

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
23<sup>rd</sup> Navajo Nation Council --- Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE  
NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY REGULATIONS  
SETTING PENALTIES FOR VIOLATIONS OF THE NAVAJO NATION STORAGE  
TANK ACT

BE IT ENACTED:

**Section One. Authority**

- A. The Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §500(C), exercises oversight authority over land.
- B. The Resources and Development Committee of the Navajo Nation Council is empowered to approve regulations regarding the Navajo Nation Underground and Aboveground Storage Tank Act pursuant to 4 N.N.C. §1506.

**Section Two. Findings**

- A. The Navajo Nation Environmental Protection Agency, through a Memorandum of November 21, 2017, attached as **Exhibit F**, is proposing the Navajo Nation Environmental Protection Agency Regulations Setting Penalties for Violations of the Navajo Nation Storage Tank Act.
- B. The Navajo Nation Environmental Protection Agency Regulations Setting Penalties for Violations of the Navajo Nation Storage Tank Act is attached as **Exhibit A**.
- C. The list of Field Citation Penalties is attached as **Exhibit B**; the list of Administrative Penalties is attached as **Exhibit C**; the Notice of Inspection Form is attached as **Exhibit D**, and the Field Citation Form is attached as **Exhibit E**.
- D. The Response to Comments on Proposed Penalty Regulations regarding the published notice of the proposed Navajo Nation Environmental Protection Agency Regulations Setting Penalties for Violations of the Navajo Nation Storage Tank Act is attached as **Exhibit G**.
- E. The Section 164 Review Form is attached as **Exhibit H**.

**Section Three. Approval**

- A. Resources and Development Committee hereby approves the Navajo Nation Environmental Protection Agency Regulations Setting Penalties for Violations of the Navajo Nation Storage Tank Act, **Exhibit A**, Field Citation Penalties, **Exhibit B**, Administrative Penalties, **Exhibit C**, and Notice of Inspection Form, **Exhibit D** and Field Citation Form, **Exhibit E**.

**CERTIFICATION**

I, hereby certify that the following resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at the Cove Chapter, Cove, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, 1 abstained on this 21<sup>st</sup> day of February, 2018.



Benjamin Bennett, Vice Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Leonard Pete  
Second: Honorable Jonathan Perry



**THE NAVAJO NATION**

**RUSSELL BEGAYE PRESIDENT**  
**JONATHAN NEZ VICE-PRESIDENT**

Environmental Protection Agency Waste Regulatory Compliance Department

P.O. Box 3089 • Physical Address: Morgan Blvd., Bldg. #6656 Window Rock, AZ 86515

Tel: 928.871.7993

Fax: 928.871.7783

# **Navajo Nation Environmental Protection Agency**

## **Proposed Regulations Setting Penalties for Violations of the Navajo Nation Storage Tank Act**

**(“NNSTA Penalty Regulations”)**

**164 Review Document # 003691**

**DOC.**

**# 3691**

<b>1</b>	164 Signature Sheet for Document # 003691
<b>2</b>	Cover Memo to the 164 Reviewers
<b>3</b>	NNSTA Penalty Regulations
<b>4</b>	Table A - Field Citation Penalties Issued Pursuant to NNSTA §1554(C)
<b>5</b>	Table B - Administrative Penalties Issued Pursuant to NNSTA §1554(A)
<b>6</b>	NNEPA Notice of Inspection Form
<b>7</b>	NNEPA UST/AST Field Citation Form
<b>8</b>	Response to Comments on Proposed Penalty Regulations

**REGULATIONS SETTING PENALTIES  
FOR VIOLATIONS OF THE  
NAVAJO NATION STORAGE TANK ACT  
("NNSTA PENALTY REGULATIONS")**

**February 2018**

**REGULATIONS SETTING PENALTIES  
FOR VIOLATIONS OF THE  
NAVAJO NATION STORAGE TANK ACT**

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**REGULATIONS SETTING PENALTIES FOR VIOLATIONS OF THE  
NAVAJO NATION STORAGE TANK ACT**

**PART I: GENERAL PROVISIONS**

**§ 101. Authority.**

a. **In general.** These Penalty Regulations are promulgated pursuant to Section 1554(A) and (C) of the Navajo Nation Underground and Aboveground Storage Tank Act (the “Navajo Nation Storage Tank Act” or “NNSTA”), 4 N.N.C. § 1554(A) and (C), which authorizes the Director (“Director”) of the Navajo Nation Environmental Protection Agency (“Navajo Nation EPA”) to issue administrative penalty orders, including field citations, for violations of the NNSTA and implementing regulations. *See also* NNSTA § 1552(A)(2) (authority to issue administrative penalty order pursuant to § 1554).

b. **Administrative penalty orders.** Pursuant to NNSTA § 1554(A), the Director may issue an administrative order assessing a civil penalty of up to \$10,000 per tank per day of violation of the NNSTA and implementing regulations, as long as the total penalty does not exceed \$100,000 and the first alleged date of violation occurred not more than one year prior to issuance of the administrative order, unless the Director and the Navajo Nation Attorney General jointly determine that a larger penalty or longer period of violation is appropriate.

c. **Field citations.** Pursuant to NNSTA § 1554(C), designated officers or employees of the Navajo Nation EPA Storage Tank Program (“NNSTP”) may issue field citations for minor violations of the NNSTA and implementing regulations in amounts not to exceed \$5,000 per facility for each day of violation.

**§ 102. Purpose.**

a. **Administrative penalty orders.** An administrative penalty order is one of several types of administrative orders that may be issued by the Navajo Nation EPA pursuant to NNSTA §§ 1552 and 1554. By imposing penalties for violations of the NNSTA and implementing regulations, the Navajo Nation EPA intends to discourage such violations from occurring. An administrative penalty order is different from an administrative compliance order but the two types of orders may be issued simultaneously, including as a combined order.

b. **Field citations.** A field citation is the equivalent of a combined administrative compliance order, administrative penalty order, and expedited settlement agreement. Pursuant to a field citation, if the NNSTP has identified violations at a facility, it may issue a compliance order that contains proposed civil penalties, the facility owner or operator may correct the violations and pay the penalties within 30 days, and, upon the Navajo Nation EPA’s review and final approval, the compliance order will be deemed settled. In this way, use of a field citation is intended to expedite and increase the rate of compliance with the NNSTA and implementing regulations. The NNSTP generally will issue a field citation when there is a clear violation that is relatively easy to correct. The NNSTA provides for other types of enforcement for other types of violations. *See generally* NNSTA §§ 1547, 1552-1554.

### **§ 103. Applicability.**

These regulations apply to owners and operators of underground storage tanks (“USTs”) and aboveground storage tanks (“ASTs”) subject to regulation under the NNSTA and implementing regulations and, depending on the violation at issue, to installers and sellers of such tanks and persons delivering or depositing regulated substances to or into such tanks.

### **§ 104. Definitions.**

The definitions in NNSTA § 1502 shall apply to these regulations. In addition, the term “Uniform Rules” means the Navajo Nation EPA Uniform Rules for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemakings.

### **§ 105. Procedure.**

a. **Notice of Inspection.** In general, for a new facility or an existing facility with no prior history of violations, if the violations observed at the facility during an inspection are minor, an NNSTP officer or employee may take the following steps rather than issuing an administrative penalty order or field citation:

1. Issue a “Notice of Inspection” listing the violations observed at the facility.
2. Discuss the violations and necessary corrections with the owner or operator or other facility representative present at the site.
3. Provide dates on the Notice of Inspection form as to when documentation of compliance must be submitted to the NNSTP.
4. Review such documentation when submitted to determine whether the violations have been corrected.
5. Consider a request, if any, for extension of a compliance date and make a determination regarding such a request, which determination shall be in the NNSTP’s discretion and not subject to appeal.

b. **Administrative Penalty Order.**

1. For violations warranting penalties larger than those assessed in field citations, or for violations that will not necessarily be detected during a site inspection, the NNSTP will serve the violator with a proposed administrative penalty order that, pursuant to NNSTA § 1554, will state the nature of the violation and the amount of the penalty. The proposed order will notify the violator that it may request a hearing on the proposed order within 30 days of receiving the order. If the violator does not request a hearing during that period, the proposed order will become final and will not be subject to judicial review. No further action will be taken on the order once the penalty is paid; however, if the penalty is not paid the order may be enforced in Navajo Nation court, pursuant to NNSTA § 1554(E).



2. If a hearing is requested the Director will designate a Hearing Official within 15 days of receiving the request, pursuant to Uniform Rules § 305(d). The Hearing Official will set a date and location for the hearing and will render a decision after the hearing on whether to issue, modify, or withdraw the order, pursuant to Subpart 3(C) of the Uniform Rules. The decision of the Hearing Official constitutes final agency action and is subject to review in Navajo Nation court pursuant to Uniform Rules § 332.
3. In general, the penalties assessed under an administrative penalty order are determined on a case-by-case basis. However, the NNSTP has determined that it will issue standard penalties for certain types of violations in order to expedite the issuance of those orders and so decrease the frequency at which those violations have been occurring. These violations are listed in Table B under Part III of these regulations. They involve penalties in amounts similar to field citations but will not necessarily be detected during a site inspection.

**c. Field Citation.**

1. In general, for facilities with a history of prior violations, if the violations observed at the facility during an inspection are minor and penalties for those violations are included in Table A under Part II of these regulations, an NNSTP officer or employee may issue a field citation according to the instructions included with the Field Citation form, pursuant to which the officer or employee will:
  - A. Fill out Part I of the Field Citation form, indicating the violations found and the proposed penalties.
  - B. Sign Part I of the Field Citation form, have the owner, operator, or onsite representative sign Part I of the form, and provide a copy of the entire form to the owner, operator, or onsite representative, as the case may be.
  - C. Inform the owner, operator, or onsite representative, as the case may be, that he/she has 30 days to pay the penalties, submit documentation that the violations have been corrected, sign Part II of the form and submit it to the Navajo Nation EPA STP.
  - D. Consider any requests made by the owner or operator to withdraw or modify a field citation, if made within 15 days and supported by adequate documentation, as provided in the instructions included with the Field Citation form. Determinations made on such requests shall be within the NNSTP's discretion and not subject to appeal.
  - E. Consider any request made by the owner or operator for a one-time 30-day extension of the time to pay the penalties. Determinations made on such requests shall be within the NNSTP's discretion and not subject to appeal.
  - F. Review the completed form and, if approved, sign Part II (settlement agreement) and Part III (compliance order) of the form.
2. Alternatively, if a hearing is requested, the field citation will automatically be withdrawn and will be replaced with an administrative compliance order, pursuant to NNSTA § 1552(A)(1) & (B)-(C); administrative penalty order, NNSTA §§

1552(A)(2) & 1554; or other order as authorized by NNSTA § 1552 and Uniform Rules § 304. A hearing will be provided pursuant to Subpart 3(C) of the Uniform Rules.

3. Pursuant to NNSTA § 1554(C) and Uniform Rules § 331, absent a timely request for a hearing, the field citation becomes a final decision and any penalty or penalties so assessed shall become final. In the absence of a request for a hearing, a field citation is not subject to judicial review. Uniform Rules § 332. Final administrative penalty orders are enforceable pursuant to NNSTA § 1552(D) and in Navajo Nation Court pursuant to NNSTA § 1553.

d. **Enforcement Discretion.** Notwithstanding anything to the contrary in this section, the decision as to whether to take enforcement measures and the choice of which enforcement measures to take is within the discretion of the Navajo Nation EPA.

## **PART II: FIELD CITATION PENALTIES**

### **§ 201. Table of Penalties.**

Table A lists the civil administrative penalties associated with violations that are suitable for field citations. The NNSTP will use this table when issuing field citations pursuant to NNSTA § 1554(C) and these regulations. For ease of reference, the table is divided into categories as follows:

- a. Notification requirements
- b. Performance standards (design, construction, installation)
  1. New USTs
  2. New ASTs
  3. Upgrading existing USTs
  4. Upgrading existing ASTs
  5. Vaults
  6. Motor fuel dispensers
- c. General operating requirements
- d. Release detection requirements
- e. Out-of-service UST systems and closures
- f. Financial responsibility

## **PART III: OTHER ADMINISTRATIVE PENALTIES**

### **§ 301. Table of Penalties.**

Table B lists the civil administrative penalties associated with violations that are not subject to field citations but are nevertheless suitable for standard penalties to have been determined in advance by the Navajo Nation EPA. The Navajo Nation EPA will use this table when issuing administrative penalty orders pursuant to NNSTA § 1554(A) and these regulations. The Navajo Nation EPA has determined that the assessment of standard penalties for these violations will expedite the issuance of administrative penalty orders addressing these violations and so decrease their occurrence.

#### **PART IV: MISCELLANEOUS**

##### **§ 401. No Preclusion of Further Enforcement.**

Payment of a penalty pursuant to an administrative penalty order, including a field citation, issued under NNSTA § 1554 and these regulations does not preclude further enforcement by the Director under other provisions of the NNSTA to ensure the correction of an ongoing UST or AST violation or to assess additional penalties if the violation continues. For example, where warranted the Director may issue corrective action orders, NNSTA § 1547(D); initiate cost recovery proceedings for corrective actions taken by the Director, § 1547(F)(2); issue compliance orders, § 1552(A)(1), including emergency compliance orders, § 1552(C); and initiate civil judicial enforcement proceedings, including for temporary restraining orders, preliminary injunctions, and permanent injunctions, § 1553(A); criminal penalties, § 1553(B); and damages and other costs, § 1553(C).

##### **§ 402. Interest on Any Unpaid Penalty Amount.**

- a. Pursuant to NNSTA § 1554(E), any person who fails to pay an assessed civil penalty on a timely basis shall be required to pay interest on the unpaid penalty amount.
- b. Such interest shall be equal to the IRS rate and shall begin to accrue one month after the civil penalty was assessed.

##### **§ 403. Failure to Pay Penalty.**

- a. Pursuant to NNSTA § 1554(E), any person who fails to pay an assessed civil penalty on a timely basis shall be required to pay, in addition to such penalty and interest, the Director's expenses for bringing an action to enforce the penalty order at issue in Navajo Nation District Court in Window Rock. Such enforcement expenses include but are not limited to attorney's fees and costs of collection proceedings.
- b. The Director's enforcement expenses pursuant to NNSTA § 1554(E) shall be reasonable, justified, and subject to approval by the court.
- c. Pursuant to NNSTA § 1554(E), any person who fails to pay an assessed civil penalty on a timely basis shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be 10% of the aggregate

amount of the person's outstanding penalties and nonpayment penalties (but not interest) accrued as of the beginning of each quarter of non-payment.

**§ 404. Revision of Penalty Amounts**

Every three years from the effective date of these regulations, the Navajo Nation EPA will review and, if the Navajo Nation EPA determines it to be appropriate, due to inflation, increased program costs, deterrent effect, or other reasons, revise some or all of the penalty amounts listed in Tables A and B.

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
<p>NNSTA §§ 1541(C)(1), 1542(B)(7)&amp;(8), incorporating NMAC 20.5.4.27, 40 CFR § 112.7(c)(1)</p>	<p>Failure to provide new storage tank systems (including piping) with a secondary containment system, which must include, as appropriate, dikes, berms, or retaining walls; curbing or drip pans; sumps and collection systems; culverting, gutters, or other drainage systems; weirs, booms, or other barriers; spill diversion ponds; retention ponds; or sorbent materials</p>	<p>\$420</p>	<p>analogous to § 280.20(c)</p>
<p>NNSTA §§ 1521(A)(1)(c), 1542(B)(7), incorporating 40 C.F.R. § 112.7(h)</p>	<p>Installation of a containment system that does not contain all releases of regulated substances during loading and unloading</p>	<p>\$210</p>	<p>analogous to § 280.20(c)(1)(i) and (ii)</p>
<p>NNSTA §1542(B)(8), incorporating NMAC 20.5.4.30</p>	<p>Failure to provide venting, including emergency venting, for new AST systems in accordance with codes and standards</p>	<p>\$420</p>	<p>analogous to § 280.20(c)</p>
<p>NNSTA § 1542(B)(8), incorporating NMAC 20.5.4.17</p>	<p>Installation of a UST for use as an AST</p>	<p>\$1,300</p>	<p>analogous to § 280.20(d)</p>
<p>NNSTA §§ 1521(A)(1)(d), 1542(B)(8), incorporating NMAC 20.5.4.18</p>	<p>Failure to install a field-erected AST in accordance with accepted codes and standards</p>	<p>\$210</p>	<p>analogous to § 280.20(d)</p>
<b>Upgrading Existing USTs</b>			
<p>NNSTA §§ 1521(A)(2), 1542(A), incorporating 40 C.F.R. § 280.21, including 280.21(a)</p>	<p>Failure to replace, upgrade, or close substandard UST system</p>	<p>\$1,300</p>	<p>corresponds to § 280.21 (b)</p>
<p>NNSTA §§ 1521(A)(2), 1542(A), incorporating 40 C.F.R. § 280.21(b)</p>	<p>Failure to meet all UST upgrade standards</p>	<p>\$420</p>	<p>corresponds to § 280.21(b)</p>
<p>NNSTA §§ 1521(A)(1)(e), 1542(A), incorporating 40 C.F.R. § 280.21(b)(1)(i)</p>	<p>Improper installation of interior lining for upgraded UST</p>	<p>\$210</p>	<p>corresponds to § 280.21(b)(1)(i)</p>
<p>NNSTA §§ 1521(A)(1)(e), 1542(A), incorporating 40 C.F.R. § 280.21(b)(1)(ii)</p>	<p>Failure of interior lining to continue to meet original specifications</p>	<p>\$210</p>	<p>corresponds to § 280.21(b)(1)(ii)</p>



Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSA §§ 1521(A)(1)(e), 1542(B)(2), incorporating NMAC 20.5.4.16(A)	Failure to ensure AST system is compatible with any regulated substance conveyed	\$210	analogous to § 280.32
NNSA § 1542(B)(2) & (8), incorporating NMAC 20.5.4.16(B)	Failure to install a steel AST	\$420	analogous to § 280.20(a)(2)
NNSA §§ 1521(A)(1)(b), 1542(B)(7), incorporating 40 C.F.R. § 112.8(d)	Failure to ensure that steel piping routinely containing regulated substances and in contact with the ground or water is properly designed, constructed, and protected from corrosion	\$420	analogous to § 280.20(b)(2)
NNSA §§ 1521(A)(1)(e), 1542(B)(7), incorporating 40 C.F.R. § 112.8(d)	Failure to ensure that all piping is compatible with any regulated substance conveyed	\$210	analogous to § 280.32
NNSA § 1542(B)(7), incorporating 40 C.F.R. § 112.8(d)	Failure to protect piping from impact, settlement, vibration, expansion, corrosion, and damage by fire	\$420	analogous to § 280.20(b)(2)
NNSA §§ 1521(A)(1)(d), 1542(B)(8), incorporating NMAC 20.5.4.19	Failure to install piping in accordance with accepted codes and standards	\$210	analogous to § 280.20(d)
NNSA §§ 1521(A)(1)(d), 1542(B)(8), incorporating NMAC 20.5.4.23	Installation of improperly designed and constructed steel piping in accordance with accepted codes and standards	\$420	analogous to § 280.20(b)(1)
NNSA §§ 1521(A)(1)(c), 1542(B)(8), incorporating NMAC 20.5.4.33(A)(3) & (B)	Failure to use spill and overflow prevention systems unless otherwise exempted	\$420	analogous to § 280.20(c)
NNSA §§ 1521(A)(1)(d), 1542(B)(8), incorporating NMAC 20.5.4.19	Failure to install AST in accordance with accepted codes and standards	\$210	analogous to § 280.20(d)



Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.20(c)	Failure to use spill and overflow prevention systems	\$420	corresponds to § 280.20(c)
NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.20(c)(1)(i)	Installation of inadequate spill prevention equipment in a new tank	\$210	corresponds to § 280.20(c)(1)(i)
NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.20(c)(1)(ii) and (c)(3)	Installation of inadequate overflow prevention equipment in a new tank	\$210	corresponds to § 280.20(c)(1)(ii)
NNSTA §§ 1521(A)(1)(d), 1542(A), incorporating 40 C.F.R. § 280.20(d)	Failure to install UST in accordance with accepted codes and standards	\$210	corresponds to § 280.20(d)
NNSTA §§ 1521(A)(1)(d), 1542(A), incorporating 40 C.F.R. § 280.20(d)	Failure to install piping in accordance with accepted codes and standards	\$210	corresponds to § 280.20(d)
NNSTA §§ 1541(C)(1), (4), 1542(A), incorporating 40 C.F.R. § 280.20	Failure to provide new storage tank systems (including piping) with a secondary containment system	\$420	analogous to § 280.20(c)
NNSTA §§ 1535, 1542(A), incorporating 40 C.F.R. § 280.20(e)	Failure to provide certification to NNSTP of UST installation	\$210	corresponds to § 280.20(e)
<b>Performance Standards for New ASTs</b>			
NNSTA §§ 1521(A)(1)(a), 1542(B)(8), incorporating NMAC 20.5.4.16(A)	Installation of an improperly designed and constructed AST that does not meet accepted corrosion protection standards	\$420	analogous to § 280.20(a)(2)

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2)(iii)	Improper installation of a cathodic protection system for a metal tank	\$210	corresponds to § 280.20(a)(2)(iii)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2)(iv)	Improper operation and maintenance of tank cathodic protection system	\$210	corresponds to § 280.20(a)(2)(iv)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20(a)(3)	Installation of an improperly constructed steel tank clad or jacketed with a non-corrodible material	\$420	corresponds to § 280.20(a)(3)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20(b)(1)	Installation of improperly constructed piping constructed of non-corrodible material	\$420	corresponds to § 280.20(b)(1)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20(b)(2)	Failure to provide any cathodic protection for metal piping	\$420	corresponds to § 280.20(b)(2)
NNSTA §§ 1521(a)(1)(a), 1542(A), incorporating 40 C.F.R. § 280.20(b)(2)(i)	Installation of piping with unsuitable dielectric coating	\$210	corresponds to § 280.20(b)(2)(i)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20(b)(2)(ii)	Installation of improperly designed cathodic protection for metal piping	\$420	corresponds to § 280.20(b)(2)(ii)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20(b)(2)(iii)	Improper installation of cathodic protection system for piping	\$210	corresponds to § 280.20(b)(2)(iii)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.20(b)(2)(iv)	Improper operation and maintenance of cathodic protection system for metal piping	\$210	corresponds to § 280.20(b)(2)(iv)

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA §§ 1541(D), 1542(A)&(B), incorporating 40 C.F.R. § 280.22(e) and 40 C.F.R. § 112.8(c)(6)	Failure to certify UST/AST system requirements (proper installation, cathodic protection, financial responsibility, release detection)	\$210	corresponds to § 280.22(e), failure to certify compliance with referenced requirements in notification form
NNSTA § 1542(A)&(B), incorporating 40 C.F.R. §§ 280.22(f) and 112.8(c)(6), (8)	Failure to provide installer certification of compliance with new UST/AST installation requirements	\$210	corresponds to § 280.22(f), failure to provide installer certification in notification form
NNSTA §§ 1540, 1542(A), incorporating §§ 280.32(b) & 280.34(a)(2)	Failure to notify NNSTA within 30 days of any storage tank upgrade, replacement, or change-in-use, including failure to notify NNSTA at least 30 days prior to a change to a regulated substance containing greater than 10% ethanol or 20% biodiesel, or to another regulated substance as specified by NNSTP; failure to maintain records, and failure to demonstrate compatibility of new regulated substance with storage tank	\$210	corresponds to § 280.22(a)
<b>Performance Standards (Design, Construction, Installation)</b>			
<b>Performance Standards for New USTs</b>			
NNSTA §§ 1521(A)(1)(d), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(1)	Installation of an improperly constructed fiberglass-reinforced plastic tank	\$420	corresponds to § 280.20(a)(1)
NNSTA §§ 1521(A)(1)(a) or (b), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2)	Installation of an improperly designed and constructed metal tank that fails to meet corrosion protection standards	\$420	corresponds to § 280.20(a)(2)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2)(i)	Installation of a metal tank with unsuitable dielectric coating	\$210	corresponds to § 280.20(a)(2)(i)
NNSTA §§ 1521(A)(1)(a), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2)(ii)	Installation of an improperly designed cathodic protection system for a metal tank	\$420	corresponds to § 280.20(a)(2)(ii)

**TABLE A  
FIELD CITATION PENALTIES ISSUED PURSUANT TO NNSTA § 1554(C)**

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
<b>Notification Requirements</b>			
NNSTA § 1531(A)	Failure to notify NNSTP of a storage tank within 90 days of the effective date of the NNSTA	\$420	analogous to § 280.22(a), failure to notify agency within 30 days of bringing UST system on line
NNSTA § 1531(B)	Failure to notify NNSTP of a change of ownership or operator within 30 days from date of change	\$210	analogous to § 280.22(a)
NNSTA § 1532	Failure to notify NNSTP of a UST taken out of operation after 01/01/74 but not removed from the ground	\$210	analogous to § 280.22(c), failure to identify all known tanks at each site
NNSTA § 1533	Failure to notify NNSTP of a UST taken out of operation on or before 01/01/74	\$210	analogous to § 280.22(c), above
NNSTA § 1534 (conditional requirement)	[Reserved.] [If Director requires owner to notify NNSTP of USTs removed from the ground after 11/8/84]	N/A	N/A
NNSTA § 1535	Failure to notify NNSTP within 30 days of bringing a new storage tank into operation	\$420	analogous to § 280.22(a), above
NNSTA §§ 1535, 1542(A), incorporating 40 C.F.R. § 280.22(d)	Failure to submit a separate notification form for USTs at each site where tanks are located	\$210	corresponds to § 280.22(c), above



Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(2)	Failure to maintain records of the operation of corrosion protection equipment	\$70	corresponds to § 280.33(f)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(3)	Failure to maintain documentation of compatibility for UST systems	\$70	corresponds to § 280.33(f)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(4)	Failure to maintain documentation of UST system repairs	\$70	corresponds to § 280.33(f)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(7)	Failure to maintain documentation of compliance with release detection requirements for UST systems	\$70	corresponds to § 280.33(f)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(c)(1), (2)	Failure to maintain records at the UST site and immediately available for inspection or at alternate site and available upon request	\$70	corresponds to § 280.33(f)
<b>Release Detection Requirements for USTs</b>			
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.40(a)	Failure to provide an adequate release detection method	\$420	corresponds to § 280.40(a)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.40(c)	Failure to close UST system not meeting release detection	\$420	corresponds to § 280.40(d)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(a)	Failure to monitor USTs at least every 30 days, or as provided in 40 C.F.R. § 280.41(a)	\$420	corresponds to § 280.41(a)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(a)(1), (2)	Failure to tightness test once every five years or annually, as may be required or to monitor for releases at least every thirty days	\$420	corresponds to § 280.41(a)(1)&(2)
NNSTA § 1542(A), incorporating 40 C.F.R.	Failure to equip pressurized piping with an automatic line leak detector	\$420	corresponds to § 280.41(b)

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.31(d)	Failure to maintain records of cathodic protection inspections	\$70	corresponds to § 280.31(d)
NNSTA §§ 1521(A)(1)(e), 1542(A), incorporating 40 C.F.R. § 280.32(a)&(b)	Failure to ensure UST system is made of or lined with materials that are compatible with any regulated substance conveyed	\$210	corresponds to § 280.32
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.33(a)	Failure to repair UST system in accordance with accepted codes and standards	\$210	corresponds to § 280.33(a)
NNSTA §§ 1521(A)(8), 1542(A), incorporating 40 C.F.R. § 280.33(c)	Failure to repair metal piping that has released product	\$210	corresponds to § 280.33(c)
NNSTA §§ 1521(A)(8), 1542(A), incorporating 40 C.F.R. § 280.33(b)	Failure to repair fiberglass-reinforced piping in accordance with manufacturer's specifications	\$210	corresponds to § 280.33(b)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.33(d)&(f)	Failure to conduct appropriate testing and inspections within 30 days of completion of repairs	\$420	corresponds to § 280.33(d)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.33(e)	Failure to test a cathodic protection system within six months of repair of a UST system	\$210	corresponds to § 280.33(e)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.33(g)	Failure to maintain records of each repair to a UST system	\$70	corresponds to § 280.33(f)
NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(1)	Failure to maintain records of corrosion expert's analysis of site corrosion potential, if corrosion protection equipment is not used	\$70	corresponds to § 280.33(f)



Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
<b>Under-Dispenser Spill Containment</b>			
NNSTA §§ 1541(C)(2), NNSTA § 1542(A), incorporating 40 C.F.R. § 280.20(f)	Failure to install under-dispenser spill containment for each motor fuel dispenser system installed after the enactment of the NNSTA or failure to install under-dispenser spill containment for any new dispenser system installed after 4/11/2016	\$210	analogous to § 280.20(c)(1)
<b>General Operating Requirements</b>			
NNSTA § 1542(A)&(B)(8), incorporating 40 C.F.R. § 280.30(a) and NMAC 20.5.4.33	Failure to take precautions against overflow or spillage during the transfer of product to or from a UST or AST system	\$420	corresponds to § 280.30(a)
NNSTA § 1542(B)(5) &(8), incorporating NMAC 20.5.4.25	Failure to equip ASTs located at elevation with anti-siphon or solenoid valve	\$210	analogous to § 280.20(c)(1)(i)&(ii)
NNSTA § 1542(B)(5) & (8), incorporating NMAC 20.5.4.26	Failure to appropriately protect AST systems at marinas by installing automatic break-away devices, isolating dock piping where necessary, and protecting piping from stress	\$420	analogous to § 280.20(c)(1); alternatively to § 280.20(c)(1)(i) or (ii)
NNSTA § 1542(A) & (B)(7), incorporating 40 C.F.R. §§ 280.31(a), 112.8(c)(6)	Failure to continuously operate and maintain cathodic protection system	\$210	corresponds to § 280.31(a)
NNSTA §§ 1521(A)(1)(b), 1542(A) & (B)(7), incorporating 40 C.F.R. §§ 280.31(b), 112.8(c)(6)	Failure to ensure proper operation of cathodic protection system, including regular testing	\$210	corresponds to § 280.31(b)
NNSTA §§ 1521(A)(7), 1542(B)(7), incorporating 40 C.F.R. § 112.8(c)(6)	Failure to test integrity of ASTs on a regular schedule and whenever material repairs are made	\$210	corresponds to § 280.31(b)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.31(c)	Failure to inspect impressed current systems every 60 days	\$210	corresponds to § 280.31(c)

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.21(b)(2)	If upgrading with cathodic protection, failure to ensure UST is and remains structurally sound by inspecting for corrosion holes, monitoring for releases, or conducting tightness tests	\$210	corresponds to § 280.21(b)(2)(i)
NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.21(c)	Failure to install cathodic protection for metal piping that routinely contains regulated substances and is in contact with the ground	\$420	corresponds to § 280.21(c)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.21(c)	Failure to meet piping tightness test requirements for metal piping after upgrade with cathodic protection	\$210	corresponds to § 280.21(c)
NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.21(d)	Failure to comply with new spill or overflow prevention equipment requirements	\$420	corresponds to § 280.21(d)
<b>Upgrading Existing ASTs</b>			
NNSTA §§ 1521(a)(2), 1542(B)(7), incorporating 40 C.F.R. § 112.8(c)(8)	Failure to upgrade existing AST systems to meet all performance standards for new AST systems	\$420	analogous to § 280.21(b)
NNSTA § 1521(A)(2)	Failure to close any AST system that does not meet performance standards	\$1,300	analogous to § 280.21(b)
NNSTA §§ 1521(A)(2), 1542(B)(8), incorporating NMAC 20.5.4.17	Failure to close any UST being used as an AST	\$1,300	analogous to § 280.21(b)
<b>Vaults</b>			
NNSTA § 1521(A)(9)	Placement of storage tank within an underground vault or other structure restricting visual inspection or access	\$1,300	no comparable federal or state requirement

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
§ 280.41(b)(1)(A) and (b)(2)(i)			
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(b)(1)(i)(B)	Failure to conduct an annual tightness test on pressurized piping, or to perform monthly monitoring	\$420	corresponds to § 280.41(b)
NNSTA § 1542(A), incorporating 40 CFR § 280.41(b)(2)(i)	For pressurized piping installed or replaced after 4/11/2016, failure to monitor for releases at least every thirty days	\$420	corresponds to § 280.41(b)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(b)(1)(ii)	Failure to conduct a line tightness test at least once every three years on suction piping, or to use monthly monitoring	\$420	corresponds to § 280.41(b)
NNSTA § 1542(A), incorporating 40 CFR § 280.41(b)(2)(ii)	For suction piping installed or replaced after 4/11/2016, failure to monitor for releases at least every thirty days if required	\$420	corresponds to §§ 280.41(b)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(a)	Failure to conduct inventory control on a monthly basis	\$420	analogous to § 280.41(a)
NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.43(b)	Inadequate operation or maintenance of manual tank gauging	\$420	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(1)	Inaccurate or ill-timed tank level measurements*	\$70	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(2)	Miscalculated tank level measurements*	\$70	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(3)	Inadequate equipment for manual tank gauging*	\$70	analogous to § 280.40(a)(3)

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(4)	Failure to suspect a release and to treat it appropriately*	\$70	analogous to § 280.40(a)(3)
	*If more than three of these provisions would be cited, "Inadequate operation or maintenance of manual tank gauging" per 40 C.F.R. 280.43(b) or "Failure to monitor USTs at least every 30 days" per 40 C.F.R. 280.41(a) should be cited instead. Also, use of manual tank gauging as the sole method of release detection for USTs of 551 - 2000 gallons is allowed only in accordance with the table in 40 C.F.R. § 280.43(b)(4), per 40 C.F.R. § 280.43(b)(5).		
NNSTA §§ 1521(A)(7), 1542(A) incorporating 40 C.F.R. § 280.43(c)	Inadequate operation or maintenance of tank tightness testing	\$210	analogous to § 280.41(a)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(d)	Inadequate operation or maintenance of automatic tank gauging	\$420	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(d)(1)	Failure to use a sufficiently sensitive automatic product level monitor test	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(d)(2) &(3)	Inadequate inventory control	\$210	analogous to § 280.40(a)(2)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)	Inadequate operation or maintenance of vapor monitoring	\$420	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(1)	For vapor monitoring, use of insufficiently porous materials as backfill**	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(2)	For vapor monitoring, use of insufficiently volatile stored regulatory substance or tracer compound**	\$210	analogous to § 280.40(a)(3)



Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(3)	For vapor monitoring, inoperative monitoring device**	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(4)	For vapor monitoring, interference due to background contamination**	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(5)	Inadequately designed and operated vapor monitors**	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(6)	For vapor monitoring, inadequate assessment of the underground excavation zone**	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(7)	For vapor monitoring, inadequate marking and securing of monitoring wells**	\$210	analogous to § 280.40(a)(3)
	**If more than <u>one</u> of these provisions would be cited, "Inadequate operation or maintenance of vapor monitoring" should be cited instead.		
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)	Inadequate operation or maintenance of groundwater monitoring	\$420	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(1)	For groundwater monitoring, failure of regulated substance to be immiscible in water and or to have a specific gravity of more than one <sup>†</sup>	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(2)	For groundwater monitoring, improper placement of monitoring wells in relation to groundwater and hydraulic conductivity of the soils <sup>†</sup>	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(3)	For groundwater monitoring, improper design of monitoring well casing <sup>†</sup>	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(4)	For groundwater monitoring, failure to seal monitoring well from the ground surface to the top of the filter pack <sup>†</sup>	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(5)	For groundwater monitoring, improper placement of monitoring wells or devices in relation to excavation zone <sup>†</sup>	\$210	analogous to § 280.40(a)(3)

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(6)	For groundwater monitoring, inadequate continuous monitoring devices <sup>†</sup>	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(7)	For groundwater monitoring, inadequate site assessment <sup>†</sup>	\$210	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(8)	For groundwater monitoring, failure to mark and secure monitoring wells <sup>†</sup>	\$210	analogous to § 280.40(a)(3)
	<sup>†</sup> If more than <u>one</u> of these provisions would be cited, "Inadequate operation or maintenance of groundwater monitoring" should be cited instead.		
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(g)	Inadequate operation or maintenance of interstitial monitoring	\$420	analogous to § 280.40(a)(3)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.44	Failure to provide release detection for underground piping	\$420	corresponds to § 280.44
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.44(a), (b)	Failure to provide an adequate line leak detector system or an adequate line tightness testing system	\$210	corresponds to § 280.44(a), (b)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.44(c)	Inadequate use of applicable tank release detection methods	\$210	corresponds to § 280.44(c)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.45	Failure to maintain records of release detection monitoring	\$210	corresponds to § 280.45
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.45(a)	Failure to document all release detection performance claims	\$70	corresponds to § 280.45(a)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.45(b)	Failure to maintain results of sampling, testing, or monitoring for release detection, or failure to retain results of tank tightness testing until the next test is conducted	\$70	corresponds to § 280.45(b)



Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
NNSA § 1542(A), incorporating 40 C.F.R. § 280.45(c)	Failure to document calibration, maintenance, and repair of release detection equipment	\$70	corresponds to § 280.45(c)
<b>Out-of-Service USTs and UST Closures</b>			
NNSA § 1542(A), incorporating 40 C.F.R. § 280.70(a)	Failure to operate and maintain corrosion protection system in temporarily closed UST system	\$210	analogous to § 280.31(a)
NNSA § 1542(A), incorporating 40 C.F.R. § 280.70(a)	Failure to operate and maintain release detection in a corrosion protection system for a temporarily closed UST system	\$420	analogous to § 280.40(a)
NNSA § 1542(A), incorporating 40 C.F.R. § 280.70(b)	Failure to comply with temporary closure requirements for a UST system that is temporarily closed for 3 months or more	\$420	analogous to § 280.40(d)
NNSA § 1542(A), incorporating 40 C.F.R. § 280.70(b)(1)	Failure to leave vent lines open and functioning in a UST system that is temporarily closed for 3 months or more	\$210	analogous to § 280.40(d)
NNSA § 1542(A), incorporating 40 C.F.R. § 280.70(b)(2)	Failure to cap and secure all other lines, pumps, manways, and ancillary equipment in a UST system that is temporarily closed for 3 months or more	\$210	analogous to § 280.40(d)
NNSA § 1542(A), incorporating 40 C.F.R. § 280.70(c)	Failure to permanently close or upgrade a UST system that has been temporarily closed more than twelve months	\$420	analogous to § 280.40(d)
NNSA §§ 1540, 1542(A), incorporating 40 C.F.R. § 280.71(a)	Failure to notify NNSA of a UST system closure or change-in-service at least 30 days in advance	\$420	analogous to § 280.22(a)
NNSA § 1542(A), incorporating 40 C.F.R. § 280.71(b)	Failure to remove all liquids and sludges from the UST in preparation for tank closure	\$420	analogous to § 280.72(a)
NNSA § 1542(C)(1); NNSA § 1542(A), incorporating 40 C.F.R. § 280.71(b)	Failure to remove a closed UST from the ground, unless removal would result in unnecessary destruction to a structure or harm to cultural resources, in which case failure to fill the UST with an inert solid for tank closure	\$420	analogous to § 280.20(d)

Citation	Violation	Penalty	Comments (Basis for Penalty Amount)
<b>Financial Responsibility</b>			
NNSTA §§ 1521(A)(4), 1543(A)	Failure to maintain financial assurance	\$210	corresponds to § 280.93
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.93(a)(1)-(2)	Failure to obtain per-occurrence coverage as required	\$210	corresponds to § 280.93(a)(1)-(2)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.93(b)(1)-(2)	Failure to obtain annual aggregate coverage as required	\$210	corresponds to § 280.93(b)(1)-(2)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.93(f)	Failure to review and adjust financial assurance	\$210	corresponds to § 280.93(f)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.94	Use of an unapproved financial assurance mechanism	\$210	corresponds to § 280.94
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.110(a)(1)	Failure to report evidence of financial responsibility within 30 days of detecting a known or suspected release	\$210	corresponds to § 280.110(a)(1)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.110(a)(2)	Failure to report evidence of financial responsibility if the provider of financial assurance becomes incapable of providing same and alternate coverage not obtained	\$210	corresponds to § 280.110(a)(2)
NNSTA §§ 1521(A)(4) and 1542(A), incorporating 40 C.F.R. § 280.110(b), (c)	Failure to report evidence of financial responsibility when new USTs or ASTs are installed or comply with request for evidence of financial assurance or other information relevant to compliance with financial assurance requirements	\$210	corresponds to § 280.110(b)
NNSTA § 1542(A), incorporating 40 C.F.R. § 280.111	Failure to maintain copies of financial assurance mechanism(s) and certification of compliance	\$210	corresponds to § 280.111

**TABLE B**  
**ADMINISTRATIVE PENALTIES ISSUED PURSUANT TO NNSTA § 1554(A)**

Citation	Violation	Penalty
NNSTA § 1542(C)(2)	Failure to use qualified personnel for tank removals, installations, upgrades, or remedial activities	\$1,000
NNSTA § 1542(C)(7)	Failure to provide written notification or request for a waiver of notification 30 days in advance of any installation and removal activity	\$150
§ 1542(C)(12) & § 1544	Failure to report within 24 hours a release of 25 gallons or more	\$500
§§ 1542(C)(14), 1544(A), 1547(A)	Failure to immediately contain and clean up a release of less than 25 gallons	\$500
§ 1542(A), incorporating 40 CFR § 280.63(b)	For USTs, failure to submit report on initial site characterization within 45 days of release confirmation, or such other period specified by NNEPA	\$300
§ 1542(A), incorporating 40 CFR §280.74; § 1542(B), incorporating 40 CFR §112.7(e)	Failure to maintain closure records for at least 3 years; failure to maintain change-in-service records for at least 3 years	\$300





NAVAJO NATION  
 ENVIRONMENTAL PROTECTION AGENCY  
 P.O. Box 3089 Window Rock, AZ 86515



**NOTICE OF INSPECTION**

The Navajo Nation Environmental Protection Agency ("Navajo Nation EPA") is responsible for ensuring compliance with the Navajo Nation Underground and Aboveground Storage Tank Act of 2012 ("NNSTA"), 4 N.N.C §§ 1501-1577, by all underground storage tanks ("USTs") and aboveground storage tanks ("ASTs") on the Navajo Nation.

Violations observed: \_\_\_\_\_ Yes (specify below) \_\_\_\_\_ No Check one:  AST  UST

Pursuant to the NNSTA, a duly authorized inspector/employee of Navajo Nation EPA inspected your facility on \_\_\_\_/\_\_\_\_/\_\_\_\_. During the inspection, violations of the NNSTA were observed, as listed below. (As an interim measure, the NNSTA incorporates by reference the federal regulations for USTs, see NNSTA § 1542(A), and the New Mexico regulations for ASTs, see NNSTA § 1542(B).) Navajo Nation EPA wishes to work cooperatively with you as the owner or operator of this facility to correct the violations and requests that you submit documentation demonstrating compliance by \_\_\_\_/\_\_\_\_/\_\_\_\_ to the Navajo Nation Storage Tank Program, Navajo Nation EPA, P.O. Box 3089, Window Rock AZ 86515.

Violations:	Correction Required:
Violations:	Correction Required:
Violations:	Correction Required:
Violations:	Correction Required:

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Personnel in the Navajo Nation Storage Tank Program will review the records of this inspection, including the documentation you submit. A final determination of your facility's compliance with the NNSTA will be made on the basis of this review, which may reveal additional violations that need to be corrected.

Date:	Inspector:	Time In:	Facility Name:		
		Time Out:	Address:		
Facility ID No:					
Facility Representative:			City:	State:	Zip Code:
Phone #: ( ) -					
Receipt of this Notice of Inspection is acknowledged.			Signature of Lead Inspector _____ Phone #: _____		
Signature of Facility Representative _____			Signature of Assisting Inspector _____ Phone #: _____		





Compliance Order No. \_\_\_\_\_

**NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY**  
**UNDERGROUND & ABOVEGROUND STORAGE TANK FIELD CITATION FORM: EXPEDITED SETTLEMENT AGREEMENT**

**PART I: INSPECTION SUMMARY**

On \_\_\_\_\_ Time \_\_\_\_\_  
(Date of inspection) (Time of inspection)

At \_\_\_\_\_  
(Name of facility and facility identification number)

\_\_\_\_\_  
(Address of facility)

\_\_\_\_\_  
(Name of Onsite Facility Representative, if not the Owner or Operator)

Name and address of owner or operator (circle all that apply):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

A duly authorized inspector of the Navajo Nation Environmental Protection Agency  
("NNEPA"), \_\_\_\_\_  
(Printed name)

inspected this underground or aboveground storage tank ("UST" or "AST") facility to determine its compliance with the Navajo Nation Underground and Aboveground Storage Tank Act of 2012 ("NNSTA") and implementing regulations, including federal and state regulations incorporated by reference in NNSTA § 1542. (The incorporated regulations include federal UST requirements in 40 C.F.R. Part 280, various provisions of 40 C.F.R. Part 112 pertaining to petroleum ASTs, fire code requirements, and various provisions of the New Mexico Admin. Code ("NMAC") pertaining to ASTs.) During this inspection, the following violations of the NNSTA were found:

Violation: \_\_\_\_\_

Statutory or Regulatory Provision: \_\_\_\_\_  
Penalty: \$ \_\_\_\_\_

Violation: \_\_\_\_\_

Statutory or Regulatory Provision: \_\_\_\_\_  
Penalty: \$ \_\_\_\_\_

Violation: \_\_\_\_\_

Statutory or Regulatory Provision: \_\_\_\_\_  
Penalty: \$ \_\_\_\_\_

Violation: \_\_\_\_\_

Statutory or Regulatory Provision: \_\_\_\_\_  
Penalty: \$ \_\_\_\_\_

Total Proposed Penalty: \$ \_\_\_\_\_

Compliance Extension Request (if applicable): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signed: NNEPA Inspector) DATE: \_\_\_\_\_

I hereby acknowledge receipt of this Storage Tank Field Citation Form: Expedited Settlement Agreement and instructions.

\_\_\_\_\_  
(Signed: Owner, Operator, or Onsite Representative) DATE: \_\_\_\_\_

**PART II: EXPEDITED SETTLEMENT AGREEMENT**

This Settlement Agreement will become effective once signed by NNEPA and is binding on NNEPA and the owner or operator signing below. The owner or operator signs this Settlement Agreement under NNEPA's expedited enforcement procedures to settle the violations identified in Part I of this Form, subject to the following terms and conditions:

By signing this Settlement Agreement, the owner or operator recognizes that the violations identified in Part I are violations of the NNSTA and/or implementing Navajo regulations and that the owner or operator is willing to enter into settlement with NNEPA to resolve these violations.

The owner or operator signing below agrees to comply with the Compliance Order in Part III and certifies, with knowledge that civil and criminal penalties may be imposed for making a false submission to the Navajo Nation, that he/she has corrected or will timely correct the violation(s) identified in Part I and has submitted a certified check or money order for \$ \_\_\_\_\_ in full payment of the total penalty amount indicated in Part I.

Without admitting liability for the violations cited in Part I, the owner or operator signing below waives any objections to NNEPA's jurisdiction with respect to this Compliance Order and Expedited Settlement Agreement and consents to NNEPA's final approval of this Settlement Agreement without further notice. Upon NNEPA's final approval of this Settlement Agreement, the owner or operator waives the opportunity for a public hearing pursuant to NNSTA § 1552(B).

This Compliance Order and Settlement Agreement are effective upon NNEPA's final approval in Parts II and III. Upon NNEPA's final approval, the agency will take no further civil enforcement action against the owner or operator under the NNSTA or implementing regulations for the violations described in Part I, provided the violations have been timely corrected and the penalty has been timely paid. This Settlement Agreement shall not affect any enforcement action by NNEPA for any other past, present, or future violations of storage tank system requirements or other relevant requirements not described in Part I.

Final approval of this Compliance Order and Settlement Agreement is in the sole discretion of the NNEPA Director or his/her authorized designee and shall not be unreasonably withheld. Upon NNEPA's final approval, NNEPA shall mail a copy of the executed Settlement Agreement and Compliance Order to the owner or operator signing below.

**SIGNATURE BY OWNER OR OPERATOR:**

Name (print): \_\_\_\_\_  
Title (print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FINAL APPROVAL BY NNEPA:**

Name (print): \_\_\_\_\_  
Title (print): \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PART III: COMPLIANCE ORDER**

This Compliance Order is issued under the authority of the NNSTA to resolve the civil violations identified in Part I. NNEPA has determined that the items identified in Part I are violations of NNSTA requirements and that a penalty is appropriate. The owner or operator is ordered to correct the violations and pay the total penalty amount listed in Part I of this Form.

\_\_\_\_\_  
(Signature of Authorized NNEPA Official) Date: \_\_\_\_\_

This Compliance Order is not an adjudicatory proceeding but is issued solely in conjunction with the Settlement Agreement in Part II. If the Settlement Agreement in Part II is not signed and returned in correct form and the assessed penalty amount is not timely paid, this Field Citation Form is hereby automatically withdrawn.

**NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY**  
**UNDERGROUND & ABOVEGROUND STORAGE TANK FIELD CITATION FORM: EXPEDITED SETTLEMENT AGREEMENT**

### INSTRUCTIONS

The Navajo Nation Environmental Protection Agency ("NNEPA") is authorized under the Navajo Nation Underground and Aboveground Storage Tank Act ("NNSTA") § 1552 and the Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings and Rulemakings Under Navajo Nation Environmental Acts (Uniform Rules) §§ 328-331 to issue field citations specifying violations of the NNSTA, assessing penalties, and providing a schedule for compliance. NNEPA encourages the expedited settlement of easily verifiable violations of the NNSTA by offering settlement terms that include the expedited correction of the violation(s) and the payment of penalties. Until such time as the Navajo Nation adopts regulations implementing the NNSTA, NNEPA will utilize the federal and state UST and AST regulations incorporated by reference in NNSTA § 1542(A)&(B) in administering the statute. However, the penalties contained in the Field Citation Form are imposed by NNEPA pursuant to Navajo law and nothing herein shall be interpreted as representing any view on the part of NNEPA with respect to the applicability of or violations of federal law.

You may quickly resolve the cited violations by signing and returning the Settlement Agreement to NNEPA and paying the penalty amount to NNEPA within 30 days of the issuance of the Compliance Order. If the end of the 30-day period falls on a weekend or tribal or federal holiday, the deadline will fall on the next business day. You also must correct the violations within 30 days of the issuance of the proposed Compliance Order, unless a different compliance schedule is provided. NNEPA, at its discretion, may grant one 30-day extension to come into compliance if the owner or operator demonstrates to the satisfaction of NNEPA that it is technically infeasible or impracticable to achieve compliance within the required time.

**Expedited Settlement:** Attached is a NNSTA Field Citation Form for expedited settlement. This Form invites the owner or operator to make an offer of settlement to NNEPA to resolve the violations identified in Part I of the Form. This process is optional. If the owner or operator chooses not to follow these expedited settlement procedures, NNEPA can pursue other enforcement remedies for the violations, including but not limited to the issuance of an administrative penalty order. If the owner or operator does not submit this Form and pay the assessed penalty amount to NNEPA within 30 days of the date of signature by the NNEPA Inspector in Part I (or within 60 days of such signature, if NNEPA grants a payment extension), NNEPA will assume that the owner or operator is not interested in pursuing expedited settlement. The Field Citation Form consists of three parts. Part I is an Inspection Summary that identifies the violations observed along with the penalties they trigger. Part II is a Settlement Agreement that must be signed by the owner or operator before he/she sends the Field Citation Form to NNEPA. Part III is a Compliance Order which NNEPA will sign if it approves the Settlement Agreement. The Compliance Order requires the owner or operator to correct the violations in the Inspection Summary and to pay the penalty listed in the Settlement Agreement.

**Process:** If the owner or operator wishes to resolve the potential violations using the Field Citation Form, he/she must: (1) pay the proposed penalty, (2) sign the Settlement Agreement, and (3) send the Form to NNEPA within 30 days of the date of signature by the NNEPA Authorized Representative in Part I (or pay the penalty within 60 days of such signature, if NNEPA grants a payment extension). If the deadline falls on a weekend or tribal or federal holiday, it will be extended until the next business day. NNEPA will not approve the Settlement Agreement if there is any alteration of any information in the Field Citation Form or the payment submitted is less than the full amount of the proposed settlement.

The owner or operator also must correct the violations in accordance with the compliance schedule in Part I or within 30 days of the inspection, if no compliance schedule is provided. Documentation that the violations have been corrected must be promptly submitted following completion of all corrective actions. A certified check or money order payable to "NNEPA" in the amount of the proposed penalty, the original of the Field Citation Form, and true and accurate documentation of the required corrective actions must be sent to: Storage Tank Program, ATTENTION: Field Citation Settlement, Navajo Nation Environmental Protection Agency, P.O. Box 3089, Window Rock, AZ 86515.

By signing the Settlement Agreement, the owner or operator waives the right to a hearing and to judicial review pursuant to NNSTA § 1552(B) and Uniform Rules § 330(a).

**Certification:** By signing the Settlement Agreement, the owner or operator is certifying, subject to civil and/or criminal penalties for making a false submission to the Navajo Nation, that he/she (1) has or will correct the identified violations within the required time, (2) has or will promptly submit, following completion of all corrective actions, true and accurate documentation of the correction of the identified violations, and (3) has or will submit, within the required time, full payment to NNEPA.

**Final Approval of Settlement Agreement:** Final approval of the Settlement Agreement (Part II) is at the sole discretion of the NNEPA Director or his/her authorized designee. When NNEPA signs the Settlement Agreement, NNEPA will also sign the Compliance Order in Part III. The Compliance Order places a formal obligation on the owner or operator to correct the violations identified in the Inspection Summary and to pay the penalty listed in the Settlement Agreement. Upon NNEPA's final approval, the Settlement Agreement is binding on NNEPA and the owner or operator. NNEPA will take no further action against the owner or operator for the violations identified in Part I, provided that they are timely corrected and the penalty is timely paid. The Compliance Order is not an adjudicatory proceeding but is issued in conjunction with the Settlement Agreement. If NNEPA does not sign the Settlement Agreement, the owner or operator will receive a full refund for the amount of his/her payment, if any.

**Request for Withdrawal or Modification of Field Citation:** If the owner or operator can document that he/she was in compliance with the cited statutory or regulatory provision(s) on the date of the inspection, the owner or operator may submit that documentation to NNEPA within 15 days of the inspection (or the next business day, if the fifteenth day falls on a weekend or tribal or federal holiday). NNEPA will review the documentation and may choose to withdraw some or all of the identified violations and reissue a modified Field Citation to the owner or operator (via certified or registered mail) for those potential violations that are not withdrawn. The owner or operator will then have 30 days from the date of his/her receipt of the modified Field Citation Form (or the next business day, if applicable), as measured from the registered or certified mail's date of confirmation of receipt, to submit the Form to NNEPA pursuant to these instructions.

**Request for Extension:** If the owner or operator needs additional time to pay the penalty amount or correct the violation(s), NNEPA, at its discretion, may grant a single extension of 30 days if the owner or operator demonstrates to NNEPA's satisfaction that it is infeasible or impracticable to comply within 30 days. The owner or operator must request this extension within 30 days of the date of signature by the NNEPA Inspector in Part I or, if the Form is not delivered in person, within 30 days of the date that he/she receives the Field Citation Form via certified or registered mail.

**Failure to Respond/Request for Hearing:** NNEPA will treat any response that deviates from the terms specified in the Field Citation Form to mean that the owner or operator is not interested in pursuing the expedited settlement procedures. If the Form is not signed and sent to NNEPA or the owner or operator requests a hearing pursuant to NNSTA § 1554(C) and Uniform Rules § 330(b) within 30 days of the date of signature by the NNEPA Inspector in Part I (or the following business day, if applicable), the Field Citation Form is considered automatically withdrawn. If the owner or operator does not return the Settlement Agreement or timely request a hearing, NNEPA may pursue additional enforcement measures to require correction of any violation(s) and/or to seek penalties, including but not limited to the issuance of an administrative penalty order under NNSTA § 1554(A). Failure to return the Settlement Agreement within the required time does not relieve the owner or operator of the responsibility to comply fully with the NNSTA and implementing regulations, including correcting the violations specifically identified by the inspector. If the owner or operator requests a hearing, the provisions of NNSTA §§ 1552(B) and 1554(C) and Subpart 3, Part C of the Uniform Rules will apply to the hearing. The final decision of the Hearing Official will be subject to judicial review pursuant to NNSTA § 1554(D) and Uniform Rules § 332.

If NNEPA pursues administrative enforcement to seek correction of the violations or payment of penalties, the owner or operator will receive instructions describing his/her rights under NNSTA and the Uniform Rules.

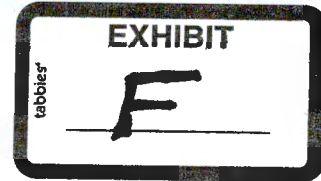




# THE NAVAJO NATION


RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE-PRESIDENT

Environmental Protection Agency Waste Regulatory Compliance Department  
P.O. Box 3089 • Physical Address: Morgan Blvd., Bldg. #6656 Window Rock, AZ 86515  
Tel: 928.871.7993 Fax: 928.871.7783



## MEMORANDUM

TO : 164 Reviewers

FROM : Dr. Donald Benn, Executive Director   
Navajo Nation Environmental Protection Agency

DATE : November 21, 2017

SUBJECT : **Navajo Nation EPA Storage Tank Penalty Regulations**

Under the Navajo Nation Underground and Aboveground Storage Tank Act (“NNSTA”), 4 N.N.C. § 1154(C), The Navajo Nation EPA (“NNEPA”) Director is authorized to develop regulations for issuing administrative penalty orders and field citations against owners of Underground Storage Tanks (“UST”) and Aboveground Storage Tanks (“AST”) for violations of the NNSTA. Currently, as an enforcement tool, the Navajo Nation Storage Tank Program exercises the Delivery Prohibition regulation where a red tag is affixed to the storage tank that is out of compliance. The Penalty Regulations allow the program to issue a field citation with a monetary fine to a non-compliant storage tank facility and the responsible party will submit payment to the NNEPA Storage Tank Program to comply with the NNSTA.

In order to issue field citations under Navajo Nation law, the STP has developed proposed Regulations setting Penalties for Violations of the Navajo Nation Storage Tank Act, a table of penalties which sets a dollar amount for each violation of the NNSTA, and related notices and forms. These regulations were developed in accordance with the rulemaking provisions of the NNSTA, 4 N.N.C. § 1554(A) and (C), and have undergone a public review and comment process. The regulations provide procedures under which STP may issue field citations for minor violations of the NNSTA and regulations in amounts less than \$5,000, and administrative penalty orders for violations warranting penalties larger than those assessed in field citations, or for violations that will not necessarily be detected during a site inspection.

By conducting annual compliance inspections and identifying violations under Navajo Law, the STP has become familiar with facilities that generally comply with the law, and with those that are often in violation, which can result in environmental contamination and a need for greater oversight. Through the STP’s increased involvement in annual inspections and compliance assistance of USTs and ASTs on the Navajo Nation, compliance by owners has increased significantly. STP would like to enhance in its program by enforcing the Penalty Regulations. The Penalty amounts are consistent with Federal Regulations.



**NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY**

**Navajo Nation Storage Tank Program and  
Navajo Nation Leaking Storage Tank Program**

**Response to Comments on Proposed Penalty Regulations**

On January 30, 2014, the Navajo Nation Storage Tank Program (“NNSTP”) and the Navajo Nation Leaking Storage Tank Program (“NNLSTP”) (collectively, “Programs”) published notice of proposed Penalty Regulations under the Navajo Nation Underground and Aboveground Storage Tank Act (“NNSTA”), 4 N.N.C. §§ 1501-1577, as amended. Notice was published in the Navajo Times, Gallup Independent, and Farmington Daily Times and broadcast over radio station KTNN. The public was given until March 3, 2014 to provide written comments. Program staff also held public hearings on February 19, 2014, at the Window Rock Museum (Window Rock, AZ); February 25, 2014, at the Shiprock Chapter House (Shiprock, New Mexico); and February 26, 2014, at the Tuba City Chapter House, Tuba City, AZ.

The Programs received comments from Cameron Petroleum Group, Crownpoint Fleet Management, Kaibeto Market, Kayenta Township, the Sandia Oil Company, the Shiprock Chapter, Thriftway Marketing, Tuba City Super Fuels, Western RBDO, and the Window Rock School District Transportation Department. The Programs have considered all significant comments that they received from the above-described outreach and respond to them as set forth below:

**Response to Comments on the Proposed Penalty Regulations**

**Comment 1:**

Several commenters expressed concern over enforcement by both the U.S. Environmental Protection Agency (“USEPA”) and the Navajo Nation Environmental Protection Agency (“NNEPA”), including a concern that there may be double penalties.

**Response to Comment 1:**

The NNSTA imposes requirements for both underground storage tanks (“USTs”) and aboveground storage tanks (“ASTs”). In contrast, the Resource Conservation and Recovery Act (“RCRA”) applies to USTs only. Overlap between the federal and Navajo storage tank programs therefore exists only with respect to USTs.

With respect to USTs, RCRA does not contain a provision for tribes to implement the Act in place of USEPA (RCRA does not contain a “treatment as a state” provision). Instead, USEPA is responsible for implementing and enforcing RCRA, while NNEPA is responsible for implementing and enforcing the NNSTA. In order to address this situation, USEPA and NNEPA try to coordinate their efforts as much as possible; for example, in the past USEPA authorized NNEPA to conduct inspections and issue field citations on behalf of USEPA and NNEPA performed a certain number of federal inspections every year in its role as USEPA’s agent. At the same time, NNEPA conducts its own inspections of USTs under the NNSTA, which USEPA

cannot enforce. Going forward, NNEPA intends to focus its efforts on NNSTA inspections, and the Penalty Regulations will allow NNEPA to issue its own field citations as one of its enforcement tools under the NNSTA.

NNEPA will make every effort to avoid the imposition of double penalties in connection with UST compliance actions. Because the NNEPA penalty regulations are new, the two agencies are still in the process of coordinating on this issue.

**Comment 2:**

One commenter asked how the new regulations will affect the current enforcement process.

**Response to Comment 2:**

In the past, NNEPA conducted a certain number of UST inspections each year under RCRA, using federal credentials, and was authorized to issue federal field citations based on those inspections pursuant to an agreement with USEPA. However, only USEPA could sign off on those federal field citations. The new regulations will allow NNEPA to issue and sign off on its own field citations under the NNSTA, for both USTs and ASTs. As noted in the response to Comment 1, NNEPA intends to focus its efforts on NNSTA inspections, which USEPA may view as meeting the RCRA inspection requirements in 42 U.S.C. § 6991d(c)(2) if it chooses, and to coordinate with USEPA on field citations to avoid double penalties.

The Penalty Regulations are unlikely to affect the number of storage tank inspections that NNEPA conducts each year.

**Comment 3:**

A commenter asked whether the NNEPA regulations are equivalent to the USEPA regulations. Another commenter inquired if NNEPA is planning to increase the federal penalties, and if the penalty regulations are current.

**Response to Comment 3:**

The NNEPA penalty regulations are based in large part on the federal penalty regulations for USTs. As noted above, USEPA does not regulate ASTs under RCRA, and the NNEPA AST penalty regulations are based instead on corresponding state penalty regulations. NNEPA believes that it based its penalties on the most current federal and state penalties and, wherever a direct comparison can be made, the NNEPA penalties are no higher than the federal and state penalties and indeed in most instances are significantly lower.

**Comment 4:**

Two commenters asked about USEPA's position on the new penalty regulations.

**Response to Comment 4:**

USEPA does not have a role with regard to the NNEPA Penalty Regulations because, as explained in the response to Comment 1, they are being promulgated under Navajo Nation law (NNSTA), not federal law (RCRA), and also there is no "treatment as a state provision" under

RCRA which would allow the Penalty Regulations to be submitted to USEPA for approval. NNEPA is discussing coordination of the two sets of penalty regulations with USEPA but the two agencies have not yet resolved how they will work together on this issue.

**Comment 5:**

Commenters asked whether NNEPA was planning to take over the whole role of enforcement for the Navajo Nation, and whether NNEPA would override USEPA enforcement activities.

**Response to Comment 5:**

As explained in the response to Comment 1, NNEPA is the sole body implementing and enforcing requirements for petroleum ASTs at gas stations within the Navajo Nation. USEPA does not have any role under RCRA or NNSTA regarding these ASTs. (USEPA has a role under the federal Clean Water Act, 33 U.S.C. §§ 1251-1387, to ensure that spill prevention and control plans are in place for ASTs, but those plans are not covered by NNEPA's Penalty Regulations under NNSTA.)

Also as noted in the response to Comment 1, NNEPA is the sole body implementing and enforcing NNSTA requirements for USTs. USEPA does not enforce the NNSTA.

Finally, for practical purposes, NNEPA is the primary body for enforcement of UST requirements on the Navajo Nation, since NNEPA storage tank inspectors are present on the Navajo Nation whereas USEPA inspectors must travel from USEPA Region 9 in San Francisco. Also, in most instances the Navajo and federal requirements for USTs are the same. However, USEPA remains the ultimate enforcement authority of RCRA storage tank requirements on the Navajo Nation, and has discretion as to whether and when to enforce those requirements under federal law.

As noted above, NNEPA and USEPA are discussing how the overlap between NNEPA and USEPA enforcement of UST requirements will be addressed.

**Comment 6:**

Commenters also asked whom owners should direct questions to, whom they should report to for enforcement purposes, and whether owners should contact NNEPA rather than USEPA regarding concerns with federal violations after the Penalty Regulations are adopted.

**Response to Comment 6:**

Owners and operators should direct their questions and responses regarding inspections to the inspectors who performed the inspections at issue. In most cases they will be NNEPA inspectors, who perform the majority of inspections on the Navajo Nation, but in some instances a USEPA official may have conducted the inspection.

If owners and operators still have questions after talking to the inspectors, or if they have questions that do not concern specific inspections, they should contact USEPA regarding federal requirements and NNEPA regarding Navajo requirements.



Any questions regarding penalties should be directed to NNEPA if the penalties are assessed under the NNSTA pursuant to either a field citation or a NNEPA compliance order and to USEPA if the penalties are assessed under RCRA pursuant to a federal field citation or federal compliance order.

**Comment 7:**

A commenter stated that the penalties are steep.

**Response to Comment 7:**

The penalties are steep because they are meant to deter noncompliance. They are no higher than the corresponding federal and state penalties on which they are based (see response to Comment 3).

**Comment 8:**

Commenters asked about the approval process for the Penalty Regulations and when they would become effective.

**Response to Comment 8:**

The Programs reviewed the proposed Penalty Regulations at the same time as they reviewed the comments they received during the public comment period. Sometimes comments may lead a NNEPA program to make revisions to proposed regulations but in this case the Programs determined that no revisions were necessary to the Penalty Regulations in response to comments from the public.

After receiving and reviewing the comments from the public but before the Programs finalized the Penalty Regulations, USEPA promulgated revised federal UST regulations, published in 80 Fed. Reg. 41566 (July 15, 2015). The Programs made some revisions to Table A (Field Citation Penalties) of the Penalty Regulations in light of the revised federal regulations, as indicated in the accompanying redlined document and as discussed further below. The Programs then prepared the final version of Table A at the same time as they prepared the final version of this Response to Comments. No revisions were made to the Penalty Regulations themselves or to Table B (Other Administrative Penalties), because these documents were not affected by the revised federal regulations.

The Penalty Regulations and associated Tables and forms are now final for purposes of the NNSTA, but they will not become effective until they are approved by the Resources and Development Committee, which is the Navajo Nation Council Oversight Committee for NNEPA. The regulations do not need to be submitted to the full Council. (See NNEPA Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts (“Uniform Rules”) § 407.)

**Comment 9:**

A commenter asked if NNEPA will provide an announcement prior to AST/UST inspections. The commenter noted that Kayenta Township was responsible for business site leases.



**Response to Comment 9:**

NNEPA does not generally announce its inspections in advance. However, pursuant to Penalty Regulations § 105(a), new facilities or facilities with no previous violations may be allowed a grace period to come into compliance instead of being issued a field citation immediately.

Enforcement of the NNSTA requirements is separate from enforcement of business site lease requirements. Nevertheless, NNEPA often works with the various entities issuing business site leases (such as the Regional Business Development Offices and certain Chapters and Townships) on matters involving storage tanks.

**Comment 10:**

A few commenters asked if a 30-day period will be allowed for corrective actions for fines and penalties relating to USTs and ASTs. Another commenter asked if a violation is issued, and the facility acts to address the violation, will the facility still be required to go before a hearing official or judge.

**Response to Comment 10:**

If a field citation is issued, then pursuant to Penalty Regulations § 105(c)(1) the facility will be allowed 30 days to correct the violations noted in the field citation and to pay the associated penalties. If all of the corrections are made and the penalties are paid within the 30-day period, the field citation is considered settled and that is an end of the matter. No hearing will take place.

If the facility contests the field citation it must request a hearing within 30 days of receiving it. In that case the field citation will be withdrawn, a compliance order will be issued in its place, and a hearing official will be designated. See Penalty Regulations § 105(c)(2). If a final order is issued by the hearing official, the order will be subject to judicial review. Penalty Regulations § 105(b)(2).

**Comment 11:**

A commenter asked whether the notification violations under Table A, Field Citation Penalties, apply to management.

**Response to Comment 11:**

The owner or operator of the storage tank or storage tank site at issue (or someone designated by the owner or operator) must provide the notifications listed in Table A or else be subject to the penalties listed in that table.

**Comment 12:**

A commenter asked how many gas stations are located on the Navajo Nation.

**Response to Comment 12:**

There are approximately 100 operating gas stations with underground storage tanks and 75 operating aboveground storage tanks on the Navajo Nation.

**Comment 13:**

A commenter inquired as to who pays NNEPA to conduct inspections and/or what type of funds NNEPA receives.

**Response to Comment 13:**

NNEPA is not paid for the inspections it conducts. The Programs are partially funded by USEPA grants. In addition, NNSTA, 4 N.N.C. § 1576, establishes a Storage Tank Fund which is used to administer and implement (including to enforce) the NNSTA. Fees and penalties collected under various provisions of the NNSTA are deposited into the Storage Tank Fund, together with 20% of the revenues collected under the storage tank tariff established pursuant to 4 N.N.C. § 1573.

**Comment 14:**

A commenter asked what regulations and laws the tribe has. The commenter stated that there is a lot of red tape that people cannot follow, and that it would be helpful for someone from the program to provide a presentation to the community to let them know what is going on.

**Response to Comment 14:**

The NNSTA is the main Navajo Nation law that addresses petroleum storage tanks. It was enacted in 2004 to cover USTs and amended in 2012 to also cover ASTs. The NNSTA authorizes NNEPA to promulgate regulations to carry out the Act, see 4 N.N.C. § 1506(A)(1), such as the Penalty Regulations that are the subject of this Response to Comments. The Programs also have issued guidance regarding implementation of the NNSTA. Copies of the NNSTA, regulations, and guidance are available on the Programs' website, <http://navajonationepa.org/>, and at the Programs' office in Window Rock.

The Programs have made presentations to the community about the NNSTA requirements. They also inform owners and operators of those requirements when they conduct inspections. The Programs work with other parts of the Navajo Nation government (and with their counterparts in Arizona and New Mexico) to ensure that other government entities are aware of the NNSTA requirements and how they may affect other government programs. Finally, individuals may contact the Programs directly for information related to storage tank facilities.

**Comment 15:**

A commenter asked whether ASTs or USTs are better tanks. Another commenter suggested that facilities should be required to use long-lasting tanks to prevent corrosion and pollution.

**Response to Comment 15:**

It is the owner's decision as to which type of tank, AST or UST, to install. However, all tanks are subject to various design, construction, operation, and related requirements, as set forth in the

NNSTA, to prevent corrosion, spilling, leaking and other mishaps that could endanger human health or the environment.

**Comment 16:**

A commenter asked if any facilities within the Western Agency have received or made a payment for a field citation and, if so, how many facilities and when were the penalties assessed?

**Response to Comment 16:**

NNEPA has not yet issued any field citations under the NNSTA and the new Penalty Regulations because the Penalty Regulations are not yet effective (see response to Comment 8). However, beginning in 2004, USEPA has issued federal field citations and penalties under RCRA and 23 facilities in the Western Agency have been issued penalties, two of which were elevated to formal federal enforcement actions.

**Comment 17:**

A commenter asked when the owners and operators will start paying penalties.

**Response to Comment 17:**

The penalties listed in the Penalty Regulation Tables will become effective upon approval of the Penalty Regulations by the Resources and Development Committee, as explained in the response to Comment 8. Once the penalties are effective, NNEPA may issue field citations that contain the relevant penalties.

**Comment 18:**

A commenter asked if any owner within the Western Agency has been issued a compliance order, if a penalty has been assessed, and if corrective action has been required.

**Response to Comment 18:**

So far, the Navajo Nation Storage Tank Program has issued three compliance orders under the NNSTA to the owners of two facilities within the Navajo Nation. The orders required documentation of financial responsibility, the replacement of a cracked spill bucket, proof of calibration of an automatic tank gauge, and the payment of tank fees, but did not contain any penalties. A hearing was requested on one of the compliance orders and a preliminary hearing was conducted. The matter was then resolved without further enforcement action because the owner complied with the order. No hearing was requested on the other two orders, which also were complied with after issuance of the orders.

**Comment 19:**

A commenter indicated support for the penalty regulations and asked how NNEPA is going to use the money to better the program. Specifically, the commenter asked for an overview of where payments will go.

**Response to Comment 19:**

All penalties collected under the NNSTA are deposited into the Storage Tank Fund under NNSTA, 4 N.N.C. § 1576. The Storage Tank Fund is used to administer and implement the Storage Tank Program. See response to Comment 13.

**Comment 20:**

A commenter asked if both a leaseholder and sublease-holder will be accountable for clean-up, if cleanup of a site is required.

**Response to Comment 20:**

Either or both may be held accountable pursuant to NNSTA and depending on the terms of the lease and sublease. Pursuant to NNSTA § 1502(Q), an “operator” is a person “in control of, or having responsibility for the daily operation of underground or aboveground storage tanks.” An “owner” is defined under NNSTA § 1502(R) and includes, among other things, a person who “holds a legal, equitable, or possessory interest of any kind in a storage tank” or “acquires ownership or control of property (by lease, use or other means) where a storage tank is located,” unless that person conducted due diligence prior to acquiring the property, did not know, and had no reason to know that the storage tank was located on the property. The lease and sublease terms may control who has ownership or control over a storage tank at various times and who is responsible for operating the tank, under these definitions.

**Comment 21:**

One commenter stated that its facilities are located entirely on fee land and therefore are not subject to Navajo Nation jurisdiction.

**Response to Comment 21:**

The commenter’s facilities are located within the Navajo Nation and therefore are subject to Navajo Nation jurisdiction. Moreover, even if the operator of those facilities is non-Indian, the Navajo Nation maintains that operating storage tank facilities is an activity that comes within the second exception articulated in *Montana v. United States*, 450 U.S. 544 (1981) (namely, it is conduct that “threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe”), and so would still be subject to Navajo Nation jurisdiction. However, any such determination would need to be made in light of the particular facts at issue, which cannot be determined in the abstract for purposes of this Response to Comments.

**Revisions Made to Penalty Table A Due to Revised Federal Regulations**

The Penalty Regulations include Table A, which lists the violations which may incur penalties under a field citation and also lists the amount of the penalties that will be charged. As noted above, USEPA promulgated revisions to the federal UST regulations in 40 C.F.R. Part 280 after the Penalty Regulations were proposed but before they became final. The Programs have therefore revised Table A to incorporate the changes to the federal regulations where appropriate. Because these revisions do not raise “substantial new questions” or “significant new



information” (see Uniform Rules § 406), as discussed below, a new round of public comment is not being provided.

The revisions made to Table A are shown in the redline included with this Response to Comments. Two types of revisions were made. The first type simply corrects the citations to various section numbers in the revised federal UST regulations, because USEPA added some new section numbers and revised some of the existing section numbers when updating the old regulations. A few typographic errors in other citations also were corrected. These revisions do not raise any substantial new questions or present significant new information.

The second type of revisions also was made to maintain consistency with the new federal regulations. These revisions make changes to the descriptions of some of the penalties, as indicated on the attached redline, but do not result in any substantial changes from the proposal. In general, these revisions simply clarify the scope of the penalty and add record-keeping and monitoring requirements. Moreover, none make any changes to the penalty amounts. Therefore, none of these revisions raise substantial new questions or significant new information. Further, because public notice and comment was provided for the federal regulations, and since all USTs are subject to the federal as well as the Navajo UST requirements, there is even less need for further comment.



Document No. 003691

Date Issued: 03/25/2015

**SECTION 164 REVIEW FORM**

Title of Document: NNSTA Proposed Penalty Regulations Contact Name: MALONE, DIANA J

Program/Division: ENV. PROTECTION AGENCY

Email: DianeMalone@navajo-nsn.gov Phone Number: 9288717993

Division Director Approval for 164A: *John*

**Check document category; only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.**

**Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council**

<input checked="" type="checkbox"/>	<b>Statement of Policy or Positive Law:</b>		Sufficient	Insufficient
	1. OAG: <u><i>V. Blakely</i></u>	Date: <u>12/14/12</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)</b>			
	1. OMB: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

**Section 164(B) Final approval rests with the President of the Navajo Nation**

<input type="checkbox"/>	<b>Grant/Funding Agreement or amendment:</b>			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Subcontract/Contract expending or receiving funds or amendment:</b>			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. BRD: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OMB: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	5. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:</b>			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>M.O.A. or Letter of Assurance expending or receiving funds or amendment:</b>			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ 12/13/17 4:28 pm DATE / TIME 7 Day Deadline DOC #: 003691 SAS #: UNIT: WRN

RESUBMITTAL

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

CLIENT TO COMPLETE
DATE OF REQUEST: 12/13/17 ENTITY/DIVISION: NNEPA
CONTACT NAME: Warren J. Roan DEPARTMENT: WE WRCD/STP
PHONE NUMBER: 928 871 7993 E-MAIL: warrenjroan@navajo-nsn.gov
TITLE OF DOCUMENT: Proposed Regulations Setting Penalties for Violations of the Navajo Nation Storage Tank Act (NNEPA Penalty Regulations)
DOJ SECRETARY TO COMPLETE: Julia G. Harrison
DATE/TIME IN UNIT: 12.13.17 4:55pm REVIEWING ATTORNEY/ADVOCATE: 12.22.17
DOJ ATTORNEY / ADVOCATE COMMENTS: These were drafted 3 years ago, but don't raise any legal concerns for me.
REVIEWED BY: (PRINT) DATE / TIME SURNAMED BY: (PRINT) DATE / TIME
Julia Guarino 12/14/17 1:52pm / Blackhat 12/14/17 2:20pm
DOJ Secretary Called: Christina for Document Pick Up on 12.14.17 at 3:15 By: J
PICKED UP BY: (PRINT) DATE / TIME:

COMPLETED

**RESOURCES AND DEVELOPMENT COMMITTEE**  
**Regular Meeting –**  
**February 21, 2018**

**ROLL CALL**  
**VOTE TALLY SHEET:**

**Legislation # 0069-18:** An Action Relating to Resources and Development Committee; Approving the Navajo Nation Environmental Protection Agency Regulations Setting Penalties for Violations of the Navajo Nation Storage tank Act.. *Sponsor: Honorable Walter Phelps*

**MAIN MOTION: Jonathan Perry      S: Leonard Pete      V: 3-0-1**

**ROLL CALL VOTE TALLY:**

YEAS:            Jonathan Perry; Leonard Pete and Walter Phelps

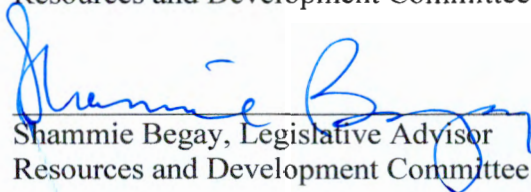
NAYS            NONE

NOT VOTING: Benjamin Bennett (Presiding)

EXCUSED: Davis Filfred and Alton Joe Shepherd



Benjamin Bennett, Presiding Vice-Chairman  
Resources and Development Committee



Shammie Begay, Legislative Advisor  
Resources and Development Committee