



Texas General Land Office Oil Spill Prevention and Response Program

Administrative Penalty Policy for Violations

The goal of the Texas General Land Office is to protect and preserve Texas coastal waters, while partnering with the oil production and transportation industries to promote strong local and regional economies. To that end, the Oil Spill Prevention and Response (OSPR) Division implements programs to protect the health of the Texas coast. The basic philosophy of the Land Office is that all oil spills are preventable and repeat oil spills are an indication of process or procedural failure on the part of the repeat offender. This Administrative Penalty Policy for Violations of the Oil Spill Prevention and Response Act of 1991 was developed to further that philosophy and will be reviewed annually to determine its effectiveness in reducing the number of oil spills and repeat offenders. Written comments regarding the policy should be sent to:

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The penalty provisions detailed in the *Unauthorized Discharge Matrix* are focused on repeat violations of the Oil Spill Prevention and Response Act of 1991 (OSPRA) by the same operation or organization within the 12-month period preceding a spill event. These violations represent the nucleus around which the Oil Spill Prevention and Response Program was developed. The matrix motivates the regulated community to decrease repeat spills through a graduated penalty assessment that is reduced when an effective and recognized Sound Management Practices Program is in place. Organizations that have no oil spills over a 12-month period are assessed the smallest penalties when they are the responsible parties for an accidental unauthorized discharge.

A Sound Management Practice Program includes the following items:

- a. A written statement committing to an SMP program dated prior to a spill and submitted by the owner/operator to the Land Office.
- b. Written policies and procedures to be used by company personnel in the handling of oil in a location where a spill could threaten Texas coastal waters, a description

- of the methods or processes to ensure that personnel adhere to the policies and procedures, and the mechanism to conduct quality assurance of initial and refresher training.
- c. Written documentation of Spill Prevention and Response Training identified in (b) above including the subjects presented, the dates of training, and a list of attendees.
 - d. Post spill auditing process.

The *Unauthorized Discharge Matrix* considers the following factors in assessing administrative penalties:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused.
2. The degree of cooperation and quality of response.
3. The degree of culpability and history of previous violations of the responsible party.
4. The amount necessary to deter future violations.
5. Any other matter that justice requires including the existence of a Sound Management Practice, Responsible Carrier, or other like programs.
6. The degree to which the responsible party has implemented prevention practices or corrective actions as a result of previous spill incidents.

The *Prevention and Response Penalty Matrices* provide guidance for assessing penalties for specific violations of the OSPRA not directly attributable to unauthorized discharge or failure to notify violations. Most of the violations listed in these matrices, though generally associated with a spill event, are distinctly identified in the OSPRA or the implementing regulation and are considered as either prevention or response actions. Penalties for violations identified in this matrix may be increased for multiple violations within the preceding 12-month period depending on the circumstances.

Penalty Matrix Statement

The Land Office will use these matrices for guidance in assessing penalties with the intention to assess penalties at the minimum levels. Aggravating circumstances, however, may cause the penalty assessed to be higher.

The following are examples of circumstances where penalty assessments may be increased from the baseline. This list represents some common considerations and is not meant to be inclusive of all possible circumstances.

1. The responsible party fails to respond to a spill with the appropriate resources within a reasonable time frame.
2. The responsible party fails to modify identified deficient procedures that contribute to subsequent spills.

3. The responsible party fails to fulfill the duties of the responsible person in accordance with the OSPRA.
4. The responsible party is the subject of repeat unauthorized discharges of a similar nature or oil handling, storage or transfer process failure.

Unauthorized Discharge Matrix

The following matrix applies to all unauthorized discharges of oil that has entered Texas coastal waters. The time period for determining the number of spills appropriate to this matrix is the 12-month period immediately preceding the spill in question. For example, an unauthorized discharge that occurred on January 31st will require the inclusion of the responsible party's history of unauthorized discharges since February 1st of the previous year to determine the appropriate penalty box to enter.

Repeat unauthorized discharge violations may subject the responsible party to a comprehensive review of spill history and pollution prevention processes including, if appropriate, a review of the responsible party's Sound Management Practices Program.

When discharges are small, the Land Office may elect to issue an "on the spot" ticket if no other aggravating factors require an increase in an assessed penalty amount.

Unauthorized discharges one barrel or greater that enter coastal waters require a per barrel penalty equal to the number of whole barrels (42 U.S. gallons) multiplied by the amount indicated in the appropriate penalty box. For example, if an unauthorized discharge of 5.5 barrels was the third spill during the preceding 12-month period, and it occurred at a location where a Sound Management Practices Program was in place, the responsible party would be assessed a \$900 penalty.

EX: \$400 (base penalty) plus 5 bbls (5.5 rounded to the lowest whole barrel) multiplied by \$100 equals \$900.

Sound Management Practice (SMP) in place

| | 1st Spill | 2nd Spill | 3rd Spill | 4th Spill | 5th Spill** |
|---------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| <= 1 gal | \$250 | \$250 | \$250 | \$250 | \$250 |
| >1gal but <1 bbl | \$300 | \$300 | \$300 | \$300 | \$300 |
| > 1 bbl | \$300 plus \$100 per bbl | \$350 plus \$100 per bbl | \$400 plus \$100 per bbl | \$450 plus \$100 per bbl | \$500 plus \$100 per bbl |

** Figure applies to all spills greater than the 4th spill in the 12 months immediately preceding the spill in question.

Sound Management Practice (SMP) not in place

| | 1st Spill | 2nd Spill | 3rd Spill | 4th Spill | 5th Spill** |
|---------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| <= 1 gal | \$250 | \$250 | \$250 | \$250 | \$250 |
| >1gal but <1 bbl | \$300 | \$300 | \$300 | \$300 | \$300 |
| > 1 bbl | \$350 plus \$200 per bbl | \$400 plus \$200 per bbl | \$450 plus \$200 per bbl | \$500 plus \$200 per bbl | \$550 plus \$200 per bbl |

** Figure applies to all spills greater than the 4th spill in the 12 months immediately preceding the spill in question.

Effective 09/01/11

Prevention and Response Penalty Matrix

| Violation Category | Cite | Description | Base Penalties |
|--------------------------------|----------------|--|---|
| Failure to Notify | 31TAC19.32(b) | Failure to notify the GLO of an unauthorized discharge | \$500 - Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill |
| Failure to cooperate with SOSC | 31TAC19.34(c) | Failure to comply with orders from SOSC and | \$1,000 |
| | 31TAC19.34(d) | failure to give written reasons for non-compliance | |
| | 31 TAC 19.3(a) | Denying access to property | \$1,000 |
| | 31 19.32(f) | Failure to report material changes that occur prior to arrival of SOSC | \$1,000 |
| Insufficient Response | 31TAC19.34(a) | Immediately initiate response actions | \$500 |

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|---------|--------------------------------|--|---|
| Actions | 40.251(d) | Take reasonable action to abate, contain, and remove pollution | \$1,000 |
| | 31TAC19.34(a) | Not consistent with plan or deviates from plan | Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill |
| | 31TAC19.34(e) 31TAC19.34(f) | No site safety plan or not consistent with NCP or ACP | Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, |

| | | | |
|----------------|--------------------------------|--|---|
| | | | size, and environmental impacts of the spill |
| | 31TAC19.35(a) | Unauthorized DCO | Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill |
| | 31TAC19.32(g) 31TAC19.32(h) | Failure to notify adjacent property owners or local responders | \$500 - Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill |
| Waste Disposal | 31TAC19.36(d) | Failure to inform SOSC about location for waste disposal | \$100 |

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| | 31TAC19.36(c) | Failure to remove waste from spill site within 14 days after cleanup complete | \$100 |
| | 31TAC19.36(d) | Failure to provide documentation of waste disposal as directed | \$100 |
| Paperwork | 31TAC19.37(b) | Failure to file completion report | \$100 assuming that reasonable requests for extensions were granted |
| | 40.251(e) | Making a material false statement with fraudulent intent in application or report | Criminal referral |
| | 40.251(a) (2) | Operating a facility or vessel without required certificate of financial responsibility | Penalty to be determined based on a review of the circumstances and |

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|-----------|--------------|---|---|
| | | | mitigating factors regarding the failure to comply with regulations |
| Operating | 40.251(a)(1) | Operating a facility or vessel without an approved plan | \$1,000 |
| Vessel | 40.251(a)(5) | Removing a vessel from which a spill has emanated from jurisdiction without showing proof of financial responsibility | |