



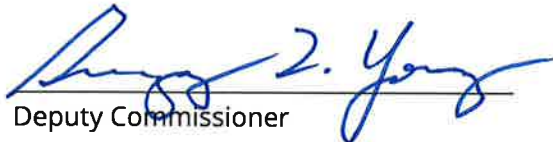
## **BOE - G - 02 - BOE Operations During COVID-19 Situation - 032620**

### **Guidance for BOE Operations During COVID-19 Situation**

This document is guidance only and does not create legal rights or obligations. Agency decisions in any particular case will be made applying applicable laws and regulations to the specific facts.

**EFFECTIVE DATE:** MARCH 26, 2020

#### **SIGNATURES:**

  
Deputy Commissioner

#### **I. Introduction**

On March 4, 2020, the first case of Coronavirus Disease 2019 (COVID-19) was identified in the State of Tennessee. Additional cases of COVID-19 have since been identified in Tennessee, demonstrating a continued, increasing, and serious risk to the health, safety, and welfare of Tennesseans. TDEC's Bureau of Environment (BOE) has joined the coordinated state government approach to both limit the spread of COVID-19 while continuing to protect the environment and provide and support Essential Services for Tennessee communities. This guidance offers direction for BOE operations during this extraordinary period, affecting the following "BOE Divisions" and their various programs:

- a) Air Pollution Control
- b) Energy Programs / Emergency Services
- c) Fleming Training Center
- d) Radiological Health
- e) Remediation
- f) Solid Waste Management
- g) Tennessee Geological Survey
- h) Underground Storage Tanks
- i) Water Resources
- j) West Tennessee River Basin Authority

As part of this guidance for BOE operations, BOE will take into consideration all applicable federal (e.g., Environmental Protection Agency, Department of Energy, Nuclear Regulatory Commission, Food and Drug Administration, Office of Management and Budget) guidance regarding the COVID-19 situation. While these circumstances are unprecedented in many ways, BOE will seek to continue operations as close to normal as possible. This guidance will apply to BOE operations from March 12, 2020, until April 30, 2020, or such later date if determined necessary and appropriate by amendment. It is anticipated that this guidance



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will be re-evaluated on a weekly basis and may be amended as deemed appropriate based on changing circumstances.

#### **II. Determination of Necessity**

- a. On March 11, 2020, the World Health Organization officially characterized COVID-19 as a “pandemic.”
- b. On March 12, 2020, Gov. Bill Lee issued Executive Order No. 14 declaring a State of Emergency to facilitate COVID-19 response activities.
- c. On March 12, 2020, TDEC issued internal guidelines consistent with Executive Order No. 14 as well as CDC and Tennessee Department of Health guidance.
- d. On March 13, 2020, Gov. Lee, through the Tennessee Department of Human Resources, issued guidance to state employees encouraging state employees to work remotely through the state’s Alternative Workplace Solutions (AWS) program until March 31, 2020, to cease all non-essential business travel, and to cancel or adjust non-essential in-person meetings of 10 or more individuals.
- e. On March 13, 2020, President Donald J. Trump declared a National Emergency in response to COVID-19.
- f. On March 19, 2020, Gov. Lee issued Executive Order No. 15 to further facilitate COVID-19 response activities.
- g. On March 19, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) promulgated a “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response” that included energy, water and wastewater, and solid waste management as within the range of operations and services that are essential to continued critical infrastructure viability.
  1. **4/7/20** – CISA updated this Memorandum on March 28, 2020.
- h. On March 20, 2020, Gov. Lee issued Executive Order No. 16, to allow state, county and municipal governing bodies to continue to meet through electronic means, rather than being required to gather a quorum of members physically present at the same location.
- i. On March 22, 2020, Gov. Lee issued Executive Order No. 17 ordering that persons in the State of Tennessee shall not participate in social gatherings of 10 or more people and that in workplaces which remain open, employees should work from home where feasible, and employees and their customers should practice good hygiene and observe the necessary precautions advised by the President and the CDC to reduce the spread of COVID-19.



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- j. Executive Order No. 17 further stated that all critical infrastructure remains operational, and government entities and businesses will continue providing important and Essential Services.
- k. On March 23, 2020, Gov. Lee issued Executive Order No. 18 that limited non-emergency healthcare procedures to reduce the spread of COVID-19.
- l. Since March 23, 2020, a number of local governments in Tennessee have issued "Safer at Home Orders" that require residents of the jurisdiction to stay inside their homes unless they are engaged in certain essential activities.
- m. On March 24, 2020, Gov. Lee issued Executive Order No. 19 that suspended the requirement of inspection and testing of light-duty motor vehicles in Tennessee and the requirement for a light-duty motor vehicle owner to submit a certificate of compliance relative to a vehicle's registration in all cases where required between March 12, 2020, and May 18, 2020. Such requirements shall return to their original schedule in subsequent years.
- n. On March 24, 2020, Gov. Lee, through the Tennessee Department of Human Resources, directed state employees that are currently working from home through the state's AWS program should continue doing so and that schools should remain closed through April 24, 2020.
- o. **4/7/20** – On March 26, 2020, the U.S. EPA published a Guidance Memorandum to address COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program which set forth various circumstances and conditions under which EPA would be willing to exercise enforcement discretion.
- p. **4/7/20** – On March 26, 2020, Gov. Lee issued Executive Order No. 20 that amended Executive Order No. 15 to suspend provisions of certain statutes and taking other necessary measures in order to facilitate the treatment and containment of COVID-19.
- q. **4/7/20** – On March 29, 2020, President Trump extended federal guidelines on social distancing to April 30, 2020.
- r. **4/7/20** – On March 30, 2020, Gov. Lee issued Executive Order No. 21 that amended Executive Order No. 17 to further mitigate the spread of COVID-19 by limiting non-Essential Services and gatherings.
- s. **4/7/20** – On March 30, 2020, Gov. Lee issued Executive Order No. 22 that urged all Tennesseans to stay at home unless engaging in Essential Services to limit their exposure to and spread of COVID-19.



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- t. **4/7/20** – On April 2, 2020, Gov. Lee issued Executive Order No. 23 that amended Executive Order No. 22 to require all Tennesseans to stay at home unless engaging in Essential Services to limit their exposure to and spread of COVID-19.
- u. **4/7/20** – On April 3, 2020, Gov. Lee issued Executive Order No. 24 that amended Executive Order No. 15 regarding COVID-19 response activities.
- v. During this timeframe and in compliance with the foregoing, the BOE and Divisional leadership has taken various measures to protect TDEC employees and the Tennessee citizens and regulated community we serve. The vast majority of BOE personnel are currently working remotely. Travel is restricted and large gatherings discouraged, meaning that various meetings have been cancelled, postponed and/or conducted through electronic means. Routine fieldwork, on-site compliance inspections, and monitoring visits have been deferred, and non-emergency complaint investigations have been delayed until they can be safely performed. Compliance activities that can be undertaken remotely continue to occur.
- w. The purpose of this guidance is to ensure that further, ongoing measures and activities of the BOE Divisions are grounded in appropriate legal authority and common sense in a manner that continues to protect TDEC employees, Tennessee citizens, the environment, and the regulated community.

### **III. Substantive Guidance**

- a. Travel Restrictions. BOE Division employees shall avoid conducting any non-essential travel. For travel to be essential, it must be essential for the health, safety and welfare of Tennesseans.
  - 1. **4/7/20** – Use of Personal Vehicles for Essential Services. BOE Divisions should instruct employees to use their personally owned vehicles for work-related Essential Services if practical. Essential Services are discussed in more detail at Section IV. e. below. BOE Division employees using personally owned vehicles for Essential Services should submit travel claims and requests for reimbursement every two weeks. BOE Division employees performing Essential Services who have been designated as the primary driver of a state vehicle, such as employees working in the Subsurface Sewage Disposal Program, may continue to use the state vehicle they currently use. If a BOE Division employee's personally owned vehicle is not suitable for use to perform the essential service, then the employee should use the Environmental Field Office Vehicle Reservation System to reserve the appropriate vehicle for the essential service. Before and after using the TDEC vehicle, the employee shall follow the vehicle sanitizing procedure prescribed by TDEC.



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- b. Remote Work. BOE Divisions shall strongly encourage all employees to utilize AWS to work remotely and facilitate working remotely to the level practical.
  1. **4/7/20** – Safer at Home. According to Executive Orders Nos. 22 & 23, all persons in Tennessee are required to stay at home, except when engaging in Essential Services. Moreover, all persons are strongly encouraged to limit to the greatest extent possible the frequency of engaging in Essential Services.
- c. Mass Gatherings. With the exception of emergency support / response services and maintaining critical infrastructure, BOE Divisions employees shall not take part in any work-related mass gatherings that involve more than 10 people. In this regard, the Fleming Training Center has ceased conducting further in-person classroom training. Other in-person and TDEC-sponsored training, seminars and conferences should also be cancelled or postponed. *See item f below regarding public hearings and board meetings.*
  1. **4/7/20** – Appointment Only Service Model. The Department has already moved to appointment only for in-person services to the general public at all BOE offices (Environmental Field Offices, the Oak Ridge Office and the Central Office). Phone numbers and email addresses have been set up for each BOE office, and signage with contact information is clearly displayed on the front door at each BOE office. All BOE offices should have administrative staff available to respond to customers' comments, complaints or questions. BOE Divisions should also continue to follow this guidance for in-person meetings in response to complaints and inspections during this time.

In order to further protect BOE Division employees, this appointment only model is being extended to all BOE Division employees. All BOE Division employees (including administrative staff) should be working remotely at this point, and their appearances at the TDEC offices are to be limited to retrieving files, equipment, and/or fleet vehicles that are necessary to continue performing Essential Services. The BOE Divisions will develop and refine appropriate protocols and procedures to schedule appointments through administrative staff, which shall include notification, social distancing, and appropriate sanitizing practices. With respect to vehicle usage, BOE Divisions are authorized to create a standing process with administrative staff to minimize employee contact and to maximize efficiency; provided, however, that all state vehicle usage should still incorporate the guidance in Section III. a. 1. above and applicable travel policies.



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- d. Permit, License & Certification Expirations / Renewals. BOE Divisions are authorized, but not required, to exercise enforcement and other discretion regarding expiration of any license, permit or certification that would expire after March 12, 2020, and prior to April 30, 2020. To accomplish this, BOE Divisions may, among other reasonable measures, choose to either: (i) issue a statement of general applicability to the regulated community; and/or (ii) solicit and respond to individual requests from regulated persons. Either approach is acceptable under this guidance as are other reasonable measures to address the expiration of permits, licenses and/or certifications. BOE Divisions are encouraged to utilize the assistance of the Office of General Counsel when making these determinations.
- e. Public Comment Period Deadlines and Document Availability. BOE Divisions are reminded they have authority to extend deadlines for any public comment periods. BOE Divisions are authorized, but not required, to utilize alternative document viewing and repository solutions. To accomplish these extensions or alternatives, BOE Divisions may, among other reasonable measures, choose to either: (i) issue a statement of general applicability to the regulated community; and/or (ii) solicit and respond to individual requests from regulated persons. Either approach is acceptable under this guidance as are other reasonable measures to address the expiration of public comment periods and document viewing and repository solutions.
- f. Public Hearings and Board Meetings. BOE Divisions are authorized, but not required, to exercise enforcement and other discretion regarding public hearing and Board meeting dates between March 12, 2020 and April 30, 2020. BOE Divisions are also authorized to conduct any public hearing or Board meetings through electronic means such as WebEx. Any BOE Division actions in this regard must be consistent with Executive Order No. 16 to allow for full and transparent public participation. BOE Divisions are directed to solicit any necessary Board approvals in connection with any such actions. BOE Divisions are encouraged to utilize the assistance of the Office of General Counsel when making these determinations.
  1. **4/7/20 – Additional Guidance for Public Hearings.** After consultation with US EPA Region 4, TDEC has developed a plan for conducting BOE Division public hearings via videoconference. To the extent practicable, the BOE Divisions will follow normal protocols applicable to in-person hearings. In particular, members of the public will be able to register their participation in the hearing, indicate whether they plan to testify, and provide their testimony (subject to normal time limits). For each of these public hearings, the Department will comply with all applicable rules and will:



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- a. Provide clear, easy-to-understand instructions to the public about how to participate.
  - b. Provide different options for participation, such as participating either by computer or by telephone. In addition, if a person cannot participate by computer or telephone, the person may submit written comments in advance and request the hearing officer to read these comments into the record, subject to the same time limits applicable to oral comments. (Please note that written comments do not need to be read at the public hearing to be considered as part of the record.)
  - c. Provide a rationale for why the hearing is being conducted remotely.
  - d. For any hearings that were previously noticed to be conducted in-person, provide public notice of the cancellation of the original hearing and a new public notice for the online public hearing.
- g. On-site Compliance Inspections, Monitoring Visits, Non-emergency Complaints & Testing. BOE Divisions are authorized, but not required, to postpone and extend any applicable dates for on-site compliance inspections, monitoring visits or testing from March 12, 2020 to April 30, 2020. Additionally, non-emergency complaints may be deferred until they can be safely performed. Compliance activities that can be done remotely should continue to occur. To accomplish this, BOE Divisions may, among other reasonable measures, choose to either: (i) issue a statement of general applicability to the regulated community and/or TDEC grantees; and/or (ii) solicit and respond to individual requests from regulated persons and/or TDEC grantees. Either approach is acceptable under this guidance as are other reasonable measures to address on-site compliance inspections and testing. In the event a BOE Division chooses to move forward with an on-site compliance inspection, monitoring visit, testing, and/or complaint investigation, then, in order to protect BOE employees and the regulated person or TDEC grantee and such person's or grantee's employees from COVID-19 transmission, that BOE Division shall ensure appropriate protocols consistent with CDC and Tennessee Department of Health guidance are followed by BOE employees and that BOE employees respect appropriate protocols requested by a regulated person and/or TDEC grantee.
- h. Administrative Orders and Agreements Compliance Deadlines. With consultation and permission from the Office of General Counsel, BOE Divisions are authorized, but not required, to extend any applicable deadlines under administrative orders and agreements. Given the fact-dependent nature of these actions, BOE Divisions should not issue statements of general applicability, but should instead respond to individual respondent requests. Furthermore, specific provisions of these documents should be consulted to determine whether a procedure is already in place, and if so, that procedure should be followed.



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- i. **4/7/20 – Administrative Appeals.** Please be advised that the TDEC Office of General Counsel has established a new email address [TDEC.Appeals@tn.gov](mailto:TDEC.Appeals@tn.gov) to allow permittees, respondents, and third parties to file appeals with TDEC electronically.
- j. **Other.** BOE Divisions are authorized, but not required, to exercise enforcement and other discretion regarding any other regulatory and/or contract deadlines<sup>1</sup> through a statement of general applicability to the regulated community, grantees, or contractors; and/or solicit and respond to individual requests from regulated persons, grantees, or contractors. This provision could apply to routine data submittals, technical reports, progress reports, (e.g., monthly, quarterly, annual, or milestone), studies, fee payments, plans and the like. Furthermore, BOE Divisions are authorized to make common sense substantive exceptions or waivers to permits, licenses and certifications (limited in duration) that may involve other matters besides schedule and deadline extensions. For example, medical waste handlers may need longer holding times for medical waste and flexibility on waste storage volumes. No determination should be made that is anticipated to have a negative impact on human health and the environment.

#### **IV. Miscellaneous**

- a. **BOE Division Discretion** – This concept is fundamental to this guidance. BOE Divisions should use common sense and should not act in a manner that is arbitrary, capricious, or an abuse of discretion. We are in unique circumstances and uncharted waters. BOE Divisions must be reasonable and use good judgment in making decisions pursuant to this guidance. BOE Divisions should take into consideration all applicable federal (e.g., Environmental Protection Agency, Department of Energy, Nuclear Regulatory Commission, Food and Drug Administration, Office of Management and Budget) guidance issued as a result of the pandemic and consult with the Office of General Counsel.
- b. **Regulatory Flexibility & Environmental Protection** – These concepts are also fundamental to this guidance. In making decisions and working with respective regulated persons, BOE Divisions should balance the need for regulatory flexibility with our mission to protect the environment and ensuring that important and Essential Services continue to be provided. Not all requests for regulatory flexibility

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<sup>1</sup> Subject to guidance and/or approvals of other State agencies (i.e., Department of General Services – Central Procurement Office, Department of Finance & Administration, and the Office of the Comptroller of the Treasury).





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should be granted. BOE Divisions should use best professional judgment in achieving this balance between regulatory flexibility and environmental protection.

- c. Documentation – BOE Divisions shall document determinations made pursuant to and in connection with this guidance. Documenting a determination includes, but is not limited to, identifying: the impediment created by the COVID-19 situation, the absence of technological or process changes that can accommodate the impediment and negate the need for discretion or why those accommodations are not feasible, the potential impact of the determination on human health and the environment, and the term of the determination. Consultation with the Office of General Counsel is strongly encouraged.
- d. Critical Infrastructure – Executive Order No. 17 [4/7/20 – and Executive Order No. 22] unequivocally state that all critical infrastructure remains operational, and that government entities and businesses will continue providing important and essential services. Accordingly, when implementing the provisions of this guidance, BOE Divisions must take into consideration the importance of maintaining critical infrastructure and continuing essential services relative to such infrastructure.

Critical infrastructure is more specifically addressed in the Department of Homeland Security's CISA Memo dated March 19, 2020 [4/7/20 – and updated on March 28, 2020]. The CISA Memo speaks in terms of “essential critical infrastructure workers,” but should be reviewed in full to determine what “services” of the BOE Divisions might qualify as “important and essential” for critical infrastructure. A few highlights tailored to BOE are provided below:

- Essential critical infrastructure industries include: medical and health care, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works (including solid waste management).
- Emergency Response Operations of government entities qualify as Essential Services, including hazardous materials responders.
- The “energy” industry sector involves three primary components: (i) electricity generation; (ii) petroleum; and (iii) natural and propane gas. Environmental remediation/monitoring workers for the electricity industry are specifically listed in the CISA memo, as well as workers needed to ensure safe and secure operations at nuclear generation facilities. This could impact BOE Divisions involved in TVA remediation activities and/or radioactive material licensing. As to petroleum, retail fuel centers such as gas stations



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and truck stops and the distribution systems that support them are specifically listed in the CISA memo. This could impact BOE Divisions involved in petroleum underground storage tank regulation. The Office of Energy Programs is also involved in emergency support and response activities related to the energy industry.

- The “water and wastewater” industry sector involves services needed to operate and maintain drinking water, wastewater, and stormwater collection, conveyance, and treatment infrastructure, including permitted pumping and hauling of wastewater. Most of the Essential Services would appear to be carried out by various persons regulated by BOE Divisions, but BOE Divisions should stand ready to provide necessary and appropriate services to the water and wastewater industry and take necessary actions to ensure Tennesseans have clean water to drink and can continue to flush toilets.
  - The CISA Memo specifically mentions “hazardous materials.” Workers involved in managing medical waste, pharmaceutical waste, and who support hazardous materials response and cleanup are deemed essential. This could impact BOE Divisions that deal with solid/hazardous waste and hazardous substance releases.
- e. **4/7/20 – Essential Services.**<sup>2</sup> Executive Order No. 22 provides substantial information as to what constitutes Essential Services and how those Essential Services should be conducted during this time of restricted travel, social distancing and working remotely. BOE Divisions should review Executive Order No. 22 in its entirety.

Based on the information contained in Attachment A to Executive Order No. 22, BOE Divisions should determine their Essential Services through a two-part analysis:

- What activities of my Division are needed for the immediate support of public health, safety and welfare and environmental protection? See Executive Order No. 22, Attachment A, paragraph 5, Essential Government Functions.
- What activities of my Division are needed for the continued essential infrastructure operations? See Executive Order No. 22, Attachment A, paragraph

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<sup>2</sup> Executive Order No. 22 also addresses Essential Activities. Essential Activities appear to refer more to personal activities (e.g., medical care, worship, outdoor recreation, etc.) as opposed to the work-related Essential Services addressed in Executive Order No. 22, Attachment A. Accordingly, this BOE guidance does not focus on Essential Activities.



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4, Essential Infrastructure Operations. See also, CISA Memo, version 2.0, March 28, 2020.

Even though Essential Services are deemed as exceptions from the general “stay at home” order, Essential Services should nevertheless be limited in frequency to the greatest extent possible. For example, all persons are strongly encouraged to use thoughtful planning, careful coordination, and consideration of others when engaging in Essential Services in order to minimize the need and frequency for leaving their place of residence.

BOE Divisions may also consider timing in order to identify and prioritize Essential Services. For example, an essential service could perhaps be postponed based on applicable federal compliance and funding deadlines, but if the COVID-19 situation persists, then that essential service may become more immediate to support public health, safety and welfare and environmental protection.

BOE Divisions should ensure that their analyses and determinations with respect to Essential Services are documented in writing through email, internal memoranda and the like.

- f. Amendment / Modification – BOE leadership will maintain situational awareness of these unprecedented circumstances and retain the prerogative to amend or modify the elements or duration of this guidance as needed.
- g. Termination – This guidance for BOE operations will automatically terminate on April 30, 2020, unless otherwise amended or modified.

#### REVISION HISTORY TABLE

Revision Number	Date	Brief Summary of Change
1	4/7/2020	Revisions made to account for additional Executive Orders and other developments.