



Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 2[0]6 – [Clean Water Commission] Petroleum and Hazardous Substance
Storage Tanks
Chapter [10] 2 – Underground Storage Tanks – Technical Regulations

PROPOSED AMENDMENT

10 CSR [20-10]26-2.0[7]62 Assessing the [Site] **Property** at Closure or Change in Service. The rule title and number, rule references within the rule, and the authority for the rule, and terms within the rule are amended. In addition, new language is added to the rule to clarify when actions are required, to explain what target levels apply at closure or change in service, the type of backfill that must be used, and to require that a report be submitted to the department within 60 days of closure or change in use activities.

Comment [n1]: Based on comments received, the definition of "site" will be revised to mean the property on which the UST is or was found and on which contamination, if any, originated. Therefore, the title of this rule will revert to "Assessing the Site at Closure or Change in Service."

PURPOSE: This amendment changes the rule number in the rule title and rule citations within the text to reflect movement of division 20, chapter 10 rules to division 26, chapter 2, clarifies authority for the rule, changes terms to be consistent with risk-based corrective action terms used in other rules within the chapter, requires actions to determine whether a release has occurred from an underground storage tank, specifies the target levels applicable when a tank system is closed or undergoes a change in service so that the target levels are consistent with those provided for in other rules in the chapter, presents requirements regarding the type of backfill that must be used to fill a tank excavation to ensure protection of human health and the environment, and specifies that a closure report must be submitted to the department within sixty (60) days of completion of closure or change in use activities so that the department is made aware of potential problems in a timely manner.

(1) Before permanent closure or a change in service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the underground storage tank (UST) [site]system. In selecting sample types, sample locations and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if vapor monitoring or groundwater monitoring in 10 CSR [20-10]26-2.043(E) and (F) is operating at the time of closure and indicates no release has occurred.

(2) Unless vapor monitoring or groundwater monitoring conducted in accordance with 10 CSR 26-2.043(E) and (F) indicates no release has occurred, subsequent to the removal of a tank and system components or completion of a change in service, actions must be taken to determine whether the tank or any of the system components have released petroleum into the environment. Such actions include field screening and the collection of soil and, as warranted, groundwater samples for laboratory analysis.

([2]3) If contaminated soils, contaminated groundwater, **vapors from contamination**, or free product as a liquid or vapor is discovered under sections (1) or (2) of this rule, or by any other manner, owners and operators must begin **release response, site characterization, risk assessment** and corrective action in 10 CSR [20-10]26-2.0[6]70--10 CSR [20-10.067]26-2.082.

(A) If bedrock or coarse gravel or similar conditions prevent the collection of soil samples from the floor of the tank pit, or there is an indication that a release has impacted bedrock, a geologic assessment must be performed to determine the potential for free product migration and groundwater contamination. Such assessment must be performed by a geologist registered in the State of Missouri.

(B) If there is water in the excavation pit, the water shall be assumed to be groundwater, and a grab sample shall be collected and analyzed for chemicals of concern, unless the water is removed and there is no recharge into the excavation pit within twenty-four (24) hours.

(C) If one or more underground storage tanks are closed in place, the owner or operator shall record a statement of closure on the deed for the property.

Comment [n2]: Long-term stewardship; stakeholders not opposed to this requirement

(D) Soil and fill material removed from the tank pit during a tank closure or change in service may be returned to the tank pit if concentrations of all chemicals of concern in the material are below the target levels specified at section (5) of this rule.

1. Soil and fill material removed from the tank pit and which the owner or operator intends to place back into the tank pit must be sampled at a minimum frequency of one discrete sample per fifty (50) cubic yards of excavated material. Each sample shall be collected at least two (2) feet into the stockpile and analyzed for all applicable chemicals of concern.

A. Samples shall be handled and analyzed in accordance with 10 CSR 26-2.076(16)(A)2, 3, and 4.

B. Laboratory analytical data shall be developed and documented in accordance with 10 CSR 26-2.076(21)(A), (B), and (C).

([3]4) Owners and operators shall follow a written procedure **governing tank closure activities**. To comply with this rule, the department's [UST] Tanks Closure Guidance Document may be used as a written procedure. Other written procedures may be used with prior written approval of the department.

(5) Applicable target levels. The default target levels [established by the department] in Table 1 of 10 CSR 26-2.077 shall initially apply when assessing a UST system at closure or change in service. The tier one residential [soil type one] risk-based target levels in Tables 2, 5, and 6 may be applied only when the conditions in section (7) of this rule are met.

Comment [n3]: Issue: application of RBCA at UST closure

(6) Default target levels. Owners and operators shall compare the maximum concentration of each chemical of concern detected in soil and groundwater samples obtained during UST closure or change in service with the default target levels in Table 1 of 10 CSR 26-2.077.

(A) If the maximum concentration of one or more chemicals of concern in soil or groundwater samples obtained during UST closure or change in service exceeds a default target level, owners and operators shall:

1. Conduct corrective action to meet the default target levels;
2. Meet the conditions in section (7) of this rule to apply tier one residential [*soil type one*] risk-based target levels; or
3. If the default target levels will not be applied to the site, begin release response, site characterization, risk assessment, and corrective action in accordance with the provisions of 10 CSR 26-2.070—10 CSR 26-2.082.

(B) If the maximum concentrations for all chemicals of concern in soil or groundwater samples obtained during UST closure or change in service are less than the default target levels or, if the conditions of section (7) of this rule are met, the tier one residential [*soil type one*] risk-based target levels, owners and operators shall submit all required tank closure or change in service documentation as specified at section [(10)] (9) of this rule and the department will make a determination of no further corrective action documented in a letter to the owner, operator, or both.

(7) Conditions for using tier one residential [*soil type one*] risk-based target levels. Tier one residential [*soil type one*] risk-based target levels may be applied at closure or change in service without first fully characterizing the site only if each of the following conditions are met.

(A) A registered geologist or professional engineer has determined the groundwater domestic use pathway is incomplete under current and future site conditions in accordance with 10 CSR 26-2.075(10) and 10 CSR 26-2.075(16)(C).

(B) Samples obtained during UST closure or change in service are representative of the highest concentrations of chemicals of concern in soil and groundwater at the site.

1. If available information indicates that contamination associated with a tank system is beyond the immediate boundaries of the UST system or that soil and groundwater samples obtained during UST closure do not represent maximum concentrations for all chemicals of concern in soil or groundwater, the department may require site characterization before allowing tier one risk-based target levels to be applied at closure or change in service.

(8) Comparison to tier one residential [*soil type one*] risk-based target levels. If the conditions of section (7) of this rule are met, owners and operators may compare the maximum concentration for each chemical of concern from soil and groundwater samples obtained during UST closure or change in service with the tier one residential [*soil type one*] risk-based target levels.

(A) If the maximum concentration of one or more chemicals of concern in soil or groundwater samples obtained during UST closure or change in service exceeds the applicable tier one residential [*soil type one*] risk-based target levels, owners and operators shall:

1. Conduct corrective action to meet the applicable tier one residential [soil type one] risk-based target levels; or

2. Begin release response, site characterization, risk assessment, and corrective action in accordance with the provisions of 10 CSR 26-2.070—10 CSR 26-2.082.

(B) If the maximum concentration of each chemical of concern in soil or groundwater samples obtained during UST closure or change in service is less than the applicable tier one residential [soil type one] risk-based target levels and the conditions of section (7) of this rule have been met, owners and operators shall submit all required tank closure documentation as specified at section [(10)] (9) of this rule and the department will make a determination of no further corrective action documented in a letter to the owner, operator, or both.

(9) [If the conditions of section (7) of this rule are met and tier one residential, soil type one risk-based target levels are determined to apply, all excavations associated with the tank pit, piping runs, and dispensers must be backfilled with a material having the characteristics of soil type one, two, or three. The material placed into the excavations must be compacted to meet or exceed the porosity and density of at least soil type one. If the excavations are filled with a granular material or material not having the same properties as soil type one, two, or three, tier one risk-based target levels for soil type one shall apply to the filled areas unless the department determines that the use of soil type one risk-based target levels is not adequately protective of human or ecological receptors, in which case the department may require the owner or operator to develop tier two site-specific target levels for the material.]

(10) (9) Documentation. A closure report signed by the tank owner or operator must be submitted to MDNR within 60 days of completion of closure or change in use activities, unless otherwise approved in writing by the department. The closure report shall use forms provided by the department as the basis of the report[.], and shall present a conclusion as to whether any further site characterization or corrective action is needed. Tank owners and operators may use the department's Tanks Closure Checklist to prepare this report.

(A) The department shall review the report and either concur with the actions and conclusions or respond with comments, questions, or directives for further action.

1. If the department concurs that no further corrective action is needed, the department shall issue a letter to that effect.

2. If the department does not concur but instead has comments, questions, or directives for further action, the department shall issue a letter presenting the comments, questions, or directives.

(B) Tank owners and operators are required to address the department's comments, questions, or directives for further action until such time as the department concurs that no further corrective action is required.

AUTHORITY: sections 319.111, RSMo [Supp. 1989] 2000 and [644.026]319.137, RSMo Supp. [1993]2007. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed February 13, 2009.*

**Original authority: 319.107, RSMo 1989 [and 644.026, RSMo 1972, amended 1973, 1987, 1993].*

PUBLIC ENTITY COST: This proposed amendment will not cost public entities more than \$500 in the aggregate.

PRIVATE ENTITY COST: This proposed amendment will cost private entities approximately eighty-one thousand dollars (\$81,000) 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 10:30 a.m. on August 20, 2009, 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. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on August 27, 2009. Faxed or emailed correspondence will not be accepted. 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.