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**Rules of**  
**Department of Natural Resources**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 4—Underground Storage Tanks—**  
**Administrative Penalties**

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**Title 10—DEPARTMENT OF  
NATURAL RESOURCES**

**Division 26—Petroleum and Hazardous  
Substance Storage Tanks  
Chapter 4—Underground Storage Tanks—  
Administrative Penalties**

**10 CSR 26-4.080 Administrative Penalty  
Assessment**

*PURPOSE: This rule establishes the procedures for assessment of administrative penalties.*

(1) General Provisions.

(A) Pursuant to section 319.127, RSMo, and in addition to any other remedy provided by law, upon determination by the director that a provision of sections 319.100–319.139, RSMo, or a standard, limitation, order or rule promulgated, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator. The amount of the administrative penalty will be determined according to section (3) of this rule. In no event may the total penalty assessed per day of violation exceed the statutory maximum specified in section 319.127, RSMo.

(B) An administrative penalty shall not be imposed until the department has sought to resolve the violations through conference, conciliation, and persuasion and shall not be imposed for minor violations. If the violation is resolved through conference, conciliation, and persuasion, no administrative penalty shall be assessed unless the violation has caused, or had the potential to cause, a risk to human health or to the environment, or has caused or had the potential to cause pollution, or was knowingly committed, or is not a minor violation.

(C) An order assessing an administrative penalty shall be served upon the operator, owner, or appropriate representative through United States Postal Service certified mail, return receipt requested, a private courier or messenger service which provides verification of delivery or by hand delivery to the operator's or owner's residence or place of business. An order assessing an administrative penalty shall be considered served if verified receipt is made by the operator's or owner's appropriate representative. A refusal to accept, or a rejection of certified mail, private courier, or messenger service delivery or by hand delivery of an order assessing an administrative penalty constitutes service of the order.

(D) The program may, at any time, withdraw, without prejudice, any administrative order.

(E) An order assessing an administrative penalty shall describe the nature of the violation(s), the amount of the administrative penalty being assessed and the basis of the penalty calculation.

(2) Definitions.

(A) Definitions for key words used in this rule may be found in 10 CSR 26-2.012 and section 319.100, RSMo.

(B) Additional definitions specific to this rule are as follows:

1. Conference, conciliation, and persuasion—A process of verbal or written communication, including but not limited to meetings, reports, correspondence, or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at minimum, consist of one (1) offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

2. Economic benefit—Any monetary gain which accrues to a violator as a result of noncompliance;

3. Gravity-based assessment—The degree of seriousness of a violation taking into consideration the risk to human health and the environment posed by the violation and considering the extent of deviation from sections 319.100–319.139, RSMo;

4. Minor violation—A violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

5. Multi-day violation—A violation which has occurred on or continued for two (2) or more consecutive or nonconsecutive days; and

6. Multiple violation penalty—The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action.

(3) Determination of Penalties. The calculation of the amount of an administrative penalty will involve the application of a gravity-based assessment under subsection (3)(A) and may involve additional factors for multiple violations, (3)(B), multi-day violations, (3)(C), and economic benefit resulting from noncompliance, (3)(D). The resulting administrative penalty may be further adjusted as specified under (3)(E).

(A) Gravity-Based Assessment. The gravity-based assessment is determined by evaluat-

ing the potential for harm posed by the violation and the extent to which the violation deviates from the requirements of the law.

1. Potential for harm. The potential for harm posed by a violation is based on the risk to human health or the environment or to the purposes of implementing the law and associated rules or permits.

A. The risk of exposure is dependent on both the likelihood that humans or the environment may be exposed to contaminants and the degree of potential exposure. Penalties will reflect the probability the violation either did result in or could have resulted in a release of contaminants in the environment, and the harm which either did occur or would have occurred if the release had in fact occurred.

B. Violations which may or may not pose a potential threat to human health or the environment, but which have an adverse effect upon the purposes of or procedures for implementing the law and associated rules or permits may be assessed a penalty.

C. The potential for harm shall be evaluated according to the following degrees of severity:

(I) Major. The violation poses or may pose a substantial risk to human health or to the environment, or has or may have a substantial adverse effect on the purposes of or procedures for implementing the law and associated rules and/or permits;

(II) Moderate. The violation poses or may pose a significant risk to human health or to the environment, or has or may have a significant adverse effect on the purposes of or procedures for implementing the law and associated rules and/or permits; and

(III) Minor. The violation does not pose significant or substantial risk to human health or to the environment, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor.

2. Extent of deviation. The extent of deviation may range from slight to total disregard of the requirements of the law, and associated rules and permits. The assessment will reflect this range and will be evaluated according to the following degrees of severity:

A. Major. The violator has deviated substantially from the requirements of the law, associated rules, or permits resulting in substantial noncompliance;

B. Moderate. The violator has deviated significantly from the requirements of the law, associated rules, or permits resulting in significant noncompliance; and

C. Minor. The violator has deviated slightly from the requirements of the law,



associated rules, or permits that does not result in substantial or significant noncompliance; most provisions were implemented as intended; the violation was not knowingly committed; and is not defined by the United States Environmental Protection Agency as other than minor.

3. Gravity-based penalty assessment matrix. The matrix that follows will be used to determine the gravity-based assessment portion of the administrative penalty. Potential for harm and extent of deviation form the axes of the matrix. The penalty range selected may be adapted to the circumstances of a particular violation.

Gravity-Based Penalty Assessment Matrix

Table with 4 columns: Potential for Harm, Extent of Deviation (Major, Moderate, Minor), and corresponding penalty ranges.

(B) Multiple Violation Penalty. Penalties for multiple violations may be determined when a violation is independent of or substantially different from any other violation.

(C) Multi-Day Penalty. Penalties for multi-day violations may be determined when the director has concluded that a violation(s) has continued or occurred for more than one (1) day.

Multi-Day Penalty Assessment Matrix

Table with 4 columns: Potential for Harm, Extent of Deviation (Major, Moderate, Minor), and corresponding penalty ranges.

(D) Economic Benefit. Any economic benefits, including delayed and avoided costs that have accrued to the violator as a result of

noncompliance will be added to the penalty amount. Determination will be made by the department using an economic benefit formula that provides a reasonable estimate of the economic benefit of noncompliance.

- 1. The economic benefit is an insignificant amount;
2. There are compelling public concerns that would not be served by taking a case to trial; or
3. It is unlikely that the department would be able to recover the economic benefit in litigation based on the particular case.

(E) Adjustments. The department may add to or subtract from the total amount of the penalty after consideration of the following adjustments:

- 1. Recalculation of penalty amount. After the issuance of an order by the department, if new information about a violation becomes available which indicates that the original penalty calculation may have been incorrect, the department may recalculate the penalty.
2. Good faith efforts to comply. The department may adjust a penalty amount downward if good faith efforts have been adequately documented by the violator.
3. Culpability. In cases of heightened culpability which do not meet the standard of criminal activity, the penalty may be increased at the department's discretion.

The following criteria will be used to determine culpability:

- A. How much control the violator had over the events constituting the violation;
B. The foreseeability of the events constituting the violation;
C. Whether the violator took reasonable precautions against the events constituting the violation;
D. Whether the violator knew or should have known of the hazards associated with the conduct; and

E. Whether the violator knew or should have known of the legal requirement which was violated. This criteria shall be used only to increase a penalty, not to decrease it;

4. History of noncompliance. Where there has been a recent history of noncompliance with the law and any associated rule and/or permit, to a degree deemed significant due to frequency, similarity, or seriousness of past violations, and considering the violator's response to previous enforcement actions, the department may increase the administrative penalty. No downward adjustment is allowed because of this factor;

5. Ability to pay. When a violator has adequately documented that payment of all or a portion of the administrative penalty will preclude the violator from achieving compliance or from carrying out important remedial measures, the department may—

- A. Waive any of the administrative penalty; or
B. Negotiate a delayed payment schedule, installment plan, or penalty reductions with stipulated penalties; and

6. Other adjustment factors. This rule allows for other penalty adjustments based on fairness and equity not mentioned in this rule which may arise on a case-by-case basis.

(4) The proceeds from any administrative penalty assessed in accordance with this rule shall be paid to the county treasurer of the county in which the violation(s) occurred for the use and benefit of the county schools.

(5) Natural Resource Damages. Nothing in this rule shall be construed as satisfying any claim by the state for natural resource damages.

AUTHORITY: sections 319.137 and 319.139, RSMo Supp. 2010. \* This rule originally filed as 10 CSR 20-13.080. Original rule filed Dec. 31, 1991, effective Aug. 6, 1992. Rescinded and readopted: Filed April 15, 1999, effective March 30, 2000. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011.

\*Original authority: 319.137, RSMo 1989, amended 1993, 1995, 2004 and 319.139, RSMo 1981, amended 1993, 2004.