



Department of
**Environment &
Conservation**

Underground Storage Tank Enforcement Policy Update

Underground Storage Tanks and
Solid Disposal Control Board
August 2, 2023

CHANGES TO ENFORCEMENT POLICY

The revised enforcement policy went out for public comment on March 17, 2023. Comments were due by close of business on May 18, 2023.

No comments were received. So, the policy as presented to the Board previously is final other than correction of several typos on Page 11.

**Presentation from the
April 5, 2023
Board Meeting**

CHANGES TO ENFORCEMENT POLICY

The primary changes to the Enforcement Policy are:

- Revised Settlement Policy
- Housekeeping Corrections

Revised Settlement Policy

- Settlement policy was revised to:
 - provide more consistency in settlements
 - assist the Office of General Counsel in providing more timely settlements.

100% Reduction

Settlement Process

Although each case must be analyzed on its own merits, this policy lists some general circumstances when it would be reasonable to consider using the enforcement discretion provided to the Division by entering into negotiations with a respondent.

1. For consideration of a full reduction (100%) in the assessed civil penalties, the Division will consider the following:
 - a. Factors
 - i. The respondent agrees to permanently close the UST facility in a manner approved by the Division and owns no other tanks/facilities in the State of Tennessee; or
 - ii. The respondent has sold the tanks and owns no other tanks/facilities in the State of Tennessee.
 - b. Reasoning
 - i. The proper closure of tanks is an expensive activity.
 - ii. Reoccurrence of non-compliance by this respondent under the UST Act is decreased to zero because the respondent no longer owns UST tanks or facilities in Tennessee (unless the respondent opens a new facility).

30% to 50 % Reduction

For consideration of a 30% to 50% reduction in the assessed civil penalties, the Division will consider the following:

a. Factors

- i. The respondent has closed or agrees to quickly close some tanks but still owns tanks in the State of Tennessee, and agrees to pay an up-front penalty and contingent penalty, or
- ii. The respondent has filed an appeal of an administrative order, has no outstanding operational violations, and agrees to pay an up-front penalty and contingent penalty.

b. Reasoning

- i. There are no outstanding violations at the facility.
- ii. The respondent has filed an appeal of the order indicating there may be a factual dispute or a desire to resolve the matter.
- iii. The proper closure of tanks is an expensive activity.
- iv. There is still the possibility of non-compliance under the UST Act by the respondent because the respondent owns other facilities. Thus, there still needs to be a civil penalty to act as a deterrent to future non-compliance.

10% to 29% Reduction

3. For consideration of a 10% to 29% reduction in the assessed civil penalties, the Division will consider the following:

a. Factors

- i. The respondent has a Final Order and continued to operate in violation of the Order but had returned to compliance prior to the settlement;
- ii. The respondent may have other facilities, be a distributor, or have a subsidiary company in the petroleum distribution business;
- iii. The respondent has incurred multiple violations at multiple facilities;
- iv. The respondent owns and/or distributes to multiple sites in the State of Tennessee;
- v. The respondent closes no tanks in the State of Tennessee; or
- vi. The respondent agrees to pay an up-front penalty and contingent penalty and operate in accordance with all UST laws and rules.

b. Reasoning

- i. Court action and its associated costs are imminent and the respondent failed to cooperate until after the order went final and the facility was red-tagged.
- ii. There is still the possibility of non-compliance under the UST Act by the respondent because the respondent owns other facilities. Thus, there still needs to be a civil penalty to act as a deterrent to future non-compliance.

Other Considerations

Additional consideration toward settlement may include:

1. Information and input from the field office inspector, enforcement case manager, and OGC attorney on such matters as evaluation of the respondent's current violations, release status, and long term history of cooperation and compliance;
2. Information and input provided by the respondent; or
3. Any other issues deemed applicable to make a sound decision.

However, the Division Director retains the sole discretion to enter into or exit from settlement negotiations, and nothing in this policy or the items listed above are intended to obligate settlement on every occasion.

Furthermore, all respondents have the option to submit financial inability to pay documentation, which will be considered in determining the appropriate reduction in the assessed civil penalties.

Housekeeping

Page 11 - ENFORCEMENT ACTION REFERRAL REVIEW PROCESS

The following language was added to the Standard Order process to provide consistency:

If an operator retraining violation was discovered and operator retraining was not completed prior to issuance of an order, the order will require operator retraining within 90 days of the date the order is received.

If the order is a tank closure order, the Permanent Closure Application is due in 30 days from the date of receipt of the order and the Permanent Closure Report is due in 60 days from the approval of the Permanent Closure Application. (Note: All orders will need to be resolved through the Office of General Counsel).

Housekeeping

Rule 0400-18-01-.04(1)(a)3 - an additional row was added to split the penalty for tank compartment and piping system to be consistent with other similar violations.

167	0400-18-01-.04(1)(a)3		Failure to ensure that electronic and mechanical components are tested annually for proper operation in accordance with subparts 2(i) through (iii) of this subparagraph	TANK COMP	\$3200	Moderate	Major
			Failure to ensure that electronic and mechanical components are tested annually for proper operation in accordance with subparts 2(i) through (iii) of this subparagraph	PIPING SYS	\$2000	Moderate	Moderate

Housekeeping

Rule 0400-18-01-.02(3)(a)1(ii) - typos corrected (added “t” to end of restric and removed duplicate “to”)

167	33	0400-18-01-.02(3)(a)1(ii)		Failure to have overfill prevention equipment that will automatically shut off the flow into the tank when the tank is no more than ninety-five (95%) full; 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; or restrict flow 30 minutes prior to overfilling, alter the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on the top of the tank are exposed to product due to overfilling.	TANK	\$2,000	Moderate	Moderate
				Failure to ensure that electronic and mechanical components are tested annually for proper operation in accordance with subparts 2(i) through (iii) of this subparagraph	PIPING SYS	\$2000	Moderate	Moderate

Questions?

