

NAVAJO NATION UNDERGROUND AND
ABOVEGROUND STORAGE TANK ACT

As enacted
February 13, 2012

TITLE 4, NAVAJO NATION CODE
CHAPTER 15, THE NAVAJO NATION UNDERGROUND AND ABOVEGROUND
STORAGE TANK ACT

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CHAPTER 15, THE NAVAJO NATION UNDERGROUND AND ABOVE-GROUND
STORAGE TANK ACT

Subchapter 1. General Provisions

1501. Title

The title of this Chapter is the Navajo Nation Underground and Aboveground Storage Tank Act and the short title is the Navajo Nation Storage Tank Act (NNSTA).

1502. Definitions

For purposes of this Chapter:

- A. “Abandoned Storage Tank” means a storage tank abandoned by the owner and operator for which no liability is imposed against the owner or operator or their guarantor for the removal of said storage tank or associated release under federal law, this Chapter, Navajo common law or contract law, or where it is impossible to require an owner or operator to remove a storage tank or remediate a release or collect damages from the owner or operator for their failure to remove a storage tank or remediate a release because the owner and operator have been determined by a court of competent jurisdiction to be bankrupt or otherwise unable to pay.

- B. “Aboveground Storage Tank (AST)” means a single tank or combination of tanks, including any pipes connected to the tanks, whether above or below ground, that is used to contain regulated substances and the volume of which is more than 90% above the ground. The term includes a field-erected tank, a rebuilt tank, a shop-fabricated tank, and a storage tank situated in an aboveground area (including a basement, cellar, mine-working drift, shaft or tunnel) if the storage tank is situated on or above the surface of the floor. However, notwithstanding the preceding sentence, no tanks are permitted on the Navajo Nation that are placed in underground vaults or other structures that restrict visual inspection or access to the tank. The term does not include:
 - 1. A farm, ranch, or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel or heating oil for noncommercial purposes, provided, however, that the owner or operator of such tank shall comply with the leak/release reporting requirements of § 1544, that such tanks installed after the effective date of this amendment shall comply with the best available design technology for preventing leaks and releases, and that, in the

event of a release, the owner or operator of such tank shall be subject to the corrective action requirements of this Chapter and implementing regulations;

2. A pipeline facility, including gathering lines, that is regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. §§ 1671 - 1986, or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. § 2001;
 3. A surface impoundment, pit, pond, or lagoon;
 4. A storm water or wastewater collection system;
 5. A flow-through process tank;
 6. A liquid trap, tank, or associated gathering lines or other storage methods or devices related to oil or gas exploration, production, transportation, refining, processing or storage, or the oil field service industry operations, except that fuel tanks used to service vehicles in connection with industry operations are not exempt;
 7. A tank owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business;
 8. A tank associated with an emergency generator system;
 9. A tank located on site at either the Four Corners Power Plant or the Navajo Generating Station, provided that this exemption is for the purposes of administrative efficiency only and shall not be deemed to affect the Navajo Nation's jurisdiction over those two plants nor affect the Navajo Nation's ability to regulate such tanks under the Navajo Nation Oil Pollution Prevention Regulations or other provisions of Navajo Nation law; or
 10. Pipes connected to any tank described in Paragraphs 1-9 of this Subsection.
- C. "Attorney General" means the Attorney General of the Navajo Nation.
- D. "Completely Buried Tank" means an underground storage tank that is completely below grade and covered with earth, sand, gravel, asphalt, or other material.
- E. "Corrective Action Plan (CAP)" means a document which is submitted to the regulatory agency for approval and which is based on the site characterization of a

storage tank site. The CAP corrects soil, surface water and groundwater contamination and is implemented in order to protect human health, safety, welfare and the environment, as well as cultural resources of the Navajo Nation.

- F. “Director” means the Executive Director of the Navajo National Environmental Protection Agency or his/her designee.
- G. “Environmental Assessment (EA)” means an assessment done of an individual parcel of land for the purpose of evaluating the environmental impacts of a project and for making management decisions in accordance with the National Environmental Policy Act (NEPA). An EA is not as comprehensive as an Environmental Impact Statement (EIS), which is done for federal projects, nor is it commercially based like an ESA.
- H. “Environmental Audit” means a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.
- I. “Environmental Site Assessment” or “ESA” means the process by which a person or entity seeks to determine if a particular parcel of property (including improvements) is subject to recognized environmental conditions.
- J. “Exposure Assessment” means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum or a regulated substance from a release from a storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.
- K. “Facility” means, with respect to any owner or operator, a single parcel of property or contiguous or adjacent property on which storage tanks and their associated piping are used for the storage of regulated substances. A facility may have one or more clusters of storage tanks at separate tank sites.
- L. “Guarantor” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator as required by this Chapter.

- M. “Navajo Nation” means:
1. When referring to the body politic, the same meaning as set forth in 1 N.N.C. § 552;
 2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:
 - a. All land within the exterior boundaries of the Navajo Indian Reservation, or of the Eastern Navajo Agency, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;
 - b. All land held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and
 - c. All other land over which the Navajo Nation may exercise government jurisdiction in accordance with federal or international law.
- N. “Navajo Nation Council” means the official legislative body of the Navajo Nation empowered to adopt policies and enact laws governing the Navajo Nation, as set forth in 2 N.N.C. §§ 102, *et seq.*
- O. “Navajo Nation Environmental Protection Agency (Navajo Nation EPA or NNEPA)” means the agency established by the Navajo Nation Council pursuant to CAP-47-95, 2 N.N.C. §§ 1921, *et seq.*, to carry out the environmental laws and regulations adopted by the Navajo Nation.
- P. “Navajo Nation Storage Tank Program” means the program, including any successor program, regardless of name, within Navajo Nation EPA that is responsible for implementing and enforcing this Chapter.
- Q. “Operator” means any person in control of, or having responsibility for the daily operation of underground or aboveground storage tanks.
- R. “Owner” means:
1. A person who either:

- a. holds a legal, equitable, or possessory interest of any kind in a storage tank, or
 - b. held at the time of a release, or immediately before a storage tank was last operated, a legal, equitable, or possessory interest of any kind in the storage tank.
2. A person who acquires ownership or control of property (by lease, use or other means) where a storage tank is located is the owner of the storage tank, except that the person is not an owner if
 - a. the person, after conducting a due diligence investigation immediately prior to acquiring ownership of the property, did not know and had no reason to know that the storage tank was located on the property. Due diligence shall consist of performing a phase I environmental assessment of the property which meets the requirements of ASTM standard E-1527-93 or E-1528-93, as such standards may be revised from time to time, or other generally accepted commercial practices or standards for due diligence performed prior to the adoption of this standard.
3. The Navajo Nation is not an owner for purposes of this Chapter despite ownership of the property where a storage tank is located if the Navajo Nation has not placed regulated substances in the storage tank and has not dispensed regulated substances from the storage tank. For purposes of this paragraph, dispensing does not mean emptying the storage tank for purposes of closure.
4. A person who holds indicia of ownership primarily to protect a security interest in either the storage tank or in the property on which the storage tank is or was located but who does not participate in the management of the storage tank and who is not otherwise engaged in the petroleum refining or marketing is not an owner for purposes of this Chapter.
5. A person who holds indicia of ownership as prescribed by paragraph (4) of this Section and who acquires ownership or control of a storage tank through foreclosure of the property where a storage tank is located shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release, if the person does all of the following:

- a. Complies with the notification requirements prescribed by Subchapter 3.
 - b. Complies with the reporting requirements prescribed by § 1544 to the extent that the information is known to the person at the time of the report.
 - c. Temporarily or permanently closes the storage tank as in accordance with this Chapter and regulations promulgated hereunder.
 - d. Divests itself of the property in a reasonably prompt manner using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking into consideration all of the facts and circumstances.
6. The Navajo Nation shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release where it holds indicia of ownership due to bankruptcy, foreclosure, tax delinquency condemnation, abandonment or similar means because of its status as a government entity and it:
- a. Complies with the notification requirements prescribed by subchapter 3.
 - b. Complies with the reporting requirements prescribed by § 1544 to the extent that the information is known to the person at the time of the report.
 - c. Temporarily or permanently closes the storage tank as in accordance with this Chapter and regulations promulgated hereunder.
7. The federal government or any of its agencies shall not be deemed an owner or operator under this Chapter if prohibited by federal law.
- S. “Person” means any individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.
- T. “Petroleum” means petroleum, including crude oil or any fraction thereof that is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure,

and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

- U. “Petroleum product” means petroleum, including crude oil and/or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of 42 U.S.C. §9601(14), natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The word fraction refers to certain distillates of crude oil, including gasoline, kerosene, diesel oil, jet fuels, and fuel oil, pursuant to Standard definitions of Petroleum statistics.

- V. “Regulated Substance” means:
 - 1. Petroleum;
 - 2. A substance defined in the Comprehensive Environmental Liability Act of 1980, 42 U.S.C. §9601(14), but not including a substance regulated as a hazardous waste under the Solid Waste Disposal Act of 1984, P.L. 98-616, 42 U.S.C. §6921.

- W. “Release” means any spilling, leaking, pumping, pouring, emptying, dumping, emitting, discharging, escaping, leaching, or disposing from any storage tank into groundwater, surface water or surface or subsurface soil.

- X. “Resources and Development Committee” means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 500 *et seq.* with oversight authority over the Navajo Nation Environmental Protection Agency as provided for by Navajo Nation Council Resolution No. CAP-10-11, or any successor Navajo governmental entity, including any Navajo Executive Branch Division or Department to which authorities of the Resources and Development Committee may be delegated.

- Y. “Site Characterization” at a storage tank site is the investigation and reporting of detailed information about soil, ground water, geology, conductivity, contaminants and other data for the purpose of implementing a corrective action plan (CAP).

- Z. “Storage Tank” means either an aboveground or an underground storage tank.

- AA. “Tank System” means a storage tank or tanks and ancillary equipment, including piping, which is used for the storage of regulated substances.

- BB. “Underground Storage Tank (UST)” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. Such term does not include any
1. Farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes; provided, however, that the owner or operator of such tank shall comply with the leak/release reporting requirements of § 1544 and that such tanks installed after the effective date of this Chapter shall comply with the best available design technology for preventing leaks and releases. Moreover, in the event of a release the owner or operator of such tanks shall be subject to the corrective action requirements of this Chapter and implementing regulations;
 2. Single tank of 660 gallons or less or tank system of 1,320 gallons or less used for storing heating oil for consumptive use on the premises where stored, provided, however, that the owner or operator of such tanks shall comply with the leak/release reporting requirements of § 1544 and such tanks installed after the effective date of this Chapter shall comply with the best available design technology for preventing leaks or releases. Moreover, in the event of a release the owner or operator shall be subject to the corrective action requirements of this Chapter and regulations promulgated hereunder;
 3. Septic tank;
 4. Pipeline facility (including gathering lines) that is regulated under
 - a. the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. §§1671 - 1986, or
 - b. the Hazardous Liquid Pipeline Safety Act of 1968, 49 U.S.C. App. §2001;
 5. Surface impoundment, pit, pond, or lagoon;
 6. Storm water or waste water collection system;
 7. Flow-through process tank;
 8. Liquid trap, tank, or associated gathering lines or other storage methods or devices related to oil or gas production, transportation, refining, processing, or storage, or the oil field service industry operations, except that fuel tanks

used to service vehicles in connection with industry operations and completely buried tanks are not exempt;

9. Storage tank owned or used by a refinery, natural gas processing plant, or pipeline company in the regular course of their refining, processing, or pipeline business, except that completely buried tanks are not exempt; or
10. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.
11. The term “underground storage tank” shall not include any pipes connected to any tank that is described in Paragraphs 1 through 10.

1503. Declaration of Policy

The Navajo Nation Council finds and declares that the release of petroleum products and other hazardous liquids from underground and aboveground storage tanks presents a significant danger to the public health and the environment, by contaminating surface water, groundwater and surface and subsurface soils. Therefore, it is the intent of the Navajo Nation Council to establish a program for the regulation of underground and aboveground storage tanks which implements stringent control of the installation, maintenance, operation, retrofitting, upgrading, removal, closure and post-closure care of such storage tanks, and which requires corrective action to be taken in the event of releases of regulated substances and requires financial assurances consistent with the requirements of Title VI of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-618, 42 U.S.C. §§ 6991 - 6995. The provisions of this Chapter are to be implemented in conjunction with the Navajo Nation Clean Water Act and regulations thereunder to ensure the comprehensive regulation of storage tanks within the Navajo Nation.

1504. Applicability; Effective Date; Exemptions

- A. Except as otherwise provided in this Section, the provisions of this Chapter and regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation. Except as provided otherwise in this Chapter, the provisions of this Chapter become effective pursuant to 2 N.N.C. § 221.
- B. Except as otherwise provided in Subsection (C) of this Section, the provisions of this Chapter and/or regulations promulgated hereunder, in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.

- C. The provisions of this Chapter and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 1505 of this Chapter.
- D. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of a covenant not to regulate or otherwise exercise jurisdiction is valid.

1505. Voluntary Compliance Agreement

Subject to 2 N.N.C. § 164(B)(2) and 2 N.N.C. § 1005(C)(2), the Director may enter into a voluntary compliance agreement with an entity that otherwise may not be subject to the provisions of this Chapter, or as to which there is a dispute regarding the applicability of this Chapter, under which the entity would be regulated by the Navajo Nation in order to achieve the goals and purposes of this Chapter, and provided that the Director finds, after consultation with the Resources and Development Committee, that entering into the agreement is in the best interests of the Navajo Nation. Such agreement may contain provisions that differ from and supersede the requirements of this Chapter and implementing regulations, provided that the minimum federal requirements apply to the entity in question.

1506. General Authorities of the Director

- A. **Powers and Duties.** In carrying out the intent of this Chapter, the Director is authorized to:
 - 1. Promulgate such regulations as are necessary to carry out his/her functions under this Chapter in accordance with the provisions of § 1561(A) of this Chapter;
 - 2. Enforce the provisions of this Chapter and the regulations promulgated hereunder, pursuant to the provision of Subchapter 5 of this Chapter;
 - 3. Require monitoring, sampling or other studies;
 - 4. Assess fees for the inspection of storage tanks;
 - 5. Issue compliance orders, civil penalties and citations to carry out the intent of this Chapter and regulations promulgated hereunder;

6. Conduct investigations, inspections and tests at storage tank sites to carry out the duties of this Chapter pursuant to the provisions of Subchapter 5 of this Chapter;
7. Hold hearings related to any aspect of or matter within the authority of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;
8. Provide to the public pertinent educational materials and information regarding storage tank issues;
9. Issue guidelines and encourage voluntary cooperation with the provisions of this Chapter and the regulations promulgated hereunder;
10. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Chapter, provided that all monies resulting therefrom shall be deposited in the Navajo Nation Treasury to the account of the Navajo Nation Storage Tank Program, as authorized under Navajo law;
11. Require the owner and/or operator of a storage tank to perform or cause to be performed a tank and line system test to determine compliance with the standards established by this Chapter or regulations promulgated hereunder; and
12. Perform such other activities as the Director may find necessary to carry out his/her functions under this Chapter.

In prescribing regulations under this Chapter, the Director shall consider but shall not be limited to the requirements of Title VI of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-618, 42 U.S.C. § 6991 - 6995, and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under said Act. All regulations promulgated under this Chapter shall be subject to approval by the Resources and Development Committee of the Navajo Nation Council.

- B. Delegation of Authority.** The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this Chapter, except the making of regulations, as he or she may deem necessary or expedient.

- C. **Primary Responsibility.** The Navajo Nation Storage Tank Program shall have primary responsibility for implementation of this Chapter

1507. Construction

This Chapter shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this Chapter shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this Chapter or regulations promulgated hereunder shall be construed to diminish, limit or otherwise adversely affect any right or remedy held or available to the Navajo Nation.

1508. Compliance with other Laws and Regulations

Compliance with this Chapter and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations, including but not limited to the Navajo Nation Oil Pollution Prevention Regulations promulgated under the Navajo Nation Clean Water Act. In particular, tanks and facilities that are exempt under this Chapter may be subject to provisions of the Navajo Nation Clean Water Act and implementing regulations, and vice versa.

1509. Severability

If any provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter and the application of such provision to other persons or circumstances shall remain unaffected.

Subchapter 2. Prohibited Acts

1521. Prohibited Acts

- A. **Storage Tanks.** It shall be unlawful for any person:
1. To install or operate a storage tank (or tank system) unless:
 - a. It is designed to prevent release due to corrosion or structural failure for the operational life of the tank;
 - b. It is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with noncorrosive material or designed in a manner to prevent the release of a regulated substance;
 - c. It is equipped with spill and overfill prevention devices;

- d. It is correctly installed in accordance with manufacturer specifications and appropriate technical industry standards;
 - e. The material used in the construction or lining of the storage tank is compatible with the substance to be stored; and
 - f. The storage tank (or operation thereof) complies with all standards required by this Chapter and regulations promulgated hereunder.
- 2. To fail to remove (or upgrade) a storage tank that does not comply with this Chapter or to fail to remove it in accordance with the removal requirements of this Chapter and regulations promulgated hereunder.
 - 3. To fail to take corrective action for any leaking storage tank as required by this Chapter and in accordance with the requirements of this Chapter and regulations promulgated hereunder.
 - 4. To fail to maintain adequate financial responsibility assurances as required by this Chapter and regulations promulgated hereunder.
 - 5. To fail to comply with notification, reporting, and recordkeeping requirements of this Chapter or regulations promulgated hereunder.
 - 6. To violate any duty to allow inspection, entry or monitoring activities.
 - 7. To fail to inspect or monitor a storage tank or tank system as required by this Chapter or regulations promulgated hereunder.
 - 8. To violate any provision, requirement, prohibition, or duty under this Chapter or regulations promulgated hereunder.
 - 9. No AST may be located on the Navajo Nation if it is placed in an underground vault or other structure that restricts visual inspection or access to the tank by the Navajo Nation EPA. Any such existing tanks must be reconfigured to permit inspection and access by the Navajo Nation EPA (such as by removing existing covering that restricts such inspection and access) but prevent public access to the tank (such as by installing a locked fence or other barrier to the tank).

B. Reporting. It shall be unlawful for any person to:

1. Falsify documents or otherwise provide false information to the Director.
2. Divulge confidential information in violation of § 1546 of this Chapter.
3. Fail to notify the Navajo Nation Storage Tank Program of the release of a regulated substance, as required by this Chapter.

C. Regulated Substances. It shall be unlawful for any person:

1. To deliver to, deposit into, or accept into a storage tank any petroleum containing methyl tertiary butyl ether (MTBE).
2. To deliver to, deposit into, or accept a regulated substance into a storage tank when the owner or operator is not in compliance with all the requirements of this Chapter or regulations promulgated hereunder.
3. To deliver to, deposit into or accept a regulated substance into a storage tank when any tariff or fees imposed under this Chapter or regulations promulgated hereunder, including related interest or penalties, have not been paid when due.
4. The Director shall promulgate regulations implementing the prohibition against the delivery, deposit or acceptance of a regulated substance to an ineligible storage tank system and to establish the means of notifying storage tank owners and operators and distributors and depositors of regulated substances of such ineligibility.

Subchapter 3. Notification Requirements

1531. Existing Storage Tanks

- A.** Within 90 days from the effective date of this Chapter (or 90 days from the effective date of this amendment, in the case of ASTs), each owner or operator of a storage tank shall notify the Navajo Nation Storage Tank Program, on a form to be provided by the Director, of the existence of such tank, specifying the:
1. Age,
 2. Size,
 3. Type,
 4. Location,
 5. Uses of such tank,

6. The type of release detection system and the extent of any known soil or surface or groundwater contamination,
7. The material out of which the tank and piping are constructed,
8. Factory tank design specifications,
9. Tank system schematic, and
10. Other pertinent information as may be determined by the Director.

- B.** If either the owner or operator of the storage tank changes, the new owner or operator must file a new form with the Navajo Nation Storage Tank Program within 30 days from the date of the change.

1532. Underground Storage Tanks Taken Out of Operation

The owner or operator of an underground storage tank taken out of operation after January 1, 1974 but not removed from the ground shall notify the Navajo Nation Storage Tank Program, on a form to be provided by the Director, of the existence of such tank within 90 days from the effective date of this Chapter, specifying the:

- A. Date the tank was taken out of operation,
- B. Age of the tank taken out of operation,
- C. Size,
- D. Type,
- E. Location,
- F. Type and quantity of substance stored in tank immediately before it was taken out of operation,
- G. Factory tank design specifications,
- H. Tank system schematic, and
- I. Other pertinent information as may be determined by the Director.

1533. Underground Storage Tanks Taken Out of Operation before January 1, 1974

The notice requirements of § 1531 and 1532 do not apply to an owner of an underground storage tank taken out of operation on or before January 1, 1974; provided, however, that the owner or operator of USTs taken out of operation prior to January 1, 1974 shall notify (within six months of the effective date of this Chapter) the Navajo Nation Storage Tank Program of the existence and location of such tanks and other information (if available) as may be required by the Director. In addition, any person who discovers the existence of a UST taken out of operation prior to January 1, 1974 shall notify the Navajo Nation Storage Tank Program of the existence of such tank.

1534. Underground Storage Tanks Removed from a Facility

The notice requirements of § 1531 and 1532 do not apply to the owner of an underground storage tank that has been removed from the ground between January 1, 1974, and November 8, 1984, but the Director may require the owner of an underground storage tank removed from the ground after November 8, 1984 to notify the Navajo Nation Storage Tank Program of the age, location, uses of the tank and the date of its removal.

1535. New Storage Tanks

An owner or operator who begins operating a storage tank after the effective date of this Chapter shall comply with the notice requirements in § 1531 within 30 days of the date that the storage tank is brought into operation.

1536. Notification by Depositors

When a person deposits regulated substances into a storage tank that has a new owner or operator, the depositor shall notify the owner or operator of the tank of the notification requirements of this Subchapter upon depositing the regulated substances.

1537. Notification by Sellers

Any person who sells a tank intended to be used as a storage tank shall notify the purchaser of the owner's notification requirements under § 1535.

1538. Inventory and Report

The Director shall prepare and maintain an inventory of all storage tanks within the Navajo Nation, and shall make the inventory available to the public. The inventory shall be based on and shall include the information collected pursuant to the notification requirements under this subchapter; shall be updated at least annually; and shall include for each year, to the extent practicable, the number, sources, and causes of storage tank releases; the record of compliance by storage tanks with this Chapter; and the number of storage tank equipment failures.

1539. Business Site Leases

- A. Within six months from enactment of this Section, the Executive Director of the Division of Economic Development ("DED") shall conduct a review of all business sites subject to the jurisdiction of DED and containing storage tanks or where storage tanks are intended to be installed to determine whether there is a current lease for each site and whether such lease includes the provisions set forth in Part II (Standard Terms and Conditions), § 2.0 (Special Terms and Conditions for Navajo Nation

Business Site Leases with Storage Tanks) of the Navajo Nation Economic Development Lease approved by the Economic Development Committee of the Navajo Nation Council pursuant to Resolution No. EDCO-48-07 (“DED Lease”), as may be amended from time to time. Within the same six months the General Manager of the Navajo Nation Shopping Centers, Inc. (“NNSCI”) shall do the same for all business sites under the jurisdiction of NNSCI, except that for existing leases the General Manager shall determine whether the leases include the provisions set forth in the DED Lease, as may be amended from time to time for use by NNSCI (“NNSCI Lease”). Each Business Office Manager of an LGA Certified Chapter, Township, or Municipal Form of Government (collectively, “Local Government Units”) or Entity (as that term is defined in the Uniform Business Leasing Regulations of 2008) that is delegated authority to approve and manage business site leases shall do the same for those business sites subject to the jurisdiction of the applicable Local Government Unit or Entity, within the same period, except that for existing leases the Business Office Manager shall determine whether the leases include the storage tank provisions set forth in Part II (Standard Terms and Conditions) of the Local Government or Entity Lease, as approved by the appropriate Navajo Nation Council Committee and as may be amended from time to time.

- B.** Within one year from enactment of this section the Executive Director, DED, the General Manager, NNSCI, and each Business Office Manager of a Local Government Unit or Entity shall compile the information collected under Subsection (A) and provide an inventory to the Executive Director of the Navajo Nation EPA and to the Attorney General listing all business sites on the Navajo Nation subject to its jurisdiction and containing storage tanks or where storage tanks are intended to be installed and providing the information gathered pursuant to Subsection (A). The Executive Director, DED, the General Manager, NNSCI, and each Business Office Manager of a Local Government Unit or Entity shall update this inventory on an annual basis and shall provide a copy of the updated inventory annually to the Director and the Attorney General.
- C.** Within two months of receipt of the inventory required under Subsection (B), the Executive Director of NNEPA shall send notices to all lessees and prospective lessees listed on the inventory informing them of the new AST, site assessment, financial assurance, and other storage tank provisions of the DED, NNSCI, Local Government, and Entity Leases, as applicable. The Director shall send additional notices as needed in subsequent years based upon information provided in the updated inventories.
- D.** Within six months of compiling or updating the inventory required under Subsection (B), the Executive Director of DED, the General Manager of NNSCI, and the Business Office Manager of any applicable Local Government Unit or Entity shall,

in consultation with the Executive Director of NNEPA, develop a schedule for issuing leases for business sites listed on the inventory that do not currently have leases and for amending leases that do not already contain the storage tank provisions of the DED, NNSCI, Local Government, or Entity Lease, as applicable, subject to the lessee's consent. The schedule shall give priority to sites where storage tank releases are most likely to occur or have occurred.

- E. DED, NNSCI, Local Government Units, and Entities shall submit to the Navajo Nation Department of Justice for legal review all new leases and amendments to leases regarding storage tanks, which shall contain the storage tank provisions of the DED, NNSCI, Local Government, or Entity Lease, as applicable. In the event the Executive Director, DED, the General Manager of NNSCI, or the Business Office Manager of a Local Government Unit or Entity determines and the Navajo Nation Department of Justice concurs that it is advisable to issue a lease that deviates from the storage tank provisions of the DED, NNSCI, Local Government, or Entity Lease, he/she shall obtain the concurrence of the Executive Director of the Navajo Nation EPA. In addition, any amendments to storage tank provisions of the DED, NNSCI, Local Government, or Entity Lease shall require concurrence by the Director.

1540. Upgrades, Replacement Storage Tanks and Storage Tanks That Change Use

An owner or operator shall notify the Navajo Nation Storage Tank Program, within 30 days, of any upgrade, storage tank replacement (providing the information required in § 1531) or any change in the use of a storage tank.

Subchapter 4. Release Detection, Prevention, Reporting, Closure, and Corrective Action Regulations and Other Requirements

1541. Release Detection, Prevention, Reporting, Closure, and Corrective Action Regulations

A. Promulgation of Regulations

1. The Director, after notice and opportunity for public comment as provided for in this Chapter, shall promulgate release detection, prevention, reporting, closure, and corrective action regulations applicable to all owners and operators of storage tanks as may be necessary to protect human health and the environment. The regulations adopted pursuant to this Section shall be no less stringent than corresponding federal regulations.
2. In promulgating regulations under this Section, the Director may distinguish between types, classes, and ages of storage tanks. In making such

distinctions, the Director may take into consideration factors, including, but not limited to: location of the tanks, soil, and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, proximity to drinking water, size of the tanks, quality of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

B. General Requirements. The regulations promulgated pursuant to this Section shall include, but need not be limited to, the following requirements respecting all storage tanks:

1. Requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;
2. Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
3. Requirements for operator training and certification;
4. Requirements for reporting of releases and corrective action taken in response to a release from a storage tank;
5. Requirements for performing an environmental assessment;
6. Requirements for taking corrective action in response to a release from a storage tank;
7. Requirements for the closure of storage tanks to prevent future releases of regulated substances into the environment;
8. Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden or gradual releases arising from operating a storage tank; and
9. Requirements for submitting health and safety plans and management plans as may be necessary to protect the public health and safety and the environment.

C. Tank and Piping Secondary Containment

1. Each new storage tank or tank system installed after the enactment of this Subsection, or any existing storage tank or tank system that is replaced after the enactment of this Subsection, shall be secondarily contained and monitored for leaks. In the case of replacement of an existing storage tank, this requirement shall apply only to the specific storage tank or piping being replaced and not to the other storage tanks comprising the tank system.
2. Each installation of a new motor fuel dispenser system after the enactment of this Subsection shall include under-dispenser spill containment. If any product line or piping below the shear valve of an existing dispenser system is replaced, under-dispenser spill containment shall be installed.
3. This Subsection shall not apply to repairs to a storage tank or dispenser that are meant to restore a storage tank or dispenser to operating condition and that do not involve replacement of the tank or any piping.
4. As used in this Subsection:
 - a. The term “secondarily contained” means, with respect to USTs, a release detection and prevention system that contains regulated substances released from the tank system until they are detected and removed, that prevents releases of regulated substances to the environment during the operational life of the tank system, that is checked for evidence of a release every 30 days, and that meets the requirements of 40 C.F.R. § 280.43(g). The term “secondarily contained” means, with respect to ASTs, a berm to capture spillage from overfill or other causes and to prevent the spill from spreading, as well as a containment area with an impervious liner and large enough to hold 110% of the capacity of the tank. In neither case does “secondarily contained” include under-dispenser spill containment or control systems, unless such systems are necessary for secondary containment of piping near a dispenser.
 - b. The term “storage tank” shall not include tank combinations or more than a single pipe connected to a tank.
 - c. The term “installation of a new motor fuel dispenser system” means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank

system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the underground storage tank system.

5. These requirements shall be enforced in conformance with the EPA Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005 (EPA-510-R-06-001) (November 2006), unless and until such guidelines are superceded or the Director promulgates regulations replacing those guidelines.

D. Installer Certification.

1. Any person who installs (including replacing, repairing, or adding) a storage tank or storage tank system shall:
 - a. be certified or licensed by the tank and piping manufacturer;
 - b. be certified or licensed by the Navajo Nation EPA or, pending implementation of a Navajo Nation EPA certification program, by any state with such a program;
 - c. have the storage tank or storage tank system installation certified by a registered professional engineer with education and experience in storage tank system installation;
 - d. have the installation of the storage tank or storage tank system inspected and approved by the Navajo Nation EPA; or
 - e. be compliant with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.
2. The installer also shall maintain financial responsibility of at least \$1 million per occurrence and \$2 million annual aggregate, pursuant to the neighboring state requirements, to cover the costs of corrective action of a release from a storage tank due to improper installation, and shall maintain such coverage for ten years after installation or until the tank is removed. An installer is exempt from this requirement if it demonstrates that it is already required to maintain financial responsibility as an owner or operator of a storage tank.
3. Prior to installing a tank system or upgrades to a tank system, the installer shall submit to the Navajo Nation Storage Tank Program "as-built" drawings

stamped by a professional engineer, so that the Program may review the design, equipment, construction, materials, and other aspects of the tank installation to ensure compliance with applicable law.

1542. Interim Storage Tank Requirements

- A.** Until the Director promulgates regulations authorized under § 1541, the owner and operator of any underground storage tank shall comply with all applicable underground storage tank requirements of 42 U.S.C. § 6991 *et seq.* and federal regulations promulgated thereunder.

- B.** Until the Director promulgates regulations authorized under § 1541, the owner and operator of any aboveground storage tank shall comply with the following criteria:
 - 1. any new AST (brought into use after the enactment of this Subsection) shall be designed to prevent releases due to corrosion or structural failure for the operational life of the AST;
 - 2. any new petroleum AST shall be made of steel and any new AST containing regulated substances other than petroleum shall be made of a material that is compatible with the regulated substance to be stored;
 - 3. any new AST shall contain release detection and prevention devices designed utilizing the best available technology;
 - 4. any existing AST shall comply with any upgrade requirements promulgated by the Director;
 - 5. all ASTs shall comply with manufacturer instructions regarding operation, maintenance, and repairs;
 - 6. all ASTs shall comply with National Fire Protection Association Codes 30 and 30A and with the International Fire Code, as applicable;
 - 7. all ASTs shall comply with applicable federal laws, regulations and design and operational standards, including the applicable requirements of 40 C.F.R. part 112, and shall comply with the applicable requirements of the Navajo Nation Oil Pollution Prevention Regulations; and
 - 8. new and existing ASTs shall comply with the relevant provisions of the New Mexico Administrative Code §§ 20.5.4.16 - 20.5.4.19 and 20.5.4.23 - 20.5.4.33, which are hereby incorporated by reference.

- C. In addition, until the Director promulgates regulations authorized under § 1541, the owner and operator of any storage tank shall comply with the following criteria:
1. Permanent closure of all storage tanks and product lines shall be accomplished by the removal and proper disposal of the tanks and product lines except that removal of an underground storage tank may not be required where said removal would result in the unnecessary destruction of a building/structure or harm to potential cultural resources.
 2. The owner and/or operator shall hire an independent third party certified consultant to perform removals, installations, upgrades, or remedial activity and shall provide proof of qualifications to NNEPA upon request. Qualifications shall include certification of installation training (if applicable), field oversight by a qualified professional (professional registered engineer or professional geologist or related science), reference list of similar projects completed, proof of liability insurance, proof of adherence to QA/QC protocol, proof of appropriate health and safety training, and proof of training and experience in storage tank removals (if applicable).
 3. Upon hiring a consultant, the owner and/or operator shall direct a letter to the NNEPA authorizing under what circumstance the consultant may speak directly to the regulatory agencies on behalf of the owner.
 4. Prior to any activity for which the ground surface will be excavated or drilled, the owner or operator or his/her authorized representative shall notify the Navajo Nation Historic Preservation Department to obtain a clearance if required to excavate or drill and provide proof of such clearance to the NNEPA.
 5. The owner and/or operator shall make arrangements in advance of the planned activity to obtain clean fill material from a permitted facility if said fill material is taken from Navajo lands.
 6. The owner and/or operator shall, in consultation with the consultant, provide a site-specific health and safety plan to the regulatory agencies prior to the planned activity, and shall conduct a health and safety meeting each day prior to commencing activity at the site.
 7. The consultant shall contact the NNEPA to arrange for a date to conduct all installation and removal activity, and shall notify the NNEPA in writing of

the arrange-for date at least thirty (30) days prior to the commencement of the activity.

8. Until such time as Navajo Nation cleanup standards and written guidelines are promulgated, the consultant shall determine, in advance of the activity, the possible alternatives for disposal and/or treatment of any contaminated soil and/or ground water and shall discuss these alternatives with the NNEPA prior to commencing activity. In the event of the discovery of a release, the consultant shall select the alternative treatment plan and present it in a Corrective Action Plan.
9. Contaminated soil may be temporarily stockpiled onsite only if permission is granted by the leasing agency of the Navajo Nation and the BIA or another agency as appropriate. The Navajo Nation Environmental Protection Agency shall review the plans and monitor the construction of the stockpile. The life span of the temporary stockpile shall be decided on a site-by-site basis by the appropriate oversight agencies.
10. The Navajo Nation Storage Tank Program shall not use risk assessment analysis as the only tool except in limited site-specific corrective actions where it is convincingly proven and agreed upon by the Director that there is no other reasonable alternative.
11. NNEPA can make policy decisions related to protection of the environment, but cannot make land use decisions. For instance, the technical oversight of landfarms shall be performed by NNEPA, but the land use decisions must be made by the proper agencies.
12. For purposes of these interim regulations, NNEPA will act as a second responder only. As stated in § 1541(C)(3), regulations will be developed that designate the requirements for reporting of releases and corrective action. In the interim, all releases that are a direct threat to the health and safety of the Navajo people shall be reported to the Department of Emergency Management within 24 hours. In addition, releases shall be reported to NNEPA pursuant to § 1544. Any one release from an underground storage tank that is greater than 25 gallons shall also be reported to the U.S. EPA within 24 hours as stated in the federal regulations.
13. NNEPA shall operate independently from the Division of Economic Development and other tribal departments and shall enforce against all entities equally. The NNEPA shall not review ESA's, land use documents, contractor bid, purchase requisitions, or other documents which are part of

the property transfer process or for which review poses a conflict of interest, unless the review is necessary in order to determine liability for a release or as a follow-up to a reported release. Should the Division of Economic Development, another Navajo department, or the Bureau of Indian Affairs need assistance in reviewing an ESA or other document, the NNEPA may do so only as a third party on technical matters.

14. The owner and/or operator shall immediately clean up a release of a regulated substance in accordance with applicable laws and regulations.

1543. Financial Responsibility Requirements

- A. Financial responsibility required by this Subsection may be established in accordance with regulations promulgated by the Director by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Director. In promulgating requirements under this Subsection, the Director is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Subchapter.
- B. In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in tribal court or the Federal Courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this Paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.
- C. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Section. Nothing in this Subsection shall be construed to limit any other tribal or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this Subsection shall be construed to diminish the liability of any person under Sections 107 and 111 of the Comprehensive Environmental Response

Compensation and Liability Act of 1980, P.L. 96-510, 42 U.S.C. §9607 and §9611, or other applicable law.

- D.**
1. The Director, in promulgating financial responsibility regulations under this Section, may establish an amount of coverage for particular classes or categories of storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of not less than one million dollars (\$1,000,000) for 1 to 100 petroleum storage tanks or with an annual aggregate of not less than two million dollars (\$2,000,000) for 101 or more petroleum storage tanks.
 2. The Director may set amounts lower than the amounts required by Paragraph 1 of this Subsection for storage tanks containing petroleum which are facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.
 3. In establishing classes and categories for purposes of this Subsection, the Director may consider the following factors:
 - a. The size, type, locations, storage, and handling capacity of storage tanks in the class or category and the volume of petroleum handled by such tanks.
 - b. The likelihood of release and the potential extent of damage from any release from storage tanks in the class or category.
 - c. The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.
 - d. The availability of methods of financial responsibility in amounts greater than the amount established by this Subsection.
 - e. Such other factors as the Director deems pertinent.

1544. Reporting Requirements for Releases of Regulated Substances

- A.** The operator and owner of a storage tank shall notify the Navajo Nation Storage Tank Program of each release or suspected release from the tank of petroleum and any release from the tank of hazardous substance that equals or exceeds its reportable quantity under the Navajo Nation Comprehensive Environmental Response,

Compensation, and Liability Act (“NNCERCLA”), 4 N.N.C. §§ 2101-2805 as soon as practicable but no later than 24 hours after the release or suspected release is detected. The reportable quantity of petroleum under the NNCERCLA is 25 gallons, unless revised by regulation pursuant to NNCERCLA, 4 N.N.C. § 2801(B)(1). For releases of petroleum or other hazardous substances that are less than the reportable quantity, the owner or operator shall immediately clean up the spill or overflow, maintain records of each release for a period of five years, and report to Navajo Nation EPA any cumulative releases of 25 gallons or more of petroleum or home heating oil during a five-year period.

- B.** The operator of a storage tank shall notify the owner of each release from the tank as soon as practicable but no later than 24 hours after the release is detected.
- C.** Notice by the operator and owner required by this Section may be made orally or in writing but shall be followed within fourteen days by a written report to the Navajo Nation Storage Tank Program that a release or suspected release has been detected. The written report shall specify to the extent known at the time of the report the nature of the release or suspected release, the regulated substance released, the quantity of the release, the period of time over which the release occurred, the initial response and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report. In addition, the written report shall include additional information as may be required by the Director. A copy of the written report shall be kept for five years.
- D.** The Director shall prescribe by regulation the reporting, investigation and confirmation actions to be taken in the event of a release or suspected release of a regulated substance from a storage tank. Any regulations adopted pursuant to this Section shall be no less stringent than the comparable federal regulations. Until regulations adopted pursuant to this Subsection are in effect, reporting, investigation and confirmation actions shall be accomplished in a manner consistent with 40 CFR §§ 280.50 through 280.53.

1545. Right to Inspect Records, Storage Tanks and Equipment

- A.** For the purposes of developing rules, conducting studies, or enforcing the provisions of this Chapter, an owner or operator of a storage tank shall, on request of the Director:
 - 1. Furnish to the Navajo Nation Storage Tank Program information relating to the storage tank and its associated equipment and contents.

2. Permit the Director to have access to the site to conduct monitoring and testing of storage tanks and surrounding soils, air, surface water or ground water.
 3. Provide the Director with and permit the Director to inspect and copy all records relating to storage tanks or which indicate that a release of a regulated substance has occurred, including but not limited to copies of line test results, leak detector results, corrosion protection results, and insurance documentation.
 4. Permit the Director to inspect and obtain samples of regulated substances contained in storage tanks.
- B.** Environmental site assessments are generated as part of a property transfer and as such are generally not reviewed by the Navajo Nation EPA. Nonetheless, the Navajo Nation EPA shall have the right to review such documents upon request to ensure compliance with this Chapter and regulations promulgated hereunder.
- C.** The Director shall conduct all inspections undertaken pursuant to Subsection (A) at a reasonable time and shall complete the inspections with reasonable promptness.

1546. Confidentiality of Records

- A.** Records or other information furnished to or obtained by the Director concerning regulated substances are available to the public, except that any records and information which relate to the trade secrets, processes, operation, style of work, or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the Navajo Nation EPA in the administration of this Chapter unless the owner or operator expressly agrees in writing to their publication or availability to the public. This Section does not prohibit the appropriate governmental agency from publishing quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary, information regarding the nature and quality of releases from storage tanks otherwise reportable pursuant to this Chapter shall be available to the public, and records, reports, documents or information may be disclosed to other officers, employees, or authorized representatives of the Navajo Nation or the United States government concerned with carrying out this Chapter or when relevant in any proceeding taken under Navajo or federal law.
- B.** Any person who knowingly and willfully divulges or discloses any information entitled to protection under this Section shall, upon conviction, be subject to a fine

of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one year or both.

1547. Corrective Actions

A. Corrective Actions by Owners and Operators.

1. As soon as a release is discovered, the owner or operator of a storage tank shall take immediate action to stop the release and to identify and mitigate any fire, explosion or vapor hazard.
2. The owner or operator of a storage tank shall take corrective action in response to the release of regulated substances from the tank.
3. Nothing in this Subsection shall prevent the Director from taking or requiring corrective action pursuant to Subsection (B) of this Section or any other provision of Navajo or federal law.

B. Corrective Actions by the Director. The Director is authorized to:

1. Require the owner or operator of a storage tank to undertake corrective action with respect to any release of a regulated substance when the Director determines that such corrective action will be done properly and promptly by the owner or operator of the storage tank from which the release occurs; or
2. Undertake corrective actions, utilizing available funds from the Leaking Storage Tank Trust Fund Account established under § 1575, with respect to any release of a regulated substance into the environment from a storage tank only if such action is necessary, in the judgment of the Director, to protect human health and the environment and one or more of the following situations exist:
 - a. No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is:
 - i. An owner or operator of the storage tank concerned,
 - ii. Subject to corrective action requirements under this Chapter, and
 - iii. Capable of carrying out such corrective action properly.

- b. A situation exists which requires prompt action by the Director to protect human health and the environment.
 - c. Corrective action costs at a facility exceed the amount of coverage required under this Chapter or regulations promulgated hereunder and, considering the class or category of storage tank from which the release occurred, expenditures from the Leaking Storage Tank Trust Fund Account are necessary to assure an effective corrective action.
 - d. The owner or operator of the tank has failed or refused to comply with an order of the Director under this Chapter to comply with corrective action requirements.
 3. Undertake the removal of an abandoned storage tank when, in the judgment of the Director, said removal is necessary to protect human health, safety or the environment and sufficient funds exist in the Leaking Storage Tank Trust Fund Account established under § 1575.
- C. Priority for Corrective Actions.** The Director shall give priority in undertaking corrective actions under this Subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of regulated substances from storage tanks that pose the greatest threat to human health and the environment.
- D. Corrective Action Orders.** The Director may issue orders to the owner or operator of a storage tank to carry out Paragraph (B)(1) of this Section or to carry out corrective actions pursuant to this Chapter or regulations promulgated hereunder. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under § 1552.
- E. Allowable Corrective Actions.** The corrective actions undertaken by the Director under Paragraph (B)(2) may include temporary or permanent relocation of residents (or temporary closure of business where necessary to protect the public health) and the establishment of alternative household or public water supplies. In connection with the performance of any corrective action under Paragraph (B)(2), the Director may undertake an exposure assessment. The costs of any such assessment may be treated as corrective action for purposes of Subsection (F) related to cost recovery.
- F. Recovery of Costs for Corrective Actions Taken by Director.**
 1. In General. Whenever costs have been incurred by the Director for undertaking corrective action or enforcement action with respect to the release of a regulated substance from a storage tank, the owner or operator of

such tank shall be liable to the Director for such costs. The liability under this Subsection shall be construed to be the standard of strict, joint and several liability and the Director has the discretion to use funds from either the Storage Tank Fund or the Leaking Storage Tank Trust Fund to pursue the recovery of cost.

2. Recovery. In determining the equities for seeking the recovery of costs under Paragraph (F)(1), the Director may consider the amount of financial responsibility required to be maintained under this Chapter and the regulations promulgated hereunder.
3. Effect on Liability
 - a. No Transfers of Liability. No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any storage tank or from any person who may be liable for a release or threat of release under this Section to any other person the liability imposed under this Section. Nothing in this Section shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this Section.
 - b. No Bar to Cause of Action. Nothing in this Section, including the provisions of Clause (a) of this Paragraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this Section, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

G. Emergency Procurement Powers. Notwithstanding any other provision of law, the Director may authorize the use of such emergency procurement powers as he or she deems necessary.

H. Restrictions on Use of Leaking Storage Tank Trust Fund. The Director shall expend no monies from the Leaking Storage Tank Trust Fund to clean up releases pursuant to the provisions of Subsection (A) of this Section: at any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by this Chapter or regulations promulgated hereunder, for whatever reason; at any facility owned by the federal government, the Navajo Nation or its entities (excluding tribal enterprises); at any facility not subject to tariffs under this Chapter; or at any facility that has failed to pay any tariffs owed under this Chapter when due. At such facilities the Director shall use the authorities provided in this Chapter to order corrective action to clean up such

releases. Notwithstanding the provisions of this Subsection, the Director may use monies from the fund to take the corrective actions authorized by Subsection (E) of this Section to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of Paragraph F(1) of this Section and without consideration of the factors in Paragraph F(2) of this Section. Nothing in this Paragraph shall prevent the Director from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

1548. Cost Recovery by Owners and Operators of Storage Tanks

- A.** Any one of the following persons may bring an action in Navajo Nation District Court against a person (other than the Navajo Nation or an employee of the Navajo Nation acting in the course of employment) who caused or contributed to the release of a regulated substance from a storage tank to require that person to reimburse one of the following persons for the reasonable costs of corrective action taken in response to the release:

 - 1. An owner or operator of a storage tank or any other person who takes corrective action pursuant to § 1547; or
 - 2. An owner or operator of a storage tank or any other person from whom costs are recovered by the Navajo Nation pursuant to § 1547.
- B.** The person seeking reimbursement has the burden of demonstrating that the corrective action costs incurred were reasonable.
- C.** This Section does not affect or modify the obligations or liability of a person, by reason of subrogation or otherwise, under any other provision of common law, Navajo law or federal law, for damages, injury or loss resulting from a release of a regulated substance or for the costs of a corrective action, except that a person who receives compensation for the costs of a corrective action pursuant to this Section is precluded from recovering compensation for the same corrective action costs pursuant to any other Navajo or federal law. A person who receives compensation for corrective action costs pursuant to Navajo or federal law is precluded from receiving compensation for the same corrective action costs as provided in this Section.
- D.** Liability under this Section shall be equitably allocated on a case-by-case basis in accordance with the following factors:

1. the duration and percentage of ownership or operation of the storage tank during a release of regulated substances from the tank;
2. the amount and nature of the regulated substances released;
3. the degree of care exercised by each person with respect to the regulated substances released;
4. the ability to distinguish between the respective releases of more than one responsible person; and
5. other factors that are appropriate under the circumstances.

Subchapter 5. Enforcement

1551. Record-keeping, Inspection, Monitoring and Entry

- A. Requirements in Orders.** The Director may order any owner or operator of a storage tank facility, or any other person who is subject to any requirement of this Chapter, to:
1. Establish and maintain records;
 2. Prepare and submit reports;
 3. Install, use, and maintain monitoring equipment;
 4. Monitor and sample emissions (in accordance with such audit procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe);
 5. Submit compliance certifications in accordance with Subsection (B) of this Section;
 6. Conduct site characterizations and complete corrective action plans as may be required; and
 7. Provide such other information as the Director may reasonably require.
- B. Production of Records.** To ensure compliance with this Chapter or of any regulation hereunder, the Director may request in writing that any person subject to any requirement of this Chapter produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.
- C. Public Availability of Information.** Any records, reports or other information obtained under Subsections (A) or (B) of this Section shall be available to the public, subject to the confidentiality requirements under Subchapter 4.

1552. General Enforcement Authority

- A. In General.** Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Chapter, the regulations promulgated under this Chapter, or orders issued pursuant to this Chapter, the Director may:
1. Issue and serve on such person an order requiring such person to comply with such requirement or prohibition, pursuant to the provisions of this Section;
 2. Issue and serve on such person an administrative penalty order in accordance with § 1554;
 3. Bring a civil action in accordance with § 1553(A); and/or
 4. Bring a criminal action in accordance with § 1553(B) and/or refer any criminal enforcement action or portion of such action to the U.S. EPA Regional Administrator for the appropriate EPA region.

In addition, when a person has continually violated any requirements or prohibitions of this Chapter, the regulations promulgated under this Chapter, or orders issued pursuant to this Chapter, or refused to comply with any such requirements or prohibitions, such person shall be prohibited from continuing to operate a storage tank facility within the Navajo Nation, and/or from entering into any new contracts (including leases) that would permit such person to operate a storage tank facility within the Navajo Nation.

- B. Requirements for Orders to Comply.** An order to comply issued under this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1561, if such hearing is requested in writing within 30 days after the date of the issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers. No order to comply issued under this Section shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this Chapter, nor affect

any person's obligations to comply with any Section of this Chapter or with a term or condition of any permit or implementation plan promulgated or approved under this Chapter.

- C. Emergency Compliance Orders.** Notwithstanding any other provision of this Section, the Director (after consultation with the Attorney General where feasible) may issue a compliance order that is effective immediately where there is an imminent and substantial threat to the public health, welfare or environment. Any person issued an order that is effective immediately may file a written request within 30 days with the Director for a stay pending the outcome of any appeal taken under this Section in accordance with the procedures provided for in § 1552(B). The Director shall, by written notice, grant or deny the request for a stay within five days receipt of a request for a stay. If the Director denies the request for a stay, the affected party has 30 days to appeal the denial to the Window Rock District Court. Any person subject to an emergency compliance order may seek judicial review of a final agency determination as provided for in § 1554(D).
- D. Enforcement of Compliance Orders.** Orders of the Director shall be enforced by the Navajo Nation Storage Tank Program, the Navajo Nation Department of Justice, Navajo Nation Resources Enforcement and the Navajo Nation Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

 - 1. entering upon any property or establishment believed to be violating the order and demanding compliance; and
 - 2. terminating part or all operations at the storage tank facility.
- E. Injunctive Relief.** Notwithstanding any other provision of this Section, the Director may seek injunctive relief pursuant to § 1553(A) to restrain immediately any person from engaging in any unauthorized activity that is endangering or is causing danger to the public health or the environment or enjoin any threatened or continuing violation of any requirements under this Chapter or regulations hereunder.

1553. Judicial Enforcement

- A. Civil Judicial Enforcement.** The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in an amount of not less than five hundred dollars (\$500) but not to exceed twenty-five thousand dollars (\$25,000) per day per violation, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter or order issued pursuant to this Chapter;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; and
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Paragraphs (1) and (2).

Provided, however, that any person who fails to provide notice as required by Subchapter 3 or submits false information required under this Chapter or regulations promulgated hereunder shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each tank for which notification is not given or false information is submitted.

B. Criminal Penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, or a filing, reporting or notice requirement under this Chapter;
2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report or other document required pursuant to this Chapter; or
3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Chapter;

shall, upon conviction, be punished by a fine in a maximum amount of not less than five hundred dollars (\$500) but not to exceed five thousand dollars (\$5,000) per day per violation or imprisonment for not more than 180 days per day per violation or both or be subject to any other penalty imposed by the court available under Navajo law. In any instance where the Navajo Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may

impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1552. For the purpose of this Subsection, the term “person” includes, in addition to the entities referred to in § 1502, any responsible corporate officer.

- C. Suits for Costs.** In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with either a civil, criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter, including for payment of costs of all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings.
- D. Jurisdiction and Venue.** Any action under this Section may be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Navajo Nation under this Chapter, and award any other appropriate relief.
- E. Calculation of Penalties.**

 - 1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 1554 or § 1555, if the Director has notified the source in writing of the violation and a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of the violation prior to such notice and each day thereafter until the violator established that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.
 - 2. In determining the amount of a civil penalty assessed under this Section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator’s full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating

factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court may assess penalties for noncompliance with administrative subpoenas under § 1561 or actions under Subchapter 2 where the violator does not have sufficient cause to violate or fail or refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this Section shall be deposited in the Storage Tank Fund established under § 1576 for use by the Director to finance the administration of the Navajo Nation Storage Tank Program, including compliance and enforcement activities.
4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused, perform community service, or conduct supplemental environmental projects.

F. Security. The court may, if a temporary restraining order or preliminary injunction is sought under this Section or § 1555, require the filing of a bond or equivalent security.

1554. Administrative Assessment of Penalties

A. Basis for Penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) for each tank for each day of violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, or order issued pursuant to this Chapter. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) used for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing Requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this Section. Before issuing such an order, the Director shall give written notice of the proposed

order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 days of receipt of the notice.

- C. Field Citations.** After consultation with the Attorney General, the director may implement a field citation program through regulations establishing minor violations for which field citations assessing civil penalties not to exceed five thousand dollars (\$5,000) per day per facility may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Chapter if the violation continues.
- D. Judicial Review.** Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within 30 days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.
- E. Failure to Pay Penalty.** If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorney's fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be ten percent (10%) of the aggregate amount of the

person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter of non-payment.

- F. Calculation of Penalty; Payment into Storage Tank Fund.** In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 1553(E). Any penalties paid under this Section shall be deposited into the Storage Tank Fund established by § 1576 for use by the Director to finance the administration and implementation of this Chapter and regulations promulgated hereunder, including storage tank compliance and enforcement activities.

1555. Citizen Suits

A. Authority to Bring Civil Action; Jurisdiction.

1. Except as provided in Subsection B of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his own behalf:
 - a. Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises or other similar businesses engaged in the wholesale or resale trade whether for profit or nonprofit) who is alleged to be in violation of any provision, requirement or prohibition of this Chapter, including but not limited to a regulations adopted pursuant to this Chapter, or order issued pursuant to this Chapter, or
 - b. Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who has contributed or who is contributing to any activity which may present an imminent and substantial endangerment to the public health or the environment.
2. The Navajo Nation courts shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, or order and to take such other action as may be necessary and to apply any appropriate civil penalties.

B. Notice.

1. An action may not be commenced under Paragraph (A)(1)(a) of this Section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an

action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Chapter, except that any person may intervene as a matter of right in such an action.

2. An action may not be commenced under Paragraph (A)(1)(b) of this Section fewer than 90 days after the plaintiff has given notice of the endangerment to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to restrain or abate conditions which may have contributed or are contributing to the activities which may cause or lead to the alleged endangerment, except that any person may intervene as a matter of right in such action if such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest.

C. Venue; Intervention, Service of Complaint.

1. Any action relating to a violation of any requirement of this Chapter or the regulations promulgated hereunder may be brought only in the Navajo Nation District Court in Window Rock.
2. The Director, if not already a party, may intervene as of right in any action brought under this Section.
3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

- D. Award of Costs.** The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

- E. Payment of Penalties into Storage Tank Fund.** Penalties received under this Section shall be deposited in the Storage Tank Fund established by § 1576 of this Chapter for use by the Director to finance the administration and implementation of this Chapter and regulations promulgated hereunder, including storage tank compliance and enforcement activities.

1556. Administrative Hearings

The Director shall, by regulation, establish a formal hearing review process which meets due process standards, to conduct hearings under § 1554(A) and (B) (administrative penalties), § 1554(C) (field citations) and § 1552(C) (emergency compliance orders). The Director may establish an informal review process to hear all other administrative appeals provided under this Chapter. Until the Director establishes a formal hearing review process, the Navajo Office of Hearings and Appeals is authorized to conduct hearings under § 1554(A) and (B), § 1554(C) and § 1552(C); provided, however, the Director may, at his/her discretion, transfer other appeals allowed under this Chapter and regulations promulgated hereunder to the Navajo Office of Hearings and Appeals where the need arises.

Subchapter 6. Rulemaking and Judicial Review

1561. Rulemaking and Other Administrative Procedures

A. Rulemaking.

1. Notice of any proposed regulations shall be published in a newspaper of general circulation for the Navajo Nation. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English languages, data or arguments; and shall keep the docket open for 20 calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.
2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed

regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

B. Administrative Subpoenas.

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.
2. Upon a showing satisfactory to the Director by the owner or operator of a storage tank that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, as provided in § 1546, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Nation concerned with carrying out this Chapter or when relevant in any proceeding under this Chapter.
3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation's courts. In case of contumacy or refusal to obey a subpoena, the tribal court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books, documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation Window Rock District Court in his or her official capacity and not in any other manner; in any such action, relief shall be limited to declaratory relief.

1562. Review in Navajo Nation Supreme Court

- A. Petitions for Review.** A petition for review of any final action taken by the Director under this Chapter, including but not limited to promulgation of regulations and standards or issuance of orders (but not including imposition of administrative penalties under § 1554 which are subject to review under § 1554(D)), or challenge of an administrative subpoena which is subject to review under § 1561(B)(3), shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Chapter, except that if the petition is based solely on grounds

arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise.

B. Limitations on Review.

1. If judicial review of a final action of the Director could have been obtained under Subsection A of this Section, that action shall not be subject to judicial review proceedings for enforcement.
2. With respect to any regulations promulgated under this Chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three months.
3. Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Chapter. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for Review. In reviewing any final action of the Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
3. Without observance of procedure required by law; or

4. Unsupported by substantial evidence.

- D. Challenge to Provisions.** Any challenge to the lawfulness of any provision of this Chapter must be filed in accordance with Navajo law within 90 calendar days after the date of enactment of this Chapter in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within 90 calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this Chapter.

Subchapter 7. Funding

1571. Registration Fee

All owners and operators required to provide notice under § 1531 or § 1532 shall pay to the Navajo Nation EPA a one-time registration fee. The fee effective as of the date of enactment of this amendment, shall be \$100 per tank, which fee may be increased by the Director by regulation in order to cover increased program costs. The fees collected shall be transmitted to the Controller for deposit into the Storage Tank Fund established by § 1576.

1572. Annual Tank Fees

Each owner or operator of a storage tank that is subject to regulations under this Chapter shall pay an annual fee to the Navajo Nation EPA. The initial fee shall be \$150 per tank, which fee may be increased by the Director by regulation promulgated pursuant to § 1561 in order to cover increased program costs. The fees collected shall be transmitted to the Controller for deposit into the Storage Tank Fund established by § 1576. For purposes of paying fees pursuant to this Section, each compartment in a compartmentalized storage tank shall be considered a separate tank.

1573. Storage Tank Tariff

- A. Liability for and Amount of Tariff.** The Director shall collect a tariff from either the owner who is primarily responsible for submitting payment or the operator on the operation of storage tanks regulated under this Chapter. The tariff shall be based on the quantity of regulated substances placed in a tank in any calendar year and shall be collected on an annual basis; provided, however, that the distributor of motor vehicle fuel, diesel fuel and aviation fuel shall be responsible and liable for submitting the tariff (on a monthly basis) to the Navajo Nation EPA where the owner or operator is not engaged in the bulk distribution of such fuels. In the event the

distributor fails to submit the tariff, the owner and operator shall also remain jointly and severally liable for said tariff. The tariff shall be levied at the rate of one cent per gallon of regulated substance, which tariff may be increased by the Director by regulation in order to cover the costs of corrective actions taken pursuant to this Chapter, including but not limited to tank removals and site remediation.

- B. Presumptions.** For proper administration of this Section, and to prevent the evasion of the tariff imposed by this Chapter, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the Director that all regulated substances that are motor vehicle fuel, aviation fuel and diesel and that are refined, manufactured, produced, compounded or blended within the Navajo Nation or imported into the Navajo Nation will be placed in a storage tank from which the fuel will be dispensed to users who consume the fuel and do not further distribute it.
- C. Exemptions.** The tariff imposed by this Chapter does not apply to emergency generator tanks.
- D. Return and Payment of Tariff; Due Date.**
1. The tariff levied under this Section on owners and operators is due and payable annually on or before March 31 for the preceding calendar year and is delinquent if not postmarked on or before that date or if not received by the Navajo Nation EPA on or before March 31 for tariff payers electing to file in person.
 2. When an owner or operator pays the tariff the payer shall prepare and file with the tariff a return, on a form prescribed by the Director, showing the amount of tariff for which he is liable for the period covered by the return. The return shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the return is true, complete and correct according to the best belief and knowledge of the owner or operator filing the report.
 3. The tariff levied under this Section on distributors is due and payable the last business day of the month after the month in which fuel is deposited into storage tanks and is delinquent if not postmarked on or before that date or if not received by the Navajo Nation EPA on or before that date for distributors electing to file in person.
 4. When a distributor pays the tariff, the distributor shall provide to the Navajo Nation EPA a monthly summary report on forms prescribed by the Director

as well as an annual reconciliation report on a form prescribed by the Director verifying payment of all tariffs owed.

- E. Extensions; Abatement.** The Director, for good cause, may extend the time for filing any return required by this Chapter and may grant such reasonable additional time within which to make the return as he deems proper if at least ninety percent (90%) of the tariff liability is paid when the extension is requested.
- F. Audits.** The Director may require a person who is required to pay the tariff under this Section to appear, at reasonable times and on reasonable notice, at the Director's office and produce such records and information as are specified in the notice to determine compliance with this Section. The Director shall audit the records of a sufficient number of tariff payers under this Section to ensure general compliance with this Section.
- G. Interest; Penalty; Lien.**
1. If the tariff, or any portion of the tariff, is not paid on or before the date prescribed for its payment, interest shall be imposed on any unpaid amount of tariff from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received. The rate shall be equal to the IRS rate.
 2. If the tariff payer fails to file a return as required under this Section on or before the due date as extended by the Director, unless the failure is due to reasonable cause and not due to willful neglect, a penalty of five percent (5%) of the tariff found to be remaining due shall be added to the tariff for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five percent (25%) of the tariff remaining due. The penalty so added to the tariff is due and payable on notice and demand by the Director.
 3. If any tariff, interest or penalty imposed by this Section is not paid when due, the unpaid amounts are a lien from the date the amounts became due on all real and personal property and rights to property belonging to the tariff payer. The lien may be perfected by recording a notice of lien in the county in which the property is located, the Navajo Division of Economic Development, the Navajo Land Department or the Bureau of Indian Affairs where appropriate. The notice shall specify the nature of the tariff, the amount of the tariff, interest and penalty due, the tariff period for which the amounts are due and the name and last known address of the tariff payer who is liable for the amounts. In addition, it shall be unlawful for the owner, operator or

distributor to place a regulated substance into a storage tank where said tariff, interest or penalty imposed has not been paid when due.

H. Remission and Disposition of Revenues. The Director shall promptly transmit to the Controller all monies collected under this Section. The Controller shall credit these payments to the Leaking Storage Tank Trust Fund established under § 1575 and the Storage Tank Fund established under § 1576 as follows:

1. Eighty percent (80%) of the net revenues shall be deposited into the Leaking Storage Tank Trust Fund, which is used to carry out corrective actions as set forth in § 1575.
2. Twenty percent (20%) of the net revenues shall be deposited into the Storage Tank Fund, which is used for program implementation as set forth in § 1576.
3. The Director may change the allocation between the two funds with the approval of the Resources and Development Committee and without the need to go to the Council, provided that the Director demonstrates to the satisfaction of the Resources and Development Committee that the relative need of monies for corrective action compared to program implementation warrants a reallocation of funds.

I. Appeals. Any appeals taken under this Section shall be taken in the same manner as appeals taken under § 1554 (administrative penalties).

1574. Storage Tank Removal, Installation and Clean-Up Monitoring Fees

Each owner or operator of a storage tank shall pay a fee to the Navajo Nation EPA for tank removal and installation field monitoring. The initial fee shall be one hundred and fifty dollars (\$150) per tank per day of monitoring for each removal or installation, which fee may be increased by the Director by regulation in order to cover increased monitoring costs. In the event that remediation is required, each owner or operator of a storage tank shall pay an additional field monitoring fee for each site per day. The initial fee shall be one hundred and fifty (\$150) per day of field monitoring per site, which fee may be increased by the Director by regulation in order to cover increased monitoring costs. The fees collected shall be transmitted to the Controller for deposit into the Storage Tank Fund established by § 1576.

1575. Leaking Storage Tank Trust Fund

There is hereby established a Leaking Storage Tank Trust Fund to be utilized by the Director at his/her discretion, but pursuant to an approved budget, to carry out corrective actions required under this Chapter and regulations promulgated hereunder, including to remove abandoned storage

tanks and clean up such sites. Monies shall be deposited into this trust fund from any tariffs authorized pursuant to § 1573, appropriations authorized by the Navajo Nation Council, available state, federal or other grants, corrective action reimbursements, or donations. For a period of five years after the effective date of this Chapter, the Navajo Nation Council hereby authorizes a set aside of one-half of all business site lease revenues (but not to exceed two million dollars (\$2,000,000) within a single fiscal year) to be used for corrective actions, including removal of abandoned storage tanks and clean-ups associated with such removal. The monies collected from this set-aside shall be transmitted by the Controller into the Leaking Storage Tank Trust Fund to be used by the Director to carry out the intent of this Section.

1576. Storage Tank Fund

Monies derived from fees imposed under §§ 1571, 1572, and 1574 and from penalties imposed under §§ 1553, 1554, and 1555 shall be available solely for the administration and implementation of this Chapter and the regulations promulgated hereunder. Such funds shall be deposited into a duly established Special Revenue Fund, called the Storage Tank Fund, and shall be expended by the Director for the use of the Storage Tank Program in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget.

1577. Interest on Late Payments

The Director may charge interest on late payment of fees or tariffs due under this Subchapter. Interest shall be assessed beginning on the day after payment was due, at a rate equal to the federal short term rate as defined in 26 U.S.C. § 6621 plus 3%.