

NAVAJO NATION STORAGE TANK ACT  
DELIVERY PROHIBITION REGULATIONS

101. Purpose, Applicability and Scope.

- (a) This regulation establishes the means by which the prohibition against the delivery of regulated substances to a non-compliant storage tank system will be enforced.
- (b) Procedures for the appeal of the affixing of a red tag to a non-compliant storage tank system or to the issuance of an order to comply are governed by the provisions of the Navajo Nation Storage Tank Act, as amended (NNSTA), and the Navajo Nation Environmental Protection Agency Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemakings Under Navajo Nation Environmental Acts (NNEPA Uniform Regulations). In the case of a conflict between a provision of the NNSTA or this regulation and the NNEPA Uniform Regulations, the NNSTA and this regulation shall govern.

102. Authority.

The authority to promulgate these regulations comes from Section 1521(C) of the NNSTA.

103. Definitions.

In addition to the definitions set forth in Section 1502 of the NNSTA and Section 103 of the NNEPA Uniform Regulations, the following definitions apply to this regulation.

- (a) An “imminent threat violation” means a violation that poses an imminent and substantial threat to the public health, welfare, or the environment. The commission of any of the prohibited acts set forth in Section 1521(A)(1)-(3) of the NNSTA shall constitute an imminent threat violation.
- (b) A “significant violation” means the commission of any of the prohibited acts set forth in Section 1521(A)(4)-(8) of the NNSTA.

104. Affixing Red Tags.

- (a) Upon the discovery of an imminent threat violation, the Director shall immediately affix a red tag to the fill pipe of the non-compliant storage tank system. Immediately after affixing a red tag to the non-compliant storage tank, the Director shall issue an emergency compliance order to the owner or operator pursuant to Section 1552(C) of the NNSTA notifying the owner or operator of the violation(s) for which the red tag was issued. The affixing of the red tag and the issuance of the emergency compliance order shall be subject to appeal as set forth in Section 1552(C) of the

NNSTA and Section 306 of the NNEPA Uniform Regulations.

- (b) Upon the discovery of a significant violation, the Director shall issue an order to comply to the owner or operator pursuant to Section 1552(B) of the NNSTA identifying the significant violation(s). The Director shall affix a red tag to the fill pipe of the non-compliant storage tank system if the owner or operator does not comply or file a written request for a hearing within 30 days of the issuance of the order to comply, or upon the decision of the Director at the conclusion of such hearing.
- (c) If the owner or operator of the red-tagged storage tank system does not come into compliance within 30 days, the tank must be drained so that no more than one inch of regulated substance remains in the tank.
- (d) Red tags shall be affixed to the fill pipe of a non-compliant storage tank system using a tamper-resistant strap or straps, clips, fill pipe bag, or any other method so that the tag is visible to any person attempting to deliver a regulated substance to the non-compliant storage tank system.
- (e) Before affixing a red tag to the non-compliant storage tank system, the Director shall document the level of stored product in the tank.
- (f) The Director shall use red tags, fill pipe bags, clips, and/or tamper-resistant straps made of nylon, plastic, or other durable, damage resistant material.
- (g) No owner or operator of a facility may deposit or allow the deposit of a regulated substance into a storage tank system that has a red tag affixed to the system's fill pipe.
- (h) No person may deposit petroleum into a storage tank system that has a red tag affixed to its fill pipe.
- (i) Except as otherwise provided in Section 105 of this regulation, no person shall remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.
- (j) The Director may assess administrative penalties pursuant to Section 1554 of the NNSTA for any violations of subsections (g)-(i) of this section.

105. Removing Red Tags.

- (a) Upon notification by the owner or operator documenting to the satisfaction of the Director that a violation has been corrected, the Director may provide written authorization to the owner or operator to remove the red tag. The Director shall inspect the storage tank system within five business days of notification to determine whether the system continues to be in violation, regardless of whether removal of the red tag by the owner or operator was previously authorized. If, upon inspection, the Director determines that the system is no longer in violation but has not already authorized removal of the red tag, the Director shall immediately remove the red tag.
- (b) Upon removing a red tag from a storage tank system, the Director shall document the level of stored product in the tank. If the owner or operator removes a red tag pursuant to written authorization by the Director, the owner or operator shall document the level of stored product in the tank immediately after removing the red tag.
- (c) A red tag that has been removed by the owner or operator shall be returned to the Director within five business days, or sooner if requested by the Director.

106. Removal of Red Tag from Rural and Emergency Generator Tank Systems Prior to Correction of Violation.

- (a) For the purposes of this regulation, all areas of Navajo Nation Indian Country are considered to be rural areas. Notwithstanding any other provision of this regulation, the Director may remove or authorize the removal of a red tag from a generator tank system before a violation has been corrected if the Director determines that the ineligibility of the tank system to accept petroleum would jeopardize the availability of, or access to, motor fuel in any area of Navajo Nation Indian Country.
- (b) Notwithstanding any other provision of this regulation, the Director may remove or authorize the removal of a red tag from an emergency generator tank system before a violation has been corrected if the Director determines that an emergency situation exists requiring operation of the system and the delivery of petroleum is necessary for the continued operation of the system during the emergency. For purposes of this section, an “emergency generator tank system” means a storage tank system that provides power supply in the event of a commercial power failure, stores petroleum, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical Code of the National Fire Protection Association.
- (c) No tank system excepted from the prohibition against product delivery pursuant to subsections (a) or (b) of this section shall be permitted to operate for more than 180

days without correction of the violation(s).

107. Notice of Correction of Violation.

Upon making a determination that a violation has been corrected, the Director shall notify the owner or operator in writing of the determination.

108. Content of Red Tags.

- (a) A red tag shall be red in color and 3 inches wide by 5 inches long and made of nylon, plastic, or other durable and damage resistant material.
- (b) Red tags shall bear the following information on both sides of the tag:
  - (1) The following wording, printed in white at the top of the tag in all capital letters in at least 36 point bold-faced type: "DELIVERY PROHIBITED!"
  - (2) The following wording, printed in white below the wording described in subsection (b)(1) in at least 16 point type: "Delivering petroleum or removing, defacing, altering, or otherwise tampering with this tag may result in civil penalties of up to \$10,000 per day."
  - (3) Printed below the wording described in subsection (b)(2), the following wording in at least 16 point type: "If you have questions, please contact the Navajo Nation Environmental Protection Agency at (928)871-7993." The appropriate phone number shall be filled in.
  - (4) In the lower left hand corner, a unique identification number.
  - (5) In the lower right hand corner, a graphic comprised of the seal of the Navajo Nation EPA and the letters "NNEPA."