

**BOE- P- 6- Non-UST Act Petroleum Sites -010223**

**DISCLAIMER:** This document is policy only and does not create legal rights or obligations. It is intended to provide division staff guidance on how to apply decisions, procedures and practices pertaining to the internal operation or actions of the division. Decisions affecting the public, including the regulated community, in any particular case will be made applying applicable laws and regulations to the specific facts.

**EFFECTIVE DATE: January 2, 2023**

**SIGNATURES:**



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Greg Young, Deputy Commissioner



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Ashley Ball (Dec 15, 2022 10:18 CST)

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Joseph Sanders, Senior Legal Advisor  
Reviewer

**PURPOSE:**

The purpose of this policy is to provide guidelines for the Department of Environment and Conservation (TDEC), Bureau of Environment (BOE) staff on addressing petroleum contaminated sites that do not fall under the statutory jurisdiction of the Tennessee Petroleum Underground Storage Tank Act, Title 68, Chapter 215 (the "UST Act").

**BACKGROUND**

The UST Act does not regulate all petroleum contaminated sites in the state. When TDEC determines a site does not fall under the jurisdiction of the UST Act, there is confusion about the BOE division that will manage the investigation and remediation of the non-UST Act site. There are also questions about the applicable clean-up levels for the non-UST Act site and the enforcement options against the responsible party(s).

**TYPES OF NON-UST ACT SITES (THIS IS NOT A COMPLETE LIST)**

For purposes of this policy, a non-UST Act site is a site polluted with petroleum contaminants of concern and the petroleum release is not regulated by the UST Act. There are multiple reasons why a petroleum release would not be regulated by the UST Act. One reason is the date the release occurred. The UST Act does not

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apply retroactively to releases or other events that occurred prior to July 1, 1988.<sup>1</sup> The source of the petroleum release is another reason the release would not be regulated by the UST Act. This includes petroleum releases from aboveground storage tanks or tanks exempted from the UST Act under Tenn. Code Ann. section 68-215-124.

**PROCEDURE:**

When TDEC is notified about a possible non-UST Act site, the first step is to refer the site to the Division of Underground Storage Tanks (DUST) for investigation. DUST will investigate the site and determine whether the petroleum contaminated site falls under the jurisdiction of the UST Act. In making this determination, DUST will seek input from the other BOE divisions and the Office of General Counsel. During this investigative phase, DUST will attempt to identify any responsible party(s).

**A. VOLUNTARY CLEANUP OVERSIGHT AND ASSISTANCE PROGRAM**

After DUST determines a site is a non-UST Act site, DUST will notify DOR and share its research regarding the identify of any responsible party(s). DOR will use the information collected by DUST to contact the responsible party(s) (RP). DOR will give the RP the option of entering into a voluntary agreement for the investigation and remediation of the site. This option will only be available to the RP for a finite period of time. The length of time the RP has to select the voluntary agreement option will be communicated to the RP in writing. Once the time period expires, TDEC will not enter into a voluntary agreement with the RP to investigate and remediate the site. In the event the RP does not enter into a voluntary agreement, the lead division to investigate and remediate the non-UST Act site will be:

1. The DIVISION OF SOLID WASTE MANAGEMENT if the TDEC investigation of the site determines that ground water or surface water is not impacted by the petroleum contamination at the site. The Division of Solid Waste Management will take enforcement action against the RP.
2. The DIVISION OF WATER RESOURCES if the TDEC investigation of the site determines ground water or surface water is impacted by the petroleum contamination at the site. The Division of Water Resources will take enforcement action against the RP.

The lead division will take enforcement action against the RP in accordance with the lead division’s applicable statutory authority, although the lead division will consult other divisions as needed.

**B. Cleanup Standards To Be Applied**

For these non-UST Act sites, the same cleanup standards will be applied regardless of which BOE division is managing the cleanup and investigation. Initial Screening Levels (ISLs) are provided on the UST webpage: <https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/release.html>. For the calculation of Site-Specific Cleanup Levels (SSCLs), an exposure assessment is required in order to properly complete the Risk Analysis Report (RAR).

Revision Number	Date	Brief Summary of Change
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<sup>1</sup> Tenn. Code Ann. §68-215-102(c). See also the definitions located in Tenn. Code Ann. § 68-215-103 and Tenn. Comp. R. & Regs. 0400-18-01-.01(4).

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0	January 2, 2023	Initial Issuance
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