



This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

16-009

Revised: November 1, 2021

**Petroleum Remediation Section
Petroleum Release Remedial Action Cash Fund
(Title 200 Program)**

Reimbursement Reduction Guidance

Table of Contents

TITLE 200 REIMBURSEMENT REDUCTION GUIDANCE INTRODUCTION	1
NON-COMPLIANCE REDUCTIONS – ONGOING	2
REQUIREMENTS BEFORE DISCOVERY OF THE RELEASE	2
<i>Registration and Fee Payment for USTs.....</i>	<i>2</i>
<i>Registration/Permitting of Non-Exempt Tanks:.....</i>	<i>3</i>
<i>Registration of Exempt Tanks:</i>	<i>3</i>
<i>PRRA Fund Fee Payments for Non-Exempt Tanks:.....</i>	<i>3</i>
TANK OPERATION REQUIREMENTS:	3
<i>Tank Design, Construction, Installation, and Repair:</i>	<i>3</i>
<i>Product Compatibility:</i>	<i>4</i>
<i>Release Detection and Tank Gauging:</i>	<i>4</i>
<i>Operator Training:</i>	<i>4</i>
REQUIREMENTS AT THE TIME OF RELEASE DISCOVERY	5
<i>Tank Closure Requirements:</i>	<i>5</i>
<i>Disposal of Wastes.....</i>	<i>5</i>
<i>Release Not Reported to NDEE or SFM in a Timely Fashion:.....</i>	<i>5</i>
NON-COMPLIANCE REDUCTIONS - ONE TIME	6
NON-COMPLIANCE WITH NDEE TIMETABLES	6
TIMELY SUBMITTAL OF TITLE 200 APPLICATIONS	6
OTHER.....	7
CALCULATION	7
RESPONSIBLE PERSON.....	7
NON-COMPLIANCE	7
EXEMPTION	7
APPENDIX.....	8
ACRONYMS:.....	8
CONTACT INFORMATION:	8

Title 200 Reimbursement Reduction Guidance Introduction

The Petroleum Release Remedial Action Act (Neb. Rev. Stat. §66-1501 to §66-1531) created a program that reimburses costs to investigate and cleanup petroleum released from underground and aboveground storage tank systems. Operating the tank system in compliance with applicable rules and regulations of the United States Environmental Protection Agency (EPA), the State Fire Marshal (SFM), and the Nebraska Department of Environment and Energy (NDEE) is key to preventing releases or detecting releases quickly. Reimbursements may be reduced as much as one hundred percent for failure by the responsible person (RP) to comply with these requirements, pursuant to Neb. Rev. Stat. §66-1525. This statute directs the NDEE to take into consideration:

- a) The extent and reasons for non-compliance;
- b) The likely environmental impact of the non-compliance; and
- c) Whether non-compliance was negligent, knowing, or willful.

These guidelines were developed for purposes of consistency when calculating reductions. The statutorily required considerations were taken into account when selecting the categories, the size of potential reductions, and limits for each. Reductions are calculated as a percentage of the reimbursement amount up to a maximum limit unless otherwise noted.

When the NDEE makes a determination of non-compliance, the RP will be notified of the decision via certified letter. Reimbursements to the RP under Title 200 will then be reduced by the specified percentage up to a maximum dollar amount based on the circumstances and extent of non-compliance. Non-compliance reductions decrease the maximum amount reimbursable for remedial actions under Neb. Rev. Stat. §66-1523. Additionally, the RP is responsible for the amount of any reductions pursuant to Title 200, Chapter 1, Section 010.

An RP has the right to formally petition the NDEE for review of the non-compliance determination. However, according to regulation (Title 200, Chapter 1, Section 012), you have only **thirty days** from receipt of NDEE's official notification to file your petition with the Director of NDEE in the format specified in Title 53, Chapter 4, Section 004.04 of the Nebraska Administrative Code. The petition will then be heard as a contested case pursuant to Title 115. Title 115 is available on the agency web page <http://dee.ne.gov>

This document updates earlier versions of the Reimbursement Reduction Guidance and reflects various regulatory and program changes. This revised guidance applies to Title 200 Applications received **November 1, 2021** and later.

Non-compliance Reductions – Ongoing

An ongoing non-compliance reduction is applied as a percentage of reimbursement until the maximum limit is met or the release is closed. In other words, the reduction is subtracted from more than one reimbursement application. The non-compliance categories relate to petroleum storage tank and environmental remedial action requirements found in SFM and NDEE regulations. As noted below, SFM regulations address the registration, operation, permitting, and closure of a tank. NDEE regulations address investigation and remedial action in response to a petroleum release.

The Flammable Liquids Storage Tanks section of the SFM Fuels Division has responsibilities regarding aboveground and underground storage tanks. These responsibilities include:

- Registration and inspection of petroleum underground storage tanks (USTs) in accordance with Title 159.
- Issue permits to install and remove USTs in accordance with Title 159.
- Issue permits to install aboveground petroleum storage tanks (ASTs) in accordance with Title 153.
- License contractors and certify individuals to do UST work in accordance with Title 159.

NDEE reviews SFM records for every initial application for reimbursement from the Fund. The review starts with a Substantial Compliance Check checklist prepared by the SFM's office. All documents provided are reviewed for compliance issues, including Notification for Underground Storage Tanks forms, Inspection Checklists, Order Forms, Supplemental Reports, closure documents, etc. The review focuses on the records for the tank system associated with the release while the RP owned and/or operated the tank system. The non-compliance categories are organized from requirements before release discovery, through the discovery process and to the investigation and remedial action process.

Requirements before discovery of the release

Registration and Fee Payment for USTs

Beginning in 1986, all petroleum USTs needed to complete a Notification form to be registered with the SFM Office, pursuant to Title 159, Chapter 2. The applicable Title 159 requirement depends on which category the underground petroleum storage tank falls into: non-exempt or exempt. Non-exempt tanks include most active gasoline tanks, diesel tanks, or heating oil tanks that are larger than 1,100 gallons. Exempt tanks include farm tanks or heating oil tanks that are smaller than 1,100 gallons. See Neb. Rev. Stat. §81-15,119 (10) for more complete definitions. Tanks that are permanently out of service are also exempt from some requirements. Registration is the first step for compliance. When a tank is not registered or not registered in a timely fashion, the reduction category that best applies to the type of tank is selected. Timely fashion refers to situations where it is discovered during the UST closure process that the UST was never registered. The tank must be registered before the closure permit is issued.

The SFM office collects annual fees on operating non-exempt tanks. The annual registration fee goes to the SFM for operations. Also collected by the SFM office is the Petroleum Release Remedial Action (PRRA) fee that is deposited to the Fund. The PRRA fee is paid annually for all non-exempt USTs. Payment of PRRA fees during the period of usage is a requirement for participation in the fund. When the fees are not paid, the potential reductions listed may apply depending on when or how often the fees were not paid.

Registration/Permitting of Non-Exempt Tanks:

<u>Compliance Violation</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
No initial registration	10%	\$2,500
	20%	\$5,000
	35%	\$10,000
Registration up to one day before release discovered	10%	\$2,500
	20%	\$5,000
	35%	\$10,000
No annual registration	2%/yr.	\$500/yr.

Registration of Exempt Tanks:

No initial registration or up to one day before release discovered	10%	\$2,500
	20%	\$5,000
	35%	\$10,000

PRRA Fund Fee Payments for Non-Exempt Tanks:

Nonpayment of initial PRRA fees	10%	\$2,500
	20%	\$5,000
	35%	\$10,000
Nonpayment of annual PRRA fees	2%/yr.	\$500/yr.
Nonpayment of all PRRA fees	100%	-----

Tank Operation Requirements:

Tank Design, Construction, Installation, and Repair:

This category covers a broad array of requirements for existing and new USTs and ASTs. The standards have evolved over the years as new technologies become regulatory requirements. NAC Title 159 contains requirements specific to USTs. Orders written for requirements such as cathodic protection or overfill protection equipment will be considered. The National Fire Protection Association (NFPA) 30 - Flammable and Combustible Liquids Code contains standards for both ASTs and USTs. A Spill Prevention, Control and Countermeasure (SPCC) plans may also have requirements that apply to tank systems. When SFM or NDEE records contain evidence of issues with the tank system that contributed to the release, a reduction under this category will be considered.

<u>Compliance Violation</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
Does not meet applicable requirements	10%	\$2,500
	20%	\$5,000
	35%	\$10,000

Product Compatibility:

EPA's UST regulations and Title 159, Chapter 6 include requirements to ensure UST system compatibility with the product or substance stored. The substance stored must not interact with the materials comprising the system in any way that would cause the system's performance to change. In other words, biofuel blends require tank systems designed for biofuels. Failure to have a compatible system may increase the possibility of a release.

<u>Compliance Violation</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
Tank system is not compatible with the product stored	10%	\$2,500
	20%	\$5,000
	35%	\$10,000

Release Detection and Tank Gauging:

When there is no release detection or inadequate release detection, leaking tanks may go undiscovered and continue to harm or impact humans and the environment. When tank inventory or gauging records are not accurate, leak discovery may also be delayed. These are the most common reduction categories. When facility inspections result in orders written for Title 159, Chapter 7 violations, NDEE staff will consider a reduction.

<u>Compliance Violation</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
Inadequate release detection	10%	\$2,500
	20%	\$5,000
	35%	\$10,000
Inadequate tank inventory records	10%	\$2,500
	20%	\$5,000
	35%	\$10,000

Operator Training:

EPA's UST regulations and Title 159 include requirements for operator training. There are three categories of operators, Class A, Class B, and Class C operators. The initial training was required to be completed no later than December 31, 2015, pursuant to Title 159, Chapter 13. Having trained staff assigned to each facility means staff have a better understanding of how to operate the system in compliance with applicable rules and makes it more likely that releases when detected will be acted on quickly.

<u>Compliance Violation</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
Does not meet UST operator training requirements	10%	\$2,500
	20%	\$5,000
	35%	\$10,000

Requirements at the Time of Release Discovery

Tank Closure Requirements:

Obtaining a closure permit and utilizing a closure contractor certified by the SFM office is important in identifying releases. Because the SFM cannot be at every removal/closure, the permitting and certification process has been developed to ensure that releases are identified, assessed, and reported.

<u>Compliance Violation</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
No closure permit (Neb. Rev. Stat. §81-15,121 (1)(c))	10%	\$2,500
	20%	\$5,000
	35%	\$10,000
No certified contractor (Title 159, Chapter 3)	10%	\$2,500
	20%	\$5,000
	35%	\$10,000

Disposal of Wastes

Disposal of wastes from removal of an UST system are subject to NDEE approval. Contaminated soils are generally classified as special waste and regulated under NDEE Title 132. Sludge and contaminated wastewater may be hazardous waste. This category is used when improper disposal has occurred. An example of improper disposal would be the dumping of contaminated soil in an unapproved location. This can enlarge the scope of contamination off-site and may lead to the contamination of another medium that may be more fragile and/or more difficult to remediate.

<u>Compliance Violation</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
Documented improper disposal of wastes (tanks, sludge from tanks, contaminated soils, contaminated wastewater, etc.)	10%	\$2,500
	20%	\$5,000
	35%	\$10,000

Release Not Reported to NDEE or SFM in a Timely Fashion:

Both the SFM and NDEE have regulations with notification requirements for a release or suspected release. The NDEE believes that immediate notification is of great importance to take immediate action to respond to a release to protect public health or taking immediate remedial measures to lessen the extent of impact to the environment. The NDEE has recognized that often it is not possible to make immediate notification past business hours and may consider next day notification as meeting the notification requirements. The reduction assessed depends on how many days after discovery of the release, it is reported. The potential reduction ranges from 2% at two days to 100% or non-participation in the fund at 91 days or more.

<u>Period of non-reporting</u>	<u>Percent Reduction</u>	<u>Maximum Limit</u>
2 – 7 days	2%	\$500
8 - 30 days	10%	\$2,500
31 – 60 days	35%	\$10,000
61 - 90 days	50%	\$25,000
91+ days	100%	-----

Non-Compliance Reductions - One Time

One-time reductions differ from on-going reductions in that they apply to one application or phase of remedial action. Reductions may be assessed when deadlines are missed as described below.

Non-Compliance with NDEE Timetables

When approving a remedial action, the NDEE project manager sets a date to submit the report documenting the work performed (compliance date). Compliance date extension requests are expected to be submitted to the NDEE in writing **before** the scheduled compliance date and include reasons for requesting the extension. Failure to comply with department timetables may result in a reduction pursuant to Title 200, Chapter 1, Section 010. When a compliance date is missed, the costs submitted for reimbursement will be subject to reduction according to the following schedule:

Submittal Period (Calendar days after compliance date)	Percent Reduction	Maximum Limit
31 – 60 days	10%	\$2,500
61 – 75 days	35%	\$10,000
76 – 90 days	50%	\$25,000
91+ days	100%	-----

Timely Submittal of Title 200 Applications

Applicants who have expenses above the applicable deductible amount must submit their Title 200 application within one year of the compliance date established by the NDEE when the remedial phase is approved or the completion date of the remedial phase, whichever is later. A phase is complete when the report is received by the NDEE. Chapter 1, Section 006 states that applications submitted to the NDEE after this time limit may be subject to reimbursement reduction or denial. NDEE will reduce reimbursements according to the following chart when applications are received after the one-year deadline:

Submittal Period (Calendar days after one-year deadline)	Percent Reduction	Maximum Limit
1 – 30 days	10%	\$2,500
31 – 45 days	35%	\$10,000
46 – 60 days	50%	\$25,000
61+ days	100%	-----

If the RP and/or their consultant obtain an extension of their compliance date from their NDEE project manager, the extended deadline for completion supersedes the original deadline. Under provisions in Section 006.02, applicants who submit an incomplete application within the one-year period gain an additional 30 days to correct and resubmit their application without reduction.

Other

Calculation

When a non-compliance reduction is assessed, the reduction is calculated after subtracting any deductible and/or co-payment obligations from the eligible expenses. One-time reductions are subtracted before any ongoing non-compliance reductions are calculated, if applicable.

Responsible Person

The RP is responsible for any reduction amount pursuant to Title 200, Chapter 1, Section 010. When a reduction is assessed, it decreases the maximum amount reimbursable for the release.

Non-Compliance

No reimbursement may be made by the Fund unless the NDEE has determined that the tanks were in substantial compliance with all applicable rules and regulations (Neb. Rev. Stat. §66-1525 (2) (a)). The NDEE has the authority to reduce reimbursements by as much as 100% for failure to comply with applicable statutory or regulatory requirements (Neb. Rev. Stat. §66-1525 (5)). Reductions in reimbursement will be added together in cases where multiple non-compliance issues exist. A total of 100% or greater will result in the denial of access into the Fund.

In addition, if an Administrative Order is issued regarding the tank and any associated release, the responsible party's failure to comply with the Order, would subject the reimbursement for a remedial action to a reduction of up to 100%. An Appeal of a Final Order filed by the Responsible Party to determine responsibility will in and of itself not be considered non-compliance.

Exemption

When determining potential reductions in reimbursement, the NDEE will not consider future or current SFM compliance issues for newer tanks at a facility when a previous release is being addressed. For example, at a hypothetical facility tanks were removed in 2016 and were found to have leaked. In the years before discovery of the release, the owner had complied with all SFM requirements. The site is now an on-going investigation with NDEE. New tanks were installed when the leaking tanks were removed. The owner has not complied with some SFM requirements relating to the new tank system. The issues of SFM non-compliance relating to the new tanks at the same facility will not be considered when applying potential reductions in reimbursement for the on-going investigation and remediation of a release from the old tank system.

Appendix

Acronyms:

AST – Aboveground Storage Tank
EPA – United States Environmental Protection Agency
NDEE – Nebraska Department of Environment and Energy
NFPA - National Fire Protection Association
PRRA – Petroleum Release Remedial Action Act
RP – Responsible Person
SFM – State Fire Marshal
SPCC - Spill Prevention, Control and Countermeasure
UST – Underground Storage Tank

Contact Information:

Nebraska Department of Environment and Energy
Petroleum Remediation Section
PO Box 98922
Lincoln, NE 68509

(402) 471-2186
Web page: <http://dee.ne.gov>

Nebraska State Fire Marshal Agency
Flammable Liquid Storage Tanks
246 S 14th St, Suite 1
Lincoln, NE 68508-1804

(402) 471-2027
Web page: <https://sfm.nebraska.gov>