

**Comment Summary Response  
Expansion of the Expedited Penalty (XP) Program  
(LAC 33:I.803, 805, and 807) (OS097)**

COMMENT 1: Louisiana Chemical Association (LCA):

General Comment

“The stated purpose of the XP Program is to address violations of minor or moderate gravity, quantify and assess penalty amounts for common violations in a consistent, fair, and equitable manner, ensure that penalty amounts are appropriate in consideration of the nine factors listed in La. R.S. 30:2024(E)(3)(a), eliminate economic incentives for noncompliance, and to ensure expeditious compliance with environmental regulations. LAC 33:I.803.A.

LCA supports the Department’s use of the XP Program, which allows flexibility and efficiency in addressing minor or moderate enforcement matters. LCA appreciates the consistency and predictability in enforcement assessments provided by the XP Program and is generally supportive of the Department’s efforts to expand the program.

With the adoption of the proposed amendments, the Department will authorize more types of enforcement matters that qualify for the XP Program. This is especially true as to the hazardous and solid waste and underground storage tank provisions. Increasing eligibility to more types of enforcement matters will lead to quicker resolution of enforcement issues thereby conserving LDEQ’s enforcement resources and allowing the Department to concentrate on more significant violations.”

FOR/AGAINST: The Department appreciates the commenter’s support.

RESPONSE 1: No response is necessary.

COMMENT 2: LCA:

Amendment to §805 Applicability

“Section 805.A is being amended to increase the assessment cap for a single violation from \$1,500 to \$3,000 and for two or more violations from \$3,000 to \$5,000. LCA supports this amendment because it allows the Department to include more types of enforcement matters in the XP Program.

The XP Program is currently authorized for “minor or moderate” violations. La. R.S. 2025(D)(1). The Department’s regulatory penalty assessment range for minor and moderate violations is between \$100 and \$8,000. See LAC 33:I.705.A (defining a minor-minor violation penalty between \$100 and \$500 and a moderate-moderate penalty between \$5,000 and \$8,000). However, Section 2025(D)(1) of the Louisiana Environmental Quality Act limits the applicability of the XP Program to \$3,000 for a single violation and \$5,000 for an aggregate total. Thus, although the Department may consider higher assessment amounts to be moderate under its regulations (up to \$8,000), which would likely expand the applicability of the program, the XP Program is capped at the limits set forth in the statute. LCA is, therefore, supportive of the Department amending the regulation to include the statutory limit for assessment amounts.”

FOR/AGAINST: The Department appreciates the commenter’s support. For clarity, the Department only utilizes the XP Program to assess penalties for violations that are deemed minor regarding risk and minor to moderate regarding nature and gravity.

RESPONSE 2: No response is necessary.

COMMENT 3: LCA:

Deletion of Chemical Accident Prevention Program Provisions

Although the Proposed XP Program Amendments largely seek to expand the types of enforcement matters included, the currently available Chemical Accident Prevention (“CAP”) program (LAC 33:III.Chapter 59, as described in 40 CFR Part 68) provisions are removed. Currently, Section 807.A includes five types of enforcement matters that qualify for the XP Program under the CAP program. These matters concern employee training, mechanical integrity procedures, process hazard analysis, and recordkeeping. LCA suggests that these matters not be deleted from the XP Program as

the prescribed assessments are under the penalty thresholds and are the type of enforcement matters that would benefit from efficient resolution.

FOR/AGAINST: The Department does not agree with the comment. While it may appear that the existing CAP program XP violations were deleted, the existing regulatory CAP citations will remain in the final rule. The use of three ellipses in the referenced XP CAP Table is standard regulatory formatting that is used to note that there are no proposed changes to the text of the current regulatory language.

RESPONSE 3: The Department will not delete or remove existing violations from the XP CAP Table. The current CAP violations will remain in the final rule.

COMMENT 4: Louisiana Oil Marketers and Convenience Store Association (LOMCSA):

General Comment: “The proposed increase is \$3,000 per violation and \$5,000 for two or more violations. While we appreciate the expedited function of the program, would the department know how many more violations would be handled under the increase amounts and the financial impact to the department and regulated community? Should the amounts be reduced from the proposed amounts in an effort to find a fairer balance?”

FOR/AGAINST: The Department acknowledges but does not agree with the comment. The Department conducted a thorough review during rule development to determine appropriate penalty amounts for the various current and proposed violations included in the XP Program. The proposed rule will expand the current program to include additional minor violations that will allow more enforcement cases to be addressed under the XP Program. This expansion of the XP Program will benefit both alleged violators and the Department due to a reduction in fiscal resources and man-hours expended to resolve enforcement cases. The Department emphasizes that utilization of the XP Program is voluntary on the part of alleged violators. Additionally, the penalties assessed under the XP Program are typically significantly lower than those assessed under the department’s formal penalty process.

RESPONSE 4: The Department will not make any changes to the regulatory text.

COMMENT 5: LOMCSA General Comment: “Second, would there be instances where the certified UST worker and/or petroleum equipment company be fined under the Expedited Penalty Program?”

FOR/AGAINST: The Department acknowledges the comment. The Department can assess penalties under the XP Program to certified UST workers, petroleum equipment companies, and/or any entity that violates the UST regulations.

RESPONSE 5: The Department can assess penalties under the XP Program to certified UST workers, petroleum equipment companies, and/or any entity that violates the UST regulations. The Department will not make any changes to the regulatory text. The Department has provided clarity regarding the commenter’s concern.

COMMENT 6: LOMCSA:

4	Failure to keep a current copy of the registration form and registration certificate on-site or at the nearest staffed facility	LAC:XI.301.C.7 and 8 and/or 509.B.5	This violation is nearly identical verbiage to the violation on Line 61. In order to prevent UST owners from being penalized twice for the same violation, can LAC 33:XI.1133.B.5. be added to the citation list on line 4 and line 61 then be totally eliminated.
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FOR/AGAINST: The Department acknowledges but does not agree with the comment. While the verbiage in LAC 33:XI.1133.B.5 is similar to that of LAC 33:XI.301.C.7 and 8 and LAC 33:XI.509.B.5, the department would not assess a penalty twice for the referenced regulatory citations. If penalties are determined to be warranted, the Department would select the regulatory citation that best applies to the facility’s operational status and the specific circumstances. LAC 33:XI.301.C.7 and 8 applies to the requirement to maintain copies of the registration form and certificate at active facilities. LAC 33:XI.1133.B.5 applies to the requirement to maintain copies of the registration form and certificate at facilities in temporary closure. LAC 33:XI.509 B and C (as referenced in Comment 9 below), while these citations include the requirement to have and maintain the registration form and certificate, applies more broadly to overall required record maintenance and record availability.

RESPONSE 6: The Department will not make any changes to the regulatory text.

COMMENT 7: LOMCSA:

18	Failure of a UST owner or operator to notify the department in writing at least 30 days before beginning an installation, renovation, upgrade, or repair as specified.	LAC 33:XI.303D.6.c; 303.E.7.a;507.A.1	While we realize that 507.A.1.b. allows the ENF-04 to be submitted up to 30 days after completion of emergency repair, the violation doesn't reflect this same language. Perhaps adding the word "planned" before "installation" in the violation language would recognize that not all repairs are planned. Or perhaps "non-emergency" before the word "repair" or additional language in the violation.
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FOR/AGAINST: The Department acknowledges the commenter's concern but does not agree that a change in the regulatory text is required. As previously noted, the Department performs an assessment when the circumstances related to a specific event or observation constitutes a violation and/or whether an assessment of penalties is warranted.

RESPONSE 7: The Department will not make any changes to the regulatory text.

COMMENT 8: LOMCSA:

19	Failure of a UST owner or operator to notify the department seven days prior to performing an installation, repair, or closure critical juncture as specified.	LAC 33:XI.3030.6.d; 303.E.7.b;S07.A.1.d; 905.A.2	Similar request as line 18. Need a way to make clear that Emergency repairs cannot be penalized for failure to submit notice prior to repair.
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FOR/AGAINST: The Department acknowledges the commenter's concern but does not agree that a change in the regulatory text is required. As previously noted, the Department performs an assessment when the circumstances related to a specific event or observation constitutes a violation and/or whether an assessment of penalties is warranted.

RESPONSE 8: The Department will not make any changes to the regulatory text.

COMMENT 9: LOMCSA:

33	Failure to maintain required information and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC33:XI.509 B and C	This is a very similar violation to Line 4 and even references the same statute as well as 509.C. Can this be combined with Line 4 and add a citation reference for 509.C to that citation list. Then this line can be eliminated. We understand that it is not the Department's practice to fine the same violation on multiple XP lines but In order to prevent future interpretations from allowing fining owner/operators multiple times for the same violation we think this should be combined with line 4.
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FOR/AGAINST: The Department acknowledges but does not agree with the comment. See the Department's response to Comment 6.

RESPONSE 9: The Department will not make any changes to the regulatory text.

COMMENT 10: LOMCSA:

34	Failure to test/inspect spill prevention equipment, overfill prevention equipment, or containment sumps used for Interstitial monitoring as required.	LAC 33:XI.511	We understand that it is the department's intent for this to be one ticketed offence per location. There doesn't seem to be any language to prevent fines from being assessed per containment sump or overfill device. Can language be added to the violation to indicate that this is a once per site citation and not per device.
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FOR/AGAINST: The Department acknowledges the comment but does not agree that changes in the regulatory text are necessary. It is not the department's policy to assess penalties in association with each UST spill prevention, overfill protection, or containment device to be found deficient during an inspection. When utilizing the XP Program to address these violations, the Department assesses the penalty amount specified in the associated XP table block once per facility regardless of the number of components/devices out of compliance.

RESPONSE 10: The Department will not make any changes to the regulatory text.



COMMENT 11: LOMCSA:

36	Failure to conduct shear valve testing as required.	LAC33:XI.515	We understand that It is the department's intent for this to be one ticketed offence per location. There doesn't seem to be any language to prevent fines from being assessed per shear valve. Can language be added to the violation to indicate that this is a once per site citation and not per valve.
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FOR/AGAINST: The Department acknowledges the comment but does not agree that changes in the regulatory text are necessary. It is not the Department's policy to assess penalties in association with each failure by a facility to properly conduct required shear valve testing noted during an inspection. When utilizing the XP Program to address these violations, the Department assesses the penalty amount specified in the associated XP Table block once per facility regardless of the number of components/devices to be determined to be out of compliance.

RESPONSE 11: The Department will not make any changes to the regulatory text.

COMMENT 12: LOMCSA:

38	Failure of Class A, B, or C UST operator to be trained and certified in accordance with the regulations and deadlines in LAC 33.XI.607.	LAC33:XI.603.A.2	The frequency on this one is listed as "per occurrence". Would this be per employee at that site? Per all employees that did work at that site at one time during the 3 year inspection period? Per the average number of staff? Maybe this should be changed to per inspection and limited to one fine or does per occurrence mean one fine for A/B and one fine for C? Maybe this should be broken into 2 separate XP each per Inspection.
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FOR/AGAINST: The Department acknowledges the comment but does not agree that changes in the regulatory text are necessary. The Department would assess this per occurrence because the regulatory requirement is not for each employee, but rather is for the Respondent to provide a certified level A/B and C operator. Not every employee is required to have this certification. Breaking this into two separate XPs is not necessary because LAC 33:XI.603.A.2 requires/applies to all three types of certifications.

RESPONSE 12: The Department will not make any changes to the regulatory text.

COMMENT 13: LOMCSA:

41	Failure to conduct an annual performance test on automatic line leak detectors as required	LAC33:XI.701.B.1	Similar to other request can there be verbiage added to this so that sites are fined per Inspection year missed and not per line leak detector. We understand the intent is per inspection year but can we clean that up so that it isn't interpreted in the future to mean per line leak detector per inspection.
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FOR/AGAINST: The Department acknowledges the comment but does not agree that changes in the regulatory text are necessary. It is not the Department's policy to assess penalties in association with each missed test per line leak detector. The Department considers per occurrence to be based upon a missed testing event and would not assess a penalty for each leak detector that missed a test. When utilizing the XP Program to address these violations, the Department assesses the XP Program-specified penalty amount regardless of the number of components/devices out of compliance.

RESPONSE 13: The Department will not make any changes to the regulatory text.

COMMENT 14: LOMCSA:

61	Failure of a UST owner or operator covered by the Underground Motor Fuel Storage Tank Trust Fund to maintain on file a copy of the current registration certificate.	LAC33:XI.1311.B.5	This violation is nearly identical verbiage to the violation on Line 4. In order to prevent UST owners from being penalized twice for the same violation, can LAC 33:XL.1133.B.5. be added to the citation 11st on line 4 and line 61 then be totally eliminated. We understand that it is not the Department's practice to fine the same violation on multiple XP lines but in order to prevent future interpretations from allowing fining Owner/Operators multiple times for the same violation we think this should be combined with line 4.
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FOR/AGAINST: The Department acknowledges but does not agree with the comment. See the Department's response to Comment 6.

RESPONSE 14: The Department will not make any changes to the regulatory text.

COMMENT 15: Mike Tritico:

Dear DEQ Regulatory Division,

I very much appreciate the responses you sent me to answer my questions about the proposed changes. I see no problems in what you are proposing. I have only two suggestions:

1. Give more weight to the field agents who actually see the real-world situations. Their eyewitness accounts should guide the legal staff in Baton Rouge, not the other way around.

2. Next time this comes up for public comment include a narrative that has the kind of extensive and clear explanations that were provided to me by Mr. Craig Easley.

Thank you all for what you are doing. I remember when there was no LDEQ. What the citizens were up against at that time has been significantly relieved by the good work that dedicated LDEQ staff members do day-in-and-day out.

FOR/AGAINST: The Department acknowledges the commenter's suggestions above. The Department appreciates the commenter's support regarding the proposed regulatory package.

RESPONSE 15: The Department will not make any changes to the regulatory text.

**Comment Summary Response  
Expansion of the Expedited Penalty Program  
(LAC 33:I.803, 805, and 807) (OS097)**

<u>COMMENT #</u>	<u>SUGGESTED BY</u>
01 -- 03	Lauren J. Rucinski, Louisiana Chemical Association
04 -- 14	Natalie Isaacks, Louisiana Oil Marketers and Convenience Store Association
15	Mike Tritico (Concerned citizen)

Comments reflected in this document are repeated verbatim from the written submittal.

Total Commenters: 03  
Total Comments: 15