

## PENALTY CALCULATION WORKSHEET

**Docket:**

**Operator:** Crooks Municipal Gas

**Date Prepared:** May 1, 2013

**Prepared by:** Nathan Solem

**Violations:** 192.1007

(d) *Identify and implement measures to address risks.* Determine and implement measures designed to reduce the risks from failure of its gas distribution pipeline. These measures must include an effective leak management program (unless all leaks are repaired when found).

(e) *Measure performance, monitor results, and evaluate effectiveness.*

(1) Develop and monitor performance measures from an established baseline to evaluate the effectiveness of its IM program. An operator must consider the results of its performance monitoring in periodically re-evaluating the threats and risks. These performance measures must include the following:

(i) Number of hazardous leaks either eliminated or repaired as required by § 192.703(c) of this subchapter (or total number of leaks if all leaks are repaired when found), categorized by cause;

(ii) Number of excavation damages;

(iii) Number of excavation tickets (receipt of information by the underground facility operator from the notification center);

(iv) Total number of leaks either eliminated or repaired, categorized by cause;

(v) Number of hazardous leaks either eliminated or repaired as required by § 192.703(c) (or total number of leaks if all leaks are repaired when found), categorized by material; and

(vi) Any additional measures the operator determines are needed to evaluate the effectiveness of the operator's IM program in controlling each identified threat.

(t) *Periodic Evaluation and Improvement.* An operator must re-evaluate threats and risks on its entire pipeline and consider the relevance of threats in one location to other areas. Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure. An operator must conduct a complete program re-evaluation at least every five years. The operator must consider the results of the performance monitoring in these evaluations.

Annual review was not completed in 2012 as required by operator's DIMP plan. During the inspection process it was stated that it was decided to not do the review until the 2012 annual report information was available in 2013. It appears that it was a willful and intentional decision to not do the 2012 annual review as described in the 2012 edition of the DIMP plan.

**Total Proposed Penalty:** \$242

## ATTACHMENT 1 Penalty Calculation Worksheet

The following penalty calculation worksheet shall be used in the assessment of all penalties in order to provide for consistency between assessments. A separate calculation shall be made for each separate violation.

### SECTION I - ESTABLISH THE MAXIMUM PENALTY

**Step 1 - Severity Classification:** Establish the severity classification as Class III, Class II, or Class I with appropriate percentages to reflect the severity of the violation; this will determine the maximum penalty that can be assessed. The maximum penalty assessed of any violation may not exceed \$100,000 a day.

<b>Severity:</b>	Class I	<b>2%</b>	Class II		Class III		<b>Class IV</b>
	Number of Documented Violations:	1					
	Absolute Penalty:	\$100,000					
	Maximum Penalty:	(Violations) x (\$100,000/day) x (Severity)					
		<b>\$2,000</b>					

#### Guidance

**Class IA** -Minor violation(s) which involve failure to comply with record-keeping and report filing requirements. Failure to submit required reports in a timely manner in accordance with pertinent regulations. This is considered a Class IA violation. such violations do not result in property damages, exceedance of regulatory standards, or pose an imminent hazard to public health and safety. A range of **0-1%** of the allowable maximum penalty per violation per day shall be assessed.

**Class IE** -Minor violation(s) which do' not result in damage or do not pose an imminent hazard to public safety. Minor compliance plan procedure violations or minor line marker deficiencies shall be considered as Class IE violations. operation without a permit or failure to report shall be considered at least as Class IE violations. Failure to prepare or produce documentation to show proper regulator station maintenance, or cathodic protection records shall also be considered a Class IE violation. A range of **1-3.5%** of the allowable maximum penalty per violation per day shall be assessed.

**Class II** Moderate violation(s) which may or has resulted in property damage, or an imminent hazard to public safety. Welding procedure violations or joining procedure violations are are considered as Class II violations. A range of **3.5-7.5%** of the allowable maximum penalty per violation per day shall be assessed.

**Class III** -Severe violation (s) which has resulted in property damage or an imminent hazard to public safety, i.e. a reportable incident. A range of **7.5-10%** of maximum violation per day shall be assessed.

**Class IV** - Egregious violation which is conspicuously bad, flagrant or offensive. A range of **10-100 %** of violation per day shall be assessed.

**10-25: a violation that THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN ABOUT AND FAILED TO ACT UPON THAT IS severe enough and with circumstances such that loss of property was possible.**

**25-50: a violation that THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN AND FAILED TO ACT UPON ABOUT THAT IS severe enough and with circumstances such that loss of life was possible.**

**50-75: a violation that THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN ABOUT AND FAILED TO ACT UPON THAT ultimately results in loss of property.**

**75-100: a violation THE OPERATOR SHOULD HAVE OR COULD HAVE KNOWN ABOUT AND FAILED TO ACT UPON THAT ultimately results in loss of life.**

### SECTION II - ESTABLISH THE BASIC PENALTY

**Step 2 - Damage:** Using 65% of the maximum penalty from Step 1, apply the percentage

associated with the chosen damage category to determine the "Damage" assessment.

**Damage:** Extreme   High   Moderate   Low 7.0%

$$\text{Damage: } (0.65) \times \text{Maximum Penalty} \times (\%)$$


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**\$91**

**Guidance:**

**Damage** -A range up to 100% of the maximum penalty for each day of violation can be assessed for damage. Since damage is a difficult area to assess, the following categories determine the value of the affected resources before the damage occurred rather than actual damage itself.

**Extreme** -Apply 37.5-50% of the maximum penalty assessable under "Damage". Documented damage which may cause permanent or long range impacts to property or to public safety

**High** -Apply 25-37.5% of the maximum penalty assessable under "Damage". Situations which may create significant impacts to property or to public safety (i.e. recuperative or mitigative losses).

**Moderate** Apply 12.5-25% of the maximum penalty assessable under "Damage". Situations which may create moderate impacts to property or to public safety (i.e. short term impacts).

**Low** -Apply up to 12.5% of the maximum penalty assessable under "Damage". Situations which likely cause low or no impacts to property or to public safety (i.e. permit violations, standard violations, reporting violations).

**Step 3 - Willfulness:** Using 12.5% of the maximum penalty from Step 1, apply the percentage associated with the appropriate degree of willfulness to determine the "Willfulness" assessment.

**Willfulness:** Reckless   Negligent 80.0% Unintent.  

$$\text{Willfulness: } (0.125) \times \text{Maximum Penalty} \times (\%)$$


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**\$200**

**Guidance:**

**Willfulness** -A range up to 12.5% of the established maximum penalty can be assessed by using the following criteria.

**Recklessness** -100% of the willfulness penalty will be assessed based on the operator's total disregard of the regulated activity or the obvious risk that a pipeline incident was likely to occur through his activities, i.e. could have been prevented. Also included in this category is blatant disregard of previous warnings or disapprovals issued by the Department.

**Negligence** -80% of the willfulness penalty will be assessed when the operator did not act in a responsible manner and should have been aware that his activities were regulated or carried a degree of risk. For example, an incident that could have been prevented with proper planning or operation and maintenance.

**Unintentional** -20% of the willfulness penalty will be assessed if it is determined that a violation occurred and could not have been reasonably prevented. For example, the operator showed diligent effort to prevent the incident.

**Step 4 - Violation History:** Using 5% of the maximum penalty from Step 1, apply the appropriate percentage associated with violation history to determine the "Violation History" assessment.

**Violation History:**

Number of NOV's: 0  
Violation History: **\$0**

**Guidance:**

**Violation History** -A range of the maximum established penalty can be assessed based on the history of the violator's actions. A first violation may be assessed up to 5% of the maximum established penalty. For succeeding Notices of Violation issued, a multiplier may then be used. Previous inspection and reporting files may be examined to determine any past non-compliance.

**Previous incidents** -If there is any other previously documented incident of non-compliance

by the violator, then assess 100% of "the penalty allocated under this category and multiply by number of Notices of Violation issued.

**Previous incidents at other sites** -If the operator is in control of other sites which have had previously documented non-compliance, then assess 75% of penalty allocated under this category and" multiply by number of Notices of Violation issued.

**No previous incidents** -No assessment under this category is made.

**Step 5 - Basic Penalty:** Add the amounts in Steps 2 through 4 to obtain the total for the established "Basic Penalty" (Section I).

**Basic Penalty:**

$$\text{Basic Penalty: Step 2 + Step 3 + Step 4}$$

$$\underline{\underline{\$291}}$$

**SECTION III - BASIC PENALTY ADJUSTMENTS**

**Step 6 - Cooperation Factor:** Subtract 7.5% of the total in Step 5 for good cooperation, 2.5 - 5% for fair cooperation, or no deduction for poor cooperation.

**Cooperation Factor:**

$$\text{Cooperation Factor: } \underline{\underline{7.5\%}}$$

$$\text{Cooperation Adjust: } \underline{\underline{\$269}}$$

**Guidance:**

**Good Cooperation** -Deduct 7.5% from the established basic penalty when the operator quickly admits responsibility for the violation and cooperates fully. For example, the operator voluntarily provides information about the violations, promptly provides a solution to alleviate other violations, assists in the state's monitoring efforts, and is agreeable to the implementation of any remedial actions which may be necessary.

**Fair cooperation** -Deduct 2.5-5% from the basic penalty if the violator agrees to employ corrective actions as requested by "the state to ensure that no other violations will occur. However, an order may still be issued even if the violator is cooperative.

**Poor Cooperation** -No deduction will be allowed if there is limited or no cooperation from the violator. For example, the violator is reluctant to admit responsibility, fails to cooperate in the State's monitoring efforts, or must be ordered to take action.

**Step 7 - Mitigating Factors:** Consider any mitigating factors.

**Mitigating Factors:**

$$\text{Mitigating Factor: (Step 6) - (Step 6 x \%)}$$

$$\underline{\underline{10.0\%}}$$

$$\text{Mitigated Penalty: } \underline{\underline{\$242}}$$

**Guidance:**

**Promptness** of the violator in taking corrective actions, as determined from the State's perspective.

The violator's **ability or inability to pay** (economic hardship) .

**Willing reimbursement** by the violator for any investigative costs incurred by the State or any other agency. This may include reimbursement for man-hours and travel, property damages, sampling and analytical costs, or mitigative monies received to offset

**Management records** which may provide documentation which relieve the entity of any responsibility for the violation.

Any **off-site mitigation projects** which are safety sound and have been agreed upon by the SDPUC and the violator.

Any other **pertinent and appropriate factors** as presented by the entity.

**SECTION IV - ECONOMIC ADVANTAGE TO ENTITY FOR NOT COMPLYING**

**Step 8 - Economic Advantage:** Consider any economic advantages.

**Guidance:**

A **reasonable methodology** shall be utilized to estimate any economic benefit or advantage the entity would have gained by not complying or alleviating the violation. The penalty should be set high enough to offset any benefit or advantage to the entity. The penalty shall also be set reasonably high enough to offset any potential burden to the State by the avoidance of responsibility by the entity.

**Step 9 - Final Penalty:** Add any economic advantages to Step 7.

**STEP 8 Economic Advantage**

Economic \$0

**FINAL PENALTY=**                   \$242