

TDEC


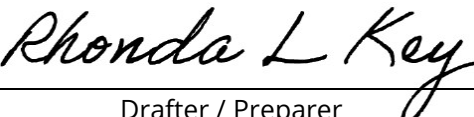
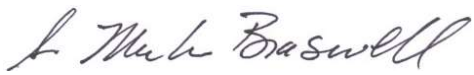
Division of Underground Storage Tanks

Enforcement Policy

~~June 24, 2022~~April 5, 2024 (DRAFT)

DISCLAIMER: This document is policy only and does not create legal rights or obligations. It is intended to provide ~~division~~Division staff guidance on how to apply decisions, procedures and practices pertaining to the internal operation or actions of the ~~division~~Division. Decisions affecting the public, including the regulated community, in any particular case will be made applying applicable laws and regulations to the specific facts. Mention of trade names or commercial products does not constitute an endorsement or recommendation for use.

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	<u>4/5/2024</u> 3/16/2023
Division Director	Date
	<u>4/5/2024</u> 3/16/2023
Drafter / Preparer	Date
	<u>4/5/2024</u> 3/16/2023
Reviewer	Date

Revision Number	Date	Brief Summary of Change
0	2013	SOP created
1	6/24/2022	Revised per rule changes effective 10/13/2018 -& 6/15/2021
2	<u>3/14</u> 8/2 /2023	Revised settlement policy & housekeeping changes
<u>3</u>	<u>4/5/2024</u>	<u>Operator retraining process & housekeeping changes</u>

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FIELD OFFICE CASE MANAGEMENT ENFORCEMENT REFERRAL PROCESS

- (1) Hazard Abatement
 - (a) If imminent or substantial threat (petroleum vapors or free product in utilities, buildings, drinking water impacts, etc.). Were hazards properly reported?
 1. No. Issue FO-084a.
 2. Yes. Continue to step (1)(b).
 - (b) Were Hazard Abatement activities initiated?
 1. No. Immediately refer to Enforcement by phone or electronic mail and LUST TRUST.
 2. Yes. Continue to next phase of investigation unless initial abatement activities are discontinued without Division approval. Refer to step (1)(a).
- (2) Deficient Reports and Plans [including Hazard Notification Report (HNR), Initial Response and Hazard Management Report (IRHMR), Corrective Action Plan (CAP), Corrective Action Monitoring Report (CAMR), etc.]
 - (a) Were deficient reports sufficiently addressed to the satisfaction of the EFOM after issuance of applicable FO-085 letter (see EXHIBIT E – Major Deficiencies for Corrective Action Enforcement Referral)?
 1. Yes. Continue to step (3).
 2. No. Issue FO-085sn letter with new 15 day deadline (unless deficiency requiring additional time i.e. proper installation of borings/monitoring wells)
 - (b) Were deficient reports sufficiently addressed to the satisfaction of the EFOM after issuance of FO-85sn, pursuant to step (2)(a)2.?
 1. Yes. Continue to applicable step.
 2. No. Issue FO-085EAN Enforcement Action Notice and refer to Enforcement.
- (3) Release Investigation
 - (a) Was release investigation initiated?
 1. Yes, but report not received. Was extension requested?
 - (i) Yes. Issue FO-055 letter with a 30 day deadline if reasonable (Respondent may request up to two extensions, the second not to exceed 15 days.) If still not received after second extension, issue FO-084EAN Enforcement Action Notice and refer to Enforcement.
 - (ii) No. Issue FO-084b or FO084d Letter with new 15 day deadline. If still not received, issue FO-084b or FO-084d deadline, issue FO-084EAN Enforcement Action Notice and refer to Enforcement.
 2. No and report not received. Was extension requested?

- (i) Yes. Issue FO-055 with a 30 day deadline if reasonable (no additional extensions allowed unless special issue as outlined in attachment). If still not initiated, issue FO-079 EAN Enforcement Action Notice and refer to Enforcement.
 - (ii) No. Issue FO-079EAN Enforcement Action Notice and refer to Enforcement.
- (4) Corrective Action (includes CAP, Corrective Action Monitoring, Closure Monitoring, Well Abandonment, etc.)
 - (a) Was Pre-CAP meeting attended? Division would like a clarification of "Time to schedule the Pre-CAP"
 - 1. Yes, but CAP not received. Was extension requested?
 - (i) Yes. Issue FO-055 letter with a 30 day deadline if reasonable (Respondent may request up to two extensions, the second not to exceed 15 days.) If still not received after second extension, issue FO-084EAN Enforcement Action Notice and refer to Enforcement.
 - (ii) No. Issue FO-084e Letter with new 15 day deadline. If still not received, refer to Enforcement.
 - 2. No, and CAP not received. Was extension requested?
 - (i) Yes. Issue FO-055 with a 30 day deadline if reasonable (no additional extensions allowed unless special issue as outlined in attachment).
 - (ii) No. Issue FO-084EAN and refer to Enforcement.
 - (b) Was CAP implemented as approved?
 - 1. Yes. Continue to next step (Conduct clean-up, monitoring well abandonment, case closure as applicable).
 - 2. No. Was it correctable?
 - (i) Yes. Issue FO-089a with a 30 day deadline to correct.
 - (ii) No. EFOM contact regional Corrective Action Expert to determine if major deviation from the approved CAP and track on contractor spreadsheet.
 - (I) If determined to be major, issue FO-85EAN Enforcement Action Notice and refer to Enforcement.
 - (II) If determined to be minor, issue FO-089a to notify contractor of potential removal from CAC list.

FIELD OFFICE PERMANENT CLOSURE ENFORCEMENT REFERRAL PROCESS

- (1) Permanent Closure Application (PCA)
 - (a) Was PCA filed prior to conducting closure?
 1. Yes. Continue to (1)(b).
 2. No. Issue FO-029 Enforcement Action Notice and refer to Enforcement.
 - (b) Was PCA deficient?
 1. Yes. Issue FO-022 with a 30 day deadline to correct.
 2. No. Continue to step (2).
 - (c) Was deficient PCA sufficiently addressed to the satisfaction of the EFOM?
 1. Yes. Issue FO-023. (Unless the tanks are being required to be closed due to Enforcement action. Then give the deadline indicated in the Director's Order.)
 2. No. (If the tank closure was required by a Director's Order, then notify Enforcement by phone or electronic mail.)
 3. No. (If not required by Director's Order-Issue FO-022a letter with new 15 day deadline.)
- (2) Permanent Closure Report (PCR)
 - (a) Was PCR submitted after conducting closure?
 1. Yes. Report approved. Issue FO-0009 or FO-0020.
 2. Yes. Report deficient. Continue to step (3).
 3. No. Was extension requested?
 - (i) Yes. Issue FO-055 letter with a 30 day deadline if reasonable. (Respondent may request up to two extensions, the second not to exceed 15 days.). If not submitted after extension requests are exhausted, then issue FO-093EAN Enforcement Action Notice and refer to Enforcement.
 - (ii) No. Issue FO-084c letter with new 15 day deadline. (If not submitted thereafter, then issue FO-093EAN Enforcement Action Notice and refer to Enforcement.)
- (3) Were deficient reports sufficiently addressed to the satisfaction of the EFOM after issuance of applicable form letter?
 - (a) Yes. Continue to step IV.
 - (b) No. Issue FO-085EAN Enforcement Action Notice and refer to Enforcement.

(4) Closure Implementation

(a) Was closure required by a Director's Order?

1. Yes, continue to step (b).
2. No and PCA is only valid for 12 months from date of approval. Go to step (c).

(b) Was closure conducted?

1. Yes, go to step (d).
2. No, notify the Enforcement Section by phone or electronic mail.

(c) Was closure conducted within the 12 months from date of approval?

1. Yes, continue to step (d).
2. No. (If not required by Director's Order, closure is no longer valid.)
3. No. (If the tank closure was conducted outside the 12 month approval, issue FO-023EAN Enforcement Action Notice and refer to Enforcement.)

(d) Was closure conducted in accordance with the approved closure plan (PCA) and Appendix 0400-18-01-.07-A of the rules?

1. Yes. Issue FO-020 or FO-009.
2. No. Was it correctable?
 - (i) Yes. Issue FO-093CV with a 30 day deadline to correct with required documentation.
 - (ii) No. EFOM determine if major deviation from the approved PCA.
 - (I) If determined to be major, issue FO-093NCV Enforcement Action Notice and refer to Enforcement (See FO-036a for draft).
 - (II) If determined to be minor, issue FO-020 or FO-009.

Operational Compliance Inspections Enforcement Referral Process

NOTES:

~~*—Any inspection where full compliance has NOT been met should be referred to enforcement.~~

~~Any inspection required to complete operator retraining that missed their 90-day deadline should be referred to enforcement. If owners and operators choose to attend Tank School to meet the retraining requirement, they must pass with a 70 or above. Owners and operators who fail initial retraining but complete the course again with passing results or complete retraining on Tank Helper within the 90-day time frame will satisfy the requirement.~~

~~**—If the inspection is for a release, review 09(6) document. The process will be worked differently in that instance.~~

(1) Schedule inspection¹ according to normal inspection process.

(2) Review records if received in an adequate time frame.

(3) Conduct inspection (review any records not submitted prior to the inspection).

(4) Violations found?

(a) ~~No~~— Issue FO-037 results of compliance inspection.

(b) ~~Yes~~—

1. Operator Retraining Violation discovered?

(i) ~~No~~— Violations needing documentation discovered?

I. ~~No~~— Issue FO-036VC results of compliance inspection letter within 1 week (unless interpretation needed on a specific issue).

II. **Yes**

A. ~~Non 9(6) inspection~~: Issue appropriate FO-036 results of compliance inspection letter within 1 week (unless interpretation needed on a specific issue) with 30-day deadline. Follow normal inspection process from this point.

¹ Follow scheduling timelines appropriate for the operational compliance inspection (14a & 9(6)).

~~B. **9(6) inspection:** Issue FO-036FED results of compliance inspection letter within 1 week (unless interpretation needed on a specific issue) with 30-day deadline. Refer to Enforcement Section if non-compliance not corrected in 30-days.~~

~~(ii) **Yes** - Violations needing documentation discovered?~~

~~I. **No**~~

~~A. **Non 9(6) inspection:** Issue FO-036OR letter within 1 week (unless interpretation needed on a specific issue) with a 90-day deadline for operator retraining (passing Tank School or Tank Helper completion). Was operator retraining successfully completed (certificate submitted or no record of completion in Tank Helper or SharePoint for Tank School)?~~

~~i. **No** - Issue EAN and refer to enforcement.~~

~~ii. **Yes** - Close inspection.~~

~~B. **9(6) inspection:** Issue FO-036FED letter within 1 week (unless interpretation needed on a specific issue) with a 30-day deadline for return to compliance and operator retraining. Was operator retraining successfully completed (certificate submitted or no record of completion in Tank Helper or SharePoint for Tank School)?~~

~~i. **No** - Issue an EAN and Refer to enforcement.~~

~~ii. **YES** - Close inspection and complete 9(6) process, see *9(6) Inspection Process Guidance*.~~

~~II. **Yes**~~

~~A. **Non 9(6) inspection:** Issue FO-036OR results of compliance inspection letter within 1 week (unless interpretation needed on a specific issue) with 30-day deadline for return to compliance and 90-day deadline for operator retraining. Did facility meet the initial 30-day compliance deadline:~~

~~i. **No** - Issue FO-036f maintaining the 90-day operator retraining deadline from the original letter. Did the facility return to compliance?~~

~~i. **Yes** - Track the operator retraining requirement, maintaining the 90-day deadline from the original letter. Close after A and B Operator certificate submitted. If certificate not submitted prior to the compliance deadline, confirm unsuccessful completion of operator retraining through Tank Helper or SharePoint for Tank School and refer to enforcement section.~~

~~ii. **No** - Refer to enforcement with an EAN.~~

~~ii. **Yes**, track the operator retraining requirement for the remaining 90 days. Close after receipt of A and B Operator certificate (either Tank Helper or Tank School). If certificate not submitted prior to the compliance deadline,~~

~~confirm unsuccessful completion of operator retraining through Tank Helper or SharePoint for Tanks School and refer to enforcement section.~~

~~B. **9(6) inspection:** Issue FO-036FED letter within 1 week (unless interpretation needed on a specific issue) with a 30-day deadline for return to compliance and operator retraining (Tank School or Tank Helper certificate). Was operator retraining successfully completed (certificate submitted or no record of completion in Tank Helper or SharePoint for Tank School)?~~

~~i. **No** – Refer to Enforcement Section if non-compliance not corrected in 30 days.~~

~~ii. **YES** – Close inspection and complete 9(6) process, see *9(6) Inspection Process Guidance*.~~

Additional Information:

~~* – If documentation is submitted that demonstrates compliance at the time of inspection then that violation would not require operator retraining. If all violations are resolved in this way, an FO-39a can be sent.~~

~~** – Tank School compliance extensions cannot be granted. If the owner/operator successfully completes tank school by the compliance date, compliance extensions may be granted per the enforcement standard operating procedures.~~

Facility ID# _____
Inspection # _____

ENFORCEMENT ACTION REFERRAL CHECKLIST

Please use this checklist to help organize a complete and thorough EAR before sending to Enforcement. This list will supplement information found from the Standardized Inspection Process and will help Enforcement present the strongest case possible for OGC. Use the checklist as a quick, easy reference to make sure all necessary documents are included in the EAR which will expedite the enforcement process. Make a check by each item that is included and leave a note indicating why items are not included. Please include the checklist in the EAR packet.

Compliance Inspection Information and Documents. (Place in reverse chronological order.)

Inspection Documents

- Phone log/email and letter scheduling the inspection.
- Operational Compliance Inspection Report with full name, and nickname if applicable, of who attended the inspection and how they are associated with the facility.
- All letters (Results of Inspection/No Response Received/Enforcement Action Notice). All green cards or tracking pages from USPS, if green card is unavailable.
 - Unclaimed - Upload the postal notice. The referral may proceed.
 - Refused - Upload the postal notice. The referral may proceed.
 - Hand-delivered - Upload the signed and dated document. The referral may proceed.
 - Unable to deliver - Upload the postal notice and contact an enforcement staff member for assistance. The referral may not proceed until a valid address is located.
- All letters addressed to or received from the owner/operator.
- Any email/phone log conversations with the owner/operator and/or service provider.
- All compliance documentation received and method it was received (i.e. copy of email or fax cover letter)

**Please note that all documents should contain a date. When a document is sent out by fax include the delivery confirmation. When a document is hand-delivered by UST staff, include a line for the date of delivery and a line for the signature of the person to whom it is delivered.

Miscellaneous Information (provide the total amount of each below regardless of the number in violation)

- Number of product piping/tank compartments at the facility and their current status. Include this information if it is different than what is reflected in the notification database: _____
Note if more than one product piping from a tank.
- Number of spill buckets at the facility (Please note remote fills): _____
- Number of dispensers at the facility: _____
- Is secondary containment currently in place at the facility even if installed before 2007?
 - Dispenser sumps
 - STP sumps
 - Piping

Full legal name of all people with whom you spoke, applicable nicknames in parentheses, and how each is associated with the facility.

- 1.) _
- 2.) _
- ~~3.) _~~

Full legal name of any additional ~~division~~Division or department staff who accompanied the inspector.

- 1.) _
- 2.) _

~~3.)~~

Any photos with the date taken and initials of inspector present. All color photos must be scanned in color and left in their original size. Please include a description of the photo contents if possible.

Let the assigned Enforcement Case Manager know if any compliance documentation is received after the case has been referred to enforcement (email all documents to assigned enforcement case manager).

Inspectors will be copied on the emails assigning enforcement staff to cases to help facilitate this communication.

Signature _____ Date _____

ENFORCEMENT ACTION REFERRAL REVIEW PROCESS

(1) Enforcement Action Request (EAR) received.

(a) Contamination Case. Is the EAR signed by the Field Office Manager?

1. Yes – Start case.
2. No – Refer back to the FO for Field Office Manager signature.

(b) Tank Closure Case. Is the EAR signed by the Field Office Manager?

1. Yes – Start case.
2. No – Refer back to the FO for Field Office Manager signature.

(c) Compliance Case – Open Violation?

~~1. No – Verify that one of the automatic enforcement violations (AEV) was found (see attached Exhibit A).~~

~~(i) AEV violation found – Has the respondent been to tank school in last 6 years?~~

~~(i) No – Issue Notice of Violation – Tank School Only letter.~~

~~I. Tank owner attends tank school – close the case as “Closed (NOV)”.~~

~~II. Tank owner doesn’t contact division to reschedule and does not attend tank school – issue expedited 20/80 order.~~

~~(ii) Yes – Issue expedited 20/80 order.~~

~~(ii) 1. No AEV violation found – Close case as “Inactive”. Issue Case Closed Without Order letter (CO-020)~~

2. Yes – Issue Notice of Violation letter (template – see attached Exhibit B) with 30 day deadline.

(i) Compliance documents received

(I) In compliance – ~~Issue Case Closed Without Order letter (CO-020)~~

~~I. AEV violation – Go to (1)(c)1 above.~~

~~II. No AEV violation – Make the case “Closed (No AEV)” in the database.~~

(II) Not in compliance – Issue Standard Director’s Order.

(ii) No compliance documents received – Issue Standard Director’s Order. Civil penalties will only be assessed for violations that have not been corrected ~~and for any AER violations listed in Exhibit A. If and operator retraining violation was discovered and operator retraining was not completed prior to issuance of an order, the order will require operator retrainins within 90 days of the date the order is received. If the order is a tank closure order, the Permanent Closure Application is due in 30 days from the date of receipt of the order and the Permanent Closure Report is due in 60 days from the~~

[approval of the Permanent Closure Application.](#) (Note: All orders will need to be resolved through the Office of General Counsel).

PREVIOUS OWNER FEE ONLY CASE PROCESS

- (1) Facility has new owner, but previous owner owes fees.
- (2) Has previous owner been invoiced for the fees?
 - (a) Yes – Send Previous Owner Fee Only Case Referral (Exhibit D) to UST.EAR@tn.gov.
 1. Referral form must include:
 - (i) Past due tank fees, penalties, and interest summary sheet;
 - (ii) Notification form showing the tanks were transferred out of the previous owner's name; and
 - (iii) Copies of invoices and statements sent to the previous owner.
 2. Enforcement Staff will verify that no previous enforcement action against previous owner went to court.
 - (b) No – Check with Deputy Director of Central Office on how to proceed.

REVISED ENFORCEMENT OF ILLEGAL PETROLEUM DELIVERIES PROCESS

This policy rescinds and replaces all former policies regarding illegal petroleum deliveries. All penalty calculations contained within this memorandum are in accordance with TDEC's standard penalty calculation process.

1. When conducting facility inspections, if illegal deliveries are suspected, the field personnel should attempt to procure the drop tickets.
2. All records should be forwarded to the enforcement manager following the established enforcement action referral process.
3. The enforcement action request must include information concerning any environmental impact that occurred during the time the system was operated illegally and received illegal deliveries of petroleum. The enforcement action request must include information about any sensitive receptors in the area like public or private drinking water wells, wellhead protection areas, or petroleum vapor impacts to buildings as measured by a properly calibrated photoionization detector or flame ionization detector and distinguishable from background and subsurface utilities that were impacted by the release. The illegal deliveries will then be classed as one of the potential for harm classifications listed below.
 - a. Minor – No environmental impact.
 - b. Moderate – Soil impact only Division response to “and non potable groundwater,” “potable,” and “NPDW” - This break down follows the department position of either no or known environmental impact.
 - c. Major – Releases contaminating groundwater or causing petroleum vapor impacts to a building or subsurface structure as measured by a properly calibrated photoionization detector or flame ionization detector and distinguishable from background.
4. Upon receipt, the referral shall be assigned to enforcement staff and the illegal deliveries will be classed as one of the deviation from rule classifications listed below.
 - a. Minor – Deliveries made to non-notifying tank systems that meet construction standards. Non-notifying tanks are tanks that have not been properly registered with the Division.
 - b. Moderate – Deliveries made to non-notifying substandard tank systems.
 - c. Major – Deliveries made to red-tagged tanks where the tags have been removed without authorization “by the fuel distributor/common carrier.”
5. Enforcement staff shall calculate the civil penalty in an order against the tank owner/operator as follows:
 - a. Minor/Minor (Deliveries made to a site with no environmental impact and with non-notifying tank systems that meet construction standards) = \$100.00
 - b. Moderate/Minor (Deliveries made to a site with soil impact only and with non-notifying tank systems that meet construction standards) = \$1,200.00
 - c. Major/Minor (Deliveries made to a site with where the release contaminated groundwater or caused a vapor impact to a building or subsurface structure and with non-notifying tank systems that meet construction standards) = \$4,400.00
 - d. Minor/Moderate (Deliveries made to a site with no environmental impact and with non-notifying substandard tank systems) = \$200.00

- e. Moderate/Moderate (Deliveries made to a site with soil impact only and with non-notifying substandard tank systems) = \$2,000.00
 - f. Major/Moderate (Deliveries made to a site where the release contaminated groundwater or caused a vapor impact to a building or subsurface structure and with non-notifying substandard tank systems) = \$6,000.00
 - g. Minor/Major (Deliveries made to a site with no environmental impact and with red-tagged tanks where the tags have been removed without authorization) = \$600.00
 - h. Moderate/Major (Deliveries made to a site with soil impact only and with red-tagged tanks where the tags have been removed without authorization) = \$3,200.00
 - i. Major/Major (Deliveries made to a site where the release contaminated groundwater or caused a vapor impact to a building or subsurface structure and with red-tagged tanks where the tags have been removed without authorization) = \$8,000.00
6. Next, calculate the multiday penalty. (Percentages in the table are % of the statutory maximum of \$10,000.00.)
- a. Minor/Minor = 0.4% X total days without notifying = \$40.00 X total days without notifying
 - b. Moderate/Minor = 0.6% X total days without notifying = \$60 X total days without notifying
 - c. Major/Minor = 2% X total days without notifying = \$200 X total days without notifying
 - d. Minor/Moderate = 0.4% X total days without notifying = \$40 X total days without notifying
 - e. Moderate/Moderate = 1% X total days without notifying = \$100 X total days without notifying
 - f. Major/Moderate = 3% X total days without notifying = \$300 X total days without notifying
 - g. Minor/Major = 0.4% X total days with an illegal delivery = \$40 X total days with an illegal delivery
 - h. Moderate/Major = 1.6% X total days with an illegal delivery = \$160 X total days with an illegal delivery
 - i. Major/Major = 4% X total days with an illegal delivery = \$400 X total days with an illegal delivery
7. If the tank owner/operator has returned to compliance, the order will require the respondent to pay 25% upfront with the remaining 75% contingent upon no illegal deliveries in the 12 months following the issuance of the order. If other compliance violations were also discovered, the probation will be for no illegal deliveries and no ~~automatic enforcement referral~~ Probation ~~v~~ violations listed in Exhibit A in the 12 months following the issuance of the order.
- Further, the order will state that the Division shall seek additional civil penalties for any newly discovered, illegal deliveries. The civil penalties in the follow-up order shall be calculated using the same rationale listed above, and the order will require that the tank owner/operator pay full face value of the civil penalty.
- If the illegal delivery occurred at a facility where a red tag was removed, then the case will be referred to the criminal section for possible criminal action in accordance with T.C.A. § 68-215-106(d).
8. Enforcement staff shall prepare an order against the fuel distributor/common carrier that assesses a civil penalty using the same rationale as item 5. above, but the multiday penalty will be assessed using the number of illegal delivery days. (Note: This penalty cannot be assessed if the facility was not registered.)
9. Repeat offender – The penalty may be increased up to 50% upon a showing that the owner/facility has a history of non-compliance, providing the penalty does not exceed the \$10,000.00 statutory per day per violation maximum.

CIVIL PENALTY CALCULATION PROCESS

The Division will begin using the Department's standard penalty calculation. Penalties will be assessed on a per site basis. The Division may recognize minor offenders and/or those that have returned to compliance by issuing expedited orders with reduced penalties, such as expedited 20/80 orders.

~~All contingent penalties are contingent upon the facility having no Probation Violations as set forth in Exhibit A for a period of one year from the date the order is signed by the director. If a Probation Violation occurs during the one-year probationary period, then the original full civil penalty will become due. All contingent penalties are based on no additional automatic enforcement referral violations for a period of one year from the date the order is signed by the director.~~

However, to continue to limit any inconsistencies amongst the orders, the penalty matrix will be rewritten to show how each penalty will fall in the matrix provided (see EXHIBIT K)

UNIFORM GUIDANCE FOR THE CALCULATION OF CIVIL PENALTIES. The method for calculating penalties consists of the following steps, calculated for each violation or class of violations of the statute or of the regulations:

1. Determine a gravity-based penalty amount for a violation from the Gravity Based Penalty Matrix;
2. Add a "multi-day" component, where appropriate, in consideration of the duration of the violations;
3. Adjust the sum of the gravity- and multi-day components to reflect case-specific circumstances, if warranted (good-faith credit, negligence, history of non-compliance, etc.); and
4. Add any economic benefit realized by the facility through non-compliance.

"Adding Economic Benefit Gained Through Non-Compliance" below on page 18.

The formula for penalty calculation is as follows:

$$\text{Penalty Amount} = \text{Gravity-based component} + \text{Multi-day component} +/\text{-} \\ \text{Adjustments} + \text{Economic Benefit}$$

A. Determination for a Gravity-Based Penalty

Cite each violation separately (provide statute and/or regulation number and text of same), and for each violation, perform the following steps:

1. Establish which factors to consider in the pertinent environmental statute.
2. Determine whether the harm to public health and/or the environment is major, moderate, or minor. In determining harm, some of the factors to be considered include, but are not limited to:
 - a. Evidence of release.
 - b. Evidence of mismanagement.
 - c. Adequacy of monitoring equipment, inspection procedures.
 - d. Ability to prevent or detect releases.
 - e. Quantity of release

- f. Toxicity of release
 - g. Potential/actual transport or migration of release by way of air, surface water, groundwater.
 - h. Existence, size and proximity of receptors (workers, residents, fish, wildlife, sensitive environmental media such as wetlands, sole source aquifer, surface waters).
 - i. Violation(s) of a permit requirement.
 - j. Registration and/or certification lapses.
3. Determine whether the extent or deviation from the statutory or regulatory requirements is major, moderate, or minor.
 4. Using the factors above, go to the penalty matrix and find the appropriate gravity-based penalty range.

It is recommended that the case manager use the low-end range on the gravity-based penalty table in the preliminary penalty determination for each violation prior to making adjustments.

Unless the low-end range of the gravity-based penalty from the table is used, the case manager should document the rationale for a higher civil penalty that is not duplicated by any subsequent adjustments.

Ultimately, the selection of the exact penalty amount within each cell range is based upon the discretion and judgment of the case manager and the Division Director in any given case. In selecting a dollar amount from the range, it is appropriate to consider such factors as: a) the seriousness of the violation relative to other violations falling within the same matrix, b) the size and sophistication of the violator, and c) other relevant factors. “is this increasing or lowering the GBC?” Division response – In this case it would be increasing because the Division penalty matrix amounts are set at the lowest amount within the department penalty matrix.

Note that several of the environmental statutes carry a “not less than” provision. Any calculated penalty amount must comply with those minimums.

PENALTY MATRIX FOR GRAVITY-BASED COMPONENT

Extent of Deviation from Requirement

Potential for Harm	Major	Moderate	Minor
Major	100% to 80%	80% to 60%	60% to 44%
Moderate	44% to 32%	32% to 20%	20% to 12%
Minor	12% to 6%	6% to 2%	2% to 1%

*Percentages in table are % of statutory maximum for each program area

B. Adding a Multi-Day Component

For each violation that has continued for more than one day, the decision should be made whether to pursue multi-day penalties. Continuing violations should be documented either by observation and testing in the field, through self-reporting by the respondent, or by demonstrating that the respondent failed to take an action required by statutory or regulatory guideline, or other mechanism containing a compliance date.

To calculate the multi-day component of the penalty, locate the proper cell in the Multi-Day Penalty Matrix. Then multiply a dollar amount selected from the cell by the number of days the violation lasted, minus one day (one day is subtracted because the first day penalty is higher and is selected from the Gravity-Based Penalty Matrix). This amount is then added to the amount selected for the first day of violation from the Gravity-Based Penalty Matrix. While this policy provides general guidance on the use of multi-day penalties, nothing in this policy

precludes the assessment of penalties up to each program's statutory maximum for each day after the first day of any given violation.

MULTI-DAY PENALTY CALCULATION MATRIX

Extent of Deviation from Requirement

Potential for Harm	Major	Moderate	Minor
Major	20% to 4%	16% to 3%	12% to 2%
Moderate	8% to 1.6	6.4% to 1%	4% to 0.6%
Minor	2.4% to 0.4%	1.2% to 0.4%	0.4%

*Percentages in table are % of statutory maximum for each program area

Compression of Violations

At the discretion of the Division Director, violations may be compressed, that is, where violations flow from one basic violation, or where violations are similar, those violations may be grouped together as treated as one violation. Examples include:

1. Where a facility fails to install a groundwater monitoring system, taking quarterly samples would be a violation, but the facility would have been unable to comply without first having the groundwater monitoring system installed. Therefore, any violations related to the groundwater monitoring system had it been installed as required, may be grouped under one violation – failure to install a groundwater monitoring system.
2. If a facility fails to obtain permit coverage under a general permit or permit-by-rule, it may also be in violation of some or all of the permit requirements. Any violations besides the failure to notify and obtain permit coverage may be compressed and grouped together for determining penalty calculations.

Compressing violations is discretionary. As long as the total penalty for all related violations is appropriate considering the gravity of the offense, is sufficient to deter similar future behavior, and economic benefit is recovered, the compression of violations is acceptable.

C. Adjustments to Initial Penalty

Adjustment factors can increase or decrease the penalty amount calculated from the matrices, dependent upon the facts of each case. Adjustments (increases or decreases) for good-faith efforts to comply, for negligence/willfulness, or for history of non-compliance should be applied to the sum of the Gravity-Based and the Multi-Day components, before the addition of any economic benefit amount. Divisions may also consider statute specific factors² when making adjustments to the base penalty. More than one adjustment factor may apply in a case; however, after all adjustment factors have been applied, the resulting penalty shall not exceed the statutory maximum per day of violation.

A facility can demonstrate good faith by promptly identifying and reporting noncompliance or by instituting measures to remedy the violation before the Department detects the violation. In other words, good faith may be shown through the action and deeds of a facility in attempting to come into compliance, rather than its inaction. Examples of good faith are often case specific. Such good faith may allow the gravity-based penalty to be decreased up to 50%.

² For example, the social and economic value of the discharge source, the suitability of the pollutant source to the area in which it is located, the technical and economic reasonableness of reducing/eliminating the discharge, the cause of the discharge or violation, the amount of penalty set by the board for specific categories of violations, and whether the penalty will be an economic deterrent to future violations.

In contrast, the gravity-based penalty may be increased up to 50% upon a showing of willfulness and/or negligence. Factors to consider in determining willfulness or negligence include, but are not limited to:

1. How much control the violator had over the event constituting the violation.
2. Whether the violator could have foreseen the events resulting in the violation.
3. Whether the violator took reasonable precautions to prevent the violation.
4. Whether the violator knew or should have known of the hazards associated with the conduct.
5. Whether the violator knew or should have known of the legal requirement which was violated.
6. Amount of effort put forth by the violator to obtain compliance.

The penalty may be increased up to 50% upon a showing that the facility has a history of non-compliance. Where a respondent has previously violated a program's regulations, this is clear evidence that the respondent was not deterred by the previous enforcement action. Factors to consider in establishing a history of non-compliance include but are not limited to:

1. How much control the violator had over the events constituting the violation.
2. Similarity to the previous violation(s).
3. When the previous violation(s) occurred. [How recent?]
4. Number of previous violations.
5. Respondent's response to previous violations.

Only documented violations should be considered when evaluating a history of non-compliance. Documentation may include inspection reports, self-monitoring reports, photographs, notices of violation, and formal enforcement actions.

D. Adding Economic Benefit Gained Through Non-Compliance

Economic benefit will be defined at a later date by a working group comprised of TDEC staff and external stakeholders and presented to the UST-SWM board at a regularly scheduled meeting for review.

E. Adding Unusual or Extraordinary Costs Incurred by the Department

The collection of "damages" reflects the extra time and effort that Division personnel must expend when formal enforcement must be pursued. On August 21, 2006, TDEC developed a document titled "Uniform Guidance for the Assessment of Damages". That guidance states that each Division within the Bureau of Environment may establish its own policy on the assessment of damages, provided it is consistent with the guidance which lists state personnel hours, vehicle mileage, and laboratory costs as examples of collectible charges.

F. Natural Resource Damages

Certain environmental statutes authorize the Department to include in the penalty assessment of the following: compensation for the loss or destruction of wildlife, fish and aquatic life; costs associated with restoring the air, water, land, and other property to their former condition; and other actual damages caused by the violation. Natural resource damages should be reviewed in all cases that result in a temporary or permanent loss of resources.

CASE CLOSED WITHOUT AN ORDER PROCESS

In order to save file space, the Enforcement section will no longer maintain files on cases when it is determined that there is no need for enforcement action.

Standard procedure shall be as follows:

- 1.) Enforcement Staff shall email the Field Office Staff, including the Field Office Manager, to communicate the section's concern regarding the case and the reason(s) why it should be closed. Should there be an impasse between the Enforcement Staff & Field Office Staff, the Enforcement Staff shall meet with the Field Office Deputy Director to attempt to resolve the issue. If necessary, the Director and the Enforcement Chief can also be consulted to facilitate resolution in the matter.
- 2.) Once everyone is in agreement, the Enforcement Staff will draft a memo for the Enforcement Manager's signature that explains the reason(s) for no further action being pursued.
- 3.) The memo will be forwarded along with any supporting documentation to the Field Office Staff that submitted the enforcement request. This information is to be placed in the Field Office file.
- 4.) Enforcement Staff will discard the enforcement request.
- 5.) No file will be maintained on this case.

SETTLEMENT PROCESS

Although each case must be analyzed on its own merits, this policy lists some general circumstances when it would be reasonable to consider using the enforcement discretion provided to the Division³ by entering into negotiations with a respondent.

1. For consideration of a full reduction (100%) in the assessed civil penalties, the Division will consider the following:
 - a. Factors
 - i. The respondent agrees to permanently close the UST facility in a manner approved by the Division and owns no other tanks/facilities in the State of Tennessee⁴; or
 - ii. The respondent has sold the tanks and owns no other tanks/facilities in the State of Tennessee⁵.
 - b. Reasoning
 - i. The proper closure of tanks is an expensive activity.
 - ii. Reoccurrence of non-compliance by this respondent under the UST Act is decreased to zero because the respondent no longer owns UST tanks or facilities in Tennessee (unless the respondent opens a new facility).
2. For consideration of a 30% to 50% reduction in the assessed civil penalties, the Division will consider the following:
 - a. Factors
 - i. The respondent has closed or agrees to quickly close some tanks but still owns tanks in the State of Tennessee, and agrees to pay an up-front penalty and contingent penalty⁶, or
 - ii. The respondent has filed an appeal of an administrative order, has no outstanding operational violations,⁷ and agrees to pay an up-front penalty and contingent penalty.
 - b. Reasoning
 - i. There are no outstanding violations at the facility.
 - ii. The respondent has filed an appeal of the order indicating there may be a factual dispute or a desire to resolve the matter.
 - iii. The proper closure of tanks is an expensive activity.
 - iv. There is still the possibility of non-compliance under the UST Act by the respondent because the respondent owns other facilities. Thus, there still needs to be a civil penalty to act as a deterrent to future non-compliance.

³ T.C.A. Section 68-215-121(a), Acts 2005, ch. 350.

⁴ T & J Market, UST case UST18-0014, Jennifer Miller and Stacey Miller

⁵ South Young Market, UST case UST19-0079, R and J Management, Inc.

⁶ Big A Market and Deli # 1, UST case 501-05, OGC case 06-0254.

⁷ Nikinsaa Inc., UST case UST21-0127; Friends Market & Deli, UST case UST 20-0141: AM Express No. 4, UST case 17-0194.

3. For consideration of a 10% to 29% reduction in the assessed civil penalties, the Division will consider the following:
 - a. Factors
 - i. The respondent has a Final Order and continued to operate in violation of the Order but had returned to compliance prior to the settlement⁸;
 - ii. The respondent may have other facilities, be a distributor, or have a subsidiary company in the petroleum distribution business;
 - iii. The respondent has incurred multiple violations at multiple facilities;
 - iv. The respondent owns and/or distributes to multiple sites in the State of Tennessee;
 - v. The respondent closes no tanks in the State of Tennessee; or
 - vi. The respondent agrees to pay an up-front penalty and contingent penalty and operate in accordance with all UST laws and rules.
 - b. Reasoning
 - i. Court action and its associated costs are imminent and the respondent failed to cooperate until after the order went final and the facility was red-tagged.
 - ii. There is still the possibility of non-compliance under the UST Act by the respondent because the respondent owns other facilities. Thus, there still needs to be a civil penalty to act as a deterrent to future non-compliance.

Additional consideration toward settlement may include:

1. Information and input from the field office inspector, enforcement case manager, and OGC attorney on such matters as evaluation of the respondent's current violations, release status, and long term history of cooperation and compliance;
2. Information and input provided by the respondent⁹; or
3. Any other issues deemed applicable to make a sound decision¹⁰.

3.4. If a case goes to an order before the respondent provides documentation showing no violations existed or that compliance was met after the inspection, the respondent will pay the failure to cooperate on the violations and the service of process charge with no reduction.

However, the Division Director retains the sole discretion to enter into or exit from settlement negotiations, and nothing in this policy or the items listed above are intended to obligate settlement on every occasion. Furthermore, all respondents have the option to submit financial inability to pay documentation, which will be considered in determining the appropriate reduction in the assessed civil penalties.

⁸ Mellon's Exxon, UST case 322-05, OGC case 05-0614 and POC Real Estate Company, LLC, UST and OGC case UST11-0059.

⁹ For example, a respondent provides information and evidence to support a claim that someone else in the company received the Order but did not make the proper persons aware of its delivery and respondent returns to compliance in a timely manner.

¹⁰ T.C.A. Section 68-215-121(a), Acts 2005, ch. 350.

EXHIBIT A – PROBATION VIOLATIONS That Require Tank School for Operator Retraining

Operator Retraining Probation -Violations		
Violation	State Cite	Rule Section
Failure of tanks installed on or after July 24, 2007 to be secondarily contained.	0400-18-01-.02(2)(a)1	UST Systems: Installation & Operation (Secondary Containment)
Failure to provide interstitial monitoring on tanks installed on or after July 24, 2007.	0400-18-01-.02(2)(a)5	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed on or after July 24, 2007 to be secondarily contained.	0400-18-01-.02(2)(b)1	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed on or after July 24, 2007 to be monitored for a release at least every thirty (30) days.	0400-18-01-.02(2)(b)5	UST Systems: Installation & Operation (Secondary Containment)
Failure to install any spill prevention system.	0400-18-01-.02(3)(a)1(i)	UST Systems: Installation & Operation
Failure to install any overfill prevention system.	0400-18-01-.02(3)(a)1(ii)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal tanks.	0400-18-01-.02(4)(a)	UST Systems: Installation & Operation
Failure to permanently close a lined tank where CP was not added by the December 22, 2012 deadline.	0400-18-01-.02(4)(a)3(v)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal piping.	0400-18-01-.02(4)(b)	UST Systems: Installation & Operation
Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product.	0400-18-01-.04(1)(a)1	Release Detection (General)
Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions.	0400-18-01-.04(1)(a)2	Release Detection (General)
Failure to provide a release detection method that meets the performance requirements for tanks or piping.	0400-18-01-.04(1)(a)3	Release Detection (General)
Failure to monitor tanks at least every 30 days, if appropriate.	0400-18-01-.04(2)(a)	Release Detection (General)
Failure to provide any release detection for underground piping.	0400-18-01-.04(2)(b)	Release Detection (Piping)
Failure to install line leak detector for pressurized underground piping.	0400-18-01-.04(2)(b)1(i)	Release Detection (Pressurized Piping)
Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping	0400-18-01-.04(2)(b)1(ii)	Release Detection (Pressurized Piping)
Failure to comply with general remedial requirements.	0400-18-01-.06	Petroleum Release Response, Remediation, and Risk Management
Division not notified of tank closure.	0400-18-01-.07(4)(a)1-2	Out-of-Service UST Systems and Closure
Failure to conduct system closure sampling.	0400-18-01-.07(5)(a)-(b)	Out-of-Service UST Systems and Closure
Failure to register an underground storage tank in accordance with the statute.	Tenn. Code Ann. § 68-215-106(a)	Tennessee Code Annotated
Placing petroleum into an underground storage tank system(s) where the Division has attached a tag or notice to the dispensers or fill ports or that has been placed on the Delivery Prohibition list on the website.	Tenn. Code Ann. §§ 68-215-106(c) and (e) 0400-18-01-.10(6)(a)	Fee Collection

Illegal Red Tag Removal	Tenn. Code Ann. § 68-215-106(c)-(d)	Tennessee Code Annotated
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EXHIBIT B – NOTICE OF VIOLATION LETTER (SEE TEMPLATE FOR FORMATTING)

DATE

RESPONDENT
STREET ADDRESS
CITY, STATE ZIP

Re: Notice of Violation CERTIFIED MAIL #
FACILITY
STREET ADDRESS
CITY, STATE ZIP
Case #USTYY-XXXX, Facility ID #X-XXXXXX

Dear Mr. SIR/MADAM:

On DATE, personnel with the Division of Underground Storage Tanks (Division) performed a compliance inspection at the referenced facility. During the inspection, the following violation(s) were found that have not been corrected and have resulted in a referral to the enforcement section of the Division for review.

- Violation #1: Failure to close a substandard tank in accordance with rule 1200-1-15-.02(4)(c)6(ii). Specifically the impressed current system has been without power since May 10, 2010. Therefore the tank shall be permanently closed.
 - Correction requested
- Violation #2: Failure to perform release detection on the tank in accordance with rule 1200-1-15-.04(2)(a). Specifically no release detection has been performed on the diesel tank despite containing twenty four (24) inches of product.
 - Correction requested
- Violation #3: Failure to test the corrosion protection system every three (3) years in accordance with rule 1200-1-15-.02(4)(c)2(i). Specifically the most recent corrosion protection test results were not provided at the time of the inspection.
 - Correction requested
- Violation #4: Failure to properly maintain the corrosion protection system in accordance with rule 1200-1-15-.02(4)(c)4. Specifically the cathodic protection rectifier has been without power and there have been no inspection logs completed in the last year.
 - Correction requested
- Violation #5: Failure to meet operating requirements for spill prevention in accordance with rule 1200-1-15-.02(3)(b)4. Specifically the monthly spill inspections and subsequent spill log have not been performed.

- Correction requested

Violation #6: Failure to meet release detection requirements in accordance with rule 1200-1-15-.04(1)(g). Specifically the quarterly dispenser inspections and subsequent dispenser log have not been performed.

- Correction requested

Violation #7: Failure to cooperate with the Division in accordance with rule 1200-1-15-.03(2).

If the violations listed above are not corrected, the potential civil penalties presently total ten thousand eight hundred sixty dollars (\$10,860.00), as follows:

Violation #1: One (1) violation assessed at two thousand five hundred dollars (\$2,500.00) per facility for failing to provide continuous cathodic protection.

Violation #2: One (1) violation assessed at two thousand four hundred dollar (\$2,400.00) per facility for failing to perform release detection.

Violation #3: One (1) violation assessed at one thousand dollars (\$1000.00) per UST for failing to properly maintain the corrosion protection system.

Violation #4: Three (3) separate violations assessed at two hundred fifty dollars (\$250.00) per inspection for a total of seven hundred fifty dollars (\$750.00) for failing to properly maintain the corrosion protection system.

Violation #5: Twelve (12) separate violations assessed at one hundred dollars (\$100.00) per spill bucket/month for a total of one thousand two hundred (\$1,200.00) for failing to complete and maintain spill inspection logs.

Violation #6: Four (4) separate violations assessed at three hundred dollars (\$300.00) per inspection/quarter for a total of one thousand two hundred dollars (\$1,200.00) for failing to maintain quarterly dispenser inspections and dispenser logs.

Violation #7: 20% was added to every outstanding violation for failure to cooperate for a total of one thousand eight hundred ten dollars (\$1810.00).

Please assist the Division by submitting the documentation detailing all required corrections to this office **by DATE**. If the violations are not addressed in a timely manner, an Administrative Order will be issued, civil penalties will be assessed, and if the order goes final, the Division will place the facility on the "Delivery Prohibition" list and attach red tags to the underground storage tanks. To avoid the possibility of any disruption of fuel delivery to this business, we request that you immediately put back into proper operation the preventative measures that protect the USTs from leaking and which detect any leaks quickly.

We are committed to working with you to help you return the facility to compliance and reach our common goal of safely storing petroleum in the State of Tennessee. We ask for your help to protect our natural resources because leaking tanks can contaminate Tennessee's drinking water or cause significant safety hazards and the cost to clean-up even small leaks can be very high.

If you have any questions about this letter, please do not hesitate to call me at 615-532-XXXX.

Sincerely,

CASE MANGER, TITLE
Division of Underground Storage Tanks

EXHIBIT C - CONTAMINATION/CLOSURE CASE REFERRAL

OFFICE CORRESPONDENCE
Tennessee Department of Environment and Conservation
Division of Underground Storage Tanks

Date:

To: Enforcement Section

From: Case Manager (Name and signature) _____

EFOM (Name and signature) _____

Re: Contamination/Closure Case Referral (circle applicable)

Facility I.D.# _____

Facility Name: _____

Hazard(s) Discovered, Not Addressed and referred for ENFORCEMENT ACTION. The owner/operator has not addressed the hazard and ongoing impact is documented. A pertinent chronology has been included.

Violation(s) Discovered and referred for ENFORCEMENT ACTION. The owner/operator has not addressed the violation(s) and/or the violations are not correctable. A pertinent chronology has been included.

Deficiencies Discovered and referred for ENFORCEMENT ACTION. A pertinent chronology has been included.

Violations/Deficiencies That Were Addressed:

1. _____

2. _____

Violations/Deficiencies That Were Not Addressed:

1. _____

2. _____

COMMENTS:

EXHIBIT D – PREVIOUS OWNER FEE ONLY CASE REFERRAL

OFFICE CORRESPONDENCE
Tennessee Department of Environment and Conservation
Division of Underground Storage Tanks

Date: **June 5, 2020**
To: **Enforcement Section**
From:
Re: **Outstanding Fees Owed**

Prior Tank Owner or
Owner at Tank Closure:

Facility I.D.#:

Facility Name:

The following documents are attached:

- Past due tank fees, penalties, and interest summary sheet;
Years owed: _____
 - Notification form showing the tanks were transferred out of the prior owner's name;
 - Copies of invoices that were mailed to the prior owner; and
 - Other: [Attach any other documents that may be relevant and identify them here.]
-

COMMENTS:

[Explain tank sales history or any other information that may be relevant.]

EXHIBIT E - MAJOR DEFICIENCIES FOR CORRECTIVE ACTION ENFORCEMENT REFERRAL

Soil Boring Placement

Soil Sampling

Well Installation (Location, Screen Placement, etc.)

Surveying

Groundwater Sampling

Soil/Water Disposal

Operation and Maintenance (O & M) or O & M procedures

EXHIBIT F – REASONABLE EXTENSION REQUESTS FOR CORRECTIVE ACTION ENFORCEMENT ACTION REFERRALS

Grant of access (GOA) issues – responsible party has made attempts to achieve the GOA from the property owner (If the Division is unable to achieve thereafter, it should be referred to the Office of General Counsel for assistance to obtain access from the property owner.)

Permitting issues – local, state, or federal authorities

Electrical or other utility connection issues

Incapacitated responsible party in which a LUST TRUST referral will be pursued

Awaiting Case Prioritization Referral Approval/Denial

Special Issues:

Proposal by the responsible party or consultant for a different technology or modification to the Division's requirements, which may require a Peer Review prior to enforcement referral.

Projects under audit or legal evaluation

EXHIBIT G – FAILURE TO COOPERATE PENALTY ASSESSMENT GUIDELINES

Failure to cooperate with the Division in accordance with Rule 0400-18-01-.03(2) will be assessed as follows:

- 1) ~~The Division shall assess civil penalties for a Respondent's failure to fully cooperate via the Respondent's willful or negligent acts or omissions. The civil penalty for the failure to cooperate violation shall be 20% of the total assessed amount for those violations assessed in a standard director's order (see pages 14-17). For any standard director's order issued, the civil penalty for each unaddressed violation will be assessed a 20% increase for willfulness and/or negligence based on TDEC's Civil Penalty Calculation Process (see pages 14-17).~~
- 2) ~~If the Respondent provides documentation to the Division that demonstrates either: (a) that a violation did not exist; or (b) that the Respondent returned to compliance prior to the issuance of the order, then the Division will generally not seek enforcement of associated civil penalties. However, the failure to cooperate penalty will be assessed with no reduction where the enforcement case has resulted in the issuance of an order that was served. The Division will also seek reimbursement for all charges associated with service of process for said order. If an enforcement case goes to an order before the Respondent provides documentation to the division that either the violations did not exist or that they returned to compliance after the inspection, the civil penalty will be dropped but the failure to cooperate will be assessed with no reduction. The division will also collect the service of process charges for that case.~~

~~For any standard director's order issued, the civil penalty for each unaddressed violation will be assessed a 20% increase for willfulness and/or negligence based on TDEC's Civil Penalty Calculation~~

~~Process (see pages 14-17). If an enforcement case goes to an order before the Respondent provides documentation to the division that either the violations did not exist or that they returned to compliance after the inspection, the civil penalty will be dropped but the failure to cooperate will be assessed with no reduction. The division will also collect the service of process charges for that case.~~

EXHIBIT H – CASE CLOSED WITHOUT AN ORDER LETTER TEMPLATE

[Respondent Name]
c/o Registered Agent or Respondent Name, Registered Agent
Address
Respondent City, State Zip

Re: Enforcement Action Request
Facility Name
Facility City, State Zip
Facility ID # 0-000000
Case # EAR-00000

Dear Respondent's Name

On INSPECTION DATE, the Division inspected the above referenced facility. On or about DATE EAR WAS REFERRED, an Enforcement Action Request (EAR) was sent to the Nashville Field Office for review. Below are the violations listed in the EAR as well as the response submitted to address each violation:

Violation #0: Failure to ... in accordance with Rule 0400-18-01-... Specifically, at the time of inspection, ...
Response: On DATE the Division received ...

Violation #0: Failure to ... in accordance with Rule 0400-18-01-... Specifically, at the time of inspection, ...
Response: On DATE the Division received ...

Based on the responses submitted, the Division has decided to close this referral without an order. Therefore, this inspection is closed.

If you have any questions about this matter, please do not hesitate to call YOUR NAME at (XXX) XXX-XXXX.

Sincerely,

Rhonda L. Key
Environmental Manager 4

cc: Enforcement file
FACILITY REGION Environmental Field Office

CO-020

EXHIBIT H - PENALTY MATRIX HYPERLINKS

- 0400-18-01-.01 Program Scope, Definitions, and Proprietary Information
- 0400-18-01-.02 UST Systems: Installation and Operation [Part02](#)
- 0400-18-01-.03 Notification, Reporting, and Record Keeping [Part03](#)
- 0400-18-01-.04 Release Detection [Part04](#)
- 0400-18-01-.05 Release Reporting, Investigation, and Confirmation [Part05](#)
- 0400-18-01-.06 Petroleum Release Response, Remediation, and Risk Management [Part06](#)
- 0400-18-01-.07 Out-of-Service UST Systems and Closure [Part07](#)
- 0400-18-01-.08 Financial Responsibility
- 0400-18-01-.09 Petroleum Underground Storage Tank Fund
- 0400-18-01-.10 Fee Collection [Part10](#)
- 0400-18-01-.11 Appeals
- 0400-18-01-.12 Indicia of Ownership [Part12](#)
- 0400-18-01-.13 Reserved
- 0400-18-01-.14 Record Retention by the Division
- 0400-18-01-.15 Petroleum Product Delivery
- 0400-18-01-.16 Certified Operator Program [Part16](#)
- 0400-18-01-.17 UST Systems with Field-Constructed Tanks and Airport Hydrant Systems

EXHIBIT J - PENALTY MATRIX (cont'd)

EXHIBIT KJ - PENALTY MATRIX

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
1	0400-18-01-.02(1)(a)1	Initial Owner Only	Failure to submit pre-installation notification form prior to installation/construction	UST-SYS	\$100	Minor	Minor
2	0400-18-01-.02(1)(b)	-	Failure to install tank in accordance with manufacturer's installation instructions	TANK	\$2,000	Moderate	Moderate
3	0400-18-01-.02(1)(b)	-	Failure to install piping in accordance with manufacturer's installation instructions	PIPING-SYS	\$2,000	Moderate	Moderate
4	0400-18-01-.02(1)(b)	-	Failure to install ancillary equipment and containment systems in accordance with manufacturer's installation instructions	OTHER-SYSTEM PARTS	\$2,000	Moderate	Moderate
5	0400-18-01-.02(1)(c)	-	Failure to have secondary containment on tanks installed after July 25, 2007	TANK	\$3,200	Moderate	Major
6	0400-18-01-.02(1)(c)	-	Failure to have secondary containment on piping installed after July 25, 2007	PIPING-SYS	\$3,200	Moderate	Major
7	0400-18-01-.02(1)(c)	-	Failure to provide secondary containment for motor fuel dispensers installed after July 25, 2007	UST-SYS	\$1,200	Moderate	Minor
-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
1	<u>0400-18-01-.02(1)(a)1</u>	<u>Initial Owner Only</u>	<u>Failure to submit pre-installation notification form prior to installation/construction</u>	<u>UST SYS</u>	<u>\$100</u>	<u>Minor</u>	<u>Minor</u>
2	<u>0400-18-01-.02(1)(b)</u>	-	<u>Failure to install tank in accordance with manufacturer's installation instructions</u>	<u>TANK</u>	<u>\$2,000</u>	<u>Moderate</u>	<u>Moderate</u>
3	<u>0400-18-01-.02(1)(b)</u>	-	<u>Failure to install piping in accordance with manufacturer's installation instructions</u>	<u>PIPING SYS</u>	<u>\$2,000</u>	<u>Moderate</u>	<u>Moderate</u>
4	<u>0400-18-01-.02(1)(b)</u>	-	<u>Failure to install ancillary equipment and containment systems in accordance with manufacturer's installation instructions</u>	<u>OTHER SYSTEM PARTS</u>	<u>\$2,000</u>	<u>Moderate</u>	<u>Moderate</u>
5	<u>0400-18-01-.02(1)(c)</u>	-	<u>Failure to have secondary containment on tanks installed after July 25, 2007</u>	<u>TANK</u>	<u>\$3,200</u>	<u>Moderate</u>	<u>Major</u>
6	<u>0400-18-01-.02(1)(c)</u>	-	<u>Failure to have secondary containment on piping installed after July 25, 2007</u>	<u>PIPING SYS</u>	<u>\$3,200</u>	<u>Moderate</u>	<u>Major</u>
7	<u>0400-18-01-.02(1)(c)</u>	-	<u>Failure to provide secondary containment for motor fuel dispensers installed after July 25, 2007</u>	<u>UST SYS</u>	<u>\$1,200</u>	<u>Moderate</u>	<u>Minor</u>
8	0400-18-01-.02(1)(d)1		Placing Petroleum into an underground storage tank system(s) without having submitted the notification form to the division <u>Division</u>	See Enforcement SOP for Penalty			
9	0400-18-01-.02(1)(d)2		Failure to have spill and overfill on underground storage tank system(s) prior to placing product in the tank compartment.	TANK COMP			
10	0400-18-01-.02(1)(d)3	Missing > 4 Months	Failure to conduct release detection on USTs holding over 1 inch of product during the installation process time period	TANK COMP	\$3,200	Moderate	Major
11		Missing 4 Months or less		TANK COMP/MON	\$200	Minor	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION-DESCRIPTION	MULTIPLIER	NEW PENALTY	POT-FOR HARM	DEV FROM RULE
12	0400-18-01-.02(1)(d)4		Failure to begin release detection in accordance with Rule 0400-18-01-.04 immediately if the tank or tank compartment contains more than two and one-half (2.5) centimeters (one(1) inch) of product	Cite as .02(1)(d)3 SEE LINES 10 & 11			
13	0400-18-01-.02(1)(d)4		Failure to immediately protect ust system(s) against corrosion in accordance with paragraph (4) of this rule.	Cite as .02(4)(a) SEE LINE 46			
14	0400-18-01-.02(1)(d)5	Initial Owner Only	Failure to perform tank tightness test at completion of the installation process and prior to dispensing fuel	TANK	\$1,200	Moderate	Minor
15	0400-18-01-.02(1)(d)5	Initial Owner Only	Failure to perform line tightness test at completion of the installation process and prior to dispensing fuel	PIPING SYS	\$1,200	Moderate	Minor
16	0400-18-01-.02(1)(d)6	In absence of the records, cite as failure to conduct	Failure to maintain the results of the line tightness test and tank tightness test at completion of the installation process and prior to dispensing fuel	Cite as .02(1)(d)5 SEE LINES 14 & 15			
17	0400-18-01-.02(1)(e)	Includes all USTs systems @ installation - Initial Owner Only	Failure to have the installation certified within 15 days following completion of installation	PER INSTALLATION	\$100	Minor	Minor
18	0400-18-01-.02(2)(a)1		Failure to have double-wall or jacketed tanks with an interstitial space on tanks installed after July 25, 2007.	TANK	\$3,200	Moderate	Major
19	0400-18-01-.02(2)(a)2		Failure of tanks installed after July 25, 2007 to meet the interstitial monitoring requirements in Rule 0400-18-01-.04(3)(g)1	Cite as .02(2)(a)5 SEE LINES 22 & 23			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
20	0400-18-01-.02(2)(a)3		Failure of tanks to prevent a release of petroleum to the environment for the operational life of the underground storage tanks	TANK COMP	\$8,000	Major	Major
21	0400-18-01-.02(2)(a)4		Failure of tanks to contain a release until detected and removed	UST SYS	\$8,000	Major	Major
22	0400-18-01-.02(2)(a)5	Missing > 4 Months	Failure of tanks installed after July 25, 2007 to be monitored for a release at least every 30 days	TANK COMP	\$3,200	Moderate	Major
23		Missing 4 Months or less		TANK COMP/MON	\$200	Minor	Moderate
24	0400-18-01-.02(2)(b)1		Failure of piping installed after July 25, 2007 to be 100% double walled or to be secondarily contained with a single wall that ends in sumps	PIPING SYS	\$3,200	Moderate	Major
25	0400-18-01-.02(2)(b)2		Failure of piping installed after July 25, 2007 to meet the interstitial monitoring requirements of Rule 0400-18-01-.04(3)(g)1	Cite as .02(2)(b)5 SEE LINE 28			
26	0400-18-01-.02(2)(b)3		Failure of piping to prevent the release of petroleum to the environment for the operational life of the piping	PIPING SYS	\$8,000	Major	Major
27	0400-18-01-.02(2)(b)4		Failure of piping to contain a release until detected and removed	PIPING SYS	\$8,000	Major	Major
28	0400-18-01-.02(2)(b)5	This applies to monthly monitoring records only	Failure of piping installed after July 25, 2007 to be monitored for a release at least every 30 days	PIPING SYS	\$2,000	Moderate	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION-DESCRIPTION	MULTIPLIER	NEW PENALTY	POT-FOR HARM	DEV FROM RULE
29	0400-18-01-.02(2)(c)1		Failure of motor fuel dispensers installed after July 25, 2007 to have containment sumps that are liquid tight on the sides, the bottom and at any penetrations	DISPENSER	\$1,200	Moderate	Minor
30	0400-18-01-.02(2)(c)2		Failure of motor fuel dispensers installed after July 25, 2007 to have containment sumps that are compatible with the petroleum product stored in the UST system	DISPENSER	\$1,200	Moderate	Minor
31	0400-18-01-.02(2)(c)3		Failure of the containment sump to be designed to allow for a visual inspection and access to the componenets of the containment systems, including that used for piping, and be monitored in accordance with Rule 0400-18-01-.04(1)(f)	SUMP	\$2,000	Moderate	Moderate
32	0400-18-01-.02(3)(a)1(i)		Failure to have spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe	TANK	\$2,000	Moderate	Moderate
33	0400-18-01-.02(3)(a)1(ii)		Failure to have overfill prevention equipment that will automatically shut off the flow into the tank when the tank is no more than ninety-five (95%) full; alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or restrict flow 30 minutes prior to overfilling, alter the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on the top of the tank are exposed to product due to overfilling.	TANK	\$2,000	Moderate	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
34	0400-18-01-.02(3)(a)3		Use of flow restrictor used in vent lines when overflow is replaced or installed on or after October 13, 2021.	OVERFILL DEVICE	\$2,000	Moderate	Moderate
35	0400-18-01-.02(3)(a)4		Failure to test spill and overflow equipment in accordance with Rule 0400-18-01-.02(3)(c)	Cite as .02(3)(c) SEE LINE 45			
36	0400-18-01-.02(3)(b)1		Failure to prevent releases due to spilling an overflowing for as long as the UST is used to store petroleum.	TANK COMP	\$8,000	Major	Major
37	0400-18-01-.02(3)(b)2		Failure to have a spill bucket lid that is in good condition and is not in contact with the fill cap	TANK COMP	\$100	Minor	Minor
38	0400-18-01-.02(3)(b)3	>50% full	Failure to keep spill catchment basins free of water, dirt, debris, etc.	TANK COMP	\$200	Minor	Moderate
39	0400-18-01-.02(3)(b)4		Failure to inspect spill catchment basins at least monthly and maintain a log of the monthly inspections for the last 12 months	UST SYS/ PER MONTH	\$100	Minor	Minor

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
40	0400-18-01-.02(3)(b)5	Over 25 gallons	Failure to report, investigate and clean up any spills and overfills in accordance with Rule 0400-18-01-.05(4)	Cite as .05(4)(a) SEE LINE 239			
41		Under 25 gallons		Cite as .05(4)(b) SEE LINE 240			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
42	0400-18-01-.02(3)(b)6		Failure to operate and maintain overfill equipment to be in good working condition in accordance with the manufacturer's specifications.	Cite as .02(3)(a)1(ii) SEE LINE 33			
43	0400-18-01-.02(3)(c)1	For systems brought into use after 10/13/18 this applies at installation. For systems in use on or before 10/13/18, this applies no later than 10/13/21	Failure to monitor spill prevention equipment, for UST systems no less frequently than walkthrough inspections are conducted, or to test spill prevention equipment at least once every three (3) years	Tank Compartment	\$2,000	Moderate	Moderate
44	0400-18-01-.02(3)(c)2		Failure to inspect overfill prevention equipment at least once every three years.	Tank Compartment	\$2,000	Moderate	Moderate
45	0400-18-01-.02(3)(d)		Failure to maintain records of testing and inspection of spill prevention equipment and overfill prevention equipment for a period of three years.	Cite .02(3)(c)1 & 2 SEE LINES 43 & 44			
46	0400-18-01-.02(4)(a)		Failure to have corrosion protection that is properly designed and constructed and/or upgraded.	TANK	\$3,200	Moderate	Major
47	0400-18-01-.02(4)(a)1	Cite as .02(4)(a)	Installation of an improperly constructed fiberglass-reinforced plastic tank	Cite as .02(4)(a) SEE LINE 46			
48	0400-18-01-.02(4)(a)2(i)	Cite as .02(4)(a)	Installation of a metal tank with unsuitable dielectric coating	Cite as .02(4)(a) SEE LINE 46			
49	0400-18-01-.02(4)(a)2(ii)	Cite as .02(4)(a)	Failure to have field installed cathodic protection system designed by corrosion expert	Cite as .02(4)(a) SEE LINE 46			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
50	0400-18-01-.02(4)(a)2(iii)	Cite as .02(4)(a)	Failure of impressed current system design to allow determination of current operating status	Cite as .02(4)(a) SEE LINE 46			
51	0400-18-01-.02(4)(a)2(iv)	Cite as .02(4)(a)	Improper operation and maintenance of tank cathodic protection system	Cite as .02(4)(a) SEE LINE 46			
52	0400-08-01-.02(4)(a)2(v)		Failure to ensure the integrity of a tank prior to the installation of corrosion protections	TANK	\$3,200	Moderate	Major
53	0400-18-01-.02(4)(a)2(v)(I)		Failure to have internal inspection and assessment performed to ensure tanks were structurally sound prior to installation of cathodic protection of the tanks	Cite as .02(4)(a)2(v) SEE LINE 52	\$3,200	Moderate	Major
54	0400-18-01-.02(4)(a)2(v)(II)	Missing > 4 Months	Failure to provide any continuous monthly monitoring prior to upgrading tanks with cathodic protection	TANK COMP	\$3,200	Moderate	Major
55		Missing 4 Months or less		TANK COMP/MON	\$200	Minor	Moderate
56	0400-18-01-.02(4)(a)2(v)(III)I. & II	Must have both pre and post installation tests	Failure to meet tightness test requirements for a tank upgraded with cathodic protection	TANK COMP	\$2,000	Moderate	Moderate
57	0400-18-01-.02(4)(a)2(v)(IV)		Failure to meet requirements for testing for corrosion holes for a tank upgraded with cathodic protection using the Tennessee Alternative Method	Cite as .02(4)(a)2(v) SEE LINE 52			
58	0400-18-01-.02(4)(a)3(i)		Failure to install the lining in accordance with all procedures and practices	TANK	\$3,200	Moderate	Major
59	0400-18-01-.02(4)(a)3(i)(I)		Failure to install lining to effectively prevent releases for the operational life of the tank	Cite as .02(4)(a)3(i) SEE LINE 58			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
60	0400-18-01-.02(4)(a)3(i)(II)		Failure to ensure that lining material is compatible with the product being stored	Cite as .02(4)(a)3(i) SEE LINE 58			
61	0400-18-01-.02(4)(a)3(i)(III)		Failure to ensure that tank shell is structurally sound before lining	Cite as .02(4)(a)3(i) SEE LINE 58			
62	0400-18-01-.02(4)(a)3(i)(IV)		Failure to follow the lining manufacturer's instructions during installation of lining	Cite as .02(4)(a)3(i) SEE LINE 58			
63	0400-18-01-.02(4)(a)3(i)(V)		Failure to conduct a tank tightness test after lining and before placing the system into operation	TANK	\$1,200	Moderate	Minor
64	0400-18-01-.02(4)(a)3(i)(VI)		Failure to maintain records of upgrade requirements for the operational life of the tanks	UST SYS	\$100	Minor	Minor
65	0400-18-01-.02(4)(a)3(iii)		Failure to comply with upgrading requirements for interior lining when cathodic protection is added.	TANK	\$2,000	Moderate	Moderate
66	0400-18-01-.02(4)(a)3(iv)		Failure to permanently close a lined tank that is not structurally sound or where the lining fails	Cite as .07(2) SEE LINE 315			
67	0400-18-01-.02(4)(a)3(v)		Failure to permanently close a lined tank where CP was not added by December 22, 2012	Cite as .07(2) SEE LINE 315			
68	0400-18-01-.02(4)(a)5(i)		Failure to document justification for having no corrosion protection system for a metal tank	Cite as .02(4)(a) SEE LINE 46			
69	0400-18-01-.02(4)(a)5(ii)		Failure to maintain a Corrosion Expert's analysis of site corrosion potential if corrosion protection equipment is not used	Cite as .02(4)(a) SEE LINE 46			

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
70	0400-18-01-.02(4)(a)6		Failure to have tank construction and corrosion protection that is determined by the Division to be no less protective of human health and the environment	Cite as .02(4)(a) SEE LINE 46			
71	0400-18-01-.02(4)(b)	Flex connectors only & corrected	Failure to comply with requirements concerning design, construction, utilization, and or upgrade of corrosion protection for piping	FLEX CONNECTOR	\$200	Minor	Moderate
72		Other piping		PIPING SYS	\$3,200	Moderate	Major
73	0400-18-01-.02(4)(b)1		Installation of improperly constructed fiberglass reinforced plastic piping or flex piping	Cite as .02(4)(b) SEE LINES 71 & 72			
74	0400-18-01-.02(4)(b)2		Failure to have corrosion protection on steel piping, including flex connectors	Cite as .02(4)(b) SEE LINES 71 & 72			
75	0400-18-01-.02(4)(b)2(i)		Installation of piping with unsuitable dielectric coating	Cite as .02(4)(b) SEE LINES 71 & 72			
76	0400-18-01-.02(4)(b)2(ii)		Inadequate design of field-installed cathodic protection system for piping	Cite as .02(4)(b) SEE LINES 71 & 72			
77	0400-18-01-.02(4)(b)2(iii)		Impressed current system for metal piping does not allow determination of current operating status	Cite as .02(4)(b) SEE LINES 71 & 72			
78	0400-18-01-.02(4)(b)2(iv)		Improper operation and maintenance of cathodic protection system for metal piping	Cite as .02(4)(b) SEE LINES 71 & 72			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
79	0400-18-01-.02(4)(b)3(i)		Failure to document justification for having no corrosion protection system for metal piping	Cite as .02(4)(b) SEE LINES 71 & 72			
80	0400-18-01-.02(4)(b)3(ii)		Failure to maintain a Corrosion Expert's analysis of site corrosion potential if corrosion protection equipment is not used	Cite as .02(4)(b) SEE LINES 71 & 72			
81	0400-18-01-.02(4)(b)4		Failure to have piping construction and corrosion protection that is determined by the Division to be no less protective of human health and the environment	Cite as .02(4)(b) SEE LINES 71 & 72			
82	0400-18-01-.02(4)(b)5		Failure to have corrosion protection on the fill piping or have a drop tube	PER SYS PART	\$200	Minor	Moderate
83	0400-18-01-.02(4)(c)1		Failure to operate and maintain corrosion protection system in accordance with a corrosion expert's design to provide continuous protection.	CP SYS	\$2,000	Moderate	Moderate
84	0400-18-01-.02(4)(c)2(i)		Failure to ensure that cathodic protection system is tested within 6 months of installation and every 3 years thereafter.	CP SYS TEST	\$1,200	Moderate	Minor
85	0400-18-01-.02(4)(c)2(ii)		Failure to ensure that cathodic protection is functioning as designed and is effectively preventing corrosion	Cite as .02(4)(c)1 SEE LINE 83			
86	0400-18-01-.02(4)(c)2(iii)		Failure to maintain every required record of cathodic protection tests	Cite as .02(4)(c)2(i) SEE LINE 84			
87	0400-18-01-.02(4)(c)3		Failure to tightness test UST system after 3 months but no later than 6 months after the installation of anodes.	UST SYS	\$1,200	Moderate	Minor

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
88	0400-18-01-.02(4)(c)4	Only cite if missing all 3 inspections and fail to begin	Failure to inspect impressed current corrosion protection systems every 60 days.	PER IC SYS	\$1,200	Moderate	Minor
89	0400-18-01-.02(4)(c)5(i)		Failure to maintain the results of the last two tests of the cathodic protection system	Cite as .02(4)(c)2(i) SEE LINE 84			
90	0400-18-01-.02(4)(c)5(ii)	Initial Owner Only	Failure to maintain the record of the addition of a sacrificial anode to an existing system for the life of the UST system	REPAIR	\$100	Minor	Minor
91	0400-18-01-.02(4)(c)5(ii)		Failure to give the record of the addition of a sacrificial anode to an existing system to the new owner at time of ownership transfer	Cite as .03(2)(d) SEE LINE 161			
92	0400-18-01-.02(4)(c)5(iii)		Failure to maintain the results for the tightness test required in 0400-18-01-.02(4)(c)3 for the life of the UST system	Cite as .02(4)(c)3 SEE LINE 87			
93	0400-18-01-.02(4)(c)5(iii)		Failure to give the results of the tightness test required in 0400-18-01-.02(4)(c)3 to the new owner at the time of ownership transfer	Cite as .03(2)(d) SEE LINE 161			
94	0400-18-01-.02(4)(c)5(iv)	Impressed Current Systems	Failure to maintain the last three records of cathodic protection rectifier inspections.	Cite as .02(4)(c)4 SEE LINE 88			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
95	0400-18-01-.02(4)(c)6(i)	CP off for less than 12 Months	Failure to conduct a tank system test on an UST system where the impressed current cathodic protection system has been turned off or has been inoperable for less than 12 months or to conduct the second tank system test no less than three months and no more than six months after the system is put back into operation.	UST SYS	\$1,200	Moderate	Minor
96	0400-18-01-.02(4)(c)6(ii)	CP off for more than 12 months	Failure to permanently close an UST system where the impressed current cathodic protection system has been turned off or has been inoperable for more than 12 months or request to the Division to direct otherwise.	UST SYS	\$3,200	Moderate	Major
97	0400-18-01-.02(5)(a)		Failure to use an UST system made of or lined with materials that are compatible with the petroleum substance stored in the UST system.	UST SYS	\$3,200	Moderate	Major
98	0400-18-01-.02(5)(b)	Paperwork only	Failure to notify the Division at least 30 prior to switching to a petroleum substance containing greater than 10% ethanol or greater than 20% biodiesel.	UST SYS	\$100	Minor	Minor
99	0400-18-01-.02(5)(b)	Paperwork only	Failure to demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment) by one or more of the methods stated.	UST SYS	\$100	Minor	Minor
100		UST System not compatible with substance stored		Cite as .02(5)(a) SEE LINE 97			
101	0400-18-01-.02(5)(c)		Failure to maintain records documenting compliance with with subparagraph (b) of this paragraph.	Cite as .03(2) SEE LINE 136			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
102	0400-18-01-.02(6)(a)	Tanks	Failure to install secondary containment on tanks replaced after July 25, 2007	TANK	\$3,200	Moderate	Major
103		Piping	Failure to install secondary containment on piping replaced after July 25, 2007	PIPING SYS	\$3,200	Moderate	Major
104		Dispensers	Failure to install secondary containment on motor fuel dispensers replaced after July 25, 2007	UST SYS	\$1,200	Moderate	Minor
105	0400-18-01-.02(6)(c)		Failure to replace all piping connected to that particular underground storage tank being removed and replacing it with secondarily contained piping with interstitial monitoring	SEE LINE 88			
106	0400-18-01-.02(6)(d)		Failure to have the Division authorize a repair of piping	PIPING SYS	\$200	Minor	Moderate
107	0400-18-01-.02(6)(e)	Anything above and including the sheer valve in a pressurized piping and above the union in an US suction piping	Failure to provide secondary containment for a motor fuel dispenser that was replaced after July 25, 2007	UST SYS	\$1,200	Moderate	Minor
108	0400-18-01-.02(6)(f)	Only applies to the owner during replacement	Failure to retain documentation for the replacement of tanks, piping and/or dispensers for the operational life of the UST system.	REPLACEMENT	\$100	Minor	Minor
109	0400-18-01-.02(7)(a)		Failure of repairs to the UST systems to prevent releases for the operational life of the tank system.	Repair	\$8,000	Major	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

<u>-</u>	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
110	0400-18-01-.02(7)(a)		Failure to repair or replace any tanks or piping which have had a structural failure.	TANK/PIPING	\$8,000	Major	Major
111	0400-18-01-.02(7)(b)		Failure to repair fiberglass-reinforced tank in accordance with manufacturers specifications	REPAIR	\$1,200	Moderate	Minor
112	0400-18-01-.02(7)(c)		Failure to replace metal piping that has released product as a result of corrosion.	PIPING SYS	\$8,000	Major	Major
113	0400-18-01-.02(7)(c)		Failure to repair fiberglass-reinforced piping in accordance with manufacturers specifications	REPAIR	\$8,000	Major	Major
114	0400-18-01-.02(7)(d)		Failure to tightness test the secondary containment according to manufacturer's instructions or in accordance with guidance provided by the Division within 30 days of repair to secondary containment areas of tanks and piping used for interstitial monitoring	PER REPAIRED TANK OR PIPING	\$1,200	Moderate	Minor
115	0400-18-01-.02(7)(e)	See rule for exceptions	Failure to ensure that repaired tank systems are tightness tested within 30 days of completion of repair.	TEST/UST SYS	\$1,200	Moderate	Minor
116	0400-18-01-.02(7)(f)	Owner at time of repair only	Failure to test the cathodic protection of an UST system within 6 months of a repair the UST system	TEST/CP SYS	\$1,200	Moderate	Minor
117	0400-18-01-.02(7)(g)	Owner at time of repair only	Failure to ensure that within 30 days following repair, the spill or overfill prevention equipment is tested or inspected in accordance with subparagraph (3)(c) of Rule 0400-18-01-.02 to ensure it is operating properly.	TEST/CP SYS	\$1,200	Moderate	Minor

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
118	0400-18-01-.02(7)(h)	Owner at time of repair only	Failure to ensure that within 30 days following repair, the spill or overfill prevention equipment is tested or inspected in accordance with subparagraph (3)(c) of Rule 0400-18-01-.02 to ensure it is operating properly.	REPAIR	\$100	Minor	Minor
119	0400-18-01-.02(8)(a)1.	>4 insps	Failure to perform periodic walkthrough inspections.	UST SYS	\$3,200	Moderate	Major
120		4 insps or less			Don't assess penalty		

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
121	0400-18-01-.02(8)(a)1.(i)(I)	>4 insps	Failure to inspect spill prevention equipment as part of required walkthrough inspection by doing the following: <ul style="list-style-type: none"> • visually check for damage; • remove liquid or debris; • check for and remove obstructions in the fill pipe; • check the fill cap to make sure it is securely on the fill pipe; and, • for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area 	UST SYS	\$2,000	Moderate	Moderate
122		4 insps or less			Don't assess penalty		
123	0400-18-01-.02(8)(a)1.(i)(II)	>4 insps	Failure to inspect release detection equipment as part of the required walkthrough inspection by doing the following: <ul style="list-style-type: none"> • check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and • ensure records of release detection testing are reviewed and current; 	UST SYS	\$2,000	Moderate	Moderate
124		4 insps or less			Don't assess penalty		
125	0400-18-01-.02(8)(a)1.(ii)(I)		Failure to inspect containment sumps as part of the required annual walkthrough inspection by doing the following: <ul style="list-style-type: none"> • visually check for damage, leaks to the containment area, or releases to the environment; • remove liquid (in contained sumps) or debris; and, • for double walled sumps with interstitial monitoring, check for a leak in the interstitial area 	UST SYS	\$2,000	Moderate	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
126	0400-18-01-.02(8)(a)1.(ii)(II)		Failure to inspect hand held release detection equipment, such as tank gauge sticks or groundwater bailers for operability and serviceability as part of the required annual walkthrough inspection	UST SYS	\$2,000	Moderate	Moderate
127	0400-18-01-.02(8)(a)2.-3.		Failure to conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to Rule 0400-18-01-.02(8)(a)1.; or in accordance with guidance provided by the division Division.	Cite as 0400-18-01-.02(8)(a)1 SEE LINE 119 & 120			
128	0400-18-01-.02(8)(b)		Failure to maintain records (in accordance with subparagraph (2)(b) of Rule 0400-18-01-.03) of operation and maintenance walkthrough inspections for one (1) year, including:• a list of each area checked, • whether each area checked was acceptable or needed action taken, • a description of actions taken to correct an issue, and • delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.	Cite as 0400-18-01-.02(8)(a)1 SEE LINE 119 & 120			
129	0400-18-01-.03(1)(a)1		Failure to submit pre-installation notification form prior to installation/construction	Cite as .02(1)(a)1 SEE LINE 1			
130	0400-18-01-.03(1)(a)2		Failure to submit notification form within 15 days of completion of installation process	NOTIFICATION	\$200	Minor	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
131	0400-18-01-.03(1)(c)		Failure to submit a separate notification form for all notified tanks that are located at a separate place of operation	FACILITY	\$100	Minor	Minor
132	0400-18-01-.03(1)(c)		Failure to identify on the submitted notification form all tanks owned at that site by owner	UST SYS	\$200	Minor	Moderate
133	0400-18-01-.03(1)(d)	For original owner cite as .02(1)(e)	Failure to provide complete certification of all requirements on the notification form	Cite as .02(1)(e) SEE LINE 17			
134	0400-18-01-.03(1)(f)		Failure to inform tank purchaser of notification requirements	NOTIFICATION	\$100	Minor	Minor
135	0400-18-01-.03(1)(g)		Failure to report a change of status for a UST system within 30 days	UST SYS	\$600	Minor	Major
136	0400-18-01-.03(2)		Failure to cooperate by failing to provide documents, testing, or monitoring records to the Division prior to the issuance of the order	SEE NEW REVISED PENALTY CALCULATION PROCESS			
137	0400-18-01-.03(2)(a)		Failure to cooperate by failing to provide documents, testing or monitoring records to the Division upon initial request	SEE NEW REVISED PENALTY CALCULATION PROCESS			
138	0400-18-01-.03(2)(a)1		Failure of owners/operators to submit notification for all UST systems to the Division	UST SYS	\$600	Minor	Major
139	0400-18-01-.03(2)(a)2		Failure to submit notification form prior to switching UST systems to certain petroleum substances in accordance with subparagraph (5)(b) of Rule 0400-18-01-.02.	Tank Compartment	\$600	Minor	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
140	0400-18-01-.03(2)(a)3		Failure to report all suspected releases	Cite .05(1)(a) SEE LINE 227			
141	0400-18-01-.03(2)(a)3		Failure to report any confirmed release	Cite as .06(3)(a) SEE LINE 251			
142	0400-18-01-.03(2)(a)3		Failure to report any spill	Cite as .05(4)(a) SEE LINE 239			
143	0400-18-01-.03(2)(a)3		Failure to report any overfill	Cite as .05(4)(a) SEE LINE 239			
144	0400-18-01-.03(2)(a)4	Cite for failure to cooperate under .03(2) and cite failure to do the work under .06	Failure to report all corrective actions planned or taken, including initial response measures, hazard management measures, initial site characterization and exposure assessment, corrective action plan, and as otherwise directed by the division Division.	Cite as .03(2) LINE 104 & Cite applicable rule under .06 SEE LINES 241-309			
145	0400-18-01-.03(2)(a)5		Failure to provide notification before permanent closure or change in service	Cite as .03(2) LINE 104			
146	0400-18-01-.03(2)(a)6		Failure to report tank closure activities including site assessment results	Cite as .03(2) LINE 104			
147	0400-18-01-.03(2)(b)1		Failure to maintain a log of the monthly spill catchment basin inspections showing at a minimum the last 12 months of inspections	Cite as .02(3)(b)4 SEE LINE 39			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
148	0400-18-01-.03(2)(b)2		Failure to maintain documentaion of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping	Cite as .02(3)(a)1(i)-(ii) SEE LINE 33-34			
149	0400-18-01-.03(2)(b)3		Failure to maintain documentation of compliance with the lining requirments for a tank which is constructed of steel and was installed on or before December 22, 1988	Cite as .02(4)(a)3(i) SEE LINE 58			
150	0400-18-01-.03(2)(b)4		Failure to maintain documentaion of a corrosion experts analysis of site corrosion if protection equipment is not used	Cite as .02(4)(a) SEE LINE 46			
151	0400-18-01-.03(2)(b)5		Failure to maintain documentation of operation of corrosion proection equipment	Cite as .02(4)(c)1 SEE LINES 83			
152	0400-18-01-.03(2)(b)6		Failure to maintain documentation of compatibility for UST systems	Cite as .02(5)(b) SEE LINE 98			
153	0400-18-01-.03(2)(b)7		Failure to maintain documentation of the replacement of tanks, piping, and/or dispensers	Cite as .02(6)(f) SEE LINE 108			
154	0400-18-01-.03(2)(b)8		Failure to maintain documentation of UST System repair	Cite as .02(7)(g) SEE LINE 117			
155	0400-18-01-.03(2)(b)9		Failure to maintain documentation of operation and maintenance walkthrough inspections	Cite as .02(8)(a)1 SEE LINES 119-126			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
156	0400-18-01-.03(2)(b)10		Failure to maintain a log of the quarterly dispenser inspections showing at a minimum the last 12 months	Cite as .04(1)(e) SEE LINE 175			
157	0400-18-01-.03(2)(b)11		Failure to maintain documentation of recent compliance with release detection requirements	SEE LINE .04(5)			
158	0400-18-01-.03(2)(b)12		Failure to maintain documentation of compliance with closure requirement and results of the site assessment conducted at permanent closure	SEE LINE.07(7)			
159	0400-18-01-.03(2)(c)1		Failure to maintain required records either at the UST site or a readily available UST site	SEE LINE 106 (cross reference specific rule)			
160	0400-18-01-.03(2)(c)2		Failure to have all records present and available for review during an inspection scheduled in advance by the division Division	SEE LINE 106 (cross reference specific rule)			
161	0400-18-01-.03(2)(d)		Failure, at the time of transfer of ownership, to transfer records or copies of records to the new owner	TRANSFER OF OWNERSHIP	\$100	Minor	Minor
162	0400-18-01-.04(1)(a)1		Failure to provide release detection method capable of detecting a release from tank that routinely contains product.	TANK COMP	\$3,200	Moderate	Major
163	0400-18-01-.04(1)(a)1		Failure to provide release detection method capable of detecting a release from pipng that routinely contains product.	Cite as .04(2)(b)1 (i) & (ii) SEE LINES 180 & 181			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
164	0400-18-01-.04(1)(a)2	Release detection not done properly on the tanks	Failure to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions	TANK COMP	\$3,200	Moderate	Major
165	0400-18-01-.04(1)(a)2	Little Leak - Release detection not done properly for line tightness test/monthly monitoring	Failure to install, calibrate, operate, or maintain release detection method for piping in accordance with manufacturer's instructions	PIPING SYS	\$2,000	Moderate	Moderate
166	0400-18-01-.04(1)(a)2	Release detection not done properly for line leak detector	Failure to install, calibrate, operate, or maintain release detection method for piping in accordance with manufacturer's instructions	PIPING SYS	\$2,000	Moderate	Moderate
167	0400-18-01-.04(1)(a)3		Failure to ensure that electronic and mechanical components are tested annually for proper operation in accordance with subparts 2(i) through (iii) of this subparagraph	TANK COMP	\$3200	Moderate	Major
			Failure to ensure that electronic and mechanical components are tested annually for proper operation in accordance with subparts 2(i) through (iii) of this subparagraph	PIPING SYS	\$2000	Moderate	Moderate
168		Tanks		TANK COMP	\$3,200	Moderate	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
169	0400-18-01-.04(1)(a)4	Piping	Failure to provide a release detection method that meets the performance requirements	PIPING SYS	\$2,000	Moderate	Moderate
170	0400-18-01-.04(1)(a)5	Tanks	Failure to operate a release detection method that has had a third party evaluation reviewed by the National Work Group on Leak Detection Evaluations (NWGLDE) and a listing of the leak detection equipment or method appears on the list maintained by the NWGLDE	TANK COMP	\$3,200	Moderate	Major
171		Piping		PIPING SYS	\$2,000	Moderate	Moderate
172	0400-18-01-.04(1)(b)		Failure to notify the Division when any release detection method utilized at the site indicates a suspected release within 72 hours, even if another method utilized at the site does not indicate a release	Cite as .05(1)(a) SEE LINE 227			
173	0400-18-01-.04(1)(c)		Failure to close any UST system that cannot meet release detection requirements.	Cite as .04(1)(a)1 SEE LINE 162			
174	0400-18-01-.04(1)(d)		Failure to select another method of release detection if the method selected by the o/o cannot meet performance standards to the satisfaction of the division Division	Cite as .04(1)(a)1 SEE LINE 162			
175	0400-18-01-.04(1)(e)	For all dispensers	Failure to remove dispenser cover and visually inspect for releases, seeps, drips at least quarterly	PER INSPECTION/ PER SYS	\$100	Minor	Minor

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
176	0400-18-01-.04(1)(f)	For sumps that are required to be secondarily contained	Failure to remove dispenser cover and visually inspect for petroleum in sumps at least quarterly. The visual inspection shall check for the presence of petroleum and/or water in the sumps. If liquid is observed in the dispenser sump, the liquid shall be removed from the sump in such a manner as to prevent the release of petroleum into the environment.	PER INSPECTION/ PER SYS	\$100	Minor	Minor
177	0400-18-01-.04(2)(a)	Missing > 4 Months	Failure to monitor tanks at least monthly, if appropriate	TANK COMP	\$3,200	Moderate	Major
178		Missing 4 Months or less		TANK COMP/MON	\$200	Minor	Moderate
179	0400-18-01-.04(2)(b)		Failure to provide any release detection for underground piping	Cite as .04(2)(b)1(i), .04(2)(b)1(ii), or .04(2)(b)2 SEE LINE 180-182			
180	0400-18-01-.04(2)(b)1(i)		Failure to equip pressurized underground piping with automatic line leak detection.	PIPING SYS	\$3,200	Moderate	Major
181	0400-18-01-.04(2)(b)1(ii)		Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping.	PIPING SYS	\$2,000	Moderate	Moderate
182	0400-18-01-.04(2)(b)2	U.S. Suction and unknown location of check valve	Failure to do monthly monitoring or conduct a line tightness test every three years on suction piping, if appropriate	TEST/ PIPING SYS	\$2,000	Moderate	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

<u>-</u>	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
183	0400-18-01-.04(3)(a)1		Use of manual tank gauging on tanks that do not qualify	Cite as .04(1)(a)1 SEE LINE 162			
184	0400-18-01-.04(3)(a)1(i)		Improper application of Manual Tank Gauging on tanks of inappropriate size	Cite as .04(1)(a)1 SEE LINE 162			
185	0400-18-01-.04(3)(a)1(ii)		Failure to use tightness testing in conjunction with tanks 551-1000 gallons in size when using Manual Tank Gauging for release detection	Cite as .04(1)(a)1 SEE LINE 162			
186	0400-18-01-.04(3)(a)1(iii)		Failure to use tightness testing in conjunction with tanks 1001-2000 gallons in size when using Manual Tank Gauging for release detection	Cite as .04(1)(a)1 SEE LINE 162			
187	0400-18-01-.04(3)(a)2		Failure to perform Manual Tank Gauging in such a manner that the accuracy of more than four months of the passing results are in question	Cite as .04(1)(a)1 SEE LINE 162			
188	0400-18-01-.04(3)(a)2(i)		Failure to make product level measurements within a specified period in which no product is added or removed	MONTH/SYS	\$200	Minor	Moderate
189	0400-18-01-.04(3)(a)2(ii)		Failure to record measurements based on an average of two consecutive stick readings at both the beginning and ending of the period.	MONTH/SYS	\$200	Minor	Moderate
190	0400-18-01-.04(3)(a)2(iii)		Failure to have equipment capable of taking measurements to the nearest 1/8th inch.	MONTH/SYS	\$200	Minor	Moderate
191	0400-18-01-.04(3)(a)2(iv)		Failure to measure and record product levels to the nearest 1/8 th inch.	MONTH/SYS	\$200	Minor	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
192	0400-18-01-.04(3)(a)2(v)		Failure to report a suspected release when the method indicates a release may have occurred	Cite as .05(1)(a) SEE LINE 227			
193	0400-18-01-.04(3)(b)1-2		Use of a method of tank tightness testing that is not capable of detecting 0.10 gallon per hour (gph) leak rate	TEST	\$2,000	Moderate	Moderate
194	0400-18-01-.04(3)(b)3	If missing so much, test isn't valid cite as failure to have TTT	Failure to include all required information on a tank tightness test report	TEST	\$200	Minor	Minor
195	0400-18-01-.04(3)(b)4		Failure to report a suspected release when the release rate is greater than the leak rate established by manufacturer specifications and/or third party certification	Cite as .05(1)(a) SEE LINE 227			
196	0400-18-01-.04(3)(c)1(i)		Failure to utilize automatic tank gauging device capable of detecting a release of at least 0.20 gph for monthly monitoring and is placed in leak mode once per month	Cite as .04(1)(a)1 SEE LINE 162			
197	0400-18-01-.04(3)(c)1(ii)		Failure to report a suspected release when the method indicates a release may have occurred	Cite as .05(1)(a) SEE LINE 227			
198	0400-18-01-.04(3)(c)2(i)		Failure to utilize a device capable of detecting a release of at least 0.20 gph for monthly monitoring using CSLD and placing it in leak test mode at least once per month if a test cannot be obtained during any one month period	Cite as .04(1)(a)1 SEE LINE 162			

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
199	0400-18-01-.04(3)(c)2(ii)		Failure to report a suspected release when the method indicates a release may have occurred	Cite as .05(1)(a) SEE LINE 227			
200	0400-18-01-.04(3)(d)1	For tank	Failure of sampling or testing method to detect a release through the inner wall in any portion of the tank that routinely contains petroleum, provide continuous protection and be installed in accordance with Division guidelines.	Cite as .04(1)(a)1 SEE LINE 162			
201	0400-18-01-.04(3)(d)2	For tank	Inability of an automatic device to detect a release from a tank fitted with an internal liner, or incompatibility of the liner and product stored	Cite as .04(1)(a)1 SEE LINE 162			
202	0400-18-01-.04(3)(e)1	For tanks	Failure to collect necessary data in accordance with inventory control requirements	Cite as .04(1)(a)1 SEE LINE 162			
203	0400-18-01-.04(3)(eh)2	For tank	Failure to have the required monthly statistical inventory reconciliation report	Cite as .04(1)(a)1 SEE LINE 162			
204	0400-18-01-.04(3)(e)3		Failure to report a numerical monthly leak rate for a quantitative SIR method	MONTH/SYS	\$200	Minor	Moderate
205	0400-18-01-.04(3)(e)4		Failure to use appropriate reporting criteria and/or terminology (Pass, Fail, Inconclusive) in making SIR determination	MONTH/SYS	\$200	Minor	Moderate
206	0400-18-01-.04(3)(e)5		Failure to use another method if there are too few operational days for statistical inventory reconciliation to successfully analyze during any month	MONTH/SYS	\$200	Minor	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
207	0400-18-01-.04(3)(e)6	Cite as .05(1)	Failure to report a suspected release following a SIR evaluation of "Fail" or two consecutive monthly inconclusive results	Cite as .05(1)(a) SEE LINE 227			
208	0400-18-01-.04(3)(f)1		Failure of other method to detect a 0.20 gph leak rate	Cite as .04(1)(a)1 SEE LINE 162			
209	0400-18-01-.04(3)(f)3		Failure to comply with the conditions imposed by the Division for the use of the method of release detection chosen	Cite as .04(1)(a)1 SEE LINE 162			
210	0400-18-01-.04(4)(a)		Failure to test line leak detectors annually.	PIPING SYS	\$2,000	Moderate	Moderate
211	0400-18-01-.04(4)(b)		Failure to conduct line tightness testing using a method that is capable of detecting a release of at least 0.10 gph.	PIPING SYS	\$2,000	Moderate	Moderate
212	0400-18-01-.04(4)(c)		Inadequate use of applicable tank release detection methods for piping.	Cite as .04(2)(b)1(ii) or .04(2)(b)2 SEE LINE 181-182			
213	0400-18-01-.04(4)(c)1(i)-(iii)		Failure of sampling or testing method to detect a release through the inner wall in any portion of the piping that routinely contains petroleum, operate continuously as designed and provide 30 day periodic testing, and is installed in accordance with Division guidelines.	Cite as .04(2)(b)1(ii) or .04(2)(b)2 SEE LINE 181-182			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
214	0400-18-01-.04(4)(c)1(iv)(I)		Failure of containment sumps used for interstitial monitoring of piping to be double walled and is periodically monitored at a frequency no less than the frequency of the walkthrough or be tested every three years in accordance with the requirements	Cite as .04(2)(b)1(ii) or .04(2)(b)2 SEE LINE 181-182			
215	0400-18-01-.04(4)(c)1(iv)(II)		Failure to have electronic sensors used to comply with Rule 04(4)(c)1(iv)(I) to be installed in every sump and placed at the lowest point in the sump and tested annually	Cite as .04(2)(b)1(ii) or .04(2)(b)2 SEE LINE 181-182			
216	0400-18-01-.04(4)(d)1		Failure to collect necessary data in accordance with inventory control requirements	Cite as .04(2)(b)1(ii) or .04(2)(b)2 SEE LINE 181-182			
217	0400-18-01-.04(4)(d)2		Failure to have the required monthly statistical inventory reconciliation report	Cite as .04(2)(b)1(ii) or .04(2)(b)2 SEE LINE 181-182			
218	0400-18-01-.04(4)(d)3		Failure to report a numerical monthly leak rate for a quantitative SIR method	MONTH/SYS	\$200	Minor	Moderate
219	0400-18-01-.04(4)(d)4		Failure to use appropriate reporting criteria and/or terminology (Pass, Fail, Inconclusive) in making SIR determination	MONTH/SYS	\$200	Minor	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
220	0400-18-01-.04(4)(d)5		Failure to use another method if there are too few operational days for statistical inventory reconciliation to successfully analyze during any month	MONTH/SYS	\$200	Minor	Moderate
221	0400-18-01-.04(4)(d)6	Cite as .05(1)	Failure to report a suspected release following a SIR evaluation of "Fail" or two consecutive monthly inconclusive results	Cite as .05(1)(a) SEE LINE 227			
222	0400-18-01-.04(5)(a)		Failure to document all release detection performance claims for 5 years after installation or until method no longer used at facility, whichever is later	UST SYS	\$100	Minor	Minor
223	0400-18-01-.04(5)(b)		Failure to maintain the last 12 months of records for release detection monitoring.	Cite as failure to have applicable release detection method			
224	0400-18-01-.04(5)(b)(1)		Failure to maintain results of tank and/or tightness testing until next test is conducted.	UST SYS	\$2,000	Moderate	Moderate
225	0400-18-01-.04(5)(b)(2)		Failure to maintain the results of testing conducted in accordance with part (1)(a)3 of this rule for three years; and at a minimum, list each component tested, indicate whether each component tested meets criteria in part (1)(a)3 of this rule or needs to have action taken, and describe any action taken to correct an issue	TEST	\$200	Minor	Minor

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
226	0400-18-01-.04(5)(c)		Failure to document every calibration, maintenance, and repair of release detection equipment for five (5) years or until method no longer used at facility, whichever is later.	EVENT	\$100	Minor	Minor
227	0400-18-01-.05(1)(a)		Failure to report a suspected release to the division Division within 72 hours after discovery of released petroleum, the occurrence of unusual operating conditions or the occurrence of monitoring results that indicate a release may have occurred	SUSPECTED RELEASE	\$3,200	Moderate	Major
228	0400-18-01-.05(2)	Cite individual investigation step required	Failure to follow investigation and confirmation steps when environmental impacts exist and a release is suspected	SEE LINES 229 - 238			
229	0400-18-01-.05(3)(a)		Failure to conduct a system test when there is a suspected release to determine whether a leak exists in the tank or delivery piping or a breach exists in either wall of secondary containment.	TEST	\$2,000	Moderate	Moderate
230	0400-18-01-.05(3)(a)2		Failure to repair, replace or close the UST system and begin corrective action if test results indicate that a release exists.	EVENT	\$3,200	Moderate	Major
231	0400-18-01-.05(3)(a)4		Failure to conduct a site check when there is environmental contamination and the systems test does not indicate a leak	Cite as .05(3)(b) SEE LINE 232			
232	0400-18-01-.05(3)(b)		Failure to conduct a site check properly when there is environmental contamination present	EVENT	\$3,200	Moderate	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
233	0400-18-01-.05(3)(b)1		Failure to begin corrective action when there is a suspected release and the site check indicates that a leak exists	SEE APPLICABLE LINE UNDER .06			
234	0400-18-01-.05(3)(c)1		Failure to notify the Division at least one (1) working day in advance of any routine field activity	Cite as .06(1)(b)1(i) SEE LINE 220			
235	0400-18-01-.05(3)(c)2		Failure to drill soil boring and/or monitoring wells, convert to monitoring wells, and/or abandon monitoring wells in accordance with guidance provided by the Division	Cite as .06(1)(b)1(ii) SEE LINE 221			
236	0400-18-01-.05(3)(c)3(i)		Failure to collect samples in accordance with guidance and instructions provided by the Division.	EVENT	\$8,000	Major	Major
237	0400-18-01-.05(3)(c)3(ii)		Failure to have samples analyzed using a method recognized by the USEPA or another method approved by the division Division prior to analysis	EVENT	\$8,000	Major	Major
238	0400-18-01-.05(3)(c)3(iii)		Failure to submit environmental sample analysis to the Division	EVENT	\$6,000	Major	Moderate
239	0400-18-01-.05(4)(a)		Failure to contain and immediately clean up a spill/overfill of less and report to the Division within 72 hours a spill or overfill that exceeds than 25 gallons	EVENT	\$8,000	Major	Major
240	0400-18-01-.05(4)(b)		Failure to contain and immediately clean up a spill/overfill of less than 25 gallons	EVENT	\$3,200	Moderate	Major
241	0400-18-01-.06(1)(a)		Failure to comply with general requirements of 0400-18-01-.06	SEE LINES 242-309			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
242	0400-18-01-.06(1)(b)1(i)		Failure to notify the Division at least one (1) working day in advance of any routine field activity	EVENT	\$4,400	Major	Minor
243	0400-18-01-.06(1)(b)1(ii)	Top of range since these are emergency response	Failure to notify the Division by no later than one (1) working day after any non-routine field activity, such as emergency responses	EVENT	\$6,000	Major	Minor
244	0400-18-01-.06(1)(b)2	They did nothing or did not follow guidance	Failure to drill borings and/or monitoring wells in accordance with guidance provided by the Division	BORING	\$8,000	Major	Major
245		They did part but not all			\$6,000	Major	Moderate
246	0400-18-01-.06(1)(b)2		Failure to convert to monitoring wells in accordance with guidance provided by the Division.	WELL	\$200	Minor	Moderate
247	0400-18-01-.06(1)(b)3(i)	They did not do the samples or did them all wrong	Failure to collect, label, handle, and transport environmental samples in accordance with guidance and instructions provided by the Division	EVENT	\$8,000	Major	Major
248		They only did part wrong			\$6,000	Major	Moderate
249	0400-18-01-.06(1)(b)3(ii)		Failure to analyze samples using a method recognized by USEPA or other method that has been approved by the Division prior to analysis	EVENT	\$4,400	Major	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
250	0400-18-01-.06(1)(b)3(iii)	Refuse to submit original or don't do cite line 225	Submission of sample analysis report(s) that does not contain all information listed in part (1)(b)3.(iii)(I) through (VII)	REPORT	\$100	Minor	Minor
251	0400-18-01-.06(3)(a)		Failure to report a confirmed release to the Division within 72 hours	EVENT	\$8,000	Major	Major
252	0400-18-01-.06(3)(b)1		Failure to perform a systems test required by the Division	EVENT	\$8,000	Major	Major
253	0400-18-01-.06(3)(b)2		Failure upon confirmation of a release to immediately remove as much petroleum from an UST system as is necessary to prevent any further release.	EVENT	\$8,000	Major	Major
254	0400-18-01-.06(3)(b)3		Failure upon confirmation of a release to immediately take an UST system out of service until piping and/or ancillary equipment associated with release are replaced and/or repaired	EVENT	\$8,000	Major	Major
255	0400-18-01-.06(3)(b)4		Failure upon confirmation of a release to prevent the placing of petroleum into a leaking UST system	EVENT	\$8,000	Major	Major
256	0400-18-01-.06(3)(c)		Failure upon confirmation of a release to take immediate action to identify fire, explosion, and/or vapor hazards.	EVENT	\$8,000	Major	Major
257	0400-18-01-.06(3)(d)		Failure to visually inspect aboveground or exposed belowground releases and prevent further migration of petroleum into surrounding soils and/or ground water	EVENT	\$8,000	Major	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
258	0400-18-01-.06(3)(e)		Failure upon confirmation of a release to perform a water use survey that includes investigation and sampling of all water supplies, including wells and springs, located within 0.1 mile of the petroleum site as directed by the Division	EVENT	\$8,000	Major	Major
259	0400-18-01-.06(4)(a)		Failure to submit a Hazard Notification Report Form to the Division within 72 hours after the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards	EVENT	\$200	Minor	Moderate
260	0400-18-01-.06(4)(b)1(i)		Failure upon discovery and/or confirmation of impacted drinking water to immediately provide an alternate drinking water supply to replace the impacted drinking water	EVENT	\$200	Minor	Moderate
261	0400-18-01-.06(4)(b)1(ii)	Failure to submit	Failure to submit a proposal for providing a permanent source of potable drinking water, including cost proposal and a recommendation for the method to be utilized.	EVENT	\$8,000	Major	Major
262		Failure to do in accordance with Division Guidance		EVENT	\$6,000	Major	Moderate
263	0400-18-01-.06(4)(b)1(iii)		Failure to take the necessary action(s) to implement an approved proposal for providing a permanent source of potable drinking water	EVENT	\$8,000	Major	Major
264	0400-18-01-.06(4)(b)2		Failure upon discovery and/or confirmation of vapor hazards to take immediate action to eliminate the vapor hazards	EVENT	\$8,000	Major	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
265	0400-18-01-.06(4)(b)2(i)		Failure to provide vapor hazard control which, at a minimum, prevents explosion and fire hazards and the compliation of a human health inhalation exposure pathway.	EVENT	\$8,000	Major	Major
266	0400-18-01-.06(4)(b)2(ii)		Failure to monitor vapor levels in accordance with guidance and a schedule established by the Division.	EVENT	\$8,000	Major	Major
267	0400-18-01-.06(4)(b)3(i)		Failure upon confirmation of free product to immediately take interim free product removal measures to control migration of free product or for free product present in excavations	EVENT	\$8,000	Major	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
268	0400-18-01-.06(4)(b)3(ii)(I)	Failure to submit	Failure to submit a required Free Product Investigation Plan, which includes a proposal for monitoring well installation, a cost proposal.	EVENT	\$8,000	Major	Major
269		Failure to do in accordance with Division Guidance		EVENT	\$6,000	Major	Moderate
270	0400-18-01-.06(4)(b)3(ii)(II)		Failure to implement an approved Free Product Investigation Plan	EVENT	\$8,000	Major	Major
271	0400-18-01-.06(4)(b)3(ii)(II)	Failure to submit	Failure to submit a Free Product Investigation Report in a format and in accordance with a schedule established by the division Division.	EVENT	\$8,000	Major	Major
272		Failure to do in accordance with Division Guidance		EVENT	\$6,000	Major	Moderate
273	0400-18-01-.06(4)(b)3(iii)	Failure to submit	Failure to submit a Free Product Removal Plan in accordance with Division guidance	EVENT	\$8,000	Major	Major
274		Failure to do in accordance with Division Guidance			\$6,000	Major	Moderate
275	0400-18-01-.06(4)(b)3(iv)		Failure to implement the Free Product Removal Plan upon approval	EVENT	\$8,000	Major	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
276	0400-18-01-.06(4)(b)3(v)	Failure to do any of the requirements	Failure to follow all reporting requirements of the Free Product Removal Plan and/or to submit those reports to the Division	EVENT	\$8,000	Major	Major
277		Failure to do only part of the the requiremetns			\$6,000	Major	Moderate
278	0400-18-01-.06(4)(b)4		Failure to take appropriate action(s) (approved in advance by Division) to abate other identified hazards	EVENT	\$8,000	Major	Major
279	0400-18-01-.06(4)(c)	Failure to submit	Failure to submit a Hazard Management Report in accordance with Division guidance	REPORT	\$8,000	Major	Major
280		Failure to do in accordance with Division Guidance			\$6,000	Major	Moderate
281	0400-18-01-.06(5)(a)1		Failure to conduct a site assessment including four borings/monitoring wells as directed by the Division	EVENT	\$8,000	Major	Major
282	0400-18-01-.06(5)(a)2		Failure to submit a proposal for additional borings/monitoring wells (beyond the initial four monitoring wells) including cost proposal and justification statement for approval prior to installing additional borings or monitoring wells.	EVENT	\$200	Minor	Moderate
283	0400-18-01-.06(5)(a)3		Failure to install additional borings/monitoring wells required by the Division	EVENT	\$8,000	Major	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
284	0400-18-01-.06(5)(b)	Failure to submit	Failure to submit an Initial Site Characterization Report (ISCR) in a format and on a schedule established by the division Division, with data collection, risk analysis and report completion done in accordance with guidance provided by the division Division.	EVENT	\$8,000	Major	Major
285		Failure to do in accordance with Division Guidance			\$6,000	Major	Moderate
286	0400-18-01-.06(5)(b)5	Failure to submit	Failure to complete a Risk Analysis Report (RAR) spreadsheet and instaruction as part of the Initial Site Characterization Report	EVENT	\$8,000	Major	Major
287		Failure to do in accordance with Division Guidance			\$6,000	Major	Moderate
288	0400-18-01-.06(6)(a)		Failure to perform closure monitoring in accordance with Division guidance	EVENT	\$3,200	Moderate	Major
289	0400-18-01-.06(6)(b)		Failure to properly abandon monitoring wells	SEE LINE 223			
290	0400-18-01-.06(6)(c)	Failure to submit	Failure to submit reports required by the Division in accordance with Division guidance	REPORT	\$8,000	Major	Major
291		Failure to do in accordance with Division Guidance			\$6,000	Major	Moderate
292	0400-18-01-.06(7)(b)	If not doing what proposal says	Failure to submit a proposal, including a cost proposal, for use of specific additional measures as directed by the Division	EVENT	\$6,000	Major	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
293	0400-18-01-.06(8)(a)1		Causing spread of contamination to previously uncontaminated or less contaminated areas during source removal through improper storage, improper treatment, untreated discharges, or improper disposal	EVENT	\$8,000	Major	Major
294	0400-18-01-.06(8)(a)2		Failure to handle soil in a manner that prevents human exposure to contaminated soil and prevents soil exposure to precipitation that may cause surface runoff.	EVENT	\$8,000	Major	Major
295	0400-18-01-.06(8)(b)2	Known hazards or known impacts	Failure to take action to eliminate or reduce risk as required or approved by the division Division	EVENT	\$8,000	Major	Major
296		Eliminate receptor pathways			\$2,000	Moderate	Moderate
297	0400-18-01-.06(8)(c)	Only assessed if Division requires it or owner opts for this versus cleanup	Failure to establish institutional controls as required or approved by the Division	EVENT	\$8,000	Major	Major
298	0400-18-01-.06(8)(d)	Only assessed if Division requires it or owner opts for this versus cleanup	Failure to employ engineering controls as required or approved by the Division	EVENT	\$8,000	Major	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
299	0400-18-01-.06(9)(a)		Failure to submit predictive modeling information in a format and by a schedule established byt the Division and in accordance with Division guidance	EVENT	\$8,000	Major	Major
300	0400-18-01-.06(9)(b)	Failure to do	Failure to include a conclusion with the predictive modeling information as to the course of action which should be taken to address contamination	EVENT	\$8,000	Major	Major
301		Failure to do in accordance with Division Guidance			\$6,000	Major	Moderate
302	0400-18-01-.06(10)(a)	Failure to do it	Failure to submit a Corrective Action Plan (CAP) required or approved by the Division in accordance with Division guidance	EVENT	\$8,000	Major	Major
303		Failure to do in accordance with Division Guidance			\$6,000	Major	Moderate
304	0400-18-01-.06(10)(b)1(i-iv)		Failure to include all general requirement information in the Corrective Action Plan (CAP)	EVENT	\$8,000	Major	Major
305	0400-18-01-.06(10)(b)2(i-v)		Failure to include all site-specific requirement information in the Corrective Action Plan (CAP)		\$6,000	Major	Moderate
306	0400-18-01-.06(10)(c)	If CAP not implemented	Failure to implement an approved Corrective Action Plan (CAP)	EVENT	\$8,000	Major	Major
307	0400-18-01-.06(10)(d)	If late with requirment	Failure to submit reports in accordance with the schedule contained in the approved Corrective Action Plan (CAP)		\$200	Minor	Moderate
308	0400-18-01-.06(11)(a)		Failure to provide public notice of a Corrective Action Plan (CAP)	EVENT	\$200	Minor	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
309	0400-18-01-.06(1)(d)		Failure to provide proper public notice of the termination of an ineffective CAP		\$200	Minor	Moderate
310	0400-18-01-.07(1)(a)	Missing all or combination of CP requirements, cite all applicable rules	Failure to continue operation and maintenance of cathodic protection system in a temporarily closed tank system	Cite as applicable CP rule SEE LINES 71-84			
311	0400-18-01-.07(1)(a)		Failure to continue operation and maintenance of release detection in a temporarily closed tank system that contains product	Cite as .04(1)(a)1 SEE LINE 162			
312	0400-18-01-.07(1)(b)1	TOS Requirements	Leave vent lines open	TANK	\$3,200	Moderate	Major
313	0400-18-01-.07(1)(b)2		Cap and secure all other lines, pumps, manways, and ancillary equipment		\$3,200	Moderate	Major
314	0400-18-01-.07(1)(b)3		File an amended notification form showing the tank system as temporarily out of use		\$100	Minor	Minor
315	0400-18-01-.07(2)		Failure to permanently close a substandard UST system	UST SYS	\$3,200	Moderate	Major
316	0400-18-01-.07(3)(a)		Failure to apply for tank compartment closure at least 30 days prior to tank compartment closure.	TANK COMP	\$100	Minor	Minor
317	0400-18-01-.07(3)(a)1		Failure to submit an Application for Closure of Tank Compartment(s) in division Division format per division Division instructions	TANK COMP	\$200	Minor	Moderate

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
318	0400-18-01-.07(3)(a)2(i)		Failure to submit a written statement by the manufacturer or an RPE certifying tank compartment closure will not cause structural damage	TANK COMP	\$3,200	Moderate	Major
319	0400-18-01-.07(3)(a)2(ii)		Failure to submit a written statement by the manufacturer or an RPE certifying CP will continue to function as designed following tank compartment closure	TANK COMP	\$3,200	Moderate	Major
320	0400-18-01-.07(3)(a)3		Failure to obtain division Division approval prior to tank compartment closure	TANK COMP	\$3,200	Moderate	Major
321	0400-18-01-.07(3)(a)5		Failure to follow the plan contained in the approved Application for Closure of Tank Compartment(s)	TANK COMP	\$3,200	Moderate	Major
322	0400-18-01-.07(3)(a)6		Failure to have the approved Application for Closure of Tank Compartment(s) on site	TANK COMP	\$100	Minor	Minor
323	0400-18-01-.07(3)(a)7 and 8	Cite only if the regulations have not changed. If regs have changed cite line 320	Use of an expired Application for Closure of Tank Compartment(s) or use of an Application for Closure of Tank Compartment(s) obtained by another person	TANK COMP	\$100	Minor	Minor
324	0400-18-01-.07(3)(b)		Failure to perform site assessment prior to completion of tank compartment closure.	EVENT	\$3,200	Moderate	Major
325	0400-18-01-.07(3)(b)		Failure to submit results of samples taken during tank compartment closure to the division Division within 60 days	REPORT	\$3,200	Moderate	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
326	0400-18-01-.07(3)(b)		Failure to take tank compartment out of operation prior to taking samples	EVENT/ COMP	\$3,200	Moderate	Major
327	0400-18-01-.07(3)(c)		Failure to empty and clean tank compartment during closure	TANK COMP	\$3,200	Moderate	Moderate
328	0400-18-01-.07(3)(c)		Failure to fill tank compartment with an inert material with a specific gravity greater than 1.0	TANK COMP	\$3,200	Moderate	Major
329	0400-18-01-.07(3)(d)		Failure to prevent damage to portion(s) of tank not being closed during tank compartment closure	TANK	\$3,200	Moderate	Major
330	0400-18-01-.07(3)(e)		Failure to prevent a release during tank compartment closure	EVENT	\$8,000	Major	Major
331	0400-18-01-.07(4)(a)		Failure to apply for permanent closure or change in service at least 30 days prior to permanent closure or change in service.	TANK	\$100	Minor	Minor
332	0400-18-01-.07(4)(a)1		Failure to submit an Application for Permanent Closure in division Division format per division Division instructions	TANK	\$200	Minor	Moderate
333	0400-18-01-.07(4)(a)2		Failure to obtain division Division approval prior to permanent closure	TANK	\$3,200	Moderate	Major
334	0400-18-01-.07(4)(a)4		Failure to follow the plan contained in the approved Application for Permanent Closure	TANK	\$3,200	Moderate	Major
335	0400-18-01-.07(4)(a)5		Failure to have the approved Application for Permanent Closure on site	TANK	\$100	Minor	Minor

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
336	0400-18-01-.07(4)(a)6 and 7		Use of an expired Application for Permanent Closure or use of an Application for Permanent Closure obtained by another person	Cite .07(3)(a)7-8 if regs not changed-If regs changed cite .07(3)(a)3 SEE LINE 323 or 320.			
337	0400-18-01-.07(4)(b)		Failure to empty and remove all liquids and accumulated sludges from tanks during permanent closure	TANK	\$3,200	Moderate	Major
338	0400-18-01-.07(4)(b)		Failure to utilize a solid inert material with a specific gravity of greater than 1.0 when permanently closing a tank in the ground	TANK	\$3,200	Moderate	Major
339	0400-18-01-.07(4)(c)		Failure to empty and remove all liquids and accumulated sludges from tanks prior to a change in service	TANK	\$3,200	Moderate	Major
340	0400-18-01-.07(4)(c)		Failure to conduct a site assessment prior to a change in service	EVENT	\$3,200	Moderate	Major
341	0400-18-01-.07(4)(d)	The Rule cite says Appendix A but the Appendix is labeled 1	Failure to follow practices described in Appendix 0400-18-01-.07A when excavating and removing a tank from the site.	EVENT	\$3,200	Moderate	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
342	0400-18-01-.07(4)(f)	The Rule cite says Appendix A but the Appendix is labeled 1	Failure to follow all practices described in Appendix 0400-18-01-.07A when storing an excavated tank on site, including maintaining a vapor-free state	EVENT	\$3,200	Moderate	Major
343	0400-18-01-.07(4)(g)		Failure to store tanks in a manner which does not pose safety hazards. Tanks shall be stored in a position with the tank's center of gravity closest to the ground. Tanks shall not be stacked. Tanks shall be secured so that they will not roll or slide across a level or sloping ground surface.	TANK	\$8,000	Major	Major
344	0400-18-01-.07(5)(a)		Failure to conduct the required assessment of the excavation zone before completion of permanent closure or change in service.	EVENT	\$3,200	Moderate	Major
345	0400-18-01-.07(5)(a)2		Failure to notify the division Division at least one day before samples are taken	EVENT	\$1,200	Moderate	Major
346	0400-18-01-.07(5)(b)		Failure to report the results of all sampling done during closure or change in service within 60 days.	REPORT	\$3,200	Moderate	Major
347	0400-18-01-.07(5)(b)		Failure to take tank out of operation prior to sample collection	TANK	\$3,200	Moderate	Major
348	0400-18-01-.07(5)(b)		Failure to submit sample results as an attachment to Permanent Closure Report for UST Systems or for Tank Compartments	REPORT	\$100	Minor	Minor
349		Failure to do		REPORT	\$200	Moderate	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
350	0400-18-01-.07(5)(c)	Failure to do in accordance with Division Guidance	Failure to submit Permanent Closure Report in a format established by the division Division and in accordance with instructions provided by the division Division		\$3,200	Moderate	Major
351	0400-18-01-.07(5)(d)		Failure to include the appropriate information set out in Rule 0400-18-01-.07(5)(d) in the Permanent Closure Report	REPORT	\$3,200	Moderate	Major
352	0400-18-01-.07(5)(e)		Failure to begin release response and corrective action if contaminated groundwater or free product is discovered at closure	EVENT	\$8,000	Major	Minor
353	0400-18-01-.07(6)		Failure to assess the excavation zone of a UST system permanently closed before December 22, 1988 when it may pose a current or potential threat when directed to do so by the Division	EVENT	\$3,200	Moderate	Major
354	0400-18-01-.07(7)		Failure to maintain change-in-service records for at least 3 years (owner during change in service only)	EVENT	\$100	Minor	Minor
355	0400-18-01-.07(7)		Failure to maintain closure records for at least 3 years (owner during closure only)	EVENT	\$100	Minor	Minor
356	0400-18-01-.10(6)(a)		Placing petroleum into an underground storage tank system(s) where the Division has attached a tag or notice to the dispensers or fill ports or that has been placed on the Delivery Prohibition list on the website.	See Illegal Delivery Policy			
357	0400-18-01-.12(2)(a)		Failure of a holder to notify the Division within 30 days after foreclosure	NOTIFICATION	\$100	Minor	Minor

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
358	0400-18-01-.12(2)(a)		Failure of a holder to complete notification form accurately and in its entirety	NOTIFICATION	\$100	Minor	Minor
359	0400-18-01-.12(2)(b)		Failure of a holder to report change in status to the Division	NOTIFICATION	\$100	Minor	Minor
360	0400-18-01-.12(2)(c)		Failure of a holder to report the sale of the security interest in tanks, UST systems, petroleum sites or property	NOTIFICATION	\$100	Minor	Minor
361	0400-18-01-.15(1)(a)		Placing or causing to be placed, petroleum substances in a petroleum UST or dispensing petroleum from a tank, if the Division has taken on or more of the following actions: 1. A tag or notice has been affixed to the dispensers;2. A tag has been affixed to the fill ports; or3. Notice has been given on the Department's web site.	See Illegal Delivery Policy			
362	0400-18-01-.15(1)(b)		Placing or causing to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a petroleum underground storage tank when the owner of the tank is required to notify the Commissioner under T.C.A. § 68-215-106(a) or (b) and the owner has not notified the Commissioner of the existence or ownership of the tank. This subparagraph applies even if no physical notice or tag is placed on the dispenser or fill port or no notice is placed on the department web site pursuant to T.C.A. § 68-215-106(c).	See Illegal Delivery Policy			

EXHIBIT J - PENALTY MATRIX (cont'd)

	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
363	0400-18-01-.15(2)		It shall be unlawful for any person to dispense petroleum from a petroleum underground storage tank if the Division has taken one or more of the actions in subparagraphs (1)(a) or (b) of this rule.	See Illegal Delivery Policy			
364	0400-18-01-.15(3)		Resumption of deliveries of petroleum and dispensing of petroleum without one of the following: (a) The Division has notified the tank owner and/or operator that the tag may be removed; and (b) The Division has removed the facility from the delivery prohibition list on the Division's section of the Department's website.	See Illegal Delivery Policy			
365	0400-18-01-.16(2)(a)	Class A & C	Failure of facility having one or more petroleum UST systems to have one or more persons designated as Class A, Class B, and Class C Operators.	FACILITY/CLASS DESIGNATION	\$600	Minor	Major
366		Class B			\$3,200	Moderate	Major
367	0400-18-01-.16(3)(a)		Failure of tank owner to register a Class A, and Class B Operator(s) for each facility where petroleum UST systems are located using the Division's web-based training database within 30 days of tank installation or a change in Class A or B operator.	FACILITY/CLASS DESIGNATION	\$100	Minor	Minor
368	0400-18-01-.16(3)(b)		Failure of tank owner to verify in division Division's database that a trained individual meeting Class C Operator requirements will be on site whenever the facility is operating.	FACILITY	\$100	Minor	Minor

EXHIBIT J - PENALTY MATRIX (cont'd)

-	2018	QUALIFIER	VIOLATION DESCRIPTION	MULTIPLIER	NEW PENALTY	POT FOR HARM	DEV FROM RULE
369	0400-18-01-.16(3)(c)		Failure to have at least one trained Class C Operator on site whenever the facility is operating.	Cite as .16(2)(a) SEE LINE 360			
370	0400-18-01-.16(3)(c)		Failure of an unmanned facility to meet Class C Operator requirements by posting appropriate signage conspicuously.	FACILITY	\$100	Minor	Minor
371	0400-18-01-.16(3)(d)		Failure of tank owner to provide proper notice to the division Division in accordance with subparagraph (1)(h) of Rule 0400-18-01-.03 when replacing a Class A or Class B Operator.	FACILITY/CLASS DESIGNATION	\$100	Minor	Minor
372	0400-18-01-.16(4)	Class A & C	Failure to successfully complete retraining to the appropriate level of operator Class within a timeframe determined by the d Division when a significant operational compliance violation is discovered.	FACILITY/CLASS DESIGNATION	\$600	Minor	Major
373		Class B			\$3,200	Moderate	Major
374	0400-18-01-.17(1)(a)		Failure of field-constructed tanks and airport hydrant systems to comply with Rules 0400-18-01.02 through 0400-18-01-.04 and 0400-18-01-.06 and 0400-18-01-.08 and 0400-18-01-.16 and 0400-18-01-.17 no later than three years after the effective date of the rule if installed on or before the effective of the rule and Rules 0400-18-04.05 and 0400-18-01.07 no later than the effective date of the rule.	SEE APPLICABLE RULE CITE VIOLATED			

EXHIBIT J - PENALTY MATRIX (cont'd)

-	<u>2018</u>	<u>QUALIFIER</u>	<u>VIOLATION DESCRIPTION</u>	<u>MULTIPLIER</u>	<u>NEW PENALTY</u>	<u>POT FOR HARM</u>	<u>DEV FROM RULE</u>
375	0400-18-01-.17(1)(b)		Failure of field-constructed tanks and airport hydrant systems installed after the effective date of this rule to comply with Rules 0400-18-01.02 through 0400-18-01-.08 and 0400-18-01-.16 and 0400-18-01-.17 at installation.	SEE APPLICABLE RULE CITE VIOLATED			
376	0400-18-01-.17(1)(c)		Failure of all field-constructed tanks and airport hydrant systems in use as of effective date of this rule to submit a one-time notice of UST existence to the Division in accordance with subparagraphs (1)(b) and (c) of Rule 0400-18-01-.03 in a format established by the Division and in accordance with instructions provided by the Division.	SEE APPLICABLE RULE CITE VIOLATED			
377	T.C.A. 68-215-106(a)		Failure to register an underground storage tank in accordance with statute	FACILITY	\$3,200	Moderate	Major

EXHIBIT J - PENALTY MATRIX (cont'd)

	Minor potential for harm is for a violation that has little chance of causing harm to the environment (ie: a paperwork only or money only violations)
	Moderate potential for harm is for a violation that has some chance of causing or exacerbating harm to the environment (ie release detection or release prevention requirements)
	Major potential for harm is a violation that is likely to cause or exacerbate harm to the environment (ie known contamination that is not being addressed)
	In the UST rules there are two main categories: Release Prevention and Release Detection. For release prevention there are three components: spill, overfill, and corrosion protection. For release detection there are three components: tank, line and dispenser. The line has two components: the big leak and the litte leak.