

Interim Consolidated  
Enforcement Penalty  
Policy for Underground  
Storage Tank (UST)  
Regulations and Revised  
Field Citation Program and  
ESA Pilot

October 5

2018

**United States Environmental Protection Agency**

*Office of Enforcement and Compliance Assurance*

*Office of Civil Enforcement*

*Office of Emergency and Land Management*

*Office of Underground Storage Tanks*

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# Section 1

## Interim Penalty Values for Violations of Federal UST Regulations

The table below provides a list of selected violations of the Federal UST requirements, the associated interim base penalty value and the associated Deviation from Requirement and Potential for Harm designations from the 1990 OSWER Directive 9610.12 U.S. EPA Penalty Guidance for Violations for UST Regulations. Based on the type of violation, penalties should be assessed on a per-tank basis if the specific requirement or violation is clearly associated with one tank (e.g., tank upgrading). If the requirement addresses the entire facility (e.g., recordkeeping practices), the penalty will be assessed on a per-facility basis. For requirements that address piping, the unit of assessment will depend on whether the piping is associated with one tank or with more than one tank. The table also provides interim penalty values for violations eligible to be addressed under the Field Citation and Expedited Settlement Agreement Programs.

The table represents interim revised penalties for the following penalty policies.

1. 1990 OSWER Directive 9610.12 U.S. EPA Penalty Guidance for Violations for UST Regulations: Interim Revised Appendix A: Base Penalty Values;
2. 1993 OSWER Directive 9610.16 Guidance on Field Citations Enforcement: Interim Revised Penalties; and
3. 2014 UST Expedited Settlement Agreement Pilot Policy: Interim Revised Penalties

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

## SUBPART A- Program Scope and Installation Requirements for Partially Excluded UST Systems

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designation for Retraining <sup>1</sup> (A/B/Both <sup>2</sup> /Neither)
<b>§280.11(a)(1)</b> Failure of owner and operator of a partially excluded UST system to install that UST system to prevent releases due to corrosion or structural failure for its operational life.	(T, P)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.11(a)(2)</b> Failure of owner and operator of a partially excluded UST system to install that UST system to be cathodically protected against corrosion, constructed of non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance.	(T, P)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.11(a)(3)</b> Failure of owner and operator of a partially excluded UST system to install that UST system in a manner that it is constructed or lined with material that is compatible with the substance stored.	(T, P)	Major	Major	\$3,500	\$670	\$940	A

<sup>1</sup> Regions have the discretion, upon review of the facts and circumstances at individual UST facilities, to make the final determination on retraining requirements specified for Class A, Class B, both, or neither operators. (**See** Office of Underground Storage Tanks (OUST) September 2018 EPA internal guidance entitled, “Determining Retraining for Class A and Class B Operators of Underground Storage Tank Systems Determined to Be Out of Compliance”).

<sup>2</sup> Class A operator means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the implementing agency. They typically manage resources and personnel. Class B operator means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the implementing agency. They typically implement in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

## SUBPART B – UST System Design, Construction, Installation, and Notification

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.20</b> Failure to install secondary containment on a new tank.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.20</b> Failure to use tank interstitial monitoring in accordance with §280.43(g) on a new secondary containment tank.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.20</b> Failure to install secondary containment on new piping systems or when piping is replaced.	(P)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.20</b> Failure to use piping interstitial monitoring in accordance with §280.43(g) .	(P)	Major	Major	\$3,500	\$670	\$940	Both
<b>§280.20(a)(1)</b> Installation of an improperly constructed fiberglass reinforced tank.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.20(a)(2)</b> Installation of an improperly designed and constructed metal tank that fails to meet corrosion protection standards.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.20(a)(2)(i)</b> Installation of a metal tank with unsuitable dielectric coating.	(T)	Major	Moderate	\$1,500	\$470	\$600	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.20(a)(2)(ii)</b> Installation of an improperly designed cathodic protection system for a metal tank.	(T)	Moderate	Moderate	\$1,000	\$312	\$450	A
<b>§280.20(a)(2)(iii)</b> Improper installation of a cathodic protection system for a metal tank.	(T)	Moderate	Moderate	\$1,000	\$312	\$450	A
<b>§280.20(a)(2)(iv)</b> Improper operation and maintenance of a tank cathodic protection system.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.20(a)(3)</b> Installation of an improperly constructed steel, clad or jacketed tank with a non-corrodible material.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.20(a)(4)(i)</b> Failure to provide determination by a corrosion expert that a site is not corrosive enough to cause the metal tank to have a release due to corrosion during its operating life.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.20(a)(4)(ii)</b> Failure to maintain records that demonstrate a corrosion expert determined site is not corrosive enough to cause the metal tank to have a release due to corrosion during its operating life  <b>Number of records for required period: 1</b> for life of tank.	(P)	See 280.34 (b)(1) Major	See 280.34 (b)(1) Major	See 280.34 (b)(1)	See 280.34 (b)(1)	See 280.34 (b)(1)	Both

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.20(b)(1)</b> Installation of improperly constructed non-corrodible material piping.	(P)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.20(b)(2)</b> Failure to provide any cathodic protection for metal piping.	(P)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.20(b)(2)(iv)</b> Improper operation and maintenance of cathodic protection system for metal piping.	(P)	Major	Major	\$3,500	\$670	\$940	Both
<b>§280.20(b)(3)</b> Piping of a new UST system is improperly designed, constructed, and protected from corrosion.	(P)	Major	Major	\$3,500	\$470	\$940	A
<b>§280.20(b)(3)(ii)</b> Failure to maintain records that demonstrate a corrosion expert determined site is not corrosive enough to cause the piping to have a release due to corrosion during its operating life.  <b>Number of records for required period: 1</b> for life of tank.	(T)	See 280.34(b)(1)	See 280.34(b)(1)	See 280.34(b)(1)	See 280.34(b)(1)	See 280.34(b)(1)	Both
<b>§280.20(c) (Spill prevention)</b> Failure to use a spill prevention system.	(T)	Major	Major	\$3,500	\$470	\$940	Both
<b>§280.20(c) (Overfill prevention)</b> Failure to use an overfill prevention system.	(T)	Major	Major	\$3,500	\$670	\$940	Both

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.20(c)(1)(i)</b> Installation of inadequate spill prevention equipment in a new tank.	(T)	Moderate	Major	\$2,000	\$530	\$710	A
<b>§280.20(c)(1)(ii)</b> Installation of inadequate overfill prevention equipment in a new tank.	(T)	Moderate	Major	\$2,000	\$530	\$710	A
<b>§280.20(c)(3)</b> Use of flow restrictors in a vent line for new or replaced overfill prevention.	(T)	Major	Moderate	\$1,500	\$470	\$600	Both
<b>§280.20(c)(4) (Spill equipment)</b> Failure to test or inspect spill equipment in accordance with §280.35.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.20(c)(4) (Overfill prevention Equipment)</b> Failure to test or inspect overfill prevention equipment in accordance with §280.35.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.20(d) (Tank)</b> Failure to install tank in accordance with accepted codes and standards. <b>Note:</b> If release occurred, not eligible for FC or ESA.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.20(d) (Piping)</b> Failure to install piping in accordance with accepted codes and standards.  <b>Note:</b> This violation addresses various piping components. For FC eligibility, depends on the component involved.	(P)	Major	Major	\$3,500	\$670	\$940	A



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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.20(e)</b> Failure to provide any certification of UST installation.	(T)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.20(e)(1) -(6)</b> Failure to provide any certification of UST installation.	(F)	Minor	Minor	\$200	\$85	\$90	A
<b>§280.20(f)</b> Failure to install under-dispenser containment for any new dispenser system.	(F)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.21(a)</b> Failure to perform replacement, upgrade, or closure for existing substandard tank systems.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.21(b)</b> Failure to meet all tank upgrade standards.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.21(b)(1)(i)</b> Improper installation of interior lining for tank upgrade requirements.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.21(b)(1)(ii)</b> Failure to meet interior lining inspection requirements for tank upgrade.	(T)	Major	Moderate	\$1,500	\$670	\$600	A
<b>§280.21(b)(1)(ii)</b> Internal lining tested and failed, and cannot be repaired.	(T)	See Subpart G for Closure Requirements.					A
<b>§280.21(b)(2)(i)</b> Failure to ensure that tank is structurally sound before installing cathodic protection.	(T)	Major	Moderate	\$1,500	Not eligible	Not eligible	A

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.21(b)(2)(ii) (Monthly monitoring)</b> Failure to ensure integrity of tank installed less than 12 years and monitored monthly for releases before upgrading to meet cathodic protection.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.21(b)(2)(iii)</b> Failure to meet tightness test requirements for a tank upgraded with cathodic protection.	(T)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.21(b)(2)(iv)</b> Failure to meet requirements for testing for corrosion holes for a tank upgraded with cathodic protection.	(T)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.21(c)</b> Failure to install any cathodic protection for metal piping upgrade requirements.	(P)	Major	Moderate	\$1,500	Not eligible	Not eligible	A
<b>§280.21(d)</b> Failure to provide spill prevention system for an existing tank.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.21(d)</b> Failure to provide overfill prevention system for an existing tank.	(T)	Major	Moderate	\$1,500	\$470	\$940	A
<b>§280.22(a)</b> Failure to submit notice of a tank system’s existence to the implementing agency within 30 days of bringing the UST system into use.	(T)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.22(b)</b>	(T)	Major	Moderate	\$1,500	\$470	\$600	A

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
Failure to submit notice of ownership changes to the implementing agency within 30 days of acquiring a UST system.							
<b>§280.22(d)</b> Failure to provide notices to the appropriate implementing agency for each tank owned (owner may provide notice for multiple tanks on one notification form, but if tanks are at more than one location separate forms must be filed for each location).  <b>Note:</b> Only cite this violation in the following situations: 1. When the o/o provides notification for some tanks but not all tanks; and 2. When the o/o did not provide separate notice for multiple tanks at more than one location (e.g., submitting one form for all tanks per site on one form). Documentation was provided but not according to the letter of the requirement.	(T)	Moderate	Minor	\$300	\$108	\$170/\$240	A
<b>§280.22(e)</b> Failure of owner/operator to certify in the notification form compliance with (1) installation of tanks and piping (2) cathodic protection of steel tanks and piping (3) financial responsibility and (4) release detection.	(F)	Moderate	Minor	\$300	\$108	\$170	A

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.22(f)</b> Failure to provide installer certification in the notification form that the methods used to install the tanks and piping complies with the requirements in 280.20(d).	(F)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.22(g)</b> Failure to notify tank purchaser of owner notification requirements  <b>Note:</b> Address this violation on a case by case basis and in consultation with your legal team. Violation of this requirement may involve some complicated questions that may arise with respect to violations of other UST regulatory requirements.	(T)	Major	Major	\$3,500	\$670	\$940	A

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## SUBPART C – General Operating Requirements

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.30(a)</b> Failure to take necessary precautions to prevent overfill/spillage during the transfer of product.	(F)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.30(b)</b> Failure to report a spill or overfill.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	B
<b>§280.30(b)</b> Failure to investigate and clean up a spill or overfill.	(F)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.31(a)</b> Failure to operate and maintain corrosion protection system continuously.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.31(b)(1)</b> Failure to ensure that cathodic protection system is tested within 6 months of installation.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.31(b)(1)</b> Failure to ensure that cathodic protection system is tested every 3 years thereafter.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.31(b)(2)</b> Failure to inspect cathodic protection system in accordance with accepted codes.	(T)	Major	Moderate	\$1,500	\$470	\$600/\$1,200	B

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.31(c)</b> Failure to inspect impressed current systems every 60 days.	(T)	Major	Moderate	\$1,500	\$470	\$600/\$1,200	B
<b>§280.31(d)</b> Failure to maintain records of the operation of cathodic protection to demonstrate compliance with the performance standards in this section.	(T, P)	Major	Moderate	\$1,500	\$470	\$600/\$1,200	B
<b>§280.31(d)(1)</b> Failure to maintain results of the last three inspections (i.e., required inspection frequency is every 60 days, a 180-day period) of UST systems with impressed current systems.  <b>Note:</b> Must have all three records. If one is missing, assess full penalty. One record encompasses required activity spanning a 60-day period.  <b>Number of records for required period:</b> 3 for 180-day period	(T, O)	Major	Moderate	\$1,500	\$470	\$600/\$1,200	B

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.31(d)(2)</b> Failure to maintain results of the last two inspections (i.e., required inspection frequency is within 6 months of installation and every three years) of UST systems with impressed current systems.</p> <p><b>Note:</b> One record encompasses required activity spanning either a 6-month period or 3-year period. Must have both records. Either within 6 months of installation plus at 3-year mark or at 3-year mark plus at 6-year mark and so on. Replacing the oldest record as time passes. If one is missing, assess the full penalty.</p> <p><b>Number of records for required period:</b> Either within 6 months of installation plus at 3-year mark or at 3-year mark plus at 6-year mark, and so on - replacing the oldest record as time passes.</p>	(T, O)	Moderate	Minor	\$300	\$108	\$170/record	B
<p><b>§280.32(a)</b> Failure to ensure that UST system is made of or lined with materials compatible with substance stored.</p>	(T, P, O)	Major	Major	\$3,500	\$670	\$940	Both

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.32(b)</b> Failure to notify at least 30 days prior to switching to a regulated substance containing greater than 10 % ethanol, greater than 20% biodiesel, or any other regulated substance identified by the implementing agency.	(T, P)	Major	Moderate	\$1,500	\$470	\$600	Both
<b>§280.32(b)(1)</b> Failure to demonstrate compatibility of UST system.	(T, P, O)	Major	Major	\$3,500	\$670	\$940	Both
<b>§280.32(b)(2)</b> Failure to use another option in lieu of demonstrating compatibility determined by implementing agency no less protective of human health and environment.	(T, P, O)	Major	Major	\$3,500	\$670	\$940	A



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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.32(c)</b> Failure to maintain records documenting demonstration of compatibility for as long as the UST system is used to store the regulated substance.</p> <p><b>Note:</b> Must have record of each applicable component of the UST system. If one record is missing, assess full penalty. Each record is critical to demonstration that entire UST system is compatible. For example, if facility has every record except record demonstrating tank compatibility, this is unacceptable since a critical component of the UST system would be unknown.</p> <p>Demonstration for 280.32(b)(1) is generally in the form of documentation. UST system related documents are at minimum: the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment and overfill equipment.</p> <p><b>Number of records for required period:</b> At least 7 documents associated with specific UST system components for as long as UST system used to store regulated substance.</p>	(T, P, O)	Major	Moderate	\$1,500	\$470	\$600	Both

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.33(a)</b> Failure to repair UST system in accordance with accepted codes and standards.	(T)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.33(b)</b> Failure to repair fiberglass-reinforced UST in accordance with accepted codes and standards.	(T)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.33(c) (metal piping)</b> Failure to replace metal piping that has released product.	(P)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.33(c) (non-corrodible piping)</b> Failure to repair non-corrodible piping in accordance with manufacturer’s specifications.	(P)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.33(d)</b> Failure to ensure that repaired secondary containment areas and tank UST systems are tightness tested within 30 days of completion of repair.	(T, P)	Major	Moderate	\$1,500	\$470	\$600	B
<b>§280.33(e)</b> Failure to test cathodic protection system within 6 months of repair of an UST system.	(T)	Major	Moderate	\$1,500	\$470	\$600	B
<b>§280.33(f)</b> Failure to test or inspect spill or overfill prevention equipment within 30 days of any repair.	(T)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.33(g)</b> Failure to maintain records of each repair to an UST system until permanently closed or undergoes change-in service.  <b>Note:</b> Must have record of each repair to applicable component of the UST system. If one is missing, assess full penalty. Each record is critical to assessment of condition of UST system. For example, do not know if repair was done in accordance with code, etc.  <b>Number of records for required period:</b> Each repair for life of UST system.	See 280.34(b)(4)	See 280.34(b)(4)	See 280.34(b)(4)	See 280.34(b)(4)	See 280.34(b)(4)	See 280.34(b)(4)	B
<b>§280.34(a)(1)</b> Failure to submit notification for UST system.	(T, O)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.34(a)(1)</b> Failure to submit notification of assumption of UST ownership.	(T, P)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.34(a)(2)</b> Failure to notify prior to switching UST to certain regulated substances.  <b>Note:</b> Notification requirement only.	(T)	Moderate	Minor	\$300	\$108	\$170/\$340	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.34(a)(3)</b> Failure to report release.  <b>Note:</b> Reporting requirement only.	(F)	Major	Major	\$3,500	\$670	\$940	Both
<b>§280.34(a)(4)</b> Failure to notify of corrective actions planned or taken.  <b>Note:</b> Notification requirement only	(F)	Moderate	Major	\$2,000	\$530	\$710	A
<b>§280.34(a)(5)</b> Failure to notify before permanent closure or change in service.	(F)	Moderate	Moderate	\$1,000	\$312	\$450	A
<b>§280.34(b)(1)</b> Failure to maintain analysis of site corrosion potential if corrosion protection equipment is not used.  <b>Note:</b> Must have record of analysis. If missing, assess full penalty. This record is critical to assessment of eligibility of site not to have to use corrosion protection equipment. For example, do not know if repair was done in accordance with code, etc.  <b>Number of records for required period:</b> Each per unit of assessment per site.	(T, P)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.34(b)(2)</b> Failure to maintain corrosion protection equipment operation documentation (i.e., §280.31(d)).  <b>Number of records for required period:</b> Same as §280.31(d), §280.31(d)(1), and §280.31(d)(2).	(T, P)	Major	Moderate	\$1,500	\$470	\$600	B
<b>§280.34(b)(3)</b> Failure to maintain documentation of compatibility for UST systems. (i.e., §280.32(c)).  <b>Number of records for required period:</b> Same as §280.32(c).	(T, P, O)	Major	Moderate	\$1,500	\$470	\$600	B
<b>§280.34(b)(4)</b> Failure to maintain UST system repairs  <b>Number of records for required period:</b> Same as §280.33(g).	(T, P, O)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.34(b)(5)</b> Failure to maintain any documentation of compliance for spill and overfill prevention equipment and containment sumps for interstitial monitoring (i.e., §280.35(c)).  <b>Number of records for required period:</b> Same as §280.35(c).	(T, P)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.34(b)(6)</b> Failure to maintain any documentation of periodic walkthrough inspections (i.e., §280.36(b)).  <b>Number of records for required period:</b> Same as §280.36(b).	(T)	Major	Moderate	\$1,500	\$470	\$600	B
<b>§280.34(b)(7)</b> Failure to maintain any documentation of compliance with release detection requirements (i.e., §280.45).  <b>Number of records for required period:</b> Same as §280.45.	(T)	Major	Moderate	\$1,500	\$470	\$600	B
<b>§280.34(b)(8)</b> Failure to maintain results of site investigation conducted at permanent closure. <b>Number of records for required period:</b> Same as §280.74.	(F)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.34(b)(9)</b> Failure to maintain any documentation of operator training (i.e., §280.245)  <b>Number of records for required period:</b> Same as §280.245.	(F)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.34(c)</b> (UST site and alternative site) Failure to maintain any required records at UST site and immediately available for inspection or at readily available alternative site or to mail any closure records to implementing agency.	(F)	Major	Moderate	\$1,500	\$470	\$600	B
<b>§280.35(a)(1)</b> Failure to meet the requirements for periodic testing and monitoring of spill prevention equipment or containment sumps.	(T, P)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.35(a)(2)</b> Failure to properly and periodically inspect overfill prevention equipment.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.35(b)</b> Failure to meet compliance deadlines for prevention, testing, and inspection of UST prevention equipment.	(T, P)	Major	Major	\$3,500	\$670	\$940	Both

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.35(c)(1)</b> Failure to maintain records of testing of prevention equipment; testing of containment sumps; and inspection of overfill prevention equipment.</p> <p><b>Note:</b> Must have record of each test or inspection. If one is missing, assess full penalty.</p> <p><b>Number of records for required period:</b> 1 for 3-year period.</p>	(T, P)	Major	Major	\$3,500	\$670	\$940	B



*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.35(c)(2)</b>            Failure to maintain record showing that prevention equipment and containment sumps not tested every three years is double walled and integrity of both walls is periodically monitored Minimum monitoring frequency is as follows:</p> <ul style="list-style-type: none"> <li>• spill prevention – 30 days</li> <li>• containment sumps used for interstitial monitoring of piping – annually</li> </ul> <p><b>Note:</b> Must have record of each periodic monitoring event in order to allow owners and operators to continue to use this option in lieu of equipment being tested at least once every 3 years.  <b>Number of records for required period:</b>            Records for spill prevention equipment (30 days) and containment sumps (annually) for as long as equipment is periodically monitored in lieu of tested every 3 years</p>	(T, P)	Moderate	Minor	\$300	\$108	\$170	B
<p><b>§280.36(a)</b>            Failure to either conduct periodic walkthrough inspection every thirty days or to conduct annual walkthrough inspection.</p>	(F)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.36(b) (30-day frequency)</b>            Failure to maintain any records of operation and maintenance walkthrough inspections (30-day frequency).  <b>Note:</b> Owners/Operators must have 10 of the last 12 records (i.e., 10 months of last year) and the two most consecutive months.</p> <p><b>Number of records for required period:</b> 12 within a 1-year period. Consider threshold: 10 of the last 12 records (i.e., 10 months of last year) and records for the two most consecutive months similar to SOC standard.</p>	(F)	Major	Major	\$3,500	\$670	\$940	B
<p><b>§280.36(b) (Annual frequency)</b>            Failure to maintain record of operation and maintenance walkthrough inspections (annual frequency).  <b>Note:</b> Must have records of each annual walkthrough inspection. If the one is missing, then assess full penalty. Activity is required once per year. If the record associated with activity is missing, it would take a period of another year and hope the facility will maintain record to prove compliance with this activity.</p> <p><b>Number of records for required period:</b> 1 per year.</p>	(F)	Moderate	Minor	\$300	\$108	\$170	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

#### SUBPART D – Release Detection

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.40(a)</b> Failure to provide release detection method.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	Both
<b>§280.40(a)(1)</b> Failure to provide release detection method capable of detecting a release from tank and piping.  <b>Note:</b> Eligible if release detection was installed but is not adequate for full coverage, as applicable. Not eligible if O/O has no release detection installed.	(T, P)	Major	Major	\$3,500	See 280.40(a)	1st ESA - \$670 2nd ESA - \$940 <b>(See note)</b>	Both
<b>§280.40(a)(2)</b> Failure to install and calibrate release detection method in accordance with manufacturer's instructions.  <b>Note:</b> Eligible if release detection was installed but is not adequate for full coverage, as applicable. Not eligible if O/O has no release detection installed.	(T, P)	Major	Major	\$3,500	See 280.40(a)	1st ESA - \$670 2nd ESA - \$940 <b>(See note)</b>	Both
<b>§280.40(a)(3)</b> Failure to operate and maintain release detection method and annually test components in accordance with manufacturer's instructions, acceptable code of practice or other requirements.	(T, P)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.40(a)(4)</b> Failure to provide a release detection method that meets the performance requirements in §280.43 or §280.44 or Subpart K, as applicable.	(T, P)	Major	Major	\$3,500	\$670	\$940	Both
<b>§280.40(b)</b> Failure to notify implementing agency when release detection indicates release.	(T, P)	Major	Major	\$3,500	\$670	\$940	Both
<b>§280.41(a)</b> Failure to monitor tanks every 30 days, if appropriate.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.41(a)(1)</b> Failure to monitor tanks installed on or before April 11, 2016, at least every 30 days, if appropriate.	(T)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.41(a)(1)(i)</b> Failure to conduct tank tightness testing every 5 years, if appropriate.	(T)	Major	Major	\$3,500	\$670	\$940/\$1,900	B
<b>§280.41(a)(1)(ii)</b> Failure to conduct manual tank gauging, if appropriate.	(T)	Major	Major	3,500	\$670	\$940/\$1,900	B
<b>§280.41(a)(2)</b> Failure to monitor tanks installed after April 11, 2016, at least every 30 days in accordance with §280.43(g).	(T)	Major	Major	\$3,500	\$670	\$940/\$1,900	B
<b>§280.41(b)</b> Failure to monitor underground piping for releases.	(P)	Major	Major	\$3,500	\$670	\$940/\$1,900	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>Note:</b> ATG console could be used with sensors as controller to even meet new interstitial monitoring requirement. Caution taken regarding the possible inappropriateness on AHS and FCTs.							
<b>§280.41(b)(1)(i)(A)</b> Failure to equip pressurized piping with automatic line leak detector.	(P)	Major	Major	\$3,500	\$670	\$940/\$1,900	Both
<b>§280.41(b)(1)(i)(B)</b> Failure to have annual line tightness test or monthly monitoring of pressurized piping.	(P)	Major	Major	\$3,500	\$670	\$940/\$1,900	B
<b>§280.41(b)(1)(ii)</b> Failure to have triennial line tightness test or monthly monitoring of suction piping.	(P)	Major	Major	\$3,500	\$670	\$940/\$1,900	B
<b>§280.41(b)(2)(i)</b> Failure to monitor pressurized piping installed after April 11, 2016, for releases at least every 30 days in accordance with § 280.43(g) and equip such piping with an automatic line leak detector.	(P)	Major	Major	\$3,500	\$670	\$940/\$1,900	Both
<b>§280.41(b)(2)(ii)</b> Failure to monitor suction piping installed after April 11, 2016, for releases at least every 30 days in accordance with §280.43(g).	(P)	Major	Major	\$3,500	\$670	\$940/\$1,900	Both
<b>§280.42(a)(1) &amp; (2)</b> Failure to design, construct and install secondary containment.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	Both

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Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.42(a)(3)</b> Failure to monitor tanks for releases at least every 30 days using §280.43(g).	(T)	Major	Major	\$3,500	\$670	\$940/\$1,900	B
<b>§280.42(b)</b> Failure to design, construct and install double walled tanks.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.42(c)</b> Failure to design, construct and install external liners.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.42(d) (Piping with secondary containment)</b> Failure to equip piping with secondary containment.	(P)	Major	Major	\$3,500	Note eligible	Not eligible	A
<b>§280.42(d) (Pressurized piping with line leak detector)</b> Failure to pressurize piping with automatic line leak detector.	(P)	Major	Major	\$3,500	\$670	\$940/\$1,900	A
<b>§280.42(e)</b> Failure to obtain approval from implementing agency to use alternate release detection method.	(T, P)	Major	Major	\$3,500	\$670	\$940/\$1,900	A
<b>§ 280.43(a)-(i)</b> Failure to properly conduct release detection for tanks.	(T, P)	Use §280.40 (a) or §280.41(a)(1) as appropriate	Use §280.40 (a) or §280.41(a)(1) as appropriate	Use §280.40 (a) or §280.41(a)(1) as appropriate	Use §280.40 (a) or §280.41(a)(1) as appropriate	Use §280.40 (a) or §280.41(a)(1) as appropriate	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.44</b> Failure to properly conduct release detection for underground piping.	(P)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.44(a)</b> Failure to equip piping with automatic line leak detector and annually test such leak detector.	(P)	Major	Major	\$3,500	\$670	\$940	Both
<b>§280.44(b)</b> Failure to provide line tightness testing for piping.	(P)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.44(c)</b> Failure to properly conduct tank release detection methods, if applicable.	(P)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.45 (a)</b> Failure to maintain records of all written release detection performance claims for 5 years after installation.</p> <p><b>Note:</b> Must have records for each method’s performance claims are met. If any are missing, then assess full penalty. Despite, for example, NWGLDE maintaining a majority of these performance claim verifications, this is still an enforceable violation. Not all release detection methods may be listed by NWGLDE and be readily available.</p> <p><b>Number of records for required period:</b> For each release detection method for a five-year period.</p>	(F)	Major	Major	\$3,500	\$670	\$940	B
<p><b>§280.45(a)</b> Failure to maintain records of site assessments for as long as methods are used.</p> <p><b>Note:</b> Must have records of site assessment. If this record is missing, then assess full penalty. Without signed site assessment unable to assure professionally/appropriately done or verify placement of wells, number of wells, seasonal conditions won’t interfere with</p>	(F)	Moderate	Moderate	\$1,000	\$312	\$450	B



*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
monitoring, groundwater level is appropriate, etc.  <b>Number of records for required period:</b> 1 for life of use of method.							
<b>\$280.45(a)</b> Failure to have site assessments signed by appropriate licensed professional.  <b>Note:</b> Must have records of site assessment. If this record is missing, then assess full penalty. Without signed site assessment unable to assure professionally/appropriately done or verify placement of wells, number of wells, seasonal conditions won’t interfere with monitoring, groundwater level is appropriate, etc.  <b>Number of records for required period:</b> 1 for as long as groundwater or vapor monitoring is used.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>\$280.45(b)</b> Failure to maintain every result of sampling, testing or monitoring for release detection for at least 1 year.  <b>Note:</b> Regions should consider a threshold of 10 of the last 12 records (i.e., 10 months	(F)	Moderate	Moderate	\$1,000	\$312	\$450	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
of last year) and records for the two most consecutive months similar to SOC standard when deciding upon issuing a penalty. However, due to considerably wide variation of on-site conditions, regional discretion is mandatory.  <b>Number of records for required period:</b> 12 within a 1-year period.							
<b>§280.45(b)(1)</b> Failure to maintain results of annual operation tests of release detection components for 3 years and include all required information.  <b>Note:</b> Regions should weigh numerous factors including what extent an older missing record is relevant and affects assessment of a site’s history of compliance. This regulatory requirement entails a large number of records involving results of complete testing of all applicable equipment annually, maintained for a three-year period. Due to considerably wide variation of on-site conditions, regional discretion is mandatory in determining whether and to what extent to issue a penalty for this violation.	(F)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>Number of records for required period:</b> Multiple depending on release detection equipment on-site -testing conducted annually and results maintained for 3 years.							
<b>§280.45(b)(2)</b> Failure to retain results of tank tightness testing conducted in accordance with § 280.43(c) until next test is conducted. <b>Note:</b> Must have results of tank tightness testing. If the test results are missing, then assess full penalty. This type of test is usually required as a confirmatory means to establish no leak tank status. Without this result tank status could be in question.  <b>Number of records for required period:</b> 1 per tank until next test is required.	(F)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.45(b)(3)</b> Failure to retain results of tank tightness testing, line tightness testing, and vapor monitoring until next test is conducted.  <b>Note:</b> Must have results of tank or line tightness testing. Vapor monitoring results, in this instance is associated with field-constructed tanks (FCT). If the test results are missing, then assess full penalty. These tests are usually required as a confirmatory means to establish no leak tank status or for	(F)	Major	Major	\$3,500	\$670	\$940	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
very large tanks with regard to FCTs. Without these results, tank status could be in question.  <b>Number of records for required period:</b> 1 per tank or line until next test is required.							
<b>§280.45(c)</b> Failure to maintain any record of any calibration, maintenance, and repair of release detection equipment. <b>Note:</b> Must have records of calibration, maintenance, and repair of release detection equipment. If these records are missing, then assess full penalty. These records indicate critical actions necessary to continuing proper operation and ensuring equipment performance is returned to proper operation.  <b>Number of records for required period:</b> 1 per release detection equipment for 1 year	(F)	Major	Major	\$3,500	\$670	\$940	B
<b>§280.45(c)</b> Failure to maintain every record of calibration, maintenance, and repair of release detection equipment. <b>Note:</b> Must have records of calibration, maintenance, and repair of release detection equipment. If these records are missing, then assess full penalty. These	(F)	Moderate	Moderate	\$1,000	\$312	\$450	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
records indicate critical actions necessary to continuing proper operation and ensuring equipment performance is returned to proper operation.  <b>Number of records for required period:</b> 1 per release detection equipment for 1 year.							

#### SUBPART E – Reporting of Suspected Releases

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.50(a)-(c)</b> Failure to report a suspected release within 24 hours to the implementing agency. <b>Note:</b> This is reporting of a suspected release. Owner/Operator must accomplish after every applicable event. <b>Number of records for required period:</b> Per event.	(F)	Major	Major	\$3,500	\$670	\$2,670	Both
<b>§280.51</b> Failure to conduct investigation due to off-site impacts.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	Both

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.52(a)-(b)</b> Failure to investigate and confirm a release (if appropriate) using accepted procedures.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	Both
<b>§280.53(a)</b> Failure to report a spill/overfill (if appropriate) to implementing agency within 24 hours (or other specified time period).  <b>Note:</b> This is a reporting requirement.	(F)	Major	Major	\$3,500	\$670	\$2,670	Both
<b>§280.53(b)</b> Failure to contain and immediately clean up a spill/overfill of greater than 25 gallons.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	B
<b>§280.53(b)</b> Failure to contain and immediately clean up a hazardous substance spill/overfill.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

## SUBPART F – Initial Response

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.61</b> Failure to take initial response actions within specified period after a release is confirmed.	(F) when listed as §280.62	Moderate	Moderate	\$1,000	Not eligible	Not eligible	Both
<b>§280.62(a)</b> Failure to perform initial abatement measures and site check.	(F) when listed only as §280.62	Moderate	Moderate	\$1,000	Not eligible	Not eligible	Both
<b>§280.62(b)</b> Failure to submit report on initial abatement measures within 20 days (or other specified time) of release confirmation.	(F) when listed only as §280.62	Major	Major	\$3,500	\$670	\$940	A
<b>§280.63(a)</b> Failure to conduct an initial site characterization.	(F) when listed only as §280.63	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.63(b)</b> Failure to submit report on initial site characterization within 45 days (or other specified time) of release confirmation.	(F) when listed only as §280.63	Major	Major	\$3,500	\$670	\$940	A
<b>§280.64(a)</b> Failure to remove free product in a way to minimize the spread of contamination and treat, discharges or disposes of recovery byproducts in compliance with applicable regulations.	(F) when listed only as §280.64	Major	Major	\$3,500	Not eligible	Not eligible	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.64(b)</b> Failure to use abatement of free product migration as a minimum objective for the design of the free product removal system.	(F) when listed only as §280.64	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.64(c)</b> Failure to handle any flammable products in a safe and competent manner to prevent fires or explosions.	(F) when listed only as §280.64	Major	Major	\$3,500	Not eligible	Not eligible	B
<b>§280.64(d)</b> Failure to submit report on free product removal within 45 days (or other specified time) of release confirmation.	(F) when listed only as §280.64	Moderate	Moderate	\$1,000	\$312	\$450	A
<b>§280.65(a)</b> Failure to conduct a release investigation if requested by the implementing agency or if groundwater wells have been affected or free product needs to be recovered.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.65(b)</b> Failure to submit release investigation information to the implementing agency.	(F)	Moderate	Moderate	\$1,000	\$312	\$450	A
<b>§280.66 (Corrective Action Plan)</b> Failure to submit a corrective action plan if requested by the implementing agency.	(F)	Moderate	Moderate	\$1,000	Not eligible	Not eligible	A
<b>§280.66 (Additional Information)</b> Failure to submit additional information. <b>Note:</b> Assumes previous information (i.e., corrective action plan) has been submitted and after review, the Agency requires O/O to submit additional information.	(F)	Moderate	Moderate	\$1,000	\$312	\$450	A



*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

#### SUBPART G – Out of Service UST Systems and Closure

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.70(a)</b> Failure to continue operation and maintenance of a corrosion protection system in a temporarily closed tank system.	(T)	Major	Major	\$3,500	\$670	\$940/\$1900	B
<b>§280.70(a)</b> Failure to continue operation and maintenance of release detection in a temporarily closed tank system.	(T)	Major	Major	\$3,500	\$670	\$940/\$1900	B
<b>§280.70(b)</b> Failure to comply with the temporary closure requirements for a tank system for 3 or more months.	(T)	Major	Moderate	\$1,500	\$470	\$600/\$1200	A
<b>§280.70(b)(1) - (2)</b> Failure to leave vent lines open and functioning, and cap and secure all other lines, pumps, manways, and ancillary equipment when an UST system is temporarily closed for 3 months or more.	(T)	Major	Moderate	\$1,500	\$470	\$600/\$1200	A
<b>§280.70(c)</b> Failure to permanently close or upgrade a temporarily closed substandard tank after 12 months.	(T)	Major	Major	\$3,500	\$670	\$940/\$1900	A
<b>§280.71(a)</b> Failure to notify an implementing agency of a closure or change in service.	(T)	Major	Major	\$3,500	\$670	\$940/\$1200	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.71(b) (Remove liquids and sludge)</b> Failure to remove all liquids and sludges for tank closure.	(T)	Major	Major	\$3,500	\$670	\$940/\$1900	A
<b>§280.71(b) (Remove ground fill with inert)</b> Failure to remove closed tank from the ground, fill tank with an inert solid for tank closure, or closed in place in a manner approved by the implementing agency.	(T)	Major	Major	\$3,500	\$670	\$940/\$1900	A
<b>§280.71(c)</b> Failure to empty and clean tank system and conduct a site assessment prior to a change-in-service.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	A
<b>§280.72(a)</b> Failure to measure (if required) for the presence of a release before a permanent closure.	(T)	Major	Major	\$3,500	\$670	\$940/\$1900	A
<b>§280.72(b)</b> If contaminated soil, contaminated groundwater, or free product is discovered, failure to begin corrective action.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	Both
<b>§280.73</b> Failure to assess the excavation zone and close the UST system in accordance with Subpart G if the releases from the UST may, in the judgement of the implementing agency, pose a current or potential threat to human health and the environment.	(T)	Major	Major	\$3,500	Not eligible	Not eligible	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.74</b> Failure to maintain closure records for at least three years. <b>Note:</b> Must have closure records. If these records are missing, then assess penalty. It is in owner’s and operator’s best interest to maintain – without documentation, UST implementing agency may suspect possible release/contamination. <b>Number of records for required period:</b> Per event for 3 years.	(F)	Major	Major	\$3,500	\$670	\$940/\$1900	A
<b>§280.74</b> Failure to maintain change-in-service records for at least 3 years. <b>Note:</b> Must have change in service records. If this record is missing, then assess penalty. It is in owner’s and operator’s best interest to maintain – without documentation, UST implementing agency may seek may suspect a release/contamination at the site. <b>Number of records for required period:</b> Per event for 3 years.	(F)	Major	Major	\$3,500	\$670	\$940/\$1900	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

## Subpart H – Financial Responsibility

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.93</b> Failure to comply with financial responsibility requirements by the required phase-in time.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.93</b> Failure to fully comply with financial responsibility requirements.	(F)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.93(a)(1) -(2)</b> Failure to meet the requirement for per-occurrence coverage of insurance.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.93(b)(1) -(2)</b> Failure to meet the requirement for annual aggregate coverage of Insurance.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.93(f)</b> Failure to review and adjust financial assurance after acquiring new or additional USTs.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.94</b> Use of an unapproved mechanism or combination of mechanisms to demonstrate financial responsibility.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.95</b> Use of falsified financial documents to pass financial test of self-insurance.	(F)	Major	Major	\$3,500	Not eligible	Not eligible	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.104(h)</b> Failure to obtain alternate assurance and notifying implementing agency with 10 days of failing bond rating test.	(F)	Moderate	Moderate	\$1,000	\$312	\$450	A
<b>§280.110(a)(1) – (Corrected 10/2019)</b> Failure to report evidence of financial responsibility to the implementing agency within 30 days of detecting a known or suspected release.	(F)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.110(a)(2) – (Corrected 10/2019)</b> 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.	(F)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.110(b) (Corrected 10/2019)</b> Failure to report evidence of financial responsibility to the implementing agency when new tanks are installed.	(F)	Moderate	Moderate	\$1,000	\$312	\$450	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.111</b> 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. <b>Note:</b> Must have copies of financial assurance mechanism(s). If this record is missing, then assess full penalty. Financial assurance is critical. <b>Number of Records for Required Period:</b> 1 per facility.	(F)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.114(a)</b> Failure to notify Director within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor.	(F)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.114(c)</b> Failure to notify Director within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor.	(F)	Moderate	Minor	\$180	\$108	\$170	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.114(e)</b> Failure to obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of bankruptcy or loss of financial assurance.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.114(e)</b> Failure to notify the Director of the implementing agency of inability to obtain alternate financial assurance after notification of bankruptcy or loss of financial assurance.	(F)	Moderate	Minor	\$300	\$108	\$170	A
<b>§280.114(f)</b> Failure to obtain alternate financial assurance within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs.	(F)	Major	Moderate	\$1,500	\$470	\$600	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

## Subpart J – Operator Training

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.241(a)</b> Failure to designate at least one Class A operator.	(F)	Major	Major	\$3,500	\$670	\$940	Neither
<b>§280.241(a)</b> Failure to designate at least one Class B operator.	(F)	Major	Major	\$3,500	\$670	\$940	Neither
<b>§280.241(b)</b> Failure to designate each individual who meets definition of Class C operator.	(F)	Major	Major	\$3,500	\$670	\$940	Neither
<b>§280.241(a)</b> Failure to designate at least one Class A operator.	(F)	Major	Major	\$3,500	\$670	\$940	Neither
<b>§280.242(a)</b> Failure to ensure Class A operator meets training requirements that requires completion of a training program with evaluation or comparable exam that covers all topics at §280.242(a)(1) or b(2).	(F)	Major	Major	\$3,500	\$670	\$940	Neither
<b>§280.242(b)</b> Failure to ensure Class B operator meets training requirements that requires completion of a training program with evaluation or comparable exam that covers all topics at §280.242(b)(1) or b(2).	(F)	Major	Major	\$3,500	\$670	\$940	Neither



*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.242(c)</b> Failure to ensure Class C operators meet training requirements that requires completion of a training program with evaluation, comparable exam, or training with evaluation by Class A or B operator that covers all topics at §280.242(c)(1) or (c)(2).	(F)	Major	Major	\$3,500	\$670	\$940	Neither
<b>§280.243(a)</b> Failure to ensure Class A operator meets training requirements in § 280.242 by initial deadline of October 13, 2018.	(F)	Major	Moderate	\$1,500	\$470	\$600	Neither
<b>§280.243(a)</b> Failure to ensure Class B operator meets training requirements in § 280.242 by initial deadline of October 13, 2018.	(F)	Major	Moderate	\$1,500	\$470	\$600	Neither
<b>§280.243(a)</b> Failure to ensure Class C operators meet training requirements in § 280.242 by initial deadline of October 13, 2018.	(F)	Major	Moderate	\$1,500	\$470	\$600	Neither

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.243(b)</b> Failure to have their designated Class A and B operators trained to meet requirements in §280.242 within 30 days of assuming their duties.	(F)	Major	Moderate	\$1,500	\$470	\$600	Neither
<b>§280.243(c)</b> Failure to have their designated Class C operators trained to meet requirements in § 280.242(c) before assuming their duties.	(F)	Major	Moderate	\$1,500	\$470	\$600	Neither
<b>§280.244</b> Failure to ensure Class A and B operators complete, within 30 days after notice of violation, a training program or comparable exam according to §280.242 that covers, at minimum, training areas determined to be out of compliance.  <b>Note:</b> This violation is not applicable when annual refresher training program covering all training areas is in place and operators are current at time of non-compliance or the implementing agency, at its discretion, may waive this retraining requirement for either the Class A or Class B operator or both.	(F)	Moderate	Minor	\$300	\$108	\$170	Neither

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.245(a)</b> Failure to maintain a list of designated operators. The list, at minimum, must contain all current Class A, B, and C operators for the facility. The list, at minimum, must include: names, Class of operator trained, date assumed duties, date each operator completed initial training, and any retraining.</p> <p><b>Note:</b> Failure to maintain all means the owner/operator has some level of compliance that EPA may choose to acknowledge. At a minimum list 1 Class A operator and required information; At a minimum list 1 Class B operator and required information; At a minimum list 1 Class C operator and required information.</p>	(F)	Moderate	Minor	\$300	\$108	\$170	Neither

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the "O" applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.245(b)</b>            Failure to maintain records verifying training or retraining of designated operators. The list, at minimum, must contain all current Class A, B, and C operators for the facility. The list, at minimum, must include the following: Names, class of operator trained, date assumed duties, date each operator completed initial training, and any retraining.</p> <p><b>Note:</b> Must have list(s) covering all 3 classes of designated operators. If this list is missing, then assess full penalty. Without list, will not know which individuals are designated.</p> <p><b>Number of Records for Required Period:</b>            Three (3) classes of designated operators (Class A, B, and C) for as long as designated.</p>	(F)	Moderate	Minor	\$300	\$108	\$170	Neither

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the "O" applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.245(b)(1)</b> For records of classroom or field training - Failure to meet all requirements of §280.245(b) and records not signed by the trainer or examiner.</p> <p><b>Note:</b> Must have records of all classroom or field training. If these records are missing, then assess full penalty. Without these records there is no other means of verifying completion of training or comparable examination.</p> <p><b>Number of Records for Required Period:</b> Three (3) classes of designated operators (Class A, B, and C) for as long as designated.</p>	(F)	Moderate	Minor	\$300	\$108	\$170	Neither
<p><b>§280.245(b)(2)</b> For records of computer based training - Failure to meet all requirements of §280.245(b).</p> <p><b>Note:</b> Must have records of all computer-based training. If these records are missing, then assess full penalty. Without these records there is no other means of verifying completion of training or comparable examination.</p> <p><b>Number of Records for Required Period:</b> Three (3) classes of designated operators (Class A, B, and C) for as long as designated.</p>	(F)	Moderate	Minor	\$300	\$108	\$170	Neither

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<p><b>§280.245(b)(3)</b> For records of retraining - Failure to meet all requirements of §280.245(b) and records not signed by the trainer or examiner.</p> <p><b>Note:</b> Must have records of retraining. If these records are missing, then assess full penalty. Without these records there is no other means of verifying completion of retraining or comparable re-examination.</p> <p><b>Number of Records for Required Period:</b> Three (3) classes of designated operators (Class A, B, and C) for as long as designated.</p>	(F)	Moderate	Minor	\$300	\$108	\$170	Neither

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the "O" applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

## Subpart K – UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

Regulatory	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.251(a)(1)</b> For UST systems installed on or before October 13, 2015 - Failure of owner/operator to implement these requirements by October 13, 2018: upgrading UST system; general operating requirements; operator training; release detection; release reporting, response, and investigation; closure; financial responsibility; and notification (except as provided in paragraph §280.251(b)).	Refer to "other" Subparts for applicable designation	Refer to "other" Subparts for applicable designation	Refer to "other" Subparts for applicable designation	Varies	Varies	Refer to "other" Subparts for applicable designation	A
<b>§280.251(a)(2)</b> For UST systems installed after October 13, 2015 - Failure of owner/operator to implement these requirements at installation: general operating requirements; operator training; release detection; release reporting, response, and investigation; closure; financial responsibility; and notification.	Refer to "other" Subparts for applicable designation	Refer to "other" Subparts for applicable designation	Refer to "other" Subparts for applicable designation	Varies	Varies	Refer to "other" Subparts for applicable designation	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.251(b)</b> Failure of owners of previously deferred airport hydrant system (AHS) by October 13, 2018 to submit a one-time notice of tank existence to the implementing agency, using the form in appendix I in Part 280 or a state form in accordance with §280.22(c). Forms covers basic descriptions of type of tank, piping, release detection method(s), used, type of CP, etc.	(P)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.251(b)</b> Failure of owners of previously deferred field-constructed tanks (FCTs) by October 13, 2018 to submit a one-time notice of tank existence to the implementing agency, using the form in appendix I in Part 280 or a state form in accordance with §280.22(c).	(P)	Major	Major	\$3,500	\$670	\$940	A
<b>§280.251(b)</b> Failure of owners and operators of previously deferred airport hydrant systems (AHS) in use as of October 13, 2015 to demonstrate financial responsibility at the time of submission as required above of the one-time notification of tank existence.	(F)	Major	Moderate	\$3,500	\$470	\$600	A



*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the "O" applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.251(b)</b> Failure of owners and operators of previously deferred field constructed tanks (FCTs) in use as of October 13, 2015 to demonstrate financial responsibility at the time of submission as required above of the one-time notification of tank existence.	(F)	Major	Moderate	\$1,500	\$470	\$600	A
<b>§280.251(c)</b> Failure to comply with the requirements of subparts A through H and J, except as provided in §280.252. Note: Use other penalty tables pertaining to subparts A through H and J, as applicable.	Refer to "other" Subparts for applicable designation	Refer to "other" Subparts for applicable designation	Refer to "other" Subparts for applicable designation	Varies (as applicable to violation)	Varies (as applicable to violation)	Varies (as applicable to violation)	A
<b>§280.252(a)</b> Failure to install or replace piping, on or after October 13, 2018, that meets the secondary containment requirement in §280.20 that is associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons that are not part of an AHS.	(P)	Major	Major	\$3,500	Not eligible	Not eligible	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.252(b)(1)</b> Failure to meet corrosion protection requirements for new tank and piping according to §280.20(a) and §280.20(b), respectively, by October 13, 2018, and not close AHS or FCT, pursuant to subpart G. Installation would have had to have commenced on or before October 13, 2015. Exceptions: 1) Single walled piping used when installing or replacing piping associated with FCT greater than 50,000 gallons and piping associated with AHS, as allowed by §280.252(a); or 2) be constructed of metal and catholically protected according to code of practice and meet requirements of §280.252(b)(1)(ii)(A) and (B).	(T, P)	Major	Major	\$3,500	\$670	\$940/\$1900	A
<b>§280.252(b)(2)</b> Failure to meet spill and overfill equipment requirements for new UST system spill and overfill requirements according to §280.20(c) by October 13, 2018, and not close AHS or FCT, pursuant to subpart G. Installation would have had to have commenced on or before October 13, 2015.	(T, P)	Major	Major	\$3,500	\$670	\$940/\$1900	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.252(c)</b> Failure to meet walkthrough inspection requirements at §280.36 and these additional areas for AHSs are not inspected as indicated at least once every 30 days: 1) Hydrant pits not visually checked for damage; liquid or debris is not removed; and this component is not checked for leaks; and 2) Hydrant piping vaults not checked for piping leaks.	(P)	Major	Major	\$3,500	\$670	\$940/\$1900	B
<b>§280.252(d)(1)</b> Failure to perform release detection for field-constructed tanks with a capacity less than or equal to 50,000 gallons in accordance with requirements in subpart D. Note: Reference penalty tables for subpart D, as appropriate.	(T)	See subpart D	See subpart D	See subpart D	See subpart D	See subpart D	B
<b>§280.252(d)(1)</b> Failure to perform release detection for field-constructed tanks with a capacity greater than 50,000 gallons in accordance with requirements in either: 1) subpart D (except §280.43(e) and (f) must be combined with inventory control as stated in §280.252(d)(1)(iv); or 2) use one or a combination of alternative release detection methods stated in §280.252(d)(1)(i) thru (vi).	(T)	See subpart D	See subpart D	See subpart D	See subpart D	See subpart D	B

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.252(d)(2)</b> Failure to conduct release detection for underground piping associated with FCTs less than or equal to 50,000 gallons in accordance with requirements in subpart D.	(P)	See subpart D	See subpart D	See subpart D	See subpart D	See subpart D	B
<b>§280.252(d)(2)</b> Failure to conduct release detection for underground piping associated with FCTs greater than 50,000 gallons in accordance with requirements in either: 1) subpart D [except §280.43(e) and (f) must be combined with inventory control as stated in §280.252(d)(2)(iii)]; or 2) in accordance with an alternative release detection method stated in §280.252(d)(2)(i) thru (iv). Note: During phase-in period If facility is using semiannual or annual line tightness testing for piping segment volumes ≥100,000 gallons not capable of meeting max 3.0 gph leak rate for semiannual (or 1.5 gph leak rate for annual test), this penalty does not apply. See below.	(T, P)	See subpart D	See subpart D	See subpart D	See subpart D	See subpart D	B
<b>§280.252(d)(2) - During phase-in period - October 13, 2018 - October 13, 2022 - ONLY Applicable to §280.252(d)(2)(i)(B)</b> During phase-in period if facility uses semiannual or annual line tightness testing in accordance with §280.252(d)(2)(i)(B).	(T)	See subpart D	See subpart D	See subpart D	See subpart D	See subpart D	A

*Unit of assessment (UOA) refers to whether the penalty should be applied per tank (T), facility (F), or other (O). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank. Where the violation applies to other parts of the UST system (O), the assessment will depend on whether the “O” applies to containment sumps, pumping equipment, spill and overfill prevention equipment, and/or release detection equipment. Regions have the discretion to cite facility as they deem appropriate.*

Regulatory Citation/Violation	Unit of Assessment	Deviation from Requirement	Potential for Harm	Base Penalty Value	Field Citation Penalty Value	Expedited Settlement Penalty Value	Recommended Operator Class Designations for Retraining (A/B/Both/Neither)
<b>§280.252(d)(3)</b> Failure to maintain release detection records according to §280.45.	(T, P)	See subpart D	See subpart D	See subpart D	See subpart D	See subpart D	B
<b>§280.252(e)</b> Failure to assess the excavation zone of the FCT or AHS permanently closed before October 13, 2015 and close the UST system in accordance with subpart G, when directed by the implementing agency, if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.	(T, P)	See subpart G	See subpart G	See subpart G	See subpart G	See subpart G	A

# Section 2

## Underground Storage Tank Expedited Settlement Agreement Pilot Program Revisions and Expansion

The UST Expedited Settlement Agreement (ESA) Pilot Program has been extended for 24 months to pilot expansions recommended by the UST workgroup and regional/HQ offices. The following changes include but are not limited to the following:

- Interim use of the UST workgroup's recommendations regarding ESA eligibility for new and existing UST violations and the penalty values associated with each;
- Increase penalty cap of \$20,000;
- Clarification on the treatment of "repeat violators" for purposes of this pilot;
- Updated evaluation criteria for evaluating the effectiveness and whether any adjustments are needed to finalize the pilot; and
- Model documents have been updated/revised

To facilitate implementation, please find attached below the following: (1) an overview of procedures for the UST ESA Pilot Program, (2) a model notice letter, and (3) a model expedited settlement agreement.

This ESA may only be used once for a repeat violator. In addition, this ESA can also be issued at the same time delivery prohibition is being implemented (i.e., issuance of a Notice of Intent to Prohibit Delivery or the placement of a Red Tag on an UST), provided the applicable criteria in this Pilot Program and the delivery prohibition policy are met.

After a period of one year from the date of the transmittal memorandum, OECA-OCE and OUST will evaluate the results of the ESA pilot and determine if any adjustments (e.g., narrowing the scope of violations covered and/or apply restrictions) are necessary and appropriate to finalize the UST ESA Pilot. We ask each region to provide the following information to Yolaanda Walker ([walker.yolaanda@epa.gov](mailto:walker.yolaanda@epa.gov)) of OCE and Tim Smith ([smith.tim@epa.gov](mailto:smith.tim@epa.gov)) of OUST within one (1) month following twelve months (12) from the date of pilot implementation.

- For the number of ESAs issued, provide the following:
  - Facility/business information
    - the number of tanks at the facility;
    - the number of tanks impacted by the expedited settlement; and
    - type of fuel stored/used

- Penalty amount paid/settled
- Days to certify compliance;
- Types of violations involved in each settled case;
- Corrective measures secured;
- Number of cases settled; and
- Other potentially relevant information (e.g., facility near a source of drinking water)?
- Briefly describe the Region's follow-through with formal enforcement when ESA respondents fail to accept offer for settlement or timely meet their obligations.
- If an ESA was issued for any of the requirements listed below, provide a brief explanation as to why the ESA tool was chosen to address the violation.
  - **UST System Design, Construction, Installation, and Notification:** §280.20 (both); §280.21(b)(1)(i); and §280.22(g)
  - **General Operating Requirements:** §280.34(b)(4); §280.35(a)(1); §280.35(a)(2); §280.35(b); and §280.35(b)(4)
  - **Release Detection:** §280.44(a)
  - **Financial Responsibility:** §280.93(a)(1)-(2)(both); 280.93(f); 280.94; 280.114(e); and 280.114(f)
  - **Airport Hydrant Systems and Field Constructed Tanks:** §280.251(b), §280.252(d)(1), §280.252(d)(2)
- Where the Region took a more traditional administrative action, what was the amount of the penalty assessed? Was the penalty mitigated based on the owner/operator's ability to pay?
- Provide the number of Delivery Prohibitions ordered, including Notice of Intent to Issue a Delivery Prohibition and the violations underlying the Delivery Prohibition or Notice of Intent to Issue a Delivery Prohibition.
- What changes do you recommend that we consider as we finalize the expedited tools? Are there violations that you recommend not be eligible for an expedited settlement? For example, are there certain violations which, in the Region's experience, cannot be fixed within 90 days?

## **Overview of Procedures for Underground Storage Tank (UST) Expedited Settlement Agreement (ESA) Updated Pilot Program**

I.	Overview
II.	Determination of Eligibility
III.	Violations Eligible for an ESA
IV.	Violations Ineligible for an ESA
V.	Calculating the ESA Penalty
VI.	Review and Act on ESA
VII.	Environmental Benefits
VIII.	Formal Enforcement
IX.	Model Documents
X.	Notice of Determination of Operator Retraining Form

### **I. Overview**

The UST ESA Pilot Program is intended to promote expedited settlements of UST enforcement cases and apply to situations that are not appropriate for field citations. The Field Citation Program remains in full effect.<sup>3</sup>

### **II. Determination of Eligibility**

The UST ESA Pilot can be used to resolve those violations listed in Table 1. They include (1) violations that were resolved under a prior field citation that has since been repeated and (2) certain violations that are not covered by the Field Citation Program (*e.*., certain UST cleanup violations and other violations identified in Section IV).

It is important to note that the violations listed in Table 1 are not eligible for an ESA if the violation(s):

- Result in significant harm to human health or the environment or may present an imminent or substantial endangerment to human health and environment;<sup>4</sup>
- Cannot be corrected within the maximum time period allowed under this ESA pilot; and
- The total penalty generated by the ESA exceeds \$20,000

EPA enforcement personnel must carefully review each case to ensure that an UST ESA is appropriate. A listing of UST violations not covered under this ESA Program is provided in Section IV.

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<sup>3</sup> See Guidance on Federal Field Citation Enforcement, OSWER Directive 9610.16 (Oct. 6, 1993) (as amended by Rosemarie A. Kelley) and addendum listing Federal Field Citation piloted penalties (updated September 2018).

<sup>4</sup> See Cynthia Giles Memo, Revised Guidance on the Use of Expedited Settlements Agreements (November 24, 2014).



Under the OECA’s 2014 ESA Policy, citing to previous 2003 EPA ESA guidance, a “repeat violator” is a violator who, in the past five years, has had the same or closely-related violation(s)<sup>5</sup> that were subject to an enforcement action at the facility where the violation occurred, or at other facilities under the ownership, operation, or control of the violator. The 2014 ESA Policy no longer prohibits the issuance of an ESA to a “repeat violator,” and allows each ESA Pilot Program to authorize the issuance of ESAs to repeat violators if such an ESA Pilot Program clearly sets forth the parameters regarding when an ESA would be an acceptable enforcement response for a repeat violator, and explains why such treatment is appropriate.

For purposes of this ESA Pilot Program, a “repeat violator” is a violator who, in the past three (3) years, has had the same or closely-related violation(s) that were subject to an enforcement action at the facility, or at other facilities under the ownership, operation, or control of the violator.<sup>6</sup> The three year period commences from the date a federal, state, tribal, or local government provided the violator with notice of a specific violation, without regard to when the violation actually occurred. For violation(s) that occurred at tribally owned UST facilities in Indian Country, a “notice of a specific violation” also includes written notices via email, compliance plans or Notices of Violations (NOVs).<sup>7</sup> For ESA eligibility, the EPA intends to include prior EPA enforcement that resulted in the imposition of a penalty. However, EPA staff may consider prior enforcement by states to include actions that did not include penalties, if circumstances warrant.<sup>8</sup>

If a violation was resolved by a prior field citation, this ESA may only be used once for a repeat violator. A traditional formal enforcement action should be taken to address any further occurrences by a repeat violator.

### **III. Violations Eligible for an ESA**

See Table 1 of the consolidated policy for UST violations eligible for an ESA.

### **IV. Violations Not Eligible for an ESA**

See Table 1 of this consolidated penalty policy for UST violations ineligible for an ESA.

### **V. Calculating the ESA Penalty**

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<sup>5</sup> For purposes of this ESA pilot, a “closely-related” means any UST violation for which the violator has received written notice from EPA that the respondent has violated an UST requirement. The written notice may be in the form of a formal administrative penalty order, or judgement. The prior violation may have involved any UST facility owned, operated by the violator.

<sup>6</sup> Most states are on a three-year inspection frequency to meet UST-related requirements of the Energy Policy Act of 2005. Several states have inspection frequencies as short as 12 – 14 months.

<sup>7</sup> Limited to enforcement of tribally owned UST facilities in Indian Country.

<sup>8</sup> For example, some states may not have the authority to impose penalties when taking certain enforcement actions. In those situations, EPA enforcement staff should consider the nature of those prior state enforcement actions and the seriousness of the violations in determining whether the ESA should apply.

Table 1 contains the established penalties for each type of violation eligible for this ESA. The maximum penalty under this ESA program is \$20,000. If the total penalty exceeds \$20,000, the facility is not eligible for settlement under this ESA.

The region will document the basis for its penalty calculation.

## **VI. Review and Act on the ESA**

If a violator elects to resolve the violations using the ESA (therefore, becoming a respondent), and sends a completed form to the appropriate EPA office (after agreeing to pay the penalty and returning to compliance), the Agency should review the form and accompanying documentation and within 30 days either accept or reject the respondent's settlement offer. The EPA requires a deposit equal to the amount of the penalty for the purposes of payment at the time the respondent signs and sends the offer of settlement to the EPA.

If questions remain as to whether the respondent is in full compliance with UST requirements for the violations identified in the ESA, the EPA may ask for clarification from the respondent before accepting or rejecting the ESA. However, if a respondent has sent a signed ESA to the EPA but has failed to adequately return to compliance, the EPA must reject the ESA and address the violation under other administrative or judicial action. An exception can be made if the remaining non-compliance is corrected and verified within the 30-day review period.

Upon written request by a respondent, the EPA may, at its discretion, grant a single 30-day extension for settlement under the ESA. EPA may grant a second 30-day extension if a respondent can demonstrate unusual circumstances that require the additional extension.

Effective copies of any ESA shall be handled in the same manner as administrative consent orders, including the Certificate of Service and providing the original copy to the Regional Hearing Clerks for filing.

## **VII. Environmental Benefits**

The OECA ESA Policy requires that ESAs obtain environmental benefits, as well as penalties. However, the 2014 OECA ESA Guidance removed the "penalty-only" prohibition on ESAs, recognizing that a key goal of ESAs is returning a facility to compliance and that penalty only ESAs may provide benefits.<sup>9</sup>

## **VIII. Formal Enforcement**

Regions are expected to pursue formal enforcement if, within 90 days of respondent's receipt of the ESA offer, the respondent declines or does not adequately respond to the offer.<sup>10</sup> An adequate response includes returning the signed agreement, paying the penalty, and certifying

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<sup>9</sup> 2014 OECA ESA Guidance *supra* note1, at p.8("[A] penalty-only ESA could provide a deterrent effect to prevent repeat violations, address actual or potential environmental harm caused by the violation, or help maintain the integrity of the overall regulatory program.")

<sup>10</sup> *Id.* at p. 6.

that the violation has been corrected. This deadline is important so that, if the respondent fails to meet the ESA deadlines, cases do not languish and the Region may proceed promptly to formal enforcement.

## **IX. Model Documents**

Regions should consider using the appended revised Model Notice Letter (Attachment B) and revised Model Settlement Agreement (Attachment C) when issuing UST ESAs.

## **X. Notice of Determination for Operator Retraining Form**

40 CFR § 280.244, retraining requirements, specify that Class A and Class B operators of UST systems determined by the implementing agency to be out of compliance must complete a training program or comparable examination in accordance with requirements in § 280.242. Attached is a notification form (Section III) for regions to use to address retraining requirements, if appropriate.

## **Attachment A**

## Model Notice Letter for Expedited Settlements of UST Violations

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[Company Contact Address]

Re: Underground Storage Tank (UST) Compliance Inspection of [Facility Name, Facility Address, EPA UST ID No.]: Opportunity for Expedited Settlement within 30 Days

Dear [Company Contact]:

### **I. Notice of Investigation Results**

On [Date], the underground storage tanks (“USTs”) located at the above address (the “Facility”) was inspected by [Name of the EPA, State, or Tribal inspector] on behalf of the U.S. Environmental Protection Agency (EPA) to determine the Facility’s compliance with UST requirements under Subtitle I of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6991 *et seq.*) and its implementing regulations (40 C.F.R. part 280) [or list the state provision with the following footnote<sup>11</sup>]. [If the inspection was carried out by the State and then referred to the EPA, note that]. Based on that inspection, the EPA finds the Facility to be in violation of the following requirements:

#### **A. List the violation(s) and the applicable requirement(s)**

If you believe you are not in violation of these UST requirements, you may provide a written explanation, along with any supporting documentation to [EPA Contact] at the EPA address shown below within 30 days of your receipt of this letter.

[Insert paragraph, if applicable]

In addition, based on the violations identified, EPA has determined retraining in accordance with 40 CFR §280.242 [insert either *has been waived or is required under 40 CFR §280.244*] for [insert *Class A Operator, or Class B Operator, or Both*] for the following top areas:

#### **Topic Areas of Regulation**

- 1.
- 2.

Retraining must be completed within 30 calendar days from receiving the “Underground Storage Tank (UST) Notice of Determination of Operator Retraining.” Failure to complete retraining within 30 calendar days may subject the owner/operator to civil penalties.

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<sup>11</sup> The EPA is enforcing [State] UST program requirements as approved by the United States on [date] (see [Federal Register Notice]) and the revisions to the UST program as approved by the United States on [Date] (see [Federal Register Notice]).

## **II. Opportunity for Expedited Settlement**

Under RCRA § 9006(d), the EPA may pursue civil penalties of up to \$ 22,000 per day (as adjusted for inflation) for each violation of UST requirements, including, where applicable, violations of approved and authorized state program requirements. **However, the EPA is offering you an opportunity to settle this matter quickly and at a reduced penalty if you choose to follow the expedited settlement procedures outlined below within 30 days of your receipt of this letter.** This settlement process is optional. You are not required to submit this form. If you do not submit this form, the EPA will conclude you are not interested in pursuing expedited settlement. The EPA will then consider other actions to resolve these violations including the possibility of formal (*i.e.*, non-expedited) administrative or judicial enforcement.

If you choose to participate in this expedited settlement process, and the EPA determines you have satisfied the requirements for expedited settlement described below, the EPA will settle the outstanding violations for \$ [Amount].

## **III. Procedure for Expedited Settlement**

To take advantage of the expedited settlement process, within 30 days of your receipt of this letter you must:

- (1) Correct the violations identified above in this form. This means you must correct all past violations that can be corrected and ensure your USTs are in full compliance with the provisions that were identified as violated in Section I above. (Note: Some UST violations cannot be “corrected” because they require performance by, or within, a certain date or timeframe in the past. For example, an owner/operator cannot correct a failure to monitor tanks every 30 days for releases (40 C.F.R. § 280.41(a)) once those 30-day terms have expired. However, those violations will be considered remedied for purposes of this ESA if an owner/operator demonstrates steps were taken to prevent a reoccurrence in the future.) This return to compliance along with the costs of returning to compliance must be documented by the owner/operator.
- (2) Submit documentation that your facility is now in compliance with UST requirement that were alleged to be violated.
- (3) Provide an estimate of the cost of returning to compliance
- (4) Complete and return to the EPA the enclosed Expedited Settlement Agreement and Final Order (“ESA/FO or “Agreement). Please note that in signing the Agreement, you are certifying under penalty of law that you: (a) have corrected the violation(s) and (b) have submitted true and accurate documentation of compliance; (c) have agreed to pay the civil penalty of [Penalty Dollar Amount] set out in the Agreement. Failure to meet these conditions means you may be liable for the original violations, as well as liable for making a false representation to the U.S. Government under 18 U.S.C. § 1001. Also, by signing the Agreement, you agree to waive your opportunity for a hearing or appeal concerning your violation(s).

A fully-executed ESA/FO will be sent to you via certified mail once it has been filed with the EPA Regional Hearing Clerk. As provided in the Agreement, the civil penalty will be due within thirty (30) calendar days of the date that the ESA/FO is filed with the Regional Hearing Clerk. Please do not send a payment for penalty until you receive the fully-executed ESA/FO, which will include the docket number that is required in order to submit payment.

If you can demonstrate in writing that it is technically infeasible or impracticable to correct your violation(s) within thirty (30) calendar days, upon request, EPA, at its discretion, may grant an extension of up to thirty (30) calendar days. You must request that extension and demonstration of infeasibility or impracticability in writing to EPA no later than 10 calendar days before the end of the initial thirty (30) calendar day compliance period. The request must clearly indicate whether you intend to take advantage of this expedited settlement offer and contain a schedule for when you will come into compliance (which must not extend beyond the extension period). Any extensions must be granted in writing by EPA.

If you do not follow the procedures outlined in this letter for expedited settlement (e.g., correct the violation(s), pay the assessed penalty deposit, and sign and return the Agreement) within thirty (30) calendar days of your receipt of this letter, then this settlement offer will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

We are committed to the fair and rapid settlement of this matter. If you have any questions, or wish to discuss the general circumstances of your case, please contact the Compliance Officer assigned to your case, [Name] at [Phone Number and/or E-mail Address].

Sincerely,

**[EPA Manager's Name and Signature Block]**

cc: [Persons to CC]

Enclosures

Expedited Settlement Agreement  
Standard Penalty Checklist Information for Small Businesses  
Underground Storage Tank (UST) Notice of Determination of Operator Retraining [if applicable]

## **Attachment B**



**Model Expedited Settlement Agreement for UST ESA Program**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION [Number]**

<b>IN THE MATTER OF:</b>	)	Docket No.
	)	[Number]
	)	
[Company Name]	)	<b>EXPEDITED SETTLEMENT</b>
EPA ID. No. [Number]	)	<b>AGREEMENT AND</b>
Respondent	)	<b>FINAL ORDER</b>
	)	
_____	)	

**EXPEDITED SETTLEMENT AGREEMENT**

1. The U.S. Environmental Protection Agency (“EPA”) alleges that [Company Name] (“Respondent”), owner or operator of the Underground Storage Tank(s) (USTs) at [Address] (the “UST Facility”), failed to comply with the following requirement(s) of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6991 *et seq.*, and its implementing regulations at 40 C.F.R. part 280.
  - a. **[List and provide a brief description of each violation including the requirement violated and date the violation was observed.]**
2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$[amount] is in the public interest.
3. The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (“Agreement”) pursuant to section 9006 of RCRA and 40 C.F.R. § 22.13(b).
4. In signing this Agreement, the Respondent: (1) admits that the Respondent is subject to requirements listed above in Paragraph 1, (2) admits that the EPA has jurisdiction over the Respondent and the Respondent’s conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein, (4) consents to the assessment of this penalty, and (5) waives any right to contest the allegations contained herein.
5. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that he or she has: (1) corrected the alleged violations, (2) submitted true and accurate documentation of those corrections, (3) provided a deposit for payment of the civil penalty in Paragraph 2 above in accordance with the EPA penalty collection procedures provided to the Respondent, (4) submitted true and accurate proof of deposit for payment of the civil penalty with this Agreement, and (5) agrees to release the deposit for payment to the EPA upon entry of this Order. Full payment of the penalty in

Paragraph 2 shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in Paragraph 1, above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

6. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
7. Upon signing and returning this Agreement to the EPA, the Respondent waives the opportunity for a hearing or appeal pursuant to section 9006(b) of RCRA or 40 C.F.R. part 22. In addition, if the Respondent is a Federal agency, the Respondent waives its right to confer with the Administrator pursuant to section 6001(b)(2) of RCRA.
8. Each party shall bear its own costs and fees, if any.
9. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.

IT IS SO AGREED,

Name (print):

Title (print):

Signature: \_\_\_\_\_

Date \_\_\_\_\_

APPROVED BY EPA:

\_\_\_\_\_  
[EPA Manager's Name]  
[Title]

Date \_\_\_\_\_

IT IS SO ORDERED:

\_\_\_\_\_  
[Name]  
Regional Judicial Officer

Date \_\_\_\_\_

## **Section III**

### **(Notice of Determination for Operator Retraining Form)**

The “Notice of Determination for Operator Retraining Form” has been developed for regional inspectors to use to notify an owner/operator of which operator should be retrained, if applicable. 40 CFR §280.244, retraining requirements, specify that Class A and Class B operators of UST systems determined by the Implementing agency to be out of compliance must complete a training program or comparable examination in accordance with requirements in §280.242.

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA), REGION \_\_\_\_\_  
[Add Street Address, City, State, Zip Code]  
UNDERGROUND STORAGE TANK (UST) NOTICE OF OPERATOR RETRAINING  
REQUIRED OR WAIVED NO. \_\_\_\_\_

**PART I: INSPECTION SUMMARY**

On: \_\_\_\_\_ Time: \_\_\_\_\_ (a.m. or p.m.)  
(Date of Inspection)

At: \_\_\_\_\_  
(Facility Name and Identification Number)

Address: \_\_\_\_\_  
  
(Name of the on-site Representative if not the Owner or Operator)

Name and address of the UST Owner or Operator (circle which applies).

Name: \_\_\_\_\_

Address: \_\_\_\_\_

A duly designated officer, employee, or representative of the EPA, including a federally-credentialed tribal inspector, or a duly designated officer or employee of the state inspected this facility. EPA has reviewed the inspection report and other relevant materials and has identified the following violation(s) of the UST regulations promulgated or approved by EPA under Subtitle I of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6991 et seq.). EPA has further indicated whether retraining in accordance with 40 CFR 280.242 is required under 40 CFR 280.244 or has been waived at the Agency's discretion.

**Violation(s) Observed**

1. Violation:  
Regulatory Citation: \_\_\_\_\_

Designated Operator Retraining Required or Waived: (circle which applies).  
Must Retrain: Class A and B; Class A or B; Neither (circle which applies).

2. Violation:  
Regulatory Citation: \_\_\_\_\_

Designated Operator Retraining Required or Waived: (circle which applies).  
Must Retrain: Class A and B; Class A or B; Neither (circle which applies).

3. Violation:  
Regulatory Citation: \_\_\_\_\_

Designated Operator Retraining Required or Waived: (circle which applies).  
Must Retrain: Class A and B; Class A or B; Neither (circle which applies).

4. Violation:  
Regulatory Citation: \_\_\_\_\_

Designated Operator Retraining Required or Waived: (circle which applies).  
Must Retrain: Class A and B; Class A or B; Neither (circle which applies).

EPA finds the Owner or Operator in violation of the above referenced federal UST requirements.

\_\_\_\_\_  
(Signature of Authorized Officer or Employee of EPA) Date: \_\_\_\_\_

**PART II: SUMMARY OF RETRAINING REQUIRED AND WAIVED**

**A. Retraining Required (EPA to select and check A1 or A2):**

☐ A1. Based on the findings of violation identified above, the Class A and Class B operators at this facility must complete retraining or comparable examination in accordance with 40 CFR 280.242; OR

☐ A2. Based on the findings of violation identified above, the Class A and Class B operators at this facility must be complete retraining or comparable examination in accordance with 40 CFR 280.242 for those areas covered by the following topic areas:

**Topic Areas by Regulation**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Such retraining must be completed within 30 calendar days from this Notice. Failure to complete this retraining within 30 days may subject the owner and operator to civil penalties.**

**B. Waiver of Retraining:** EPA, as the implementing agency, hereby waives the required retraining under II.A as indicated below:

\_\_\_ Not waived for either the Class A or Class B operator(s):

\_\_\_ Waived for the Class A operator(s):

\_\_\_ Waived for the Class B operator(s); or

\_\_\_ Waived for BOTH the Class A and Class B operator(s).

**SIGNATURE BY EPA:**

Name (print): \_\_\_\_\_

Title (print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Inspector Notes:**

## INSTRUCTIONS

On the reverse side is an Underground Storage Tank (UST) Notice of Determination of Operator Retraining. 40 CFR § 280.244, retraining requirements, specify that Class A and Class B operators of UST systems determined by the implementing agency to be out of compliance must complete a training program or comparable examination in accordance with requirements in § 280.242. The retraining program or comparable examination must be conducted by an independent organization, the implementing agency, or a recognized authority. Depending upon the number and/or severity of the UST violations, EPA may determine that the retraining may include all of the requirements listed under § 280.242. At a minimum, the retraining must cover the area(s) determined to be out of compliance. UST system owners and operators must ensure Class A and Class B operators are retrained pursuant to this section no later than 30 days from the date the implementing agency determines the facility is out of compliance except in one of the following situations:

- (a) Class A and Class B operators take annual refresher training which covers all applicable requirements in § 280.242, or
- (b) The implementing agency, at its discretion, waives this retraining requirement for either the Class A or Class B operator, or both.

EPA's Class A and Class B Operator Exams accessible at: <https://www.epa.gov/ust/class-a-and-class-b-ust-operator>

If you have any questions, please contact ***[Region must add specific office contact information, including email address]***