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POLICY # 4

Subject Percentage Reduction For Non-compliance with Petroleum Storage Tank (PST) Regulations; Denial for Substantial Non-compliance
Adopted 08-04-95; 01-05-96; 04-04-97; 05-21-99; 01-21-00; 7-26-02; 7-21-06; 12-19-08

The Committee will use the following guidelines as it determines the amount of percentage reduction, if any, to apply to the reimbursement award noncompliance, as well as whether an application should be denied for substantial noncompliance.

The tank operating regulatory issues to be considered are:

- (A) REGISTRATION
- (B) RELEASE DETECTION
- (C) RELEASE REPORTING
- (D) CLOSURE.

EXCEPTIONS TO POLICY 4:

Abandoned/orphan tank exceptions.

1. No percentage reduction applies, nor are unpaid registration fees or penalties due, if the violation pertains to an abandoned or orphan tank.

Registration exceptions.

2. No percentage reduction applies, nor will registration fees and penalties be collected, for any full year when the applicant was not the owner/operator.

Release reporting exceptions.

3. No percentage reduction applies for release reporting violations that occurred when the applicant was not the owner/operator.

Closure exceptions.

4. No percentage reduction applies for closure violations concerning a tank that was permanently closed before the applicant became the owner/operator of the facility if the tank is not involved in the remediation to which the subject application pertains.
5. No percentage reduction applies if, at the time the applicant became the owner/operator, tanks were in temporary closure longer than permitted by the regulations provided the applicant permanently closes the tanks properly within six months of becoming the owner/operator of the facility, or receives an extension to temporary closure from the Division of Oil and Public Safety (OPS).
6. No percentage reduction applies for closure violations that occur after the applicant is no longer the owner/operator.

(Citation references are to the Colorado Division of Oil and Public Safety's Storage Tank Regulations, found at 7 CCR 1101-14, effective August 1, 2008 and Colorado Revised Statutes, found at C.R.S. 8-20.5-208, effective July 1, 1989.)

Effective for releases occurring on or after July 1, 2009 unless otherwise noted.

| | Max. Penalty |
|---|---------------------|
| REGISTRATION (total reduction for all registration issues cannot exceed 10%) | |
| Failure to register petroleum storage tanks with OPS within 30 days after putting tanks into service. [Cit. ref. §2-2-10 (UST) and §3-2-5(b)(2) (AST)] | 10% |
| Failure to pay annual tank registration fees in year(s) due. [Cit. ref. §2-2-10(j) and §3-2-5(c) (AST)] | 5% |
| Failure to submit updated registration form within 30 days of change in operation for UST's. Effective 8/1/08 [Cit. ref. §2-2-10(d)] | 5% |
| Failure to submit updated registration form within 60 days for AST's. [Cit. ref. §3-2-5(b)(3)] | 5% |
| Failure to submit Install/Upgrade application for all UST and AST systems. [Cit. ref. §2-2-1 (UST) and §3-2-1 (AST)] | 10% |
| <i>Note: When tanks are closed and new tanks installed at a facility during a calendar year, annual fees are due on both the closed and the installed tanks.</i> | |
| RELEASE DETECTION (total reduction for all release detection issues cannot exceed 25%) | |
| Failure to perform release detection, or failure to perform release detection in a manner that would alert the tank owner/operator to a suspected or confirmed release. [Cit. ref. §2-4] <i>Note: For monthly monitoring release detection methods, this includes not receiving at least a minimum number of monthly conclusive reports. For example, an "inconclusive" SIR report, or failure to receive a valid ATG test more than one month during the time period requested, means that release detection was not performed on the tank. A valid test may include a "Fail" result.</i> | 25% |
| UST'S – 2008 NEW STANDARDS FOR UST'S Effective 8/1/08 | |
| Installing a new or replacing a current UST that is not secondarily contained and does not meet interstitial monitoring requirements. [Cit. ref. §2-2-8(a)] | 15% |
| Installing new or replacing current piping, including piping to remote fills, that is not secondarily contained and does not meet interstitial monitoring requirements. [Cit. ref. §2-2-8(b)] | 15% |
| Installing or replacing a motor fuel dispenser system that does not include under-dispenser containment (applies when concrete is broken). [Cit. ref. §2-2-8(d)] | 15% |
| Failure to test all secondary containment systems for leaks at the time of installation and within 30 days of a year thereafter. [Cit. ref. §2-2-8(e)(1)] | 20% |
| Failure to have tank and/or piping installed by an OPS certified installer. Effective 1/1/09 [Cit. ref. §2-2-8(f)(3)] | 15% |
| UST'S – 12/22/98 REQUIREMENTS [Cit. ref. §2-2-9] | |
| Operating an underground storage tank (UST) after 12/22/98 that does not meet corrosion protection and spill/overfill prevention requirements. [Cit. ref. §2-3-2] | 20% |
| Using inventory control after the later of 12/22/98 or when the 10-year extension ends. [Cit. ref. §2-4-2(a)] | 20% |
| Failure to perform required internal inspection within 10 years of lining tank and every 5 years thereafter. [Cit. ref. §2-2-9(b)(1)(ii)] | 15% |
| Failure to test cathodic protection systems at least every 3 years after installation. [Cit. ref. §2-3-2(b)(1-2)] | 15% |
| Failure to inspect impressed current cathodic protection systems every 60 days as documented on rectifier logs. [Cit. ref. §2-3-2(c)] | 10% |
| Failure to test cathodic protection systems within 6 months of making repairs to ensure proper operation. [Cit. ref. §2-3-4(e)] | 10% |
| UST'S – INVENTORY CONTROL and tank system testing as required | |
| Failure to record daily inventory readings or calculations in a manner that could detect a release of 1.0 percent of flow-through plus 130 gallons on a monthly basis. [Cit. ref. §2-4-4(a)(1)] | 20% |
| Failure to perform monthly reconciliation according to approved formula. [Cit. ref. §2-4-4(a)] | 15% |
| Failure to perform annual tank tightness test. [Cit. ref. §2-4-4(c)] | 15% |
| Failure to perform annual tightness test on pressurized line. [Cit. ref. §2-4-2(b)(1)(ii)] | 15% |
| Failure to perform 3-year tightness test on suction line, if required. [Cit. ref. §2-4-2(b)(2)] | 15% |
| Failure to have operational line leak detectors on pressurized line. [Cit. ref. §2-4-2(b)(1)] | 20% |

| | Max. Penalty |
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| Failure to perform annual leak detector operations test. [Cit. ref. §2-4-5(a)] | 15% |
| UST'S – MANUAL TANK GAUGING and tank system testing as required | |
| Failure to record and average tank liquid level measurements at beginning and end of required minimum idle period. [Cit. ref. §2-4-4(b)] | 20% |
| For USTs 1001-2000 gallons, failure to perform annual tank tightness test [Cit. ref. §2-4-4(c)] | 15% |
| Failure to perform annual tightness test on pressurized line. [Cit. ref. §2-4-2(b)(1)(ii)] | 15% |
| Failure to perform 3-year tightness test on suction line, if required. [Cit. ref. §2-4-2(b)(2)] | 15% |
| Failure to have operational line leak detectors on pressurized line. [Cit. ref. §2-4-2(b)(1)] | 20% |
| Failure to perform annual leak detector operations test. [Cit. ref. §2-4-5(a)] | 15% |
| UST'S – MONTHLY MONITORING: (SIR; ATG's; Interstitial, Water Well and Vapor Well monitoring) and tank system testing as required | |
| Failure to perform monthly monitoring tests or Inconclusive, No data, or Invalid reports for 3 or more months during time period requested (all other months must be okay with a valid test.) [Cit. ref. §2-4-6] | 25% |
| Failure to perform monthly monitoring tests or Inconclusive, No data, or Invalid reports for 2 month during time period requested (all other months must be okay with a valid test.) [Cit. ref. §2-4-6] | 20% |
| Failure to perform monthly monitoring tests or Inconclusive, No data, or Invalid reports for 1 month during time period requested (all other months must be okay with a valid test.) [Cit. ref. §2-4-6] | 15% |
| Failure to properly maintain and/or test the monthly monitoring system according to manufacturers instructions. | 5% |
| Failure to perform annual line tightness test on pressurized line. [Cit. ref. §2-4-2(b)(1)(ii)] | 15% |
| Failure to have operational line leak detectors on pressurized line. [Cit. ref. §2-4-2(b)(1)] | 20% |
| Failure to perform annual line leak detector operations test. [Cit. ref. §2-4-5(a)] | 15% |
| Failure to perform 3-year tightness test on suction line, if required. [Cit. ref. §2-4-2(b)(2)] | 15% |
| Failure to check for evidence of a release in secondary containment area at least every 30 days. Effective 8/1/08 [Cit. ref. §2-2-8(e)(3)] | 10% |
| Failure to test sump sensors annually by manual tripping. Effective 8/1/08 [Cit. ref. §2-2-8(e)(4)] | 15% |
| AST's | |
| Failure to perform required monthly visual inspections of entire AST system. [Cit. ref. §3-5-1] | 20% |
| Operating any tank installed after 9/30/94 that has no spill/overfill prevention equipment: [Cit. ref. §3-4-2(a)(3)] <i>(Secondary containment type tanks without diking or impounding protection and tanks at retail locations must have equipment that will automatically stop the delivery of liquid to the tank when the liquid level in the tank reaches 95 percent of capacity OR sound an audible alarm when the liquid level in the tank reaches 90 percent of capacity.)</i> | 20% |
| Failure to perform pre-delivery ullage check for all tanks. [Cit. ref. §3-4-2(a)(4)(B)] | 20% |
| Failure to visually inspect for corrosion by 10-1-99 and every 2 years thereafter. [Cit. ref. §3-5-1(b)] <i>(required if AST or metal supporting structure contacts soil or other electrolyte and AST is not protected against corrosion)</i> | 20% |
| After 12/22/96, operating an AST with no secondary containment method or device. [Cit. ref. §3-4-2] | 25% |
| Failure to perform monthly visual inspection on secondary containment tank. <i>(required if secondary containment tank has no special draining or diking)</i> [Cit. ref. §3-5-2] | 5% |
| Failure to verify monthly that interstitial monitoring is operating properly. [Cit. ref. §3-5-2] | 15% |
| Failure to have an approved and implemented SPCC (spill prevention, control and countermeasures) plan by the date required by the regulations: [Cit. ref. §3-6-3] <i>Facilities existing before 10/1/94 - prepared and implemented by 10/1/95</i> <i>Facilities becoming operational after 9/30/94 - prepare plan within 6 months of becoming operational and fully implement the plan within one year after the facility becomes operational.</i> | 10% |
| Failure to update SPCC (spill prevention, control and countermeasures) plan within 6 months of | 10% |

| | Max. Penalty |
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| every 3 years after implementing. [Cit. ref. §3-6-5(b)] | |
| Failure to perform annual line tightness test on underground line (pressurized or suction). [Cit. ref. §3-5-1(d)] | 15% |
| Failure to have operational line leak detectors on pressurized underground line. [Cit. ref. § 3-3-15(a)(7)] | 20% |
| Failure to perform annual line leak detectors operations test. [Cit. ref. §3-3-15(a)(7)] | 15% |
| Operating an AST installed after 9/30/94 without required corrosion protection. [Cit. ref. §3-4-3] | 20% |
| After 12/22/96, operating an AST without emergency vents. [Cit. ref. §3-3-11] | 25% |
| After 12/22/96, operating an AST facility that does not meet security requirements. [Cit. ref. §3-3-3] | 15% |
| Until 12/22/98, failure to have emergency shut-off valves in place on suction pumps. [Cit. ref. §3-3-15(a)] | 10% |
| After 12/22/98, failure to install solenoid valve and/or vacuum-actuated shutoff valve.[Cit. ref. §3-3-15(a)] | 20% |

| RELEASE REPORTING (total reduction for all release reporting issues cannot exceed 10%) | |
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| WHEN THE RELEASE DETECTION METHOD OR AN UNUSUAL OPERATING CONDITION INDICATES A SUSPECTED RELEASE | |
| Failure to perform system check within 7 days. [Cit. ref. §4-3(a)] | 10% |
| Failure to perform site check within 7 days. [Cit. ref. §4-3(b)] | 10% |
| Failure to report a suspected release, according to current regulations, to the office of the Division of Oil & Public Safety Technical Assistance Line (303-318-8547) within 24 hours. [Cit. ref. §4-1] A suspected release includes but is not limited to: <ul style="list-style-type: none"> ▪ Failure of any tank or line tightness test ▪ Failure of any monthly monitoring release detection method ▪ Absence of a "pass" during the month (i.e. Inconclusive, No Data or Invalid reports) for any monthly monitoring release detection method (i.e. ATG, SIR and Interstitial monitoring) ▪ For USTs using inventory control, 2 consecutive months where monthly reconciliation figure exceeds the allowable tolerance | 10% |
| Reporting a suspected release within 24 hours to an official agency having jurisdiction over the facility (e.g., local fire department, Colorado Dept. of Public Health & Environment), but not reporting it to OPS within 24 hours. | 5% |
| Failure to report a suspected release occurring between 7/1/89 and 12/1/89 to any official agency within 24 hours. [Cit. ref. CRS § 8-20.5-208(2)] | 10% |
| Failure to report a confirmed release, according to current regulations, to the office of the Division of Oil & Public Safety Technical Assistance Line (303-318-8547) within 24 hours. [Cit. ref. §4-4] A confirmed release includes but is not limited to: <ul style="list-style-type: none"> ▪ Stained soils ▪ Petroleum vapors in soils, basements, sewer or utility lines ▪ High field equipment readings ▪ Free product ▪ Laboratory analytical results | 10% |
| Reporting a confirmed release within 24 hours to an official agency having jurisdiction over the facility (e.g., local fire department, Colorado Dept. of Public Health & Environment), but not reporting it to OPS within 24 hours. | 5% |
| Failure to report a confirmed release occurring between 7/1/89 and 12/1/89 to any official agency within 24 hours. [Cit. ref. CRS § 8-20.5-208(2)] | 10% |
| Failure to submit a Site Summary Form within 60 days of a release for tanks that are not permanently closed. [Cit. ref. §5-3(b)] | 10% |
| Failure to submit a Site Characterization Report within the risk-based time frame established by regulation for tanks that are not permanently closed. [Cit. ref. §5-4(i)] | 10% |
| Failure to submit a Corrective Action Plan (CAP) within 60 days of OPS request for tanks that are not permanently closed. [Cit. ref. §5-5(a)] | 10% |

| | | Max. Penalty |
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| | Failure to implement the Corrective Action Plan (CAP) as directed by the Director for tanks that are not permanently closed. [Cit. ref. §5-5(g)] | 10% |
| | Failure to establish and maintain a groundwater monitoring program for tanks that are not permanently closed. [Cit. ref. §5-3(b)(3)] | 10% |

CLOSURE (total reduction for all closure issues cannot exceed 20%)

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| | Failure to provide written notice to OPS at least 10 days prior to placing a UST system in temporary closure. Effective 8/1/08 [Cit. ref. §2-5-1(a)] | 15% |
| | Failure to submit record of prior 12 months of release detection and corrosion testing for tanks and lines OR results of precision tightness test for tanks and lines and complete a site assessment with notification of temporary closure for UST system. Effective 8/1/08 [Cit. ref. §2-5-1(a)] | 10% |
| | Failure to provide written notice to OPS no more than 30 days before placing a UST back into service. Effective 8/1/08 [Cit. ref. §2-5-1(e)] | 15% |
| | Failure to submit documentation of a passing tightness test for the tanks and lines conducted within 30 days prior to putting the UST back into service. Effective 8/1/08 [Cit. ref. §2-5-1(e)] | 10% |
| | Failure to permanently close a UST within 12 months of taking it out of service or receive a written extension of the 12 month temporary closure period. [Cit. ref. §2-5-1] (Extension portion effective 8/1/08). | 10% |
| | Failure to permanently close an AST within 24 months of taking it out of service. [Cit. ref. §3-4-7] | 10% |
| | Failure to provide written notice to OPS at least 10 days before permanently closing a UST or an AST. [Cit. ref. §2-5-2] | 10% |
| | Failure to provide any written closure notice to OPS before permanently closing a UST or an AST. [Cit. ref. §2-5-2] | 15% |
| | Failure to submit a Site Summary Form within 60 days of release for tanks that are permanently closed. [Cit. ref. §5-3(b)] | 10% |
| | Failure to submit a Site Characterization Report within the risk-based time frame established by regulation for tanks that are permanently closed. [Cit. ref. §5-4(j)] | 10% |
| | Failure to submit a Corrective Action Plan (CAP) within 60 days of OPS request for tanks that are permanently closed. [Cit. ref. §5-5(a)] | 10% |
| | Failure to implement the Corrective Action Plan (CAP) as directed by the Director for tanks that are permanently closed. [Cit. ref. §5-5(g)] | 10% |
| | Failure to establish and maintain a groundwater monitoring program for tanks that are permanently closed. [Cit. ref. §5-3(b)(3)] | 10% |

SUBSTANTIAL NON-COMPLIANCE (Potential for complete denial)

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| | Maximum reduction imposed in any 2 of the categories: release detection, closure and release reporting | |
| | Operating an AST after 12/22/96 that does not meet the 12/22/96 upgrade requirements or has not been permanently closed pursuant to regulation at the time of release discovery. [Cit. ref. §3-3-16] | |
| | Operating a UST after 12/22/98 that does not meet the 12/22/98 requirements pertaining to spill/overfill prevention and corrosion protection or has not been permanently closed pursuant to regulation at the time of release discovery. [Cit. ref. §2-2-9] | |
| | Allowing the delivery of product into a UST that has been identified by OPS as ineligible to receive product [Cit. ref. §2-6] AND/OR removing, defacing, altering or otherwise tampering with a red tag so that the information contained on the tag is not legible. Effective 8/1/08 [Cit. ref. §2-6-2] | |