

Enforcement Discretion Determination Memo

Issued: March 30, 2020

To: All UST Division Staff

From: Stan Boyd, Director, TDEC-UST



Subject: Enforcement Discretion Determination
TDEC-UST 327.41, 2:30 PM

Timeframe: March 30, 2020 to April 30, 2020

A state agency may elect to not take formal enforcement actions pertaining to specific violations under certain circumstances. This determination documents a decision made by the Director of the Division of Underground Storage Tanks in response to COVID-19 and social isolation strategies being implemented in the state of Tennessee.

The BOE – G – 02 BOE Operations During COVID-19 Situation – 032620 Guidance (BOE Guidance) effective March 26, 2020 authorizes Bureau of Environment (BOE) Divisions to exercise discretion regarding regulatory deadlines taking into consideration applicable federal Environmental Protection Agency (EPA) guidance as well as TDEC's mission to protect the environment and ensuring that important and essential services continue to be provided.

Certain operational testing and visual inspection requirements carried out pursuant to Tenn. Comp. R. and Regs. 0400-18-01 would require facilities to be completely shut down for a period of two to six hours and require personnel to be utilized for the testing. Although personnel at fueling facilities are identified by CISA as essential, social distancing requirements and the spread of the illness could cause a shortage of employees to conduct the testing or to staff the facilities. Shutting down a facility to conduct the testing and inspections could make fuel inaccessible to critical emergency service providers. The suspension of these testing and visual inspection requirements will pose a relatively minor risk to human health and the environment due to the measures that are required to remain in place.

There are no technological or process changes that could address these impediments.

Consequently, the Division:

1. Will not issue either Notices of Violation or Director's Orders to tank owners and/or operators for missing certain operational testing and visual inspection requirements due to the need to shut the systems down for testing or cordon pump islands or tank tops off for testing or visual inspection. These operational requirements
 - a. Spill Prevention Equipment

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- i. Periodic monitoring of spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) required by Rule 0400-18-01-.02(3)(c)1(i) and
 - ii. Triennial testing of spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) required by Rule 0400-18-01-.02(3)(c)1(ii).
- b. Overfill prevention equipment triennial inspections as required by Rule 0400-18-01-.02(3)(c)2.
 - c. Testing the operation of corrosion protection equipment within six months of installation and every three years thereafter required by Rule 0400-18-01-.02(4)(c)2(i).

However, impressed current cathodic protection systems must remain turned on to continuously provide corrosion protection as required by Rule 0400-18-01-.02(4)(c)1 and be monitored every 60 days and the results recorded as required by Rule 0400-18-01-.02(4)(c)4.

d. Repairs

- i. Tightness testing repaired tanks and lines within 30 days of completing the repair as required by Rule 0400-18-01-.02(7)(d) and (e);
- ii. Testing of repaired cathodic protection systems within six months of the repair as required by Rule 0400-18-01-.02(7)(f); and
- iii. Testing of repaired spill and overfill equipment within 30 days of completing the repair as required by Rule 0400-18-01-.02(7)(g).

However, as required by Rule 0400-18-01-.02(7)(h), UST system owners and/or operators shall maintain records of each repair, including any delayed testing allowed by this memorandum, until the UST system is permanently closed or undergoes a change-in-service. Such records shall also be transferred at the time of ownership transfer.

e. Release Detection

i. General requirements for release detection:

- 1. Quarterly, visual dispenser inspections as required by Rule 0400-18-01-.04(1)(e).

However, the 12 month inspection log shall continue to be maintained by the owner and/or operator as required by Rule 0400-18-01-.04(1)(e) with notations made for the missing months.

- 2. Quarterly, visual inspections of under-dispenser containment sumps for motor fuel dispensers as required by Rule 0400-18-01-.04(1)(f).

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However, the 12 month inspection log shall continue to be maintained by the owner and/or operator as required by Rule 0400-18-01-.04(1)(f) with notations made for the missing months.

ii. Piping:

1. Annual testing of pressurized piping required by Rule 0400-18-01-.04(2)(b)1(ii);
 2. Triennial testing of suction piping required by Rule 0400-18-01-.04(2)(b)2; and
 3. Annual testing of line leak detectors required by Rule 0400-18-01-.04(4)(a).
2. Will, during the determination of fund coverage of corrective action costs, take the BOE Guidance into account, if the tank owner or operator has been unable to perform the pertinent operational requirements due to the owner's or operator's inability to shut down.
 3. Will take the BOE Guidance into account when considering the violation of any settlement agreement or administrative order that includes a probationary period during the effective dates of this policy if the tank owner or operator has been unable to perform the requirements set forth in such agreement or order due to the owner's or operator's inability to shut down.

Any testing or inspection requirements delayed pursuant to this determination must be completed no later than May 31, 2020. Failure to meet this deadline will result in the Division proceeding with its normal enforcement process.

This determination does not apply to the 60 and 90 day requirements contained in Tennessee Code Annotated section 68-215-111(f).

This determination is not intended to provide any enforcement discretion regarding the reporting of suspected releases, required by Rule 0400-18-01-.05(1)(a), and/or confirmed releases, required by Rule 0400-18-01-.06(3)(a).

This determination will expire on April 30, 2020 unless otherwise modified or extended.