



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 6 2010

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009

FROM: Rosemarie A. Kelley, Director *Rosemarie A. Kelley*
Waste and Chemical Enforcement Division
Office of Civil Enforcement

TO: Regional Counsels
Regional Division Directors
Regional Enforcement Directors

On November 16, 2009, the Waste and Chemical Enforcement Division issued adjusted penalty policy matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule. That package did not contain penalty policy matrices for enforcement under RCRA Subtitle I (Underground Storage Tanks or "USTs"). Attached for your use is a revised version of the November 16, 2009 package with adjusted penalty matrices for RCRA Subtitle I. Those matrices are found in Attachments C and D. Attachment C amends "U.S. EPA Penalty Guidance for Violations of UST Regulations: OSWER Directive 9610.12" (November 14, 1990). Attachment D amends "Guidance of Federal Field Citation Enforcement: OSWER Directive 9610.16" (October 6, 1993). Attachments A and B were changed to include RCRA Subtitle I penalty policies in effect and instructions for amending each policy.

These matrices were updated to reflect the changes made to all penalty policies by the memorandum from Granta Y. Nakayama entitled, "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule" (December 29, 2008). That memorandum implemented the Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 75,340), which became effective on January 12, 2009. Both documents are available online at: <http://www.epa.gov/compliance/resources/policies/civil/penalty/>.

Attachment C contains matrices applicable to UST violations occurring from March 15, 2004 through January 12, 2009, and after January 12, 2009. Attachment D applies to violations occurring after January 12, 2009. For questions regarding these matrices please contact Tom Charlton by phone at (202) 564-6960 or by email at charlton.tom@epa.gov.

Attachments:

- Transmittal Memorandum (originally issued on 16 November 2009)
- Attachment A (revised)
- Attachment B (revised)
- Attachment C (revised)
- Attachment D (revised)

cc: Regional Branch Chiefs

bcc: OCE/SLPD Division Director
OC/CASPD Division Director
OC/CAMPD Division Director
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Nancy Barmakian, U.S. EPA Region 1
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ATTACHMENT A

RESOURCE CONSERVATION AND RECOVERY ACT

RCRA Civil Penalty Policy (2003)

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Enforcement Response Policy for FIFRA Section 7(c): Pesticide Producing Establishment Reporting Requirement (2007)

Worker Protection Standard Penalty Policy - Interim Final (1997)

Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act -- Good Laboratory Practice (GLP) Regulations (1991)

Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (1990)

TOXIC SUBSTANCES CONTROL ACT

Section 1018 - Disclosure Rule Enforcement Response Policy (2007)

Reporting and Recordkeeping Rules and Requirements: TSCA SECTIONS 8, 12 AND 13 (1999)

Polychlorinated Biphenyls (PCBs) Penalty Policy (1990)

Interim Final Enforcement Response Policy - Asbestos Abatement Projects: Worker Protection: Final Rule (1989)

Amended TSCA Section 5 Enforcement Response Policy (1989)

Asbestos Hazard Emergency Response Act (AHERA) Enforcement Response Policy (1989)

Enforcement Response Policy for TSCA Section 4 Test Rules (1986)

Final TSCA GLP Enforcement Response Policy (1985)

EMERGENCY PLANNING COMMUNITY RIGHT-TO-KNOW ACT

Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-To-Know Act and Section 6607 of the Pollution Prevention Act, Amended (2001)

Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act

(1999)

CLEAN AIR ACT

Combined Enforcement Policy for CAA Section 112(r) Risk Management Program (2001)

RESOURCE CONSERVATION AND RECOVERY ACT – SUBTITLE I

U.S. EPA Penalty Guidance for Violations of UST Regulations: OSWER Directive 9610.12 (1990)

Guidance of Federal Field Citation Enforcement: OSWER Directive 9610.16 (1993)

ATTACHMENT B – REVISED April 6, 2010

PENALTY POLICY	DIRECTION
RCRA	
RCRA: RCRA Civil Penalty Policy (June 2003)	Insert behind pages 18-A and 26-A as indicated.
FIFRA	
FIFRA: Worker Protection Standard Penalty Policy - Interim Final (09/01/97)	Insert table (p. 4-B) behind page 4-A.
Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act – Good Laboratory Practice (GLP) Regulations (09/30/91)	No insert. When proposing penalty amounts under the Enforcement Response Policy for GLP Regulations, dated September 30, 1991, actual dollar amounts are determined by using the ERP for FIFRA (07/02/90). See directions below for FIFRA ERP.
Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (07/02/90)	Insert after page 19-B in the policy and page C-1-A in the appendix.
FIFRA Section 7(c) Enforcement Response Policy (02/10/86)	Insert table (p. 13-A) after page 13 in the policy.
TSCA	
Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy (December 2007)	Insert matrix (Appendix B p.30-A) behind Appendix B p.30
Reporting and Recordkeeping Rules and Requirements: TSCA SECTIONS 8, 12, AND 13 (03/31/99)	Insert matrix (p.8-B) behind page 8-A.
Polychlorinated Biphenyls Penalty Policy (04/09/90)	Insert matrix (p.9-C) behind page 9-B.
Enforcement Response Policy for TSCA Section 4 Test Rules (05/28/86)	Insert matrix (p2-C) behind page 2-B.
Amendment to the TSCA Section 5 Enforcement Response Policy (06/08/89)	Insert matrix (p.16-C) behind page 16-B.
Asbestos Hazard Emergency Response Act (AHERA) Enforcement Response Policy (01/31/89)	Insert matrix (p.11-C) behind page 11-B. Insert matrix (p.17-C) behind page 17-B.
Interim Final Enforcement Response Policy – Asbestos Abatement Projects: Worker Protection: Final Rule (11/14/89)	Insert matrix (p. 6-C) behind page 6-B.
Final TSCA GLP Enforcement Response Policy (04/09/85)	Insert matrix (p.4-C) behind page 4-B.
EPCRA	
Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-To-Know Act (1989) and Section 6607 of the Pollution Prevention Act (1990), Amended (04/12/01)	Insert matrix (p11-C) behind page 11-B.
Final Enforcement Response Policy for Sections 304, 311, 312 of EPCRA and Section 103 of CERCLA (09/30/99)	Insert matrix (pp. 20D & 20E) behind page 20C.
CAA 112 (r)	
Combined Enforcement Policy for CAA Section 112(r) Risk Management Program (08/15/01)	Insert matrix behind page 8.

RCRA – Subtitle I

U.S. EPA Penalty Guidance for Violations of UST Regulations: OSWER
Directive 9610.12 (11/14/90)

Use matrices in Attachment C in place of Exhibit
4 in OSWER Directive 9610.12 (Exhibit 4 is a
link on an HTML Document).

Guidance of Federal Field Citation Enforcement: OSWER Directive 9610.16
(10/6/93)

Insert matrices in Attachment D in OSWER
Directive 9610.16 as Subparts B through H.

Insert behind page 18.

**Gravity-based penalty matrix
to supplement the RCRA Civil Penalty Policy
for violations that occur after January 12, 2009.**

Extent of Deviation from Requirement

	MAJOR	MODERATE	MINOR
Potential for Harm	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
	\$15,580 to \$11,330	\$11,330 to \$7,090	\$7,090 to \$4,250
	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 26.

Multi-Day Matrix of Minimum Daily Penalties
To Supplement the RCRA Civil Penalty Policy
For Violations That Occur After January 12, 2009

Extent of Deviation from Requirement

Potential
for
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
MODERATE	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
MINOR	\$850 to \$150	\$430 to \$150	\$150

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 4-A.

Gravity-Based Penalty Table
To Supplement the Worker Protection Standard Penalty Policy - Interim Final
For Violations That Occur After January 12, 2009

Determining the Appropriate Enforcement Response

In conclusion, the following chart summarizes when issuance of a NOW or a Civil Administrative Complaint is the appropriate enforcement response:

PERSON	FIRST VIOLATION	SECOND VIOLATION WITHIN FIVE (5) YEARS
Registrant OR Commercial applicator ¹ OR Wholesaler OR Dealer OR Retailer OR Distributor ¹	If gravity adjustment factor is 3 or below (minor violations)-->NOW under § 9(c)(3) If gravity adjustment factor is 4 or greater--> Civil Administrative Complaint for a §14(a)(1) violator category with a penalty amount up to \$5,000/violation if committed through 1/30/97; or up to \$5,500/violation if committed after 1/30/97; or up to \$6,500/violation if committed after March 15, 2004 ² ; or up to \$7,500/violation if committed after January 12, 2009.	Civil Administrative Complaint for a §14(a)(1) violator category with a penalty amount up to \$5,000/violation if committed through 1/30/97; or up to \$5,500/violation if committed after 1/30/97; or up to \$6,500/violation if committed after March 15, 2004 ² ; or up to \$7,500/violation if committed after January 12, 2009.

¹ Also see FIFRA ERP ASSESSING ADMINISTRATIVE CIVIL PENALTIES (pg. 17) and footnotes (pg. 10), regarding further discussions on distributors, and commercial, "for-hire" and private applicators.

² Even if the total gravity adjustment level is 4 or greater, and if the violation occurs despite the "exercise of due care," and no "significant harm" occurs, a NOW under §14(a)(4) may be issued at any time.

PERSON	FIRST VIOLATION	SECOND VIOLATION WITHIN FIVE (5) YEARS
Private applicator ¹	NOW for a § 14(a)(2) violator category	Civil Administrative Complaint for a §14(a)(2) violator category with a penalty amount up to \$1,000/violation if committed through March 15, 2004; or up to \$1,100/violation if committed after March 15, 2004. ^{2, 3, 4}
"For hire" applicator	Civil Administrative Complaint for a § 14(a)(2) violator category with a penalty amount up to \$500/violation if committed through 1/30/97; or up to \$550/violation if committed after 1/30/97; or up to \$650/violation if committed after March 15, 2004. ¹ ; or up to \$750/violation if committed after January 12, 2009.	Civil Administrative Complaint for a §14(a)(2) violator category for a penalty amount up to \$1,000/violation if committed through March 15, 2004; or up to \$1,100/violation if committed after March 15, 2004 ^{2, 3, 4} .

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

³ Prior written warning or citation will be considered for any FIFRA violation.

⁴ The maximum penalty amount of \$1,100 did not increase after January 12, 2009.

Insert behind page 19-B.

Gravity-Based Penalty Matrix
To Supplement the Enforcement Response Policy For Federal Insecticide,
Fungicide, And Rodenticide Act Section 14(A)(1)
For Violations That Occur After January 12, 2009

CIVIL PENALTY MATRIX FOR FIFRA SECTION 14(a)(1)

SIZE OF BUSINESS

LEVEL	I	II	III
LEVEL 1	\$7,500	\$7,150	\$7,150
LEVEL 2	\$7,150	\$5,670	\$4,250
LEVEL 3	\$5,670	\$4,250	\$2,830
LEVEL 4	\$4,250	\$2,830	\$1,420

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 19-C.

Gravity-Based Penalty Matrix
To Supplement the Enforcement Response Policy For Federal Insecticide,
Fungicide, And Rodenticide Act Section 14(A)(2)
For Violations That Occur After January 12, 2009

CIVIL PENALTY MATRIX FOR FIFRA SECTION 14(a)(2)[†]

SIZE OF BUSINESS

LEVEL	I	II	III
LEVEL 1	\$1,100 ¹	\$1,100 ¹	\$1,100 ¹
LEVEL 2	\$1,100 ¹	\$1,030	\$770
LEVEL 3	\$1,030	\$770	\$650

[†] This §14(a)(2) matrix is only for use in determining civil penalties issued subsequent to a notice of warning or following a citation for a prior violation, or in the case of a “for hire” applicator using a registered general use pesticide, subsequent to the issuance of a civil penalty of \$650.

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

¹ In the matter of Petrocco Farms, the Administrative Law Judge identified a typographical error in the December 31, 1996, Civil Monetary Penalty Inflation Adjustment Rule published at 40 C.F.R. §19.4 which incorrectly listed the statutory maximum penalty for FIFRA § 14(a)(2) as \$1,000. The statutory maximum amount for FIFRA § 14(a)(2) should have been adjusted by the 10% inflation factor to \$1,100 in the codified table in the 1996 publication. The correct amount was published in the preamble but not in the table.

Insert behind page 13.

**Gravity-based penalty matrix
to supplement the Enforcement Response Policy for the Federal Insecticide,
Fungicide, and Rodenticide Act (FIFRA) for Section 7(c)
for violations that occur after January 12, 2009**

E. FIFRA Section 7(c) Civil Penalty Matrix

Type of Violations	First Time Violator	Second Time Violator*	Third and Subsequent*
Late Reporting	NOW	C-I - \$3,300 C-II - \$1,650 C-III - \$1,100	\$7,500
Non-Reporting	NOW If no response: C-I - \$3,300 C-II - \$1,650 C-III - \$1,100	C-I - \$4,950 C-II - \$3,300 C-III - \$1,650	\$7,500
Incomplete Report - Minor	Informal Response/NOW	NOW	NOW or C-I - \$3,300 C-II - \$1,650 C-III - \$1,100
Incomplete Report - Major	NOW	C-I - \$3,300 C-II - \$1,650 C-III - \$1,100	\$7,500
False Reporting	\$7,500	\$7,500	\$7,500

*Repeat violations refer to violations that occurred within a three year span.

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind Appendix B Page 30.

<p>Gravity-based penalty matrix to supplement Section 1018-Disclosure Rule Enforcement Response Policy for violations that occur after January 12, 2009</p>
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EXTENT CATEGORY MATRIX			
Occupant of the target housing is:	A child under 6 year of age or a pregnant woman	A child 6 years of age or older but less than 18 years of age or age not provided	18 years of age or older
EXTENT	<i>Major</i>	<i>Significant</i>	<i>Minor</i>

GRAVITY-BASED PENALTY (GBP) MATRIX

The GBP, a function of the nature, circumstances and extent of each violation, is determined by using the following matrix:

CIRCUMSTANCE	MAJOR	SIGNIFICANT	MINOR
	EXTENT	EXTENT	EXTENT
HIGH			
Level 1	\$16,000	\$8,500	\$2,840
Level 2	\$11,340	\$7,090	\$1,710
MEDIUM			
Level 3	\$8,500	\$5,670	\$850
Level 4	\$5,670	\$3,540	\$580
LOW			
Level 5	\$2,840	\$1,850	\$290
Level 6	\$1,420	\$710	\$150

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 8-A.

Gravity based penalty matrix
to supplement Recordkeeping and Reporting Rules and Requirements for TSCA
Sections 8, 12 and 13 for violations that occur after January 12, 2009

**TSCA §§ 8, 12, & 13
GRAVITY BASED PENALTY MATRIX**

CIRCUMSTANCES	EXTENT		
	A Major	B Significant	C Minor
LEVELS			
1	\$37,500	\$24,080	\$7,090
High Range			
2	\$28,330	\$18,420	\$4,250
3	\$21,250	\$14,170	\$2,130
Mid Range			
4	\$14,170	\$8,500	\$1,420
5	\$7,090	\$4,250	\$710
Low Range			
6	\$2,840	\$1,850	\$290

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 9-B.

Gravity Based Penalty Matrix
to supplement PCB Penalty Policy
for violations that occur after January 12, 2009

**TSCA § 6 (PCB)
GRAVITY BASED PENALTY MATRIX**

CIRCUMSTANCES (probability of damages)	EXTENT		
	A Major	B Significant	C Minor
LEVELS			
1 High Range	\$37,500	\$24,080	\$7,090
2	\$28,330	\$18,420	\$4,250
3 Mid Range	\$21,250	\$14,170	\$2,130
4	\$14,170	\$8,500	\$1,420
5 Low Range	\$7,090	\$4,250	\$710
6	\$2,840	\$1,850	\$290

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 2-B.

Gravity Based Penalty Matrix
to supplement TSCA Section 4 Test Rule Enforcement Response Policy
for violations that occur after January 12, 2009

TSCA § 4
GRAVITY BASED PENALTY MATRIX

CIRCUMSTANCES (probability of damages)	EXTENT		
	A Major	B Significant	C Minor
LEVELS 1 High Range	\$37,500	\$24,080	\$7,090
2	--	--	--
3 Mid Range	\$21,250	\$14,170	\$2,130
4	\$14,170	\$8,500	\$1,420
5 Low Range	\$7,090	\$4,250	\$710
6	\$2,840	\$1,850	\$290

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 16-B.

Gravity Based Penalty Matrix
to supplement TSCA Section 5 Enforcement Response Policy
for violations that occur after January 12, 2009

**TSCA § 5
GRAVITY BASED PENALTY MATRIX**

CIRCUMSTANCES	EXTENT		
	A Major	B Significant	C Minor
LEVELS 1 High Range 2	\$37,500 \$28,330	\$24,080 \$18,420	\$7,090 \$4,250
3 Mid Range 4	\$21,250 \$14,170	\$14,170 \$8,500	\$2,130 \$1,420
5 Low Range 6	\$7,090 \$2,840	\$4,250 \$1,820	\$710 \$290

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 11-B.

Gravity Based Penalty Matrix
to supplement Interim Final Enforcement Response Policy for the Asbestos
Hazard Emergency Response Act
for violations that occur after January 12, 2009.

Base Penalty for LEA's

CIRCUMSTANCES (Levels)	Extent LEVEL A MAJOR (>3,000 sq. ft. or 1,000 linear ft.)	Extent LEVEL B SIGNIFICANT (>160 sq. ft. or 260 linear ft. but <3,000 sq. ft. or 1,000 linear ft.)	Extent LEVEL C MINOR (<or = 160 sq. ft. or 260 linear ft.)
LEVEL 1	\$7,500	\$5,700	\$1,680
LEVEL 2	\$6,700	\$4,020	\$1,010
LEVEL 3	\$5,030	\$3,350	\$510
LEVEL 4	\$3,350	\$2,010	\$340
LEVEL 5	\$1,680	\$1,010	\$170
LEVEL 6	\$670	\$490	\$70

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 17-B.

Gravity based penalty matrix
to supplement Interim Final Enforcement Response Policy for the Asbestos
Hazard Emergency Response Act
for violations that occur after January 12, 2009

AHERA -"Other Persons"

CIRCUMSTANCES (Levels)	Extent LEVEL A MAJOR	Extent LEVEL B SIGNIFICANT	Extent LEVEL C MINOR
LEVEL 1	\$7,500	\$4,080	\$1,200
LEVEL 2	\$4,800	\$3,120	\$720
LEVEL 3	\$3,600	\$2,400	\$360
LEVEL 4	\$2,400	\$1,440	\$240
LEVEL 5	\$1,200	\$720	\$120
LEVEL 6	\$480	\$320	\$50

Note: > = greater than; < = less than.

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 6-B.

Gravity based penalty matrix
to supplement Interim Final Enforcement Response Policy – Asbestos
Abatement Projects: Worker Protection: Final Rule
for violations that occur after January 12, 2009

Asbestos Worker Protection

CIRCUMSTANCES (Levels)	Extent LEVEL A MAJOR	Extent LEVEL B SIGNIFICANT	Extent LEVEL C MINOR
LEVEL 1	\$37,500	\$24,080	\$7,090
LEVEL 2	\$28,330	\$18,420	\$4,250
LEVEL 3	\$21,250	\$14,170	\$2,130
LEVEL 4	\$14,170	\$8,500	\$1,420
LEVEL 5	\$7,090	\$4,250	\$710
LEVEL 6	\$2,840	\$1,850	\$290

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 4-B.

Gravity Based Penalty Matrix
to supplement TSCA Good Laboratory Practices Regulations Enforcement
Policy for violations that occur after January 12, 2009.

TSCA GLP
GRAVITY BASED PENALTY MATRIX

CIRCUMSTANCES (probability of damages)	EXTENT		
	A Major	B Significant	C Minor
LEVELS 1 High Range	\$37,500	\$24,080	\$7090
2	--	--	--
3 Mid Range	\$21,250	\$14,170	\$2,130
4	--	--	--
5 Low Range	\$7,090	\$4,250	\$710
6	--	--	--

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 11-B.

Gravity-based penalty matrix
to supplement Enforcement Response Policy for Section 313 of the Emergency
Planning Community Right-To-Know Act (1989) and Section 6607 of the
Pollution Prevention Act (1990) for violations that occur after January 12, 2009.

GRAVITY-BASED PENALTY MATRIX FOR EPCRA SECTION 313

CIRCUMSTANCE LEVEL	EXTENT		
	A Major	B Significant	C Minor
LEVEL 1	\$37,500	\$24,080	\$7,090
LEVEL 2	\$28,330	\$18,420	\$4,250
LEVEL 3	\$21,250	\$14,170	\$2,130
LEVEL 4	\$14,170	\$8,500	\$1,420
LEVEL 5	\$7,090	\$4,250	\$710
LEVEL 6	\$2,840	\$1,850	\$290

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 20-C.

Gravity-based penalty matrix to supplement Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-To-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act for violations that occur after January 12, 2009.

Table II

**CIVIL PENALTY MATRIX FOR CERCLA SECTION 103,
EPCRA SECTION 304[†], AND EPCRA SECTION 312**

GRAVITY (Quantity Released/Stored)

EXTENT (timeliness of notification/timeliness of inventory submission)	LEVEL A (greater than 10 times the RQ/MTL)	LEVEL B (greater than 5 but less than or equal to 10 times the RQ/MTL)	LEVEL C (greater than 1 but less than or equal to 5 times the RQ/MTL)
LEVEL 1 (more than 2 hours/30 days)	\$37,500	\$26,560	\$17,710
	\$26,560	\$17,710	\$8,860
LEVEL 2 (between 1 and 2 hours/after 20 but within 30 days)	\$26,560	\$17,710	\$8,860
	\$17,710	\$8,860	\$4,430
LEVEL 3 (within 1 hour, but after 15 minutes/after 10 but within 20 days)	\$17,710	\$8,860	\$4,430
	\$8,860	\$4,430	\$2,220

[†] While the penalty amounts in this matrix apply to EPCRA § 304(c), the criteria associated with the levels do not apply. To determine the appropriate extent level for violations of § 304, *see* pp. 12-13, *supra*.

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 20-D.

Gravity-based penalty matrix to supplement Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-To-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act for violations that occur after January 12, 2009.

Table II (continued)

CIVIL PENALTY MATRIX FOR EPCRA SECTION 311

GRAVITY (Quantity Stored)

EXTENT (timeliness of MSDS submission)	LEVEL A (greater than 10 times the MTL)	LEVEL B (greater than 5 but less than or equal to 10 times the MTL)	LEVEL C (greater than 1 but less than or equal to 5 times the MTL)
LEVEL 1 (more than 30 days)	\$16,000	\$12,460	\$8,310
	\$12,460	\$8,310	\$4,150
LEVEL 2 (after 20 but within 30 days)	\$12,460	\$8,310	\$4,150
	\$8,310	\$4,160	\$2,080
LEVEL 3 (after 10 but within 20 days)	\$8,310	\$4,160	\$2,080
	\$1,450	\$2,080	\$1,150

The dollar values in the matrix were increased by 28.75% to reflect the first increase in the statutory maximum penalty amount since 2004.

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

Insert behind page 8.

**Gravity-based penalty matrix
to supplement Combined Enforcement Policy for CAA Section 112(r) Risk
Management Program for violations that occur after January 12, 2009**

GRAVITY MATRIX

**Table I
Penalty Assessment Matrix
for violations that occurred after January 12, 2009**

		Type of Facility ⁵		
		Program 3	Program 2	Program 1
Extent of Deviation	Major	Not less than \$38,500	\$76,900	\$107,800
			\$32,010	\$44,010
	Moderate	\$44,000	\$32,000	\$18,700
		\$23,010	\$15,410	\$ 7,700
	Minor	\$23,000	\$15,400	\$7,700
		\$9,900	\$ 6,600	\$2,500

Regions should understand that the statutory maximum for penalty under the Clean Air Act after January 12, 2009, is \$37,500 per day per violation. Some of the penalty amounts in the matrix above exceed the statutory maximum. Penalties in excess of the statutory maximum may only be used if the Agency alleges that more than one violation has occurred.

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Granta Nakayama, dated December 29, 2008.

⁵ The facilities subject to part 68 fall into one of three categories: Program 1, 2 or 3. The program levels are defined in the RMP regulations based upon the level of risk posed by processes subject to the risk management program.

Exhibit 4.A.

Matrix Values for Determining the Gravity-Based Component of A Penalty

(Use for Violations that Occurred After March 15, 2004 Through January 12, 2009)

		Extent of Deviation from Requirement			
		<i>Major</i>	<i>Moderate</i>	<i>Minor</i>	
Potential for Harm	Major	1,930	1,290	650	Major
	Moderate	970	650	320	Moderate
	Minor	260	130	70	Minor

NOTE: These amounts constitute the matrix value only. They are not the initial penalty target figure. The initial penalty target figure is calculated as follows:

$\text{Initial Penalty Target Figure} = \text{Economic Benefit Component} + \left(\text{MATRIX VALUE} \times \text{Violator-Specific Adjustments} \times \text{Environmental Sensitivity Multiplier} \times \text{Days of Noncompliance Multiplier} \right)$

Note: Original values provided in Directive 9610.12, November 14, 1990 have been adjusted for inflation by multiplying By 1.2895, reflecting the 10% increase, and the 17.23% increase [1.10 x 1.1723 = 1.2895] in accordance with December 29, 2008 Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). Resulting values were rounded to the nearest whole number then rounded to the nearest 10.

[Directive 9610.12]

Exhibit 4.B.

Matrix Values for Determining the Gravity-Based Component of A Penalty

(Use for Violations that Occurred After January 12, 2009)

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm	Major	2,130	1,420	710
	Moderate	1,060	710	350
	Minor	280	140	70

NOTE: These amounts constitute the matrix value only. They are not the initial penalty target figure. The initial penalty target figure is calculated as follows:

$$\text{Initial Penalty Target Figure} = \text{Economic Benefit Component} + \left(\text{MATRIX VALUE} \times \text{Violator-Specific Adjustments} \times \text{Environmental Sensitivity Multiplier} \times \text{Days of Noncompliance Multiplier} \right)$$

Note: Original values provided in Directive 9610.12, November 14, 1990 have been adjusted for inflation by multiplying By 1.4163, reflecting the 10% increase, the 17.23% increase, and the 9.83% increase [1.10 x 1.1723 x 1.0983 = 1.4163] in accordance with December 29, 2008 Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). Resulting values were rounded to the nearest whole number then rounded to nearest 10.

[Directive 9610.12]

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Selected Violations Of Federal Underground Storage Tank Regulations Subpart B--UST Systems: Design, Construction, Installation, and Notification OSWER Directive 9610.16 Guidance On Federal Field Citation Enforcement October 6, 1993

Selected Violations of Federal Underground Storage Tank Regulations SUBPART B -- UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION

§280.20 Performance standards for new UST systems

Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.20(a)(1)	Installation of an improperly constructed fiberglass-reinforced plastic tank	\$420
§280.20(a)(2)	Installation of an improperly designed and constructed metal tank that fails to meet corrosion protection standards	\$420
§280.20(a)(2)(i)	Installation of a metal tank with unsuitable dielectric coating	\$210
§280.20(a)(2)(ii)	Installation of an improperly designed cathodic protection system for a metal tank	\$420
§280.20(a)(2)(iii)	Improper Installation of cathodic protection system for a metal tank	\$210
§280.20(a)(2)(iv)	Improper operation and maintenance of tank cathodic protection system	\$210
§280.20(a)(3)	Installation of an Improperly constructed steel-fiberglass-reinforced-plastic tank	\$420
§280.20(b)(1)	Installation of Improperly constructed fiberglass-reinforced plastic piping	\$420
§280.20(b)(2)	Failure to provide any cathodic protection for metal piping	\$420

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.20(b)(2)(i)	Installation of piping with unsuitable dielectric coating	\$210
§280.20(b)(2)(ii)	Installation of improperly designed cathodic protection for metal piping	\$420
§280.20(b)(2)(iii)	Improper Installation of cathodic protection system for piping	\$210
§280.20(b)(2)(iv)	Improper operation and maintenance of cathodic protection system for metal piping	\$210
§280.20(c)	Failure to use a spill prevention system and an overfill prevention system	\$420
§280.20(c)(1)(i)	Installation of inadequate spill prevention equipment In a new tank	\$210
§280.20(c)(1)(ii)	Installation of inadequate overfill prevention equipment in a new tank	\$210
§280.20(d)	Failure to install tank in accordance with accepted codes and standards	\$210
§280.20(d)	Failure to install piping in accordance with accepted codes and standards	\$210
§280.20(e)	Failure to provide any certification of UST installation	\$210

§280.21 Upgrading of existing UST systems

Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.21(a)	Failure to perform replacement, upgrade, or closure for existing substandard tank systems	*\$1,300
§280.21(b)	Failure to meet all tank upgrade standards	\$420
§280.21(b)(1)(i)	Improper Installation of interior lining for tank upgrade requirements	\$210
§280.21(b)(1)(ii)	Failure to meet Interior lining Inspection	\$210

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

	requirements for tank upgrade	
§280.21(b)(2)(i)	Failure to ensure that tank is structurally sound before installing cathodic protection	\$210
§280.21(b)(2)(ii)	Failure to conduct monthly release detection monitoring for upgraded tank under 10 years of age	\$420
§280.21(b)(2)(iii)	Failure to meet tightness test requirements for a tank upgraded with cathodic protection	\$210
§280.21(b)(2)(iv)	Failure to meet requirements for testing for corrosion holes for a tank upgraded with cathodic protection	\$210
§280.21(c)	Failure to Install any cathodic protection for metal piping upgrade requirements	\$420
§280.21(c)	Failure to meet piping tightness test requirements for metal piping after upgrade with cathodic protection	\$210
§280.21(d)	Failure to provide spill or overfill prevention system for an existing tank	\$420

§280.22 Notification requirements

Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.22(a) or	Failure to notify state or local agency within 30 days of bringing an UST system into use	\$420
§280.22(b)	Failure to notify designated state or local agency of existing tank	\$420
§280.22(c)	Failure to submit a separate notification form identifying all known tanks for each site where tanks are located	\$210
§280.22(e)	Failure to certify on notification form UST system requirements of proper installation, cathodic protection, financial responsibility, and release detection	\$210

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.22(f)	Failure to provide installer certification of compliance with installation requirements on notification form	\$210
§280.22(g)	Failure to inform tank purchaser of notification requirements	

Notes: *The penalty amount for the 280.21(a) "Catch-all" violation was previously changed to \$900 (on March 16, 1999); and further adjusted to \$1,300 in accordance with the March 3, 2000 Use of Field Citations for Failure to Comply with 40 C.F.R. § 280.21 Upgrade, Replacement or Closure Requirements at UST Facilities in order to recover economic benefit. This amount exceeds the adjustment for inflation using the December 29, 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). (i.e., \$420). This penalty amount remains unchanged beyond the previous increase applied on March 3, 2000.

Original penalty amounts were adjusted for inflation. Current amounts are reflected in the table. Original penalty amounts were multiplied by 1.4163. [Reflecting the 10% increase for the period Jan 31, 1997 through Mar 15, 2004; a 17.23% increase ($1.10 \times 1.1723 = 1.2895$) from March 16, 2004 through January 11, 2009; and a 9.83% increase for violations occurring on or after January 12, 2009 ($1.10 \times 1.1723 \times 1.0983 = 1.4163$)]. This is in accordance with the December 29, 2008, Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). Resulting values were rounded to the nearest \$10.

[Directive 9610.16]

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Selected Violations Of Federal Underground Storage Tank Regulations Subpart C--General Operating Requirements OSWER Directive 9610.16 Guidance On Federal Field Citation Enforcement October 6, 1993

Selected Violations of Federal Underground Storage Tank Regulations SUBPART C -- GENERAL OPERATING REQUIREMENTS

280.30 Spill and overfill control		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.30(a)	Failure to take necessary precautions to prevent overfill/spillage during the transfer of product	\$420
§280.30(b)	Failure to report a spill/overfill	
§280.30(b)	Failure to Investigate and clean up a spill/overfill	
280.31 Operation and maintenance of corrosion protection		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.31(a)	Failure to operate and maintain corrosion protection system continuously	\$210
§280.31(b)	Failure to ensure proper operation of cathodic protection system	\$210
§280.31(c)	Failure to inspect impressed current systems every 60 days	\$210
§280.31(d)	Failure to maintain records of cathodic protection inspections	\$70
280.32 Compatibility		

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.32	Failure to ensure that UST system is made of or lined with materials compatible with substance stored	\$210
280.33 Repairs allowed		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.33(a)	Failure to repair UST system in accordance with accepted codes and standards	\$210
§280.33(b)	Failure to repair fiberglass-reinforced UST in accordance with accepted codes and standards	\$210
§280.33(c)	Failure to replace metal piping that has released product	\$210
§280.33(c)	Failure to repair fiberglass-reinforced piping in accordance with manufacturers specifications	\$210
§280.33(d)	Failure to ensure that repaired tank systems are tightness tested within 30 days of completion of repair	\$420
§280.33(e)	Failure to test cathodic protection system within 6 months of repair of an UST system	\$210
§280.33(f)	Failure to maintain records of each repair to an UST system	\$70
280.34 Reporting and recordkeeping		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
For violations of reporting and recordkeeping, see appropriate regulatory section (e.g., reporting of releases will be under Subpart D).		

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.34(a)(1) or	Failure to submit notification for UST system	\$420
§280.34(a)(1)	Failure to submit certification of a new installation with notification form	\$420
§280.34(b)(1)	Failure to maintain analysis of site corrosion potential if corrosion protection equipment is not used	\$70
§280.34(b)(2)	Failure to maintain corrosion protection equipment operation documentation	\$70
§280.34(b)(3)	Failure to maintain documentation of UST system repairs	\$70
§280.34(b)(4)	Failure to maintain documentation of compliance with release detection requirements	\$70
§280.34(c)(1) or	Failure to maintain records at UST site and immediately available for inspection	\$70
§280.34(c)(2)	Failure to maintain records at a readily available alternative site	\$70

Note: Original penalty amounts were adjusted for inflation. Current amounts are reflected in the table. Original penalty amounts were multiplied by 1.4163. [Reflecting the 10% increase for the period Jan 31, 1997 through Mar 15, 2004; a 17.23% increase ($1.10 \times 1.1723 = 1.2895$) from March 16, 2004 through January 11, 2009; and a 9.83% increase for violations occurring on or after January 12, 2009 ($1.10 \times 1.1723 \times 1.0983 = 1.4163$)]. This is in accordance with the December 29, 2008, Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). Resulting values were rounded to the nearest \$10.

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Selected Violations Of Federal Underground Storage Tank Regulations Subpart D--Release Detection OSWER Directive 9610.16 Guidance On Federal Field Citation Enforcement October 6, 1993

Selected Violations of Federal Underground Storage Tank Regulations SUBPART D -- RELEASE DETECTION

280.40 General requirements for all UST systems (Applies only to petroleum tanks)		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.40(a)	Failure to provide adequate release detection method	\$420
§280.40(b)	Failure to notify implementing agency when release detection indicates release	
§280.40(c)	Failure to provide any release detection method by phase-in date	\$210
§280.40(d)	Failure to close any UST system that cannot meet release detection requirements	\$420
280.41 Requirements for petroleum UST systems		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§ 280.41(a) or	Failure to monitor tanks at least every 30 days, if appropriate	\$420
§280.41(a)(1) or	Failure to conduct tank tightness testing every 5 years, if appropriate	\$420
§ 280.41(a)(2)	Failure to conduct annual tank tightness testing, if appropriate	\$420
§280.41(b)(1)(i)	Failure to equip pressurized piping with automatic line leak detector	\$420

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.41(b)(1)(ii)	Failure to have annual tank tightness test or perform monthly monitoring on pressurized piping	\$420
§ 280.41(b)(2)	Failure to conduct line tightness test or use monthly monitoring on suction piping	\$420
280.42 Requirements for hazardous substance UST systems		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.42(a)	Failure to provide release detection for an existing hazardous substance tank system	\$420
§280.42(b)	Failure to provide adequate release detection for a new hazardous substance UST system	\$420
§280.42(b)(1)	Failure to provide adequate secondary containment of tank for a hazardous substance UST	\$420
§280.42(b)(2)	Failure to provide adequate double-walled tank/adequate lining for a hazardous substance UST	\$420
§280.42(b)(3)	Failure to provide adequate external liners for a hazardous substance UST	\$420
§280.42(b)(4)	Failure to provide adequate secondary containment of piping for a hazardous substance UST	\$420
280.43 Methods of release detection for tanks		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.43(a)	Inadequate operation or maintenance of inventory control	\$420
§280.43(a)(1)-(6)		\$70 each
§280.43(b)	Inadequate operation or maintenance of manual tank gauging	\$420

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.43(b)(1)-(4)*		\$70 each
§280.43(c)	Inadequate operation or maintenance of tank tightness testing	\$210
§280.43(d)	Inadequate operation or maintenance of automatic tank gauging	\$420
§280.43(d)(1)-(2)		\$210 each
§280.43(e)	Inadequate operation or maintenance of vapor monitoring	\$420
§280.43(e)(1)-(7)#		\$210 each
§280.43(f)	Inadequate operation or maintenance of ground-water monitoring	\$420
§280.43(f)(1)-(8)@		\$210 each
§280.43(g)	Inadequate operation or maintenance of interstitial monitoring	\$420
280.44 Methods of release detection for piping		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.44	Failure to provide any release detection for underground piping	\$420
§280.44(a) or	Failure to provide adequate line leak detector system for underground piping	\$210
§280.44(b)	Failure to provide adequate line tightness testing system for underground piping system	\$210
§260.44(c)	Inadequate use of applicable tank release detection methods	\$210
280.45 Release detection recordkeeping		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.45	Failure to maintain records of release detection monitoring	\$210
§280.45(a)	Failure to document all release detection performance claims for 5 years after installation	\$70
§280.45(b)	Failure to maintain results of sampling, testing or monitoring for release detection for at least 1 year or failure to retain results of tightness testing until next test is conducted	\$70
§280.45(c)	Failure to document calibration, maintenance, and repair of release detection	\$70

* If citing more than 3 subsections, cite instead §280.43(b) or §280.41 (a)

If citing more than 1 subsection, cite instead §280.43(e)

@ If citing more than 1 subsection, cite instead §280.43(f)

Note: Original penalty amounts were adjusted for inflation. Current amounts are reflected in the table. Original penalty amounts were multiplied by 1.4163. [Reflecting the 10% increase for the period Jan 31, 1997 through Mar 15, 2004; a 17.23% increase ($1.10 \times 1.1723 = 1.2895$) from March 16, 2004 through January 11, 2009; and a 9.83% increase for violations occurring on or after January 12, 2009 ($1.10 \times 1.1723 \times 1.0983 = 1.4163$)]. This is in accordance with the December 29, 2008, Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). Resulting values were rounded to the nearest \$10.

[Directive 9610.16]

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Selected Violations Of Federal Underground Storage Tank Regulations Subpart E--Release Reporting, Investigation, and Confirmation

OSWER Directive 9610.16 Guidance On Federal Field Citation Enforcement October 6, 1993

Selected Violations of Federal Underground Storage Tank Regulations SUBPART E -- RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

280.50 Reporting of suspected release		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.50(a)-(c)	Failure to report a suspected release within 24 hours to the implementing agency	
280.52 Release investigation and confirmation steps		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.52(a)-(b)	Failure to investigate and confirm a release (if appropriate) using accepted procedures	
280.53 Spill/overfill reporting and clean up		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.53(a)	Failure to report a spill/overfill (if appropriate) to implementing agency within 24 hours (or other specified time period)	
§280.53(b)	Failure to contain and immediately clean up a spill/overfill of less than 25 gallons	
§280.53(b)	Failure to contain and immediately clean	

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

	up a hazardous substance spill/overfill	
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Note: No penalty amounts were originally established. This table remains unchanged.

[Directive 9610.16]

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Selected Violations Of Federal Underground Storage Tank Regulations Subpart F--Release Response and Corrective Action OSWER Directive 9610.16 Guidance On Federal Field Citation Enforcement October 6, 1993

Selected Violations of Federal Underground Storage Tank Regulations SUBPART F -- RELEASE RESPONSE AND CORRECTIVE ACTION

280.61 Initial Response		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.61	Failure to take initial response actions within specified time period after a release is confirmed	
280.62 Initial abatement measures and site check		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.62	Failure to perform initial abatement measures and submit report within 20 days (or other specified time) of release confirmation	
280.63 Initial site characterization		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.63	Failure to submit report on initial site characterization within 45 days (or other specified time) of release confirmation	
280.64 Free product removal		
Regulatory	Violation	Violations Appropriate for

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Citation		Regulatory Field Citations (Penalty Amount)
§280.64	Failure to perform free product removal and submit report within 45 days (or other specified time) of release confirmation	

Note: No penalty amounts were originally established. This table remains unchanged.

[[Directive 9610.16](#)]

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Selected Violations Of Federal Underground Storage Tank Regulations Subpart G--Out-of-Service UST Systems and Closure OSWER Directive 9610.16 Guidance On Federal Field Citation Enforcement October 6, 1993

Selected Violations of Federal Underground Storage Tank Regulations SUBPART G OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

280.70 Temporary closure		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.70(a)	Failure to continue operation and maintenance of corrosion protection system in a temporarily closed tank system	\$210
§280.70(a)	Failure to continue operation and maintenance of release deflection in a temporarily closed tank system	\$420
§280.70(b)	Failure to comply with temporary closure requirements for a tank system for 3 or more months	\$420
§280.70(b)(1)-(2)		\$210 each
§280.70(c)	Failure to permanently close or upgrade a temporarily closed tank system after 12 months	\$420
280.71 Permanent closure and changes-in-service		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.71(a)	Failure to notify implementing agency of a closure or change-in-service	\$420
§280.71(b)	Failure to remove all liquids and sludges for tank closure	\$420

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.71(b)	Failure to remove closed tank from the ground or fill tank with an inert solid for tank closure	\$420
§280.71(c)	Failure to empty and clean tank system and conduct a site assessment prior to a change-in-service	
280.72 Assessing the site at closure or change-in-service		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.72(a)	Failure to measure (if required) for the presence of a release before a permanent closure	
§280.72(b)	If contaminated soil, contaminated ground water, or free product is discovered, failure to begin corrective action	
280.74 Closure records		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.74	Failure to maintain closure records for at least 3 years	\$420
§280.74	Failure to maintain change-in-service records for at least 3 years	\$420

Note: Original penalty amounts were adjusted for inflation. Current amounts are reflected in the table. Original penalty amounts were multiplied by 1.4163. [Reflecting the 10% increase for the period Jan 31, 1997 through Mar 15, 2004; a 17.23% increase ($1.10 \times 1.1723 = 1.2895$) from March 16, 2004 through January 11, 2009; and a 9.83% increase for violations occurring on or after January 12, 2009 ($1.10 \times 1.1723 \times 1.0983 = 1.4163$)]. This is in accordance with the December 29, 2008, Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). Resulting values were rounded to the nearest \$10.

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

Selected Violations Of Federal Underground Storage Tank Regulations Subpart H--Financial Responsibility OSWER Directive 9610.16 Guidance On Federal Field Citation Enforcement October 6, 1993

Selected Violations of Federal Underground Storage Tank Regulations SUBPART H -- FINANCIAL RESPONSIBILITY

280.93 Amount and scope of required Financial Responsibility		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.93(a)	Failure to comply with financial responsibility requirements by the required phase-in time	\$210
§280.93(a)(1)-(2)	Failure to meet the requirement for per-occurrence coverage of insurance.	\$210
§280.93(b)(1)-(2)	Failure to meet the requirement for annual aggregate coverage of Insurance.	\$210
§280.93(f)	Failure to review and adjust financial assurance after acquiring new or additional USTs	\$210
280.94 Allowable mechanisms and combinations of mechanisms		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.94	Use of an unapproved mechanism or combination of mechanisms to demonstrate financial responsibility	\$210
280.95 Financial test of self-insurance		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)

Attachment D: Clarification to OSWER Directive 9610.16 to reflect penalty amounts for violations occurring after January 12, 2009. This replaces Subparts B through H.

§280.95	Use of falsified financial documents to pass financial test of self-insurance	
280.106 Reporting by owner or operator		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.106(a)(1)	Failure to report evidence of financial responsibility to the implementing agency within 30 days of detecting a known or suspected release	\$210
§280.106(a)2	Failure to report evidence of financial responsibility to the implementing agency if the provider becomes incapable of providing financial assurance and the owner or operator is unable to obtain alternate coverage within 30 days.	\$210
§280.106(b)	Failure to report evidence of financial responsibility to the implementing agency when new tanks are installed	\$210
280.107 Recordkeeping		
Regulatory Citation	Violation	Violations Appropriate for Regulatory Field Citations (Penalty Amount)
§280.107	Failure to maintain copies of the financial assurance mechanism(s) used to comply with financial responsibility rule and certification that the mechanism is in compliance with the requirements of the rule at the UST site or place of business	\$210

Note: Original penalty amounts were adjusted for inflation. Current amounts are reflected in the table. Original penalty amounts were multiplied by 1.4163. [Reflecting the 10% increase for the period Jan 31, 1997 through Mar 15, 2004; a 17.23% increase (1.10 x 1.1723 = 1.2895) from March 16, 2004 through January 11, 2009; and a 9.83% increase for violations occurring on or after January 12, 2009 (1.10 x 1.1723 x 1.0983 = 1.4163)]. This is in accordance with the December 29, 2008, Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009). Resulting values were rounded to the nearest \$10.

