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Storage Tank Enforcement: Tennessee Department of Environment & Conservation Proposed Order and Assessment Related to Memphis Facility

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The Tennessee Department of Environment & Conservation (“TDEC”) issued a May 9th Proposed Order and Assessment (“Order”) to TForce Freight, Inc. (“TFI”) related to alleged violations of the Tennessee underground storage tank (“UST”) regulations. See Case No. FED21-0005.

The Order states that TFI is the registered owner of three UST systems in Memphis, Tennessee.

A product line leak within an uncontained submersible turbine pump (“STP”) sump is stated to have been discovered on July 31, 2020. A release of five to 10 gallons of diesel product is stated to have been reported to the Tennessee Emergency Management Agency (“TEMA”) on August 1, 2020.

TDEC Division of Underground Storage Tank (“Division”) personnel are stated to have received a phone call from TFI’s corrective action contractor on October 6, 2020:

. . . stating that free product was discovered in soil samples taken from soil borings on October 5 and October 6, 2020.

The Division is also stated to have been notified of the July 2020 discovery of product in the STP pump and the August 1, 2020, report to TEMA. Division personnel are stated to have informed TFI that a Hazard Notification Report (“HNR”) needed to be submitted within 72 hours. TFI is stated to have failed to meet this deadline and the following violation is proposed to be assessed:

- Failure to use the Hazard Notification Report Form established by the Division to report the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards within 72 hours in accordance with Rule 0400-18-01-.06(4)(a).

The alleged failure to notify the Division of soil boring field activities beforehand is stated to have resulted in the assessment of the following proposed violation:

- Failure to notify the Division at least one working day in advance of any routine field activity in accordance with Rule 0400-18-01-.06(1)(b)1(i).

Additional violations proposed by the Order included:

- Failure to report a confirmed release within 72 hours to the Division in accordance with 0400- 18-01-.06(3)(a).
- Failure to report a suspected release within 72 hours to the Division in accordance with 0400- 18-01-.05(1)(a).

Division personnel are stated to have received an Application for Fund Eligibility from TFI regarding the release at the facility. Paragraph XI of the Order further states:

Also on April 7, 2021, the Division received a HNR with a summary of the case activities from August 2020 to April 2021 and an email stating that approximately five gallons of product was removed from the borehole drillings conducted on October 4, 2020. The Application for Fund eligibility was not submitted within 90 days of the discovery of a suspected release as required by Rule 0400- 18-01-.09(4)(b)1. The HNR was not submitted with 72 hours of the March 30, 2021, discovery of free product. This is assessed under violation #1.

The Order states that Division personnel sent a release response letter to TFI on April 21, 2021, which required the company to undertake certain activities to prevent any further release and identify and manage any human hazards as specified in the Order. Additional activities regarding the inspection of aboveground or exposed below ground releases are identified.

Division personnel are stated to have reviewed the Application for Fund Eligibility along with the documentation required by the relevant rule and determined that it did not meet the requirements for reimbursement for the release due to the following:

- Failure to report a suspected release to the Division within 72 hours.
- Failure to submit the application for fund eligibility within 90 days of the suspected release.

The Order proposes the following:

- Application for Fund Eligibility for the referenced release is denied.
- A release investigation and remediation activities must be performed within the timeframes determined by the Division.
- A civil penalty of \$20,400 is assessed.
- TFI must attend UST operating training

The Order provides TFI certain appeal rights.

A copy of the Order can be downloaded [here](#).