Rules of
Department of Natural Resources
Division 20—Clean Water Commission
Chapter 13—Underground Storage Tanks—Administrative Penalties

Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 20—Clean Water Commission

Chapter 13—Underground Storage Tanks—Administrative Penalties

10 CSR 20-13.080 Penalty Assessment Protocol

PURPOSE: This rule sets forth the protocol used by the Missouri Clean Water Commission for the consistent and equitable assessment of civil penalties. The penalties are authorized and described in the Underground Storage Tank Law, sections 319.127 and 319.139, RSMo.

(1) Pursuant to section 319.127, RSMo, upon determination that any provision of sections 319.100—319.139, RSMo or a corresponding standard, limitation, order or rule, or a term or condition of any permit has been violated, the director of the Department of Natural Resources may issue an order assessing an administrative penalty.

(2) An administrative penalty shall not be imposed for any minor violation as defined in 10 CSR 20-10.012. An administrative penalty shall not be imposed until the director or an authorized department employee has sought to eliminate the violation through a process of conference, conciliation and persuasion (CC&P) consisting of at least two (2) communications separated by no fewer than ten (10) calendar days. At least one (1) of the two (2) required communications must be in writing. An administrative penalty will not be assessed if the violation is corrected in a time period agreed to by the violator and the department during CC&P, provided that the period does not exceed six (6) months and the violation did not result in significant harm to human safety or health, or to the environment.

(3) An order assessing an administrative penalty shall describe the nature of the violations, the amount of the administrative penalty being assessed and the basis for calculating the penalty amount.

(4) An order assessing an administrative penalty shall be served upon the operator, owner or appropriate representative, including the registered agent, 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 registered agent. 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.

(5) Administrative penalties shall be assessed for each day that a specific violation can be proven or reasonably assumed to exist, including all days between separate observations or reports which indicate that an operator or owner is not complying with a particular statutory or regulatory provision if it is logical to presume that the violation continued unabated during that time.

(6) Separate penalty assessments shall be made for each violation. The total penalty assessment specified in the order will be the sum of the individual, violation-specific assessments. The amount of administrative penalty assessed per day of violation for each violation shall not exceed the amount of the civil penalty specified in section 319.127, RSMo.

(7) Calculation of Penalties. The two (2) components listed in subsections (7)(A) and (B) will be evaluated and the two (2) figures will be totaled to arrive at a dollar penalty amount. The components weigh the gravity of the noncompliance and any economic benefits accrued as the result of noncompliance.

(A) The gravity of the noncompliance penalty amount is the combination of two (2) considerations, the occurrence of or the potential for harm to human health or the environment and the extent of deviation from statutory or regulatory requirements. The gravity-based component is adjusted using violator-specific, environmental sensitivity and multiday factors.

(B) Any economic benefit derived by the violation as determined by examining expenses which were avoided or delayed or any actual income derived by the noncompliance.

(C) Calculation of the Gravity-Based Component. The gravity-based component shall be a matrix value which may be modified by other factors. It may be multiplied by a violator-specific factor, by an environmental sensitivity factor and days of noncompliance factor.

1. Matrix value determination. The first step in determining the gravity-based component shall be determining the initial matrix value. The matrix value reflects both the federal Underground Storage Tank Law (USTL) and Resource Conservation and Recovery Act (RCRA) penalty matrices. A matrix has been developed in which two (2) criteria form the axes. The specific cell of the matrix to be used in determining the matrix value is found by determining a gravity level (major, moderate, minor) for both criteria. The criteria which form the matrix axes are the extent of deviation from the law and occurrence of or potential for harm.

A. Extent of deviation from requirement of the statute or any corresponding standard, limitation, order or regulation, or term or condition of any permit. The assessment of the extent of deviation from the provisions of sections 319.100—319.139, RSMo relates to the degree to which the violation departs from or renders ineffective the intended purpose of the specific statutory or regulatory requirement. A violator may be in compliance with most provisions of a requirement, may have totally disregarded the requirement or be at some point between the extremes. The assessment will reflect this range.

B. Actual or potential harm to human health or the environment as a result of a violator's noncompliance. The risk presented by a given violation depends on both the likelihood that humans or the environment may be exposed to the stored products and the extent and effect of the potential exposure. The assessment will reflect the probability that the violation could have resulted in, or did result in, a release of the stored substance and the harm which would result if, or did result when, the product was released to the environment.

C. The gravity levels of the criteria are as follows:

(I) A major deviation from requirement equates to substantial noncompliance and little or no effort to comply. A major potential for harm denotes substantial or continuous health or environmental risks;

(II) A moderate deviation from requirement equates to significant deviation from requirements, but there has been some effort made to comply and the substantial and significant provisions are implemented. A moderate potential for harm denotes a significant risk to health or the environment;

(III) A minor deviation from requirement equates to most, but not all, requirements met including all substantial or significant ones. A minor potential for harm may cause a relatively low health/environmental risk; and

(IV) The table appended to and made part of this rule as Appendix A shall be used to assist in the placement of violations in a specific gravity level and thereby a cell in the matrix. Violations not in Appendix A will be given gravity levels and corresponding matrix placement based on the factors presented in this section of the rule. The underground storage tank (UST) administrative and civil penalty matrix is as follows:

Potential for Harm	Extent of Deviation Major	Moderate	Minor
Major	$1500	$1000	$500
Moderate	$ 750	$ 500	$250
Minor	$ 200	$ 100	$ 0

2. Violator-specific factor adjustment (VSA). To ensure that penalties are assessed in a fair and consistent manner, and take into account case-specific differences, five (5) factors shall be considered. These factors shall be expressed as a positive or negative change to the matrix value. The change to the matrix value using VSA shall not exceed fifty percent (50%) per factor except on approval of the director. The matrix value may be adjusted based on—

A. The violator's degree of cooperation;

B. Degree of willfulness or negligence;

C. History of noncompliance;

D. Status as a habitual violator; and

E. Other unique factors but excluding claims of ignorance of the law or regulation.

3. Environmental sensitivity factor adjustment.

A. Further adjustment to the matrix value will be made by analysis of the environmental sensitivity of the site. For purposes of this rule, environmental sensitivity shall be based on the potential or actual environmental impact at the site and shall be categorized as either low, moderate or high. Factors considered to determine these levels shall be—

(I) Amount of stored substance involved or actually released and the size and number of USTs;

(II) Toxicity of the stored substance;

(III) Explosive conditions or other obvious human health and safety hazards; and

(IV) Geologic or topographic features at the site that would make cleanup difficult or spread the plume of contaminants in an erratic pattern.

B. After determining the level of environmental sensitivity, an environmental sensitivity multiplier (ESM) shall be found in the following table:

Environmental Sensitivity	ESM
Low	1.0
Moderate	1.5
High	2.0

4. Days of noncompliance factor adjustment. The final adjustment that shall be made to the matrix value is a factor that takes into account the number of days of noncompliance. To determine this adjustment, the days of noncompliance multiplier (DNM) shall be located in the following table and the matrix value shall be multiplied by this figure:

Days of Noncompliance	DNM
0—90	1.0
91—180	1.5
181—270	2.0
271—365	2.5
each additional six (6) months	add 0.5

5. The formula for the gravity-based component of the administrative or civil penalty shall be as follows:

Gravity-based penalty = Matrix value × VSA × ESM × DNM

(D) Calculation of the Economic Benefit Component. An economic benefit component shall be calculated and incorporated into the total penalty assessment when a violation results in financial gain by the violator. This component is the sum of delayed costs, avoided costs, actual income derived, if any, and any interest potentially derived. The economic benefit shall be calculated by methods which provide a reasonable estimate of the economic benefits derived from noncompliance which is the subject of the penalty assessment. This dollar figure shall be added to the dollar figure representing the gravity-based component and the sum shall be the final total penalty for the violation.

(E) Other Factors. This rule allows for other penalty modifications based on fairness and equity which are not mentioned in this rule and may arise on a case-by-case basis.

(8) Civil Penalties. Though primarily intended to relate to administrative matters, the procedures and concepts presented in this rule may be used in the development of civil penalties pursuant to section 319.127, RSMo.

(9) 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.

APPENDIX A

Violation	Deviation From Requirement	Potential for Harm	Matrix Value
UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION (Violations of the requirements of 10 CSR 20-10.020—10 CSR 20-10.022)			
Performance standards for new UST systems			
Installation of an improperly constructed fiberglass-reinforced plastic tank	Major	Major	$ 1500
Installation of an improperly designed and constructed metal tank that fails to meet corrosion protection standards	Major	Moderate	$ 750
Installation of a metal tank with unsuitable dielectric coating	Major	Moderate	$ 750
Installation of an improperly designed cathodic protection system for a metal tank	Moderate	Moderate	$ 500
Improper installation of cathodic protection system for a metal tank	Moderate	Moderate	$ 500
Improper operation and maintenance of tank cathodic protection system	Major	Moderate	$ 750
Installation of an improperly constructed steel-fiberglass-reinforced-plastic tank	Major	Moderate	$ 750
Installation of improperly constructed fiberglass-reinforced plastic piping	Major	Major	$ 1500
Failure to provide any cathodic protection for metal piping	Major	Moderate	$ 750
Installation of piping with unsuitable dielectric coating	Major	Moderate	$ 750
Installation of improperly designed cathodic protection for metal piping	Moderate	Moderate	$ 500
Improper installation of cathodic protection system for piping	Moderate	Moderate	$ 500
Improper operation and maintenance of cathodic protection system for metal piping	Major	Moderate	$ 750
Failure to install any spill prevention system	Major	Major	$ 1500
Installation of inadequate spill prevention equipment in a new tank	Major	Major	$ 1500
Failure to install any overfill prevention system	Major	Moderate	$ 750
Installation of inadequate overfill prevention equipment in a new tank	Major	Moderate	$ 750
Failure to install tank in accordance with accepted codes and standards	Varies[1]	Varies[1]	see matrix
Failure to install piping in accordance with accepted codes and standards	Varies[1]	Varies[1]	see matrix
Failure to provide any certification of UST installation	Moderate	Minor	$ 100
Failure to provide complete certification of UST installation	Minor	Minor	$ 0
Upgrading of existing UST systems			
Failure to meet all tank upgrade standards	Major	Major	$ 1500
Improper installation of interior lining for tank upgrade requirements	Major	Major	$ 1500
Failure to meet interior lining inspection requirements for tank upgrade	Major	Moderate	$ 750
Failure to ensure that tank is structurally sound before installing cathodic protection	Major	Moderate	$ 750
Failure to provide any monthly monitoring of cathodic protection for tank upgrade requirement	Major	Major	$ 1500
Failure to provide continuous monthly monitoring of cathodic protection for tank upgrade requirement	Moderate	Minor	$ 100
Failure to meet tightness test requirements for a tank upgraded with cathodic protection	Major	Moderate	$ 750
Failure to meet requirements for testing for corrosion holes for a tank upgraded with cathodic protection	Major	Moderate	$ 750
Failure to install any cathodic protection for metal piping upgrade requirements	Major	Major	$ 1500
Failure to meet tightness test requirements for cathodically protected metal piping	Major	Moderate	$ 750
Failure to provide spill prevention system for an existing tank	Major	Major	$ 1500
Failure to provide overfill prevention system for an existing tank	Major	Moderate	$ 750
Notification requirements			
Failure to notify state or local agency within thirty (30) days of bringing a UST system into use	Major	Major	$ 1500
Failure to notify designated state or local agency of existing tank	Major	Major	$ 1500
Failure to identify on the submitted notification form all known tanks at that site	Major	Moderate	$ 750
Failure to submit a separate notification form for all notified tanks that are located at a separate place of operation	Major	Minor	$ 200
Failure to provide complete certification of all requirements on the notification form	Moderate	Minor	$ 100
Failure to inform tank purchaser of notification requirements	Major	Major	$ 1500
GENERAL OPERATING REQUIREMENTS (Violations of the requirements of 10 CSR 20-10.030—10 CSR 20-10.034)			
Spill and overfill control			
Failure to take necessary precautions to prevent overfill/spillage during the transfer of product	Major	Major	$ 1500
Failure to report a spill/overfill	Major	Major	$ 1500
Failure to investigate and cleanup a spill/overfill	Major	Major	$ 1500

Violation	Deviation From Requirement	Potential for Harm	Matrix Value
Operation and maintenance of corrosion protection			
Failure to operate and maintain corrosion protection system continuously	Major	Major	$ 1500
Failure to ensure that cathodic protection system is tested within six (6) months of installation	Major	Major	$ 1500
Failure to ensure that cathodic protection system is tested every three (3) years after that	Major	Moderate	$ 750
Failure to meet one (1) three (3)-year test for cathodic protection system	Moderate	Minor	$ 100
Failure to inspect cathodic protection system in accordance with accepted codes	Major	Moderate	$ 750
Failure to inspect impressed current systems every sixty (60) days	Major	Moderate	$ 750
Failure to maintain any records of cathodic protection inspections	Major	Moderate	$ 750
Failure to maintain every record of cathodic protection inspections	Moderate	Minor	$ 100
Compatibility			
Failure to ensure that UST system is made of or lined with materials compatible with substance stored	Major	Major	$ 1500
Repairs allowed			
Failure to repair UST system in accordance with accepted codes and standards	Varies[1]	Varies[1]	see matrix
Failure to repair fiberglass-reinforced UST in accordance with accepted codes and standards	Varies[1]	Varies[1]	see matrix
Failure to replace metal piping that has released product	Major	Major	$ 1500
Failure to repair fiberglass-reinforced piping in accordance with manufacturer's specifications	Major	Major	$ 1500
Failure to ensure that repaired tank systems are tightness tested within thirty (30) days of completion of repair	Major	Moderate	$ 750
Failure to test cathodic protection system within six (6) months of repair of a UST system	Major	Moderate	$ 750
Failure to maintain records of each repair to a UST system	Major	Major	$ 1500
RELEASE DETECTION (Violations of the requirements of 10 CSR 20-10.040—10 CSR 20-10.045)			
General requirements for all UST systems			
Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product	Major	Major	$ 1500
Failure to install, calibrate, operate or maintain release detection method in accordance with manufacturer's instructions	Major	Major	$ 1500
Failure to provide a release detection method that meets the performance requirements in the regulations	Major	Major	$ 1500
Failure to notify the department when release detection indicates release	Major	Major	$ 1500
Failure to provide any release detection method by phase-in date	Major	Major	$ 1500
Failure to close any UST system that cannot meet release detection requirements	Major	Major	$ 1500
Requirements for petroleum UST systems			
Failure to monitor tanks at least every thirty (30) days, if appropriate	Major	Major	$ 1500
Failure to conduct tank tightness testing every five (5) years, if appropriate	Major	Major	$ 1500
Failure to conduct annual tank tightness testing, if appropriate	Major	Major	$ 1500
Failure to use any underground piping monitoring method	Major	Major	$ 1500
Requirements for hazardous substance UST systems			
Failure to provide release detection for an existing hazardous substance tank	Major	Major	$ 1500
Failure to provide adequate release detection for a new hazardous substance UST system	Major	Major	$ 1500
Failure to provide adequate secondary containment of tank for a hazardous substance UST	Major	Major	$ 1500
Failure to provide adequate double-walled tank/adequate lining for a hazardous substance UST	Major	Major	$ 1500
Failure to provide adequate external liners for a hazardous substance UST	Major	Major	$ 1500
Failure to provide adequate secondary containment of piping for a hazardous substance UST	Major	Major	$ 1500
Methods of release detection for piping			
Failure to provide any release detection for underground piping	Major	Major	$ 1500
Failure to provide adequate line leak detector system for underground piping	Major	Major	$ 1500
Failure to provide adequate line tightness testing system for underground piping system	Major	Major	$ 1500
Inadequate use of applicable tank release detection methods	Major	Major	$ 1500

Violation	Deviation From Requirement	Potential for Harm	Matrix Value
Release detection recordkeeping			
Failure to maintain any records of release detection monitoring	Major	Major	$ 1500
Failure to maintain every record of release detection monitoring	Moderate	Minor	$ 100
Failure to document all release detection performance claims for five (5) years after installation	Moderate	Minor	$ 100
Failure to maintain any results of sampling, testing or monitoring for release detection for at least one (1) year	Major	Major	$ 1500
Failure to maintain every result of sampling, testing or monitoring for release detection for at least one (1) year	Moderate	Minor	$ 100
Failure to retain results of tightness testing until next test is conducted	Major	Major	$ 1500
Failure to document any calibration, maintenance and repair of release detection	Major	Major	$ 1500
Failure to document every calibration, maintenance and repair of release detection	Moderate	Moderate	$ 500
RELEASE REPORTING, INVESTIGATION AND CONFIRMATION (Violations of the requirements of 10 CSR 20-10.050—10 CSR 20-10.053)			
Reporting of suspected release			
Failure to report a suspected release within twenty-four (24) hours to the department	Major	Major	$ 1500
Release investigation and confirmation steps			
Failure to investigate and confirm a release (if appropriate) using accepted procedures	Major	Major	$ 1500
Reporting and cleanup of spills and overfills			
Failure to report a spill/overfill (if appropriate) to the department within twenty-four (24) hours (or other specified time period)	Major	Major	$ 1500
Failure to contain and immediately cleanup a spill/overfill of less than twenty-five (25) gallons	Major	Major	$ 1500
Failure to contain and immediately cleanup a hazardous substance spill/overfill	Major	Major	$ 1500
RELEASE RESPONSE AND CORRECTIVE ACTION (Violations of the requirements of 10 CSR 20-10.060—10 CSR 20-10.067)			
Failure to take initial response actions within specified time period after a release is confirmed	Major	Major	$ 1500
Failure to submit report on initial abatement measures within twenty (20) days (or other specified time) of release confirmation	Major	Major	$ 1500
Failure to submit report on initial site characterization within forty-five (45) days (or other specified time) of release confirmation	Major	Major	$ 1500
Failure to submit report on free product removal within forty-five (45) days (or other specified time) of release confirmation	Major	Major	$ 1500
OUT-OF-SERVICE UST SYSTEMS AND CLOSURE (Violations of the requirements of 10 CSR 20-10.070—10 CSR 20-10.074)			
Temporary closure			
Failure to continue operation and maintenance of cathodic protection system in a temporarily closed tank system	Major	Moderate	$ 750
Failure to continue operation and maintenance of release detection in a temporarily closed tank system	Major	Major	$ 1500
Failure to comply with temporary closure requirements for a tank system for three (3) or more months	Major	Moderate	$ 1500
Failure to permanently close or upgrade a temporarily closed tank system after twelve (12) months	Major	Major	$ 1500
Permanent closure and changes-in-service			
Failure to notify the department of a closure or change-in-service	Major	Major	$ 1500
Failure to remove all liquids and sludges for tank closure	Major	Major	$ 1500
Failure to remove closed tank from the ground or fill tank with an inert solid for tank closure	Major	Moderate	$ 750
Failure to empty and clean tank system and conduct a site assessment prior to a change-in-service	Major	Major	$ 1500
Assessing the site at closure or change-in-service			
Failure to measure (if required) for the presence of a release before a permanent closure	Major	Major	$ 1500
If contaminated soil, contaminated groundwater or free product is discovered, failure to begin corrective action	Major	Major	$ 1500

Violation	Deviation From Requirement	Potential for Harm	Matrix Value
Closure records			
Failure to maintain closure records for at least three (3) years	Major	Major	$ 1500
Failure to maintain change-in-service records for at least three (3) years	Major	Major	$ 1500
FINANCIAL RESPONSIBILITY (Violations of the requirements of 10 CSR 20-11.090—10 CSR 20-11.111)			
Failure to comply with financial responsibility requirements by the required phase-in time	Major	Moderate	$ 750
Failure to meet the requirement for per-occurrence coverage of insurance	Major	Moderate	$ 750
Failure to meet the requirement for annual aggregate coverage of insurance	Major	Moderate	$ 750
Failure to review and adjust financial assurance after acquiring new or additional USTs	Major	Moderate	$ 750
Use of an unapproved mechanism or combination of mechanisms to demonstrate financial responsibility	Major	Moderate	$ 750
Use of falsified financial documents to pass financial test of self-insurance	Major	Moderate	$ 750
Failure to report evidence of financial responsibility to the department within thirty (30) days of detecting a known or suspected release	Moderate	Minor	$ 100
Failure to report evidence of financial responsibility to the department when new tanks are installed	Moderate	Minor	$ 100
Failure to report evidence of financial responsibility to the department if the provider becomes incapable of providing financial assurance and the owner or operator is unable to obtain alternate coverage within thirty (30) days	Moderate	Minor	$ 100
Failure to maintain copies of the financial assurance mechanism(s) used to comply with financial responsibility rule and certification that the mechanism is in compliance with the requirements of the rule at the UST site or place of business	Moderate	Minor	$ 100

[1]Deviation from requirement and potential from harm will vary depending upon specific code or standard violated.

Auth: sections 319.137 and 644.026, RSMo (Cum. Supp. 1990). Original rule filed Dec. 31, 1991, effective Aug. 6, 1992.