

§ 1304.406

18 CFR Ch. XIII (4-1-12 Edition)

UST or any part of an UST system below the 500-year flood elevation on a TVA reservoir, or regulated tailwater:

(1) A copy of the State approval for the UST along with a copy of the application sent to the State and any plans or drawings that were submitted for the State's review;

(2) Evidence of secondary containment for all piping or other systems associated with the UST;

(3) Evidence of secondary containment to contain leaks from gas pump(s);

(4) Calculations certified by a licensed, professional engineer in the relevant State showing how the tank will be anchored so that it does not float during flooding; and

(5) Evidence, where applicable, that the applicant has complied with all spill prevention, control and countermeasures (SPCC) requirements.

(b) The applicant must accept and sign a document stating that the applicant shall at all times be the owner of the UST system, that TVA shall have the right (but no duty) to prevent or remedy pollution or violations of law, including removal of the UST system, with costs charged to the applicant, that the applicant shall at all times maintain and operate the UST system in full compliance with applicable Federal, State, and local UST regulations, and that the applicant shall maintain eligibility in any applicable State trust fund.

(c) An application to install an AST or any part of an AST system below the 500-year elevation on a TVA reservoir or a regulated tailwater is subject to all of the requirements of paragraphs (a) and (b) of this section except that paragraph (a)(1) shall not apply in States that do not require application or approval for installation of an AST. Eligibility must be maintained for any applicable AST trust fund, and the system must be maintained and operated in accordance with any applicable AST regulations. The applicant must notify and obtain any required documents or permission from the State fire marshal's office prior to installation of the AST. The applicant must also follow the National Fire Protection Association Codes 30 and 30A for installation and maintenance of flammable and

combustible liquids storage tanks at marine service stations.

(d) *Fuel handling on private, non-commercial docks and piers.* TVA will not approve the installation, operation, or maintenance of fuel handling facilities on any private, non-commercial dock or pier.

(e) *Floating fuel handling facilities.* TVA will not approve the installation of any floating fuel handling facility or fuel storage tank.

(f) *Demonstration of financial responsibility.* Applicants for a fuel handling facility to be located in whole or in part on TVA land shall be required to provide TVA, in a form and amount acceptable to TVA, a surety bond, irrevocable letter of credit, pollution liability insurance, or other evidence of financial responsibility in the event of a release.

§ 1304.406 Removal of unauthorized, unsafe, and derelict structures or facilities.

If, at any time, any dock, wharf, boathouse (fixed or floating), nonnavigable houseboat, outfall, aerial cable, or other fixed or floating structure or facility (including any navigable boat or vessel that has become deteriorated and is a potential navigation hazard or impediment to flood control) is anchored, installed, constructed, or moored in a manner inconsistent with this part, or is not constructed in accordance with plans approved by TVA, or is not maintained or operated so as to remain in accordance with this part and such plans, or is not kept in a good state of repair and in good, safe, and substantial condition, and the owner or operator thereof fails to repair or remove such structure (or operate or maintain it in accordance with such plans) within ninety (90) days after written notice from TVA to do so, TVA may cancel any license, permit, or approval and remove such structure, and/or cause it to be removed, from the Tennessee River system and/or lands in the custody or control of TVA. Such written notice may be given by mailing a copy thereof to the owner's address as listed on the license, permit, or approval or by posting a copy on the structure or facility. TVA may remove

or cause to be removed any such structure or facility anchored, installed, constructed, or moored without such license, permit, or approval, whether such license or approval has once been obtained and subsequently canceled, or whether it has never been obtained. TVA's removal costs shall be charged to the owner of the structure, and payment of such costs shall be a condition of approval for any future facility proposed to serve the tract of land at issue or any tract derived therefrom whether or not the current owner caused such charges to be incurred. In addition, any applicant with an outstanding removal charge payable to TVA shall, until such time as the charge be paid in full, be ineligible to receive a permit or approval from TVA for any facility located anywhere along or in the Tennessee River or its tributaries. TVA shall not be responsible for the loss of property associated with the removal of any such structure or facility including, without limitation, the loss of any navigable boat or vessel moored at such a facility. Any costs voluntarily incurred by TVA to protect and store such property shall be removal costs within the meaning of this section, and TVA may sell such property and apply the proceeds toward any and all of its removal costs. Small businesses seeking expedited consideration of the economic impact of actions under this section may contact TVA's Supplier and Diverse Business Relations staff, TVA Procurement, 1101 Market Street, Chattanooga, Tennessee 37402-2801.

§1304.407 Development within flood control storage zones of TVA reservoirs.

(a) Activities involving development within the flood control storage zone on TVA reservoirs will be reviewed to determine if the proposed activity qualifies as a repetitive action. Under TVA's implementation of Executive Order 11988, Floodplain Management, repetitive actions are projects within a class of actions TVA has determined to be approvable without further review and documentation related to flood control storage, provided the loss of flood control storage caused by the project does not exceed one acre-foot.

A partial list of repetitive actions includes:

- (1) Private and public water-use facilities;
- (2) Commercial recreation boat dock and water-use facilities;
- (3) Water intake structures;
- (4) Outfalls;
- (5) Mooring and loading facilities for barge terminals;
- (6) Minor grading and fills; and
- (7) Bridges and culverts for pedestrian, highway, and railroad crossings.

(b) Projects resulting in flood storage loss in excess of one acre-foot will not be considered repetitive actions.

(c) For projects not qualifying as repetitive actions, the applicant shall be required, as appropriate, to evaluate alternatives to the placement of fill or the construction of a project within the flood control storage zone that would result in lost flood control storage. The alternative evaluation would either identify a better option or support and document that there is no reasonable alternative to the loss of flood control storage. If this determination can be made, the applicant must then demonstrate how the loss of flood control storage will be minimized.

(1) In addition, documentation shall be provided regarding:

(i) The amount of anticipated flood control storage loss;

(ii) The cost of compensation of the displaced flood control storage (how much it would cost to excavate material from the flood control storage zone, haul it to an upland site and dispose of it);

(iii) The cost of mitigation of the displaced flood control storage (how much it would cost to excavate material from another site within the flood control storage zone, haul it to the project site and use as the fill material);

(iv) The cost of the project; and

(v) The nature and significance of any economic and/or natural resource benefits that would be realized as a result of the project.

(2) TVA may, in its discretion, decline to permit any project that would result in the loss of flood control storage.

(d) Recreational vehicles parked or placed within flood control storage zones of TVA reservoirs shall be