

UST Division Public Comment Responses

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

TFCA

TFCA Public Comment #1

Page 14 of 92 Item 2 (ii) in blue type: If the order is a tank closure order, the Permanent Closure Application is due in 30 days from the date of the receipt of the order and the Permanent Closure Report is due in 60 days from approval of the Permanent Closure Application. 60 days is not a reasonable and/or sufficient amount of time to find a removal contractor, complete the removal, obtain and communicate sample results, and prepare the Closure Report.

TFCA: TFCA requests this be changed to allow a 90-120 time frame. In particular, getting the analytical reports from labs is time consuming and additional time is necessary here.

- Division Response 1. Prior to a tank closure order being issued, communication to the tank owner through the inspection and enforcement process has occurred – typically it is 1 year or more before an order is issued from the date of inspection.
- Division Response 2. For ORDERS ONLY (not the standard closure process)
 - In total 90 days
 - 30 days to:
 - find a removal contractor
 - submit the PCA
 - 60 days to:
 - Complete closure and submit PCR w/ sample results

- During the order phase of the enforcement process, more time may be needed to document compliance (see 12/12/2022 Tennessee Comptroller of the Treasury, Performance Audit, Observation 2, pages 47-50).

TFCA Public Comment #2

Page 17 of 92 Item 1: When conducting facility inspections, if illegal deliveries are suspected, the field personnel should attempt to procure the drop tickets. What is the definition of a “drop ticket”? Is it a receipt, a delivery confirmation document, a bill of lading from the terminal?

TFCA: TFCA suggests that this language mirror the Department of Revenue language describing the paperwork documentation it requires be kept.

- Division Response 1. Record of fuel delivery, document that shows proof of delivery.
 - Possible forms: receipt, bill of lading, invoice, etc.
- Division Response 2. A drop ticket is the written invoice from the driver which lists the gross volume of each type of product delivered to the location. A bill of lading is the receipt from the fuel terminal which lists the amount of fuel transferred to/from the tanker, time of arrival, time of departure. The bill of lading is vehicle specific while the drop ticket indicates how much fuel from the tanker was delivered to the specific location.
- Enforcement Policy page 11 item #1 terminology changed to “When conducting facility inspections, if illegal deliveries are suspected, the field personnel should attempt to procure the shipping papers (drop tickets, bill of ladings, etc.).

UST Division Public Comment Responses (cont'd)

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

TFCA Public Comment #3

Page 19 Civil Penalty Calculation Process, in red type: Due when? Within 10 days, within 30 days, etc.

TFCA: TFCA feels strongly that the division needs to set up and commit to a framework of response times to respond to tank owners. Reports from the field indicate that tank owners are often left hanging for significant lengths of time waiting for determinations or responses from the division. A tank owner should have some expectation of an appropriate time frame of response, particularly when follow up work or penalties are involved.

- Division Response 1. A framework of timeframes (staff job plans) already exists for fund eligibility determinations/orders. If there are concerns about any particular case, please contact the appropriate Division management.
- Division Response 2. The penalty is due immediately under compromise & settlement agreement. A demand letter is issued giving 30 days for the Division to receive the penalty before red tags are applied.

TFCA Public Comment #4

Page 27 of 92 Addition of Item 4 in blue type: ... the respondent will pay the failure to cooperate on the violations and the service of process charge with no reduction.

TFCA: Perhaps notate the structure on page 17 and/or the penalty matrix on page 20 in order to disclose the monetary costs associated.

- Division Response 1. See G(1) Failure to Cooperate (pg 36)

UST Division Public Comment Responses (cont'd)

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

TFCA Public Comment #5

Page 36 of 92 Addition of Item 2 in red type: then the Division will generally not seek enforcement of associated civil penalties.

TFCA: Is this referring to the original civil penalty for a violation, or the addition 20% penalty mentioned in Item 1 for failure to “fully” cooperate?

- [Division Response 1. Original Civil Penalty](#)

TFCA Public Comment #6

Page 42 of 92 Matrix box for 12:more tha two and one-half (2.5) centimeters:

TFCA: Typo: Change to "than"

- [Division Response 1. Corrected.](#)

TFCA Public Comment #7

on page 42 of 92 Matrix box for 16: Failure to maintain the results of the line tightness test and tank tightness test at the completion of the installation process and prior to dispensing fuel.

TFCA: This sentence is unclear and needs to be more fully explained. Perhaps a notation/reminder that this documentation is required to be maintained for the operational life of the system?

- [Division Response 1. See Rule 0400-18-01-.02\(1\)\(d\)5 \(column 2 typo corrected \(6 to 5\)\) for further clarification. Lookup table for staff use & database purposes only – paraphrasing is used to conserve table space.](#)

TFCA Public Comment #8

Page 44 of 92 Matrix box for 30: Failure of motor fuel dispensers installed after July 25, 2007 to have containment sumps that are compatible with the petroleum product stored in the UST system.

TFCA: Perhaps examples would be helpful, i.e. E-15, E-20, Flex Fuel, Biofuel, etc.

- Division Response 1. Lookup table for staff use & database purposes only – paraphrasing is used to conserve table space. See complete rule for additional information.

TFCA Public Comment #9

Page 45 of 92 Matrix box for 40 and 41: Failure to report, investigate and clean up any spills and overfills in accordance with Rule 0400-18-01-05 (4). The far right column of this item matrix indicates Rule 0400-18-01-.02(3)(b)5 which is;

5. The owner and/or operator shall report, investigate, and clean up any spills and overfills in accordance with paragraph (4) of Rule 0400-18-01-.05. And paragraph 4;
- (4) Reporting And Cleanup Of Spills And Overfills. (a) Owners and/or operators of UST systems shall contain and immediately clean up a spill or overfill and report to the Division within 72 hours and begin corrective action if a spill or overfill of petroleum results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface water; or (b) Owners and operators of UST systems shall contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons. If cleanup cannot be accomplished within 72 hours

UST Division Public Comment Responses (cont'd)

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

owners and/or operators must immediately notify the Division.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-215-101, et seq.

**Administrative History: Original rule filed December 8, 2011; effective March 7, 2012. Rule was renumbered from 1200-01-15. Amendments filed July 3, 2018; effective October 13, 2018. 0400-18-01-.06
PETROLEUM RELEASE RESPONSE, REMEDIATION, AND RISK
MANAGEMENT.**

TFCA: The matrix is not defining the differences and is not disclosing penalties for more than 25 gallons or less than 25 gallons, nor the notation that less than 25 gallons is not a required notification unless is cannot or is not cleaned. By the omission of the differences, it is implying that all are violations and penalized.

TFCA: TFCA strongly objects to the way this issue is addressed in the new guidance. The rule clearly states that the spill must be over 25 gallons in order to be reportable, and we believe that this new guidance is not in line with the clearly stated rule.

TFCA: Additionally, the guidance should address/take into/give deference to investigatory explanations created by the tankowner as to the amount of the spillage.

TFCA: Reports from the field indicate that inspectors are more often questioning and/or investigating tankowners regarding the 72 hour disclosure for releases of less than 25 gallons. TFCA does not believe that this was the historical intent or administration of this rule. We find that the guidance exceeds the authority granted by the rule and request that the guidance be readdressed to closely conform to the rule.

UST Division Public Comment Responses (cont'd)

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

- Division Response 1. Multiplier column references the rules cites in rows 239 (exceeds 25 gals) and 240 (less than 25 gals) respectively that explains the variation in civil penalty and requirements.
- Division Response 2. Item 40 & 41 concerns failure to remediate spills/overfills in accordance with Rule 400-18-01-.05(4). Item 239 description was edited to read: “Failure to contain and immediately clean up a spill/overflow and report to the Division within 72 hours a spill or overflow that exceeds 25 gallons.”
- Division Response 3. The Division welcomes and will review all evidentiary documentation available. Division order writers and OGC attorneys will be instructed to contact owners for an opportunity to explain conflicting (fire department, contractors, etc.) evidence, such as petroleum release volumetric estimates especially where the estimate is 25 gallons or more.
- Division Response 4. Please provide specific examples or contact the appropriate Division manager.

TFCA Public Comment #10

Page 51 of 92 box 89 and 94 Failure to maintain the results of the last two tests of the cathodic protection system. Failure to maintain the last three records of cathodic protection rectifier inspections.

TFCA: Verbiage is conflicting in the terms of time and inspection/records needed. Perhaps clarification with number of reports and/or years needed.

- Division Response 1. Lookup table for staff use & database purposes only – paraphrasing is used to conserve table space. See

complete rule for additional information. Item 89 is the 3-year test. Item 94 is the 90-day rectifier log.

TFCA Public Comment #11

Page 61 of 92 Failure to maintain a log of the quarterly dispenser inspections showing at a minimum the last 12 months.

TFCA: This information is now on the 30-Day Walk-through mandated State Division form. There is no longer a quarterly log.

- Division Response 1. Lookup table for staff use & database purposes only – paraphrasing is used to conserve table space. No civil penalty for this line. Penalty only assessed for failure to conduct inspections. The form is proof that the inspections are being conducted. While the Division provides and encourages the use of a consolidated walkthrough form (CN-2544), individual forms are acceptable. Section 3, the quarterly dispenser log, is provided on the consolidated walkthrough form for convenience.
- During subsequent training/meeting events, inspectors will be reminded of the above.

TFCA Public Comment #13

Page 92 of 92 The first sentence in Exhibit 1 penalty matrix gives examples of “little chance of causing harm to the environment” (i.e. paperwork only or money only violations):

TFCA: This statement seems offensive, with implications of TDEC issuing violations to the public sector for monetary gain reasons.

TFCA: TFCA believes this subject needs to be more carefully explained and/or defined with specific parameters. The current language gives too

UST Division Public Comment Responses (cont'd)

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

much leeway for field interpretation and deviation from standards that are clear to tank owners for compliance purposes.

- [Division Response 1. Section deleted.](#)

TFCA Public Comment #14

Page 92 of 92 The last sentence in Exhibit 1 references The line has two components: the big leak and the little leak.

TFCA: TFCA believes this subject needs to be more carefully explained and/or defined with specific parameters. The current language gives too much leeway for field interpretation and deviation from standards that are clear to tank owners for compliance purposes.

- [Division Response 1. Section deleted.](#)

GPM

GPM Public Comment #1

GPM: Please provide clarification of how much time after NOV {Order?} is issued to reach the financial penalty, or if new changes are stating that the fine is effective immediately.

GPM: If receiving NOV, and issues are corrected within 30 days along with No Further Action letter issued, recommend not issuing fines due to achieved compliance within timely manner.

- [Division Response 1. Civil penalties are only assessed for violations that have not been corrected prior to the issuance of an order.](#)

GPM Public Comment #2

UST Division Public Comment Responses (cont'd)

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

GPM: On penalty matrix, please make a clearly defined “corrective action needed” column (ex: if overfill failed testing, overfill retest required). Please also clearly define which violations require operator retraining and which do not.

- Division Response 1. Lookup table for staff use & database purposes only – paraphrasing is used to conserve table space. Action required is described in the results of compliance inspection letter to the owner and/or operator.
- Division Response 2. Operator retraining violations are listed in Appendix A (Probation Violations) of the policy.

GPM Public Comment #3

GPM: Page 18-19: Please clearly define fine reductions/retractions in cases of resolving NOVs {Orders?}, outside of the closure of tanks and sites (ex: repair work, clearing containments, etc.).

- Division Response 1. Civil penalties are only assessed for violations that have not been corrected prior to the issuance of an order. After an Order has been issued, Civil Penalty reductions are laid out in the settlement process of the policy.

GPM Public Comment #4

GPM: Proposed changes to the settlement process seem to be unreasonable, particularly regarding the larger reductions (50%-100%) that appear to be considered only through site or tank closures. This approach may not be feasible for many stakeholders and could lead to significant operational and financial challenges. Recommend TDEC clearly define and justify the criteria for considering larger reductions only through site/tank closures. Alternative options should be explored to provide flexibility to stakeholders.

- Division Response 1. Civil penalties will only be assessed for violations that have not been corrected prior to the issuance of an order. After an Order has been issued, Civil Penalty reductions are laid out in the settlement process of the policy. Respondents may appeal orders for any reason including the civil penalty assessments.

GPM Public Comment #5

GPM: Proposed changes include a section stating that it is at the discretion of TDEC whether they will discuss the reductions. The specific statement that they are not obligated to engage in discussions is concerning. It is essential for a transparent and collaborative process that all stakeholders can engage in discussions and negotiations regarding settlements. Recommend amending the regulation to ensure that TDEC is required to engage in discussions with stakeholders regarding settlement reductions. This will foster a more collaborative and transparent process.

- Division Response 1. Civil penalties will only be assessed for violations that have not been corrected prior to the issuance of an order. After an Order has been issued, Civil Penalty reductions are laid out in the

UST Division Public Comment Responses (cont'd)

Enforcement Policy – FINAL – October 2, 2024

October 2, 2024

settlement process of the policy. Respondents may appeal orders for any reason including the civil penalty assessments.

GPM Public Comment #6

Recommend TDEC conduct a thorough impact assessment of these proposed changes on stakeholders to ensure that the regulations are practical and do not impose undue hardship.

- Division Response 1. The settlement process in the draft policy has only one change from previous final versions, bullet #4 under “Additional consideration toward settlement may include:
 - If a case goes to an order before the respondent provides documentation showing no violations existed or that compliance was met after the inspection, the respondent will pay the failure to cooperate on the violations and the service of process charge with no reduction.”