375 are the tanks that would require the integrity test.

Total cost for private sites to meet requirements of the amendments to rule 10 CSR 20-10.010:

- $1256 \text{ in use tanks with linings} \times 30\% \text{ (linings requiring repair)} \times \$1,500 \text{ (cost per assessment)} \div 5 \text{ (adjustment for 5 year inspection cycle to calculate annual cost)} = \$113,040 \text{ annual cost for compliance with integrity test requirements}$

Three companies conduct the majority of the interior lining and steel tank integrity assessments in Missouri. All three of these companies follow a national standard that already requires integrity assessments prior to repair. As such, the department believes that the calculated potential cost is not the actual anticipated cost.