



Enforcement of Chapter 62-761, F.A.C. and Chapter 62-762, F.A.C.

**Southwest District
Storage Tanks Program**

presented by
Alison Meetze

Role of the District Offices

- Oversee County compliance verification contracts
- Verify quality of inspections done by County compliance verification programs
- Provide technical assistance to owners/operators and County compliance programs
- Conduct compliance inspections at contractor-owned facilities and conduct other non-contracted facility inspections
- Pursue enforcement actions**

Level of Effort - Local Programs

- **SNC A**

- Issue NCL within 10 working days
- Resolve or refer within 5 working days of NCL

- **SNC B**

- Issue NCL within 10 working days
- Resolve or refer within 90 days of NCL

- **MINOR**

- Issue NCL within 10 working days
- Pursue resolution for 180 days
- If unresolved, consult with District

Enforcement Priorities – SNC A

- Upgrade violations
 - USTs not protected from corrosion
 - USTs, ASTs and Piping not upgraded with secondary containment
- Release detection violations
 - Not provided in accordance with Table RD
 - USTs without release detection
 - ASTs without release detection

Enforcement Priorities – SNC B

- Financial responsibility violations
- Discharge reporting violations
- Installation & Performance standard violations
 - Installed per reference standards
 - Spill containment
 - Dispenser liners
 - Overfill protection
 - Piping sumps
 - Secondary containment
 - Shear valves

SNC-B Continued

- Release detection violations
 - Performed monthly
 - Meets manufacturer's specifications
 - Site suitability determinations
 - Vapor monitoring plans
 - Interstitial monitoring
 - Line leak detectors
 - Visual inspections
- System component out of operation until repaired
- Closure violations
 - Closure assessment
 - Unmaintained tanks

ELRA

- On June 15, 2001, the Environmental Litigation Reform Act (ELRA) was signed into law
- ELRA led to changes to 403.121 and 403.131, F.S.
- Created an administrative penalty authority
- For sites where the penalty does not exceed \$10,000

Penalties in 403.121(3)(g), F.S.

•\$5000

- Failure to empty a damaged storage tank system to ensure a release does not occur until repairs are completed.
- Failure to empty a damaged storage tank system when a release has occurred.
- Failure to timely recover free product or failure to conduct remediation.

•\$3000

- Failure to timely upgrade.

Penalties in 403.121(3)(g), F.S.

•\$2000

- Failure to conduct or maintain release detection.
- Failure to timely investigate a suspected release.
- Fueling an unregistered tank system.
- Failure to timely assess or remediate contamination.
- Failure to properly install a storage tank system.

•\$1000

- Failure to properly operate, maintain, or close a storage tank system.

Penalties in 403.121(4), F.S. (General)

- \$5000**

- (a) Failure to have Financial Responsibility.

- \$4000**

- (b) Failure to install, maintain or use a required pollution control device.

- \$2000**

- (d) Failure to conduct required monitoring or testing; Failure to conduct release detection.

- \$1000**

- (e) Failure to submit required notification to the Department.

- \$500**

- (f) Failure to maintain required documentation.

Penalties in 403.121(5), F.S. (General)

- \$500

- Failure to comply with any other statute or rule

Other Issues addressed in ELRA

- Multi-day penalties: 403.121(6), F.S.
 - Can be per day per violation
- History of Noncompliance: 403.121(7), F.S.
 - 1st repeat: 25% increase in penalty
 - 2nd repeat: 50% increase
 - 3rd or more: 100% increase
 - Can be per day penalty increase
- Economic Benefit: 403.121(8), F.S.

DEP Directive 923

- Settlement Guidelines for Civil and Administrative Penalties
- Penalties exceeding \$10,000
- Attachment II: Penalty Calculation Matrix
 - Extent of Deviation From Requirement
 - Potential For Harm

	Major	Moderate	Minor
Major	\$10,000 to \$8,000	\$7,999 to \$6,000	\$5,999 to \$4,600
Moderate	\$4,599 to \$3,200	\$3,199 to \$2,000	\$1,999 to \$1,200
Minor	\$1,199 to \$500	\$500	\$500

Common Violations Cited

- Financial Responsibility
- Release Detection Response Level available
- Release detection performed once per month, not exceeding 35 days
- Release detection devices tested annually
- Spill containment, dispenser liners and piping sumps accessible; water and regulated substances removed
- Records available within 5 working days
- Required records kept by facility for 2 years

Enforcement Process

- Warning Letter issued
 - Requires assigned case manager to be contacted by a specific date
 - Phone, email or mail are all acceptable forms of contact
 - Penalty computation included if under ELRA
- Issues discussed with RP
 - Meeting can be held
 - Documents can be submitted
 - Re-inspection may be performed to verify return to compliance
 - Penalty reductions possible based on evidence of good faith effort
- Consent Order entered
 - Short Form Consent Order
 - Long Form Consent Order
 - Requires corrective action within specified time frame
 - In-Kind Projects

Formal Enforcement – Administrative Process

- Notice of Violation
 - Issued if there is no response to the Warning Letter or if a Consent Order can not be agreed upon
 - Only issued for enforcement cases under ELRA
 - Respondent has 20 days from their receipt of the NOV to request an informal conference, or petition for an informal hearing or a formal hearing with an Administrative Law Judge
 - Petition must be received by the Office of General Counsel
 - An informal conference can allow for entry into a Consent Order

Formal Enforcement – Administrative Process Continued

- Final Order
 - Issued if no request or petition to the Notice of Violation is received or if the corrective actions ordered are not completed
 - If the corrective actions are completed, then the facility will be in compliance
 - A Consent Order can be entered
 - Notice of Appeal may filed with the Office of General Counsel within 30 days of Order date
 - Failure to respond or timely file will result in the District preparing a case report

Formal Enforcement – Judicial Process

- Begins with District preparing a Case Report
 - Prepared if there is no response to Warning Letter & the penalty is not under ELRA
 - The terms of a Final Order or Consent Order have not been met
- **Petition for Enforcement**
 - Seeking to enforce the terms of a Final Order or Consent Order
 - Filed with the clerk of the state court in the county in which the violation occurred.
- **Complaint**
 - includes a description of the facts that establish that a violation has occurred, a claim that the court has jurisdiction to decide the case, and a prayer for relief that describes the specific remedies being sought.
 - Filed with the clerk of the state court in the county in which state court action is initiated.

Enforcement Case Example – Good Faith Reduction

- Violations:

- No visual RD
- No interstitial RD
- Registration fees not paid
- Required repairs not made
- Records, including RDRL, not available

- Actions:

- Warning Letter issued
- Meeting held
 - RP provided
 - Placard
 - Bids to perform repair
 - RD since inspection citing violations
- Re-inspection 3 weeks later
 - Repairs completed
- Short Form Consent Order entered

Enforcement Case Example – In-Kind Project

- Violations – 2 Facilities:
 - No FR
 - No notifications at install
 - Not registered
 - No visual RD
 - No interstitial RD
 - No annual operability tests
 - Records, including RDRL, not available
- Actions:
 - Warning Letter issued for each facility
 - Meeting held
 - Documents submitted
 - Consent Order entered
 - Both facilities included in Consent Order in addition to an enforcement action from a different Program
 - Option to perform an In-Kind
 - Department costs and 20% penalty paid
 - In-Kind performed

Enforcement Action – History of Noncompliance

- 1st Enforcement Case (1 facility):
 - Violations
 - No FR
 - No method of interstitial monitoring
 - Repairs to interstice not made and not taken out-of-service; dispenser repairs needed
 - Records, including RDRL, not available
 - Warning Letter issued
 - Documents received ; tanks had been removed from site
 - Short Form Consent Order entered
- 2nd Enforcement Case (1 facility):
 - Violations
 - Required testing not performed
 - INF not filed or investigation performed
 - Failure to remove product
 - Records, including RDRL, not available
 - Warning letter issued
 - Documents received and testing performed
 - Short Form Consent Order entered – 25% increase in penalties

Enforcement Action – History of Noncompliance (Cont.)

- 3rd Enforcement Case (4 facilities)
 - Violations
 - Varied
 - 2 facilities have pending Consent Orders – 50% increase in penalties
 - 2 facilities have not reached settlement
- Until April 2013, any further enforcement actions under ELRA will include a 100% penalty increase



The End.