

**Missouri Department of Natural Resources Comments Regarding
November 2008 Regulatory Impact Report for Proposed Rules and Rule
Amendments: Risk-Based Corrective Action for Petroleum Storage Tank Sites
And
Regulatory Impact Report Addendum
January 29, 2009**

The Missouri Department of Natural Resources published its November 2008 *Regulatory Impact Report for Proposed Rules and Rule Amendments, Risk-Based Corrective Action for Petroleum Storage Tank Sites* on November 10, 2008. The public comment period regarding the Regulatory Impact Report (RIR) began with publication and ended 60 days later on January 9, 2009. During the public comment period, the department became aware of the need to amend two rules covered in the RIR: 10 CSR 26-2.010 and 10 CSR 26-2.012. In addition, the department recognized that the RIR did not adequately address proposed amendments to rules 10 CSR 26-2.062, 10 CSR 26-2.071, and 10 CSR 26-2.072.

ADDITIONAL PROPOSED RULE AMENDMENTS

Subsequent to the end of the public comment period, the department has amended rules 10 CSR 26-2.010 and 10 CSR 26-2.012 as follows:

- 10 CSR 26-2.010, Applicability, has been amended to include requirements regarding the applicability of rules 10 CSR 26-2.075 through 10 CSR 26-2.082 and 10 CSR 26-2.062. Specifically, the amended portion of the rule specifies that owners and operators need not comply with 10 CSR 26-2.075 through 10 CSR 26-2.082 relative to underground storage tank releases at their facility if:
 - prior to the effective date of 10 CSR 26-2.075, the owner or operator had received written department approval of a work plan for the release,
 - The work plan is fully implemented within one year of the effective date of 10 CSR 26-2.075 or in accordance with a different schedule approved by the department in writing, and
 - In addressing the release, the owner or operator complies with a written procedure or procedures that address the basic elements of the risk-based process including site characterization, risk assessment, and corrective action to an extent that provides adequate protection of human health and the environment, subject to approval of the department.

In addition, with respect to tank closure and changes in service, the amended portion of 10 CSR 26-2.010 specifies that owners and operators need not comply with 10 CSR 26-2.062 if:

- prior to the effective date of 10 CSR 26-2.075, the owner or operator has submitted a closure notice for one or more specific tanks to the department in compliance with 10 CSR 26-2.061(1) (formerly 10 CSR 20-10.071(1)) but has not yet begun or completed closure or change in service activities for the

specific tank or tanks required by 10 CSR 26-2.060 (formerly 10 CSR 20-10.070), 10 CSR 26-2.061 (formerly 10 CSR 20-10.071), or 10 CSR 26-2.062 (formerly 10 CSR 20-10.072),

- For the tank(s) that is the subject of the closure notice, the owner or operator completes closure or change in use activities and submits a complete closure report in accordance with 10 CSR 26-2.062(10) within one-year of the effective date of 10 CSR 26-2.075 or in accordance with a different schedule approved by the department in writing, and
- For the tank(s) that is the subject of the closure notice, the owner or operator completes closure or change in use activities and submits a complete closure report in accordance with 10 CSR 26-2.062(10) within one-year of the effective date of 10 CSR 26-2.075 or in accordance with a different schedule approved by the department in writing.

Finally, the amended portion of 10 CSR 26-2.010 also specifies the following:

- Owners and operators of a UST that is in temporary closure in compliance with the requirements of 10 CSR 26-2.060 on the effective date of 10 CSR 26-2.075 and that is subsequently permanently closed or for which a change in service occurs must comply with the requirements of this chapter; and
 - Except as provided for elsewhere in the rule, owners and operators of USTs that are permanently closed or for which a change in service occurs after the effective date of 10 CSR 26-2.075 must comply with the requirements of this chapter.
- 10 CSR 26-2.012, Definitions, has been amended to add language to certain definitions. Specifically, the following changes have been made:
 - The definition of “Default target levels” has been amended at (D)2.A. by the addition of “without any later amendments or additions” after “. . . dated January 2009 . . .”
 - The definition of “Risk-based target level” has been amended at (R)6.A. by the addition of “without any later amendments or additions” after “. . . dated January 9, 2009 . . .”
 - The definition of “Site-specific target level” has been amended at (S)3.A. by the addition of “without any later amendments or additions” after “. . . dated January 9, 2009 . . .”

REGULATORY IMPACT REPORT ADDENDUM

The department recognizes that the RIR failed to adequately address amendments to proposed rules 10 CSR 26-2.062 (formerly 10 CSR 20-10.072) Assessing the Property at Closure or Change in Service, 10 CSR 26-2.071 (formerly, 10 CSR 20-10.061) Initial Release Response, and 10 CSR 26-2.072 (formerly 10 CSR 20-10.062) Initial Abatement Measures, Site Check, and Comparison with Default Target Levels. In addition, the RIR did not explain the rule restructuring of tank-related rules the department proposes as part of the RBCA rulemaking effort. The restructuring was not included in the RIR because

the restructuring does not alter the requirements of the rules, but only moves the rules from one location within the Code of State Regulation to another.

10 CSR 26-2.062 Amendments

10 CSR 26-2.062 applies to site assessment when an underground storage tank is closed or undergoes a change in service. The department proposes to amend the rule as follows:

- Target levels applicable at closure or change in service without complete site characterization are the default target levels or, if approved by the department, soil type one residential risk-based target levels. The application of risk-based target levels rather than default target levels is contingent on demonstrating that the groundwater domestic use pathway is incomplete and using sample data representative of the highest concentrations of chemicals of concern in soil and groundwater at the site.
- If the soil type one residential risk-based target levels are applied, all excavations associated with the tank system must be backfilled with a material having the characteristics of soil types one, two, or three and the material must be compacted upon placement
 - These changes are proposed to ensure consistency with the risk-based corrective action process provided for in 10 CSR 26-2.075 through 10 CSR 26-2.082.
- A closure report signed by the tank owner or operator must be submitted to the department within 60 days of completion of closure or change in use activities, unless otherwise approved in writing by the department.
 - This change is proposed to address situations where tanks an owner or operator closes a tank but does not report that closure to the department. This results in the department assessing fees for a closed tank and a lack of documentation as to whether closure was conducted in compliance with applicable rules.

10 CSR 26-2.071 Amendments

10 CSR 26-2.071 pertains to the immediate steps an owner or operator must take in response to a release from an underground storage tank system. The department proposes to amend the rule as follows:

- At underground storage tank release sites where light non-aqueous phase liquid (LNAPL) is present, owners and operators must conduct vapor monitoring at and within 100 feet of the known extent of the LNAPL unless data is available demonstrating such monitoring is not warranted. Monitoring must include all utilities, subsurface and surface structures and other enclosed spaces in the defined area.
 - This change is proposed to ensure that acute risks associated with petroleum releases are quickly identified and mitigated

10 CSR 26-2.072 Amendments

10 CSR 26-2.072 pertains to the initial steps owners and operators must take to stop the spread and find the full extent of contamination resulting from an underground storage tank release. The department proposes to amend the rule as follows:

- Contaminant concentrations in the environment must be measured and the concentrations compared to the default target levels. If concentrations in the

environment exceed the default target levels, the owner or operator may either conduct corrective action to meet the default target levels or conduct full site characterization and risk assessment in accordance with 10 CSR 26-2.073 through 10 CSR 26-2.082

Rule Restructuring

To reflect statutory changes in the authority for underground storage tank rules from the Clean Water Commission to the Hazardous Waste Management Commission, as part of the RBCA rulemaking the department proposes to move the rules currently found in chapters 10, 11, 13, and 15 of title 10, division 20 of the Code of State Regulation to new rule division 20. The rules would move as follows:

- Chapter 10 technical rules, including the amended and proposed RBCA rules, would move to chapter 2 of division 26,
- Chapter 11 financial responsibility rules would move to chapter 3 of division 26,
- Chapter 13 administrative penalty assessment rule would move to chapter 4 of division 26, and
- Chapter 15 aboveground storage tank rules would move to chapter 5 of division 26.

Though statutory authority for aboveground storage tanks has not changed and remains with the Clean Water Commission, the department proposes to move the aboveground storage tank rules to the new rule division in order to keep all tank-related rules in one place within the regulations.

In addition to moving the technical rules currently in chapter 10, the department has amended 26 of the rules and added 4 new rules. The 4 new rules and most of the rule amendments pertain to the RBCA process.

In moving the rules currently in chapters 11, 13, and 15 of division 20, the department does not propose to amend any of the rules beyond renumbering each and correcting rule references within each.

In creating a new rule division, the department created one additional new rule – 10 CSR 26-1.010 Organization. This new rule explains the purpose and content of new rule division 26.