

The Navajo Nation Leaking Storage Tank Soil and Water Cleanup Standards 2012



“In the Navajo Way, the Earth is our Mother, the mountains part of her sacred body, the water courses her veins and arteries. When the earth is injured, the resultant instability, imbalance and disharmony bring illness to life on Earth including mankind.”

- *Resolution of The Navajo Nation Council (CAP-47-95)*

Nihimá Diní sin Baá ahólyá

Keep Mother Earth Sacred and Take Care of Her

Navajo Prayer

In beauty I walk
With beauty before me I walk
With beauty behind me I walk
With beauty above me I walk
With beauty around me I walk

It has become beauty again
It has become beauty again
It has become beauty again
It has become beauty again

Dedication

In Memory of Arlene Luther

Shimá Nahasdzaan

Hózhó náhásdlíí

Hózhó náhásdlíí

Hózhó náhásdlíí

Hózhó náhásdlíí

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NAVAJO NATION STORAGE TANK ACT
STORAGE TANK CLEANUP STANDARDS
2012

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STORAGE TANK CLEANUP STANDARDS

I. INTRODUCTION

The purpose of this introduction is to help non-Navajos understand the deep connection the Navajos have to their land, and so to understand the basis for these Cleanup Standards, which are being promulgated pursuant to the Navajo Nation Storage Tank Act, 4 N.N.C. § 1501 *et seq.*, as amended (“NNSTA”). The land, plants, and water are extensions of the individual and are an integral part of tribal identity and tradition. The Navajo culture relies on that connection for its survival and continued well-being.

A. The Navajo Creation Story

The Navajo creation story recalls the origin of the *Diné* (meaning The People), as the Navajo call themselves, and tells of the *Diné*'s emergence from three previous worlds into this, the fourth, or Glittering World, through a magic reed. The first people from the other three worlds were not like the people of today, but rather were animals, insects, or masked spirits as depicted in Navajo ceremonies. First Man (*'Altsé Hastiin*) and First Woman (*'Altsé 'Asdzáá*) were two of the beings from the First, or Black, World. First Man was made in the east from black and white clouds. First Woman was made in the west from the yellow and blue clouds. Spider Woman (*Na ashje'ii 'Asdzáá*) was also from the First World and taught Navajo women how to weave.

Once in the Glittering World, the people built a sweat house and sang the Blessing Song. They then met in the first house (*hogan*), made exactly as Talking God (*Haashch'eelti'i*) had prescribed. Inside the *hogan*, the people began to arrange their world, naming the four sacred mountains that surround their land and designating the four sacred stones that would become the boundaries of their homeland. The San Francisco Peaks (*Dook'o'osliid*), near Flagstaff, Arizona, represent the Abalone and Coral stones and mark the western religious

boundary while Mt. Blanco (*Tsisnaasjini'*), in Colorado, represents the White Shell stone and is the eastern religious boundary of the Dine. Mt. Taylor (*Tsoodzil*), in New Mexico, represents the Turquoise stone and the southern boundary while Mt. Hesperus (*Dibé Nitsaa*), Colorado, is associated with the Black Jet stone and the northern boundary.

After setting the sacred mountains where they should go, the Holy People placed the moon and sun into the sky. They began to carefully place the stars in an orderly way but Coyote, the Trickster, became impatient and flung the remaining stars into the sky. The Holy People continued to make the clouds, trees, rain, and other life necessities. Just when everything was as it should be, evil monsters appeared and began to kill the new Earth People. Only the birth of Ever Changing Woman (*'Asdzáá Nadleehe*) at Gobernador Knob (*Ch'óol'i'i*), New Mexico, was able to save them.

Changing Woman grew up around El Huerfano Mesa (*Dzil Na 'oodilii*) in northern New Mexico. She married the Sun and gave birth to two sons, twins, who are heroes to the Navajo people. The twins are often called Monster Slayer and Child-Born-of-Water. The twins visited their father, the Sun, who gave them weapons made of lightning bolts to fight the evil monsters. Every time the twins killed a monster, it turned to stone. The lava flows near Mt. Taylor, for example, are believed to be the blood from the death of the Monster Who Sucked in People (*Ye'iitsoh*). All the angular rock formations on *Diné* lands are believed to be the bodies of monsters.

Once all the monsters were dead, the Holy People turned their attention to forming more people. First were the Tall House People (*Kiiaa aanii*). They were made of yellow and white corn. Other clans traveled to the area around the San Juan River and contributed to the tribe. Paiutes brought beautiful baskets and Pueblos shared their knowledge of farming and weaving. Other tribes included the Utes and the Apaches.

Changing Woman went to live in the Western Sea so that she could visit her husband, the Sun. Her home was made of the four sacred stones (Abalone, Turquoise, White Shell, and Black Jet). She became lonely during the day and decided to create her own people to keep

her company. She made four clans from flakes of her skin: the Near Water People, Mud People, Salt Water People, and Bitter Water People. The people of those clans heard about humans in the east who shared their heritage and wanted to go meet them. Changing Woman gave the people permission to travel east to the San Francisco Peaks. While traveling, the people came to the Hopi Mesas where they left the porcupine, which is still found there. The people then traveled towards the Chuska Mountains and on to Mt. Taylor. The people finally arrived at *Dinetah*, the *Diné* traditional homeland, and met the clans already living there.¹

“For there is nothing more revered nor more loved by the Navajos than the land they call *Dinehtah*.”

Raymond Friday Locke, The Book of the Navajo

B. Navajo Religion - A Sacred Way of Life and Relationship to the Land

The traditional Navajo way contains no concept for religion as a sphere of activity separate from daily life. Navajo religion has been described as 'life itself, the land, and well-being.' All living things - people, plants, animals, mountains, and the Earth itself - are relatives. Each being is infused with its own spirit, or “inner form,” which gives it life and purpose within an orderly and interconnected universe. The interrelatedness of all creation is recognized through daily prayer offerings and an elaborate system of ceremonies. The purpose of Navajo life is to maintain balance between the individual and the universe and to live in harmony with nature and the Creator. In order to achieve this goal, Navajos must perform their religious practices on the specific, time-honored areas which they inhabit.²

“Our offering places are sacred to us.”

Jack Hatathlie, Navajo Medicine Man

¹ Adapted from www.lapahie.com/Crealion.cfm

² www.xpressweb.com/zionparkJindex3.html

“Navajo believe they have a responsibility to remain on and care for the land where they were placed by the Creator. Knowledge of sacred places carries with it the obligation to care for them through the appropriate offerings, prayers, and songs. Such ceremonies necessitate regular, sometimes daily, access to sacred places and plants.”³

“Navajo healing ceremonies are used to cope with the uncertainties and dangers that occur in the universe. They are usually performed to bring the dangerous powers under control and to restore physical and spiritual imbalances in an individual. These curative ceremonies, which can last up to nine days, must be performed in a *hogan* by a specially trained medicine person. The medicine person often uses sandpaintings and herbal remedies made from local minerals and plants to heal the patient. Plants must be collected for each individual ceremony; they cannot be gathered in advance or stored in a kit. For example a medicine person must walk to the spot where a plant is growing and tell the plant the name of the person who is sick. Each plant is addressed as an individual with offerings of corn pollen, song and prayer.”⁴

C. Cultural Considerations and the Cleanup Standards

It is imperative that contaminated Leaking Storage Tank (“LST”) sites be restored to pristine conditions because of the importance of the environment to religious ceremonies and to the tribe. As described above, a Navajo medicine man cannot store the materials needed for religious ceremonies and thus must have access to uncontaminated soil, plants, and water when a ceremony is to take place; access to safe, uncontaminated natural materials is essential to the continuation of traditional practices.

Traditional gathering places are present throughout the *Dinetah* and are not commonly divulged to anyone or may vary as the ceremony dictates. This leads to a need for

³ www.xpressweb.com/zionparkJindex3.html

⁴ www.xpreweb.com/zionpark/index3 0html

protection of all land, plants, animals, water, and air, as any area can or may be used for religious purposes.

The Navajo Nation takes the lead in the protection of its environment and its people. In 1995, the Navajo Nation Council passed a resolution establishing the Navajo Nation Environmental Protection Agency (“NNEPA”) as an independent agency and enacted the Navajo Nation Environmental Policy Act, which set the tone for the tribe's holistic approach to the protection of the land and the people, *see* 4 N.N.C. §§ 901-906. The Navajo Nation has since enacted a number of environmental laws, of which the Navajo Nation Storage Tank Act (4 N.N.C. §§ 1501-1575, as amended) is an example, demonstrating the Navajo Nation’s commitment to environmental protection within the boundaries of the Dinétah.⁵

It is with these facts in mind that the Navajo Nation Storage Tank Program began the process of developing cleanup standards for LST sites. Groundwater beneath the Navajo Nation is generally shallow (an average of 20 feet below the surface; Henry Haven, Jr., Pers. Comm.) and often reaches the surface at sacred seeps and springs. Although most drinking water wells tap into deeper aquifers, many people on the reservation use those seeps and springs for irrigation, daily household chores and, in some cases, as their sole source of drinking water. Animals, both wild and domestic, also need the shallow water-bearing units as drinking water. The possibility of bioaccumulation of toxic compounds in both plants and animals was also considered in the assignment of cleanup levels. Research in the area of bioaccumulation has shown that certain compounds are a cause for concern for human health when contaminated plants and animals are consumed. The Navajo Nation does not have zoning regulations and thus any area can be used for residential purposes.

⁵ The U.S Environmental Protection Agency (USEPA) Administrator William Ruckelshaus issued an Indian Policy in 1984 that recognizes the authority of tribal governments to make their own environmental policies and set their own environmental standards (<http://www.epa.gov/tribal/pdf/indian-policy-84.pdf>). Succeeding USEPA Administrators have reaffirmed USEPA’s partnership with Indian tribes, including in September 2004 in commemoration of the twentieth anniversary of USEPA’s Indian Policy (<http://www.epa.gov/tribal/pdf/indian-policy-leavitt-pr.pdf>).

Nearly 50% of petroleum storage tank sites identified so far on the Navajo Nation are suspected to have LSTs with contamination affecting both soil and water. At most of these LST sites, the shallow groundwater is in direct contact with contaminated soil (Henry Haven, Jr., Pers. Comm.) This fact was taken into account in the cleanup standards proposed for soil. It is the NNEPA Storage Tank Program's position that the most stringent cleanup levels be used to protect both the soil and the groundwater. The most stringent soil cleanup levels are those calculated using a dilution-attenuation factor ("DAF") of unity (1). A DAF of 1 assumes direct contact with the edge of the mixing zone and is an appropriate representation of most field conditions encountered at Navajo Nation sites. These recommended values are protective of both the soil and the groundwater. Due to the arid climate present on the Navajo Nation, surface water is often related to shallow groundwater and should be afforded the same level of protection.

II. REPORTING PETROLEUM PRODUCT RELEASES OR SUSPECTED RELEASES

Pursuant to the NNSTA, any suspected or known release of a regulated substance must be reported to the NNEPA within 24 hours. 4 N.N.C. § 1544. The only exception to this requirement is a release known to be fewer than 25 gallons that can be cleaned up completely within 24 hours of the release. If the cleanup cannot be accomplished within 24 hours, the owner/operator must notify NNEPA and the U.S. Environmental Protection Agency ("USEPA") (as stated in the federal regulations) within the 24-hour time-frame.

A. Suspected Releases

If there is reason to assume a release has occurred, the NNEPA must be notified within 24 hours. A release may be suspected if one or more of the following conditions are present:

- Stained soil.
- Soil with petroleum odor.

- Elevated readings of field monitoring instruments.
- Failure of any method of release detection.
- Presence of known contamination on a downgradient property, with no obvious reason to suspect a release on that property and no obvious other source.
- Failure of tank tightness tests and/or line tightness tests.

B. Confirming Releases

The owner/operator must confirm within seven days if a suspected release is an actual release. Once a release is confirmed the NNEPA and the USEPA must be notified within 24 hours. If a release is confirmed, the date that the release was initially suspected becomes the official release date for all regulatory deadlines pertaining to that release.

Methods of confirming releases include:

- Laboratory analyses of suspect soil and/or water.
- Discovery of free product outside the tank.
- Two consecutive failures of tank tightness tests and/or line tightness tests.

To report a release, call (928) 871-7993 or fax (928) 871-7996. The reporting party will be supplied with a NNEPA LST Spill Report Form which must be filled out and returned within 14 days.

If a situation exists that may impact the immediate health and safety of the community, immediately call the Navajo Nation Department of Emergency Management at (928) 871-6892, the Navajo Nation Superfund Program at 928-871-6859, and then the Navajo Nation Storage Tank Program at 928-871-7993 and the USEPA Region 9.

C. Initial Response to a Confirmed Release

Initial actions at a site with a confirmed release should include, but are not limited to:

- Removal of contaminated soil and disposal at an authorized facility.
- Enhancement and stimulation of bioactivity by addition of approved bioactivity enhancement treatment(s). This treatment is required not only at tank pulls but in any areas within the site where contaminated soil is encountered.

III. ANALYTICAL REQUIREMENTS

A. Contaminants of Concern

For the purpose of the Navajo Nation Storage Tank Program, Contaminants of Concern (“COCs”) are substances contained within a regulated storage tank system that have been released into environmental media. LST site characterization should include analyses for BTEX (benzene, toluene, ethylbenzene, and ortho-, meta-, and paraxylenes), PAHs (polycyclic aromatic hydrocarbons), MTBE (methyl-tert-butyl ether) and TPH (total petroleum hydrocarbons). In some cases, based on site history, analyses for metals, lead scavengers, solvents/chlorinated solvents, and fuel additives should also be conducted. Commonly encountered COCs at LST sites include:

• BTEX

BTEX analysis is especially important at sites with gasoline releases. Benzene is an indicator chemical for carcinogenic effects of low-molecular weight hydrocarbons. BTEX is volatile and biodegradable under conditions where oxygen and certain microbes are present. Research is ongoing to determine the biodegradability of BTEX under anaerobic conditions. **ALL samples collected must be analyzed for BTEX** using USEPA methods 8021B or 8260B. USEPA method 8260B is especially appropriate in cases where waste oil

is/was present. USEPA sample preparation method 5035 should be used for soil analyses containing low levels (0.5-200 ug/kg) of BTEX.

- **PAHs**

PAHs can be somewhat recalcitrant to biodegradation and their ultimate fate in biodegradation has greater uncertainty. Benzo(a)pyrene is especially important as an indicator chemical for cancer effects of heavier petroleum hydrocarbon fractions such as those found in diesel. **If there is reason to believe that the spill involves petroleum products in the higher TPH fractions or if TPH levels in soil or water are above the cleanup levels samples will be analyzed for benzo(a) pyrene and/or other PAHs listed in Tables 4 and 5** using USEPA methods 8270C or 8310.

- **MTBE**

MTBE has been used to boost octane ratings in gasoline and to improve gas combustion. **Unless site history and material usage records support the absence of MTBE, analyses of samples at gasoline storage facilities should include MTBE as an analyte during at least the initial sampling.** Research into the health effects of MTBE is ongoing. MTBE is not readily biodegraded and thus persists in the environment. Analyses for MTBE should be conducted using USEPA method 8260B.

- **TBA**

Tert-butyl alcohol (TBA) is a breakdown product of MTBE as well as a potential impurity in the manufacture of MTBE. TBA has also been used as an additive to petroleum products. TBA is very mobile in groundwater and is not readily biodegraded. **Analyses for TBA should be conducted if there is reason to suspect that TBA or MTBE were/are in use at the site.** Analyses for TBA should be conducted using USEPA method 8260B.

- **Lead and Other Metals**

In addition to lead, a number of metals can be associated with petroleum product storage sites. Those metals include arsenic, barium, cadmium, chromium, mercury, selenium, and silver. Metals can pose a health risk to humans and threaten the environment because they tend to bioaccumulate and may persist in the body for extended periods of time, causing long-term health concerns. High concentrations of metals are often associated with sites storing waste oil. **Analyses for lead should be conducted at sites known or suspected to have stored leaded gasoline or in cases where the stored product is unknown.** Analysis for other metals should be conducted if the site has stored or is storing waste oil, or the product is unknown, or if there is reason to believe the site may contain levels of those metals in excess of federal or NNEPA allowable contaminant levels. Analyses for metals (except mercury) should be conducted using USEPA methods 60106 or 6020. Mercury testing is achieved by using USEPA method 7470A for water and USEPA method 7471A for soil.

- **Lead Scavengers**

Leaded gasoline fuels contain additives known as organolead compounds. These lead compounds (i.e., tetraethyllead, tetramethyllead, trimethyllead, and others) require the presence of lead scavengers to prevent engine deposits of the lead oxide combustion product. Lead scavenger compounds include ethylene dibromide (“EDB”) and ethylene dichloride (“EDC,” also known as “1,2 DCA”). EDB is resistant to chemical and biological degradation, causing it to be persistent. Due to the chemical and physical properties of EDB, it volatilizes quickly within the vadose zone, dissolves quickly into the aqueous phase in the saturated zone of the subsurface, or remains in the free product when present. EDC (1, 2 DCA) readily migrates to groundwater and is very persistent. Therefore **any site where the release cannot be documented to have occurred after the phase-out period of leaded fuels for automobiles should be analyzed for lead scavengers.** Analyses for the lead scavengers should be performed using USEPA methods 8260B or 504.1.

- **Solvents/Chlorinated Solvents**

Petroleum solvents contain volatile organic compounds (VOCs) of concern for inhalation pathways, BTEX, and PAHs. Petroleum solvents do not usually contain sufficient quantities of BTEX and PAHs to allow measurement in water and soil samples. **At sites where tanks are known or suspected to have contained petroleum solvents, sampling and analysis for those compounds should be conducted.** If the initial analysis does not detect the target analytes (BTEX and PAHs) and the site is known to have stored solvents, measurement may be based on the total volatile petroleum hydrocarbons (“TVPH”) procedure, which quantifies all chromatographic peaks between 2-methyl pentane and 1,2,4-trimethylbenzene. The accepted analytical method is USEPA method 80 15B.

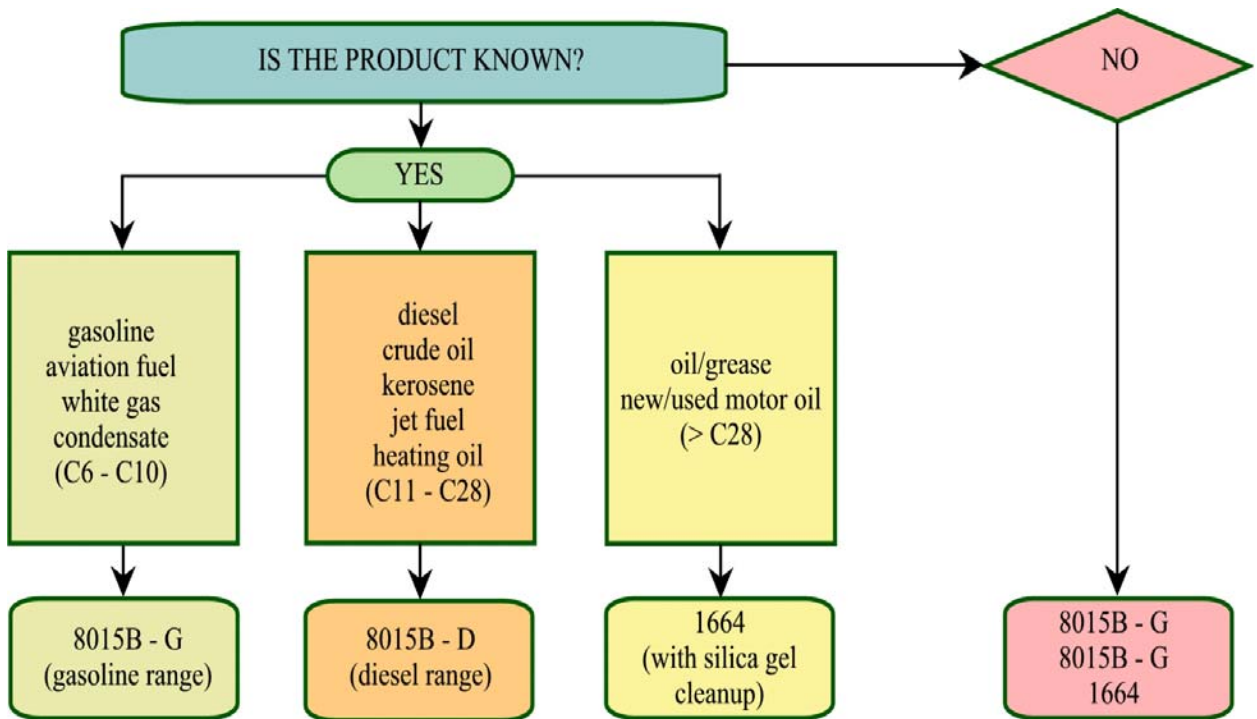
The most common chlorinated solvents are perchloroethene (aka tetrachloroethene, “PCE”), trichloroethene (“TCE”), dichloroethene (“DCE”), vinyl chloride (“VC”), trichloroethane (“TCA”), and dichloroethane (“DCA”)) (Wiedemeier et al., 1999). These compounds may be present at sites that were used for automobile repairs (garages). Sites that have a known history of such use must include sampling for chlorinated solvents as part of the initial sampling regimen. USEPA recommended methods for analysis of chlorinated solvents are 80218 (GC-PID) and 82608.

- **TPH**

Total Petroleum Hydrocarbons (“TPH”) may contain many PAHs which have toxic and carcinogenic properties. TPH is a mixture of several hydrocarbon compounds that vary depending on several factors, including the composition of the crude oil the mixture came from, the amount of refinement, the fraction under consideration (e.g., gasoline, diesel, oil and grease), and the amount of weathering the mixture has undergone. TPH values are used as indicators that potentially high levels of other COCs are present at the site. The 500 ppm level for soil proposed in this document is a nuisance standard rather than a health-based level. At the 500 ppm level the soil is visibly contaminated and has a strong “petroleum” odor. **All soil samples must be analyzed for TPH.** If TPH analytical values are above the

target levels in Tables 4 or 5 for diesel or higher fractions, analysis for the PAHs must be conducted. If the soil is in contact with groundwater, the analyses for PAHs must be conducted for soil TPH levels above 100 ppm. In no case can TPH levels in groundwater exceed the values in Table 4 (Water Cleanup Standards).

Analytical methods for TPH vary with the fraction under consideration. The following flow chart provides a guideline for determining which USEPA method is appropriate, based on the nature of the released product:



• **Free Product**

Free product is defined as a mobile regulated substance that is present as an NAPL (nonaqueous phase liquid, i.e., not dissolved in water). At sites where free product is present, the NNEPA must be notified within 24 hours of discovery. Free product must be removed to the full extent practicable and in a manner that minimizes the spread of contamination. The type, thickness, and total volume of free product must be recorded. All free product must be disposed of and treated in compliance with applicable regulations.

B. Sampling Requirements

Depending on the nature of the released material, the NNEPA requires that sampling of water and soil at new sites include some or all of the common COCs listed above. Table 1 can be used to determine which COCs should be included in the initial sampling:

Table 1. Initial Site Sampling Requirements ¹									
Product	BTEX	PAHs	MTBE	TBA	EDB, EDC	Lead	Metals	Solvents	TPH ²
Unknown	X	X	X	X	X	X	X	X	X
Gasoline	X		X	X		X			X
Leaded Gasoline	X		X	X	X	X			X
Diesel or similar products	X	X							X
Waste Oil	X	X				X	X	X	X

1. The table is a guide only. Based on site conditions the sampling requirements may change.
2. Soil only

Once analytical results for the initial sampling have been received and reviewed by NNEPA, the owner/operator must contact NNEPA to determine if any other sampling may be required.

C. Approved Analytical Methods

Tables 2 and 3 (attached as Appendix B) may be used as guides to determine the analytical method(s) and associated requirements most appropriate for sampling at a site. Table 2 pertains to sampling and analysis for water while Table 3 pertains to sampling and analysis for soil. It is always recommended that laboratory-supplied containers and preservatives be used when sampling.

IV. ADJUSTING CLEANUP STANDARDS FOR TRADITIONAL AND CULTURAL VALUES

The values in Tables 4 and 5 (attached as Appendix C) are based on values previously published by the USEPA, the State of New Mexico, the State of California, or calculated specifically for this document based on those previously published values. It is important to recognize that the values in Tables 4 and 5 are cleanup STANDARDS, not remediation goals. In view of cultural and traditional values, the NNEPA Storage Tank Program does not endorse a tiered approach to remediation and believes that promulgating a single value for each contaminant for each medium best serves the Navajo Nation. Site-specific cleanup goals may be allowed at some sites on a case-by-case basis. The petition process for such variances is detailed below.

For the water cleanup standards, federal Maximum Contaminant Levels (“MCLs”) were used where available. For COCs without federal MCLs, research was conducted into other tribal water quality standards approved by USEPA Region 9 to find precedents for water cleanup standards. The Navajo Nation has USEPA-approved surface water quality standards, as does the Hualapai Tribe. Both of these programs chose to use standards based on USEPA’s National Recommended Water Quality Criteria (“NRWQC”) for Human Health for Consumption of Water and Organisms. These programs used the NRWQC levels from the 1999 edition (USEPA, 1999). Although a newer version of the NRWQC is available, NNEPA’s Storage Tank Program uses the 1999 NRWQC levels so as to promote consistency across Navajo lands. The Hoopa Valley Tribe of California has a USEPA-

approved Water Quality Control Plan (2002) with standards based on USEPA Region 9’s Preliminary Remediation Goals (“PRGs”) and the State of California Toxics Rule, which in some cases are more stringent than the NRWQC levels. For COCs not included in either the MCLs or the NRWQC, surrounding four-corner states, USEPA Region 9 PRGs (USEPA, 2004a), and the State of California were researched and the lowest value for the given COC was chosen for the cleanup standards. The exception is the value for MTBE, which is from the USEPA Region 3 Risk-Based Concentrations (“RBCs”) Table (US EPA, 2004b).

Soil cleanup standards were adopted as follows: Once the water cleanup standards were chosen, the soil cleanup levels were calculated using Equation 10 of the USEPA Soil Screening Guidance: User’s Guide (“SSG”) (USEPA, 1996a). The dilution/attenuation factor (“DAF”) was assumed to be unity (i.e., DAF = 1). Values for K_{oc} and H' were obtained from Appendix C of the SSG (exceptions are described below).

Equation 10 (Soil Screening Level Partitioning Equation for Migration to Groundwater) is as follows:

$$SLS (mg / kg) = C_w \left[K_d + \frac{(\theta_w + \theta_a H')}{\rho_b} \right]$$

Where:

C_w is the target soil leachate concentration (mg/L). Chemical-dependent, based on target water concentration.

K_d is the soil-water partition coefficient (L/kg). K_d is calculated by multiplying K_{oc} by f_{oc} (organics). Chemical-dependent.

K_{oc} is the soil organic carbon/water partition coefficient (L/kg). Chemical-dependent, found in the tables included in the SSG.

f_{oc} is the fraction of organic carbon in soil (g/g). Default value is 0.002 (2%).

θ_w is the water-filled soil porosity (L_{water}/L_{soil}). Default value is 0.3.

θ_a is the air-filled soil porosity (L_{air}/L_{soil}). It is equal to $n - \theta_w$. The calculated

default value is 0.13.

n is the soil porosity ($L_{\text{pore}}/L_{\text{soil}}$). It is equivalent to $I - (pb/ps)$. The calculated default value is 0.43.

pb is the dry soil bulk density (kg/L). Default value is 1.5.

ps is the soil particle density (kg/L). Default value is 2.65.

H' is the dimensionless Henry's Law constant.

Default values from the Equation 10 Table were used for the calculations. The value for C_w was the standard water cleanup established for Table 3. θ_a and n were back-calculated from the default values in the Equation 10 Table.

Phenanthrene and TBA are not listed in the SSG Tables. Values for K_{oc} and H' were found by searching the USEPA Superfund Chemical Data Matrix ("SCDM") (USEPA, 2004d) for phenanthrene and obtained from Zogorski et al. (1999) for TBA.

V. CLEANUP STANDARDS

The ultimate goal of environmental cleanup on the Navajo Nation is to reduce contaminants to undetectable or background levels. However, physical, technical, economic, and time limitations often make this goal difficult to achieve. In consideration of these limitations, Tables 4 and 5 list the cleanup levels to be achieved at all LST sites on the Navajo Nation. The COCs included in the tables are those commonly found at LST sites but are not the only potential contaminants at such sites. On a site-by-site basis, the NNEPA may require testing and analysis for additional compounds based on either need for additional information (i.e., product released is unknown) or if waste oil is suspected or known to be present, since this can present additional concerns about metal and/or solvent/chlorinated solvent contamination.

Some of the cleanup standards are below the detection level ("DL") for their associated analytical methods. In such cases, the de facto cleanup standard will be the DL for the analytical method. As the DL improves for each method, or new methods are developed,

the new DL becomes the de facto cleanup standard, until such point that the cleanup standard and the DL are equal.

Cleanup standards for both water and soil as proposed in this document are based on research and data available at the time this document was prepared. The NNEPA reserves the right to change or modify the standards as new research and data becomes available. Revisions will be made pursuant to the rulemaking procedures set forth in the NNEPA Uniform Rules.

A. Water

The cleanup standards for surface and groundwater are set at the limits set forth in Table 4, except that for those contaminants of concern not listed in Table 4 site-specific levels should be developed and submitted to the NNEPA for review and approval. The owner/operator may submit a request for a variance from the cleanup limits in Table 4 through a petition process (described below) if it can be scientifically and technically demonstrated that the cleanup standards cannot be achieved at the LST site due to site-specific considerations.

B. Soil

The cleanup standards for soil are set at the limits set forth in Table 5, except that for those contaminants of concern not listed in Table 5, site-specific levels should be developed and submitted to the NNEPA for review and approval. The soil site-specific levels developed shall, in no case, cause (1) the contaminants of concern levels for contaminants in surface and groundwater to exceed the cleanup levels in Table 4; (2) groundwater to have an observable petroleum sheen or film using either the product interface probe method or visual measurement using a product thickness bailer; or (3) surface water to have an observable petroleum sheen or film. These restrictions also apply to residual NAPL in soil. The TPH cleanup values in Table 5 have been promulgated based

on the best data available at the time this document was prepared. TPH research is ongoing and the NNEPA reserves the right to change the TPH cleanup requirements as new data are made available, pursuant to NNEPA's rulemaking procedures.

VI. POINT OF COMPLIANCE

Due to the nature of the relationship between the Navajo people and the natural resources on the Navajo Nation, it is appropriate to set the point of compliance ("POC") at LST sites at the source area and/or the point of highest COC concentrations as determined during site assessment activities.

VII. LST SITE CLOSURE (NO FURTHER ACTION)

When water and soil have been remediated to, or demonstrated to be at levels below, all known site COC cleanup levels at the POC, the NNEPA may issue a No Further Action ("NFA") letter for the site. This letter does not release the owner/operator from liability should site conditions change and/or future risks resulting from the release become apparent.

If remediation to cleanup standards cannot be achieved at the site for any or all COCs, in any or all media, the owner/operator may request a variance through the petition process. In this case, a partial site closure may be granted for those COCs that have been remediated to the cleanup standards.

At sites where monitored natural attenuation ("MNA") is the NNEPA-approved remediation method, an NFA letter cannot be issued until the cleanup level has been achieved since MNA implies an ongoing periodic monitoring plan is in place. However, NNEPA will consider issuing a qualified NFA letter, comfort letter, or other similar document for a specific site where the owner/operator has demonstrated that cleanup

standards cannot be achieved at the site for one or more COCs and is in compliance with the requirements of § IX (Monitored Natural Attenuation).

VIII. PETITIONS FOR VARIANCES FROM CLEANUP STANDARDS

The following are the procedures for requesting a petition for a variance from the cleanup standards proposed in this document. Note that under the NNSTA, 4 N.N.C. § 1542(13), as amended, the NNEPA is authorized to act independently from all other tribal departments and enforce against all equally; thus any petition for a variance at a site owned by the Navajo Nation is also subject to the procedures outlined below.

The owner/operator may request a meeting with NNEPA Storage Tank Program staff during which the owner/operator may present scientifically and technically defensible data to support the claim that the site cannot be remediated to the cleanup standards promulgated by the NNEPA Storage Tank Program. The owner/operator is responsible for providing all documents and data in support of that claim. NNEPA staff will review the data and may either request additional data or approve or deny the request based on the evidence provided by the owner/operator. In general, a demonstration of technical intractability will be required before a variance is granted. The decision of the NNEPA staff will be considered equivalent to an initial order under Uniform Rules § 304 for purposes of obtaining an administrative hearing on the decision pursuant to Uniform Rules § 305 and subsequent judicial review pursuant to Uniform Rules § 332. The hearing procedures in Uniform Rules Subpart 3(C) shall apply, except for §§ 309, 310, 317, 321, and 325(b)-(c), which pertain specifically to administrative penalty orders and similar orders finding violations of applicable requirements.

Cases where the alternative cleanup levels are in conflict with the requirements of other agencies should be referred to the affected agency for review under the processes required by that agency.

At a minimum, the owner/operator must provide documents which describe the following in writing:

- Reason and justification for the waiver request.
- Proposed site-specific cleanup standards with justifications, including but not limited to a demonstration that the site-specific cleanup standards are compatible with current and future land use and the cultural and traditional significance of the site.
- A complete report of all remedial activities at the site to date.
- Tabulated results of all monitoring data at the site (including soil, water, and air data).
- A site conceptual model that includes all data from site characterization activities to date.
- Concentration vs. time plots of all groundwater monitoring data, if available.
- Statistical evaluation of concentration reduction trends for all COCs identified at the site, if available.
- Evaluation of other remediation alternatives and the alternatives selected for the site.
- Estimated timeframe to reach new cleanup standards.
- An Implementation and Monitoring Plan.
- Institutional or engineering controls proposed along with an Implementation and Monitoring Plan for the controls, if used.
- Demonstration that the alternative cleanup standards are achievable and do not create a present or future hazard to human health and the environment or cause undue damage to the property and have been approved by all other affected agencies.

IX. MONITORED NATURAL ATTENUATION

Natural attenuation, also referred to as intrinsic remediation, intrinsic bioremediation, passive remediation, natural biodegradation, etc., is defined as the

“reduction in mass or concentration of a compound in groundwater over time or distance from the source of constituents of concern due to naturally occurring physical, chemical, and biological processes, such as biodegradation, dispersion, dilution, sorption, and volatilization” (ASTM, 1998). Natural attenuation occurs to some degree at all sites.

Monitored Natural Attenuation is the process by which natural attenuation is monitored over time to ensure that attenuation is occurring and will produce the desired reduction in contamination without the need of other remediation methods. NNEPA will not consider MNA as an acceptable cleanup method unless contamination levels are within 10% of the values of the relevant cleanup standards. In such cases, MNA must be augmented by one or more bioremediation techniques. In addition, as with all other remediation methods, MNA must be shown to be able to meet remediation goals within a reasonable amount of time and be comparable to other remediation methods in efficacy and economy. MNA may be appropriate as a stand-alone remediation method at marginal sites where the COC levels are low. It may also be useful to consider MNA at the edge of active remediation areas where contaminant levels have reached low levels due to ongoing remediation.

NNEPA may consider MNA as an alternative remediation method, on a site-by-site basis, if the decision process found in the ASTM (1998) Standard Guide, Section 6, has been followed. This process includes but is not limited to:

- A record of initial response activities to prevent further contamination.
- A site characterization report that provides information, including sources, pathways, and receptors, used to determine if MNA is a viable remedial alternative method either by itself or in conjunction with other method(s). As part of the site characterization activities, a site conceptual model should be developed to gain insight into the groundwater depth, flow direction and velocity, three-dimensional distribution of the COCs, the surface and subsurface geology, source areas, and migration pathways. This conceptual model should be updated as new analytical and hydrogeological data are made available.
- A determination of the COCs present at the site.

- A determination of the remedial goals for the site.
- An evaluation of the plume status (shrinking, stable, or expanding) as a primary line of evidence that natural attenuation is occurring.
- Gathering of secondary lines of evidence of natural attenuation such as estimates of natural attenuation rates, geochemical data used as indicators of natural attenuation (dissolved oxygen, pH, temperature, conductivity, redox potential, nitrate, sulfate, etc.), solute transport modeling, and/or microbiological studies.
- A comparison of the estimated MNA performance to the remediation goals.
- A comparison of MNA to other remedial options.
- An evaluation as to whether MNA can achieve the remediation goals within an acceptable timeframe.
- A cost comparison of MNA to other methods.
- A well-defined implementation and monitoring plan, including considerations for institutional and engineering controls, if needed.

Refer to ASTM Guide E 1943-98 for more complete details.

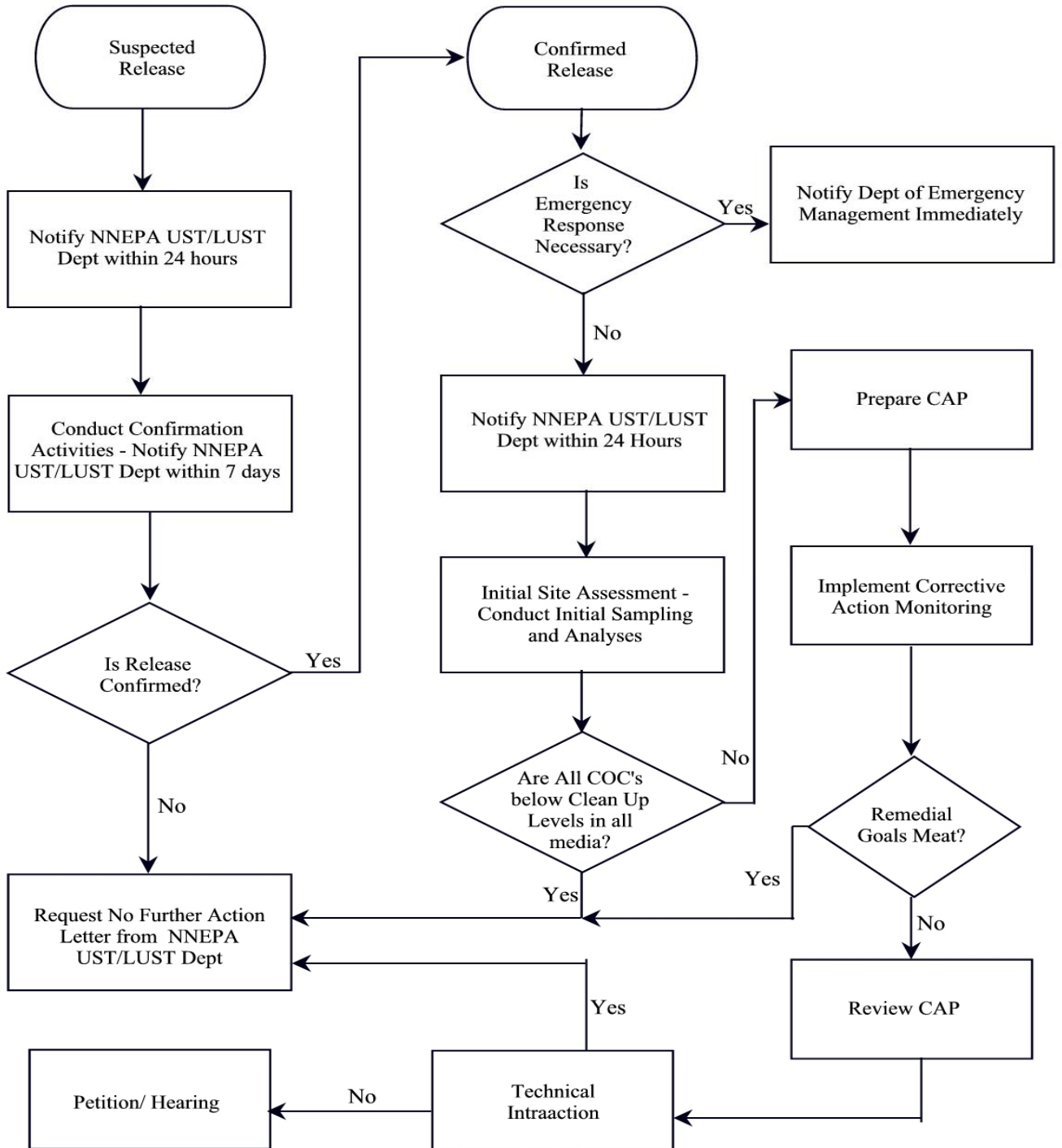
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Appendix A
 NNEPA Leaking Storage Tank Process Flowchart



APPENDIX B

Table 2 Analytical Methods and Associated Requirements to Analyze Water Samples					
Analytical method	Chemical Group	Container	Preservative	Minimum Sample ³	Maximum Holding Time
8021B	BTEX, MTBE, TBA, Lead Scavengers	G-TLS	HCl to pH<2 4°C	2x40 mL	14 days 7 days if pH>2
8260B ^{1,2}	BTEX, MTBE, TBA, Lead Scavengers	G-TLS	H ₂ SO ₄ or HCl or NaHSO ₄ to pH<2, 0.1% trisodium phosphate to pH>10. 4°C	2x40 mL	14 days 7 days if pH>2
8270C	PAHs	G-TLC (amber)	4°C	1000 mL	7 days until extraction and 40 days after extraction
8310	PAHs	G-TLC (amber)	4°C	1000 mL	7 days until extraction and 40 days after extraction
6010B	metals (except mercury)	P, G	HNO ₃ to pH<2 4°C	500 mL	6 months
6020	metals (except mercury)	P, G	HNO ₃ to pH<2 4°C	500 mL	6 months
7470	Mercury	P, G	HNO ₃ to pH < 2	500 mL	28 days
8015	Solvents, TPH	G – TLC	H ₂ SO ₄ or HCl to pH<2, 4° C	1000 mL	48 hours
1664	TPH	G – TLC	H ₂ SO ₄ or HCl to pH<2, 4° C	1000 mL	28 days

1. BTEX, MTBE, and TBA can be analyzed from a single sample provided that the sample is not preserved with acid.
2. Preservation of MTBE samples with HCl to prevent biodegradation may cause hydrolysis. As a result, trisodium phosphate 12 hydrate is preferred for MTBE sample preservation. This works out to 0.4 g/40 ml VOA vial to increase the pH to pH>10. Dry granular powder added to vial in lab. Do not be concerned about potential blue floc.
3. This minimum sampling does not include various quality control samples.

G– TLS = Glass with Teflon (PTFE) lined septum

G- TLC = Glass with Teflon (PTFE) lined cap

G- TLC (amber) = Amber glass with Teflon (PTFE) lined cap

G = Glass

P = Polyethylene

PTFE = Teflon

Table 3 Analytical Methods and Associated Requirements to Analyze Soil Samples					
Analytical method	Chemical Group	Container	Preservative	Minimum Sample³	Maximum Holding Time
8021B	BTEX, MTBE, TBA, Lead Scavengers	G-TLS	HCl to pH<2 4°C	2x40 mL	14 days 7 days if pH>2
8260B ^{1,2}	BTEX, MTBE, TBA, Lead Scavengers	G-TLS	H ₂ SO ₄ or HCl or NaHSO ₄ to pH<2, 0.1% trisodium phosphate to pH>10. 4°C	2x40 mL	14 days 7 days if pH>2
8270C	PAHs	G-TLC (amber)	4°C	1000 mL	7 days until extraction and 40 days after extraction
8310	PAHs	G-TLC (amber)	4°C	1000 mL	7 days until extraction and 40 days after extraction
6010B	metals (except mercury)	P, G	HNO ₃ to pH<2 4°C	500 mL	6 months
6020	metals (except mercury)	P, G	HNO ₃ to pH<2 4°C	500 mL	6 months
7471A	Mercury	P, G	HNO ₃ to pH<2	500 mL	28 days
8015	Solvents, TPH	G – TLC	H ₂ SO ₄ or HCl to pH<2, 4° C	1000 mL	48 hours
1664	TPH	G – TLC	H ₂ SO ₄ or HCl to pH<2, 4° C	1000 ml	28 days

1. BTEX, MTBE, and TBA can be analyzed from a single sample provided that the sample is not preserved with acid.
2. Preservation of MTBE samples with HCl to prevent biodegradation may cause hydrolysis. As a result, trisodium phosphate 12 hydrate is preferred for MTBE sample preservation. This works out to 0.4 g/40 ml VOA vial to increase the pH to pH>10. Dry granular powder added to vial in lab. Do not be concerned about potential blue floc.
3. This minimum sampling does not include various quality control samples.

G– TLS = Glass with Teflon (PTFE) lined septum

G- TLC = Glass with Teflon (PTFE) lined cap

G- TLC (amber) = Amber glass with Teflon (PTFE) lined cap

G = Glass

P = Polyethylene

PTFE = Teflon

APPENDIX C

Table 4 Water Clean Up Standards					
	CAS Registry Number	EPA Weight of Evidence Class	Water Clean Up Standard **(ug/l)	Source MCL = Maximum Contaminant Levels	EPA Method
BTEX					
Benzene	71-43-2	A	5	Federal Drinking water MCL	8021B 8260B
Toluene	108-88-3	D	1000	Federal Drinking water MCL	
Ethylbenzene	100-41-4	D	700	Federal Drinking water MCL	
Xylenes (total)	1330-20-7	D	10,000	Federal Drinking water MCL	
PAH					
Acenaphthene	83-32-9	NA*	670	National Recommended Water Quality Criteria	8270C 8310
Anthracene	120-12-7	D	8300	National Recommended Water Quality Criteria	
Benz(a)anthracene	56-55-3	B2	0.0028	National Recommended Water Quality Criteria	
Benzo(a)pyrene	50-32-8	B2	0.2	Federal Drinking water MCL	
Benzo(b)fluoranthene	205-99-2	B2	0.0028	National Recommended Water Quality Criteria	
Benzo(k)fluoranthene	207-08-9	B2	0.0028	National Recommended Water Quality Criteria	
Chrysene	218-01-9	B2	0.0028	National Recommended Water Quality Criteria	
Dibenzo(a,h)anthracene	53-70-3	B2	0.0028 (0.03)	National Recommended Water Quality Criteria	
Fluoranthene	208-44-0	D	300	National Recommended Water Quality Criteria	
Fluorine	86-73-7	D	1300	National Recommended Water Quality Criteria	
Indeno(1,2,3,-c,d)pyrene	193-39-5	B2	0.0028	National Recommended Water Quality Criteria	
Naphthalene	91-20-3	C	6.2	EPA Region 9 Tap Water PRGs "Cal Modified"	
Phenanthrene	85-01-8	D	6.2	State of New Mexico	
Pyrene	129-00-0	D	960	National Recommended Water Quality Criteria	
Lead	7439-92-1	B2	15	Federal Drinking water MCL	6010B, 6020
Additives					
MTBE	1634-04-4	NA	2.6 (5)	EPA Region 3 Tap Water RBCs	8260B
TBA	75-65-0	B2	12	State of California	
EDB	106-93-4	B2	0.05	Federal Drinking water MCL	
EDC OR 1, 2 DCA	107-06-2	B2	5	Federal Drinking water MCL	

* Not Assigned

** Analytical method detection limit is in parentheses after clean up standard

Table 5 Soil Clean Up Standards					
	CAS Registry Number	EPA Weight of Evidence Class	Soil Clean Up Standard+** (mg/kg)	Source	EPA Method
BTEX					
Benzene	71-43-2	A	0.002 (0.5)	Calculated (see text)	8021B 8260B
Toluene	108-88-3	D	0.6	Calculated (see text)	
Ethylbenzene	100-41-4	D	0.7	Calculated (see text)	
Xylenes	1330-20-7	D	7	Calculated (see text)	
PAH					
Acenaphthene	83-32-9	NA*	10	Calculated (see text)	8270C 8310
Anthracene	120-12-7	D	490	Calculated (see text)	
Benz(a)anthracene	56-55-3	B2	0.002	Calculated (see text)	
Benzo(a)pyrene	50-32-8	B2	0.4	Calculated (see text)	
Benzo(b)fluoranthene	205-99-2	B2	0.007	Calculated (see text)	
Benzo(k)fluoranthene	207-08-9	B2	0.007	Calculated (see text)	
Chrysene	218-01-9	B2	0.002	Calculated (see text)	
Dibenzo(a,h)anthracene	53-70-3	B2	0.02	Calculated (see text)	
Fluoranthene	208-44-0	D	64	Calculated (see text)	
Fluorine	86-73-7	D	36	Calculated (see text)	
Indeno(1,2,3-c,d)pyrene	193-39-5	B2	0.02	Calculated (see text)	
Naphthalene	91-20-3	C	0.02	Calculated (see text)	
Phenanthrene	85-01-8	D	0.3	Calculated (see text)	
Pyrene	129-00-0	D	200	Calculated (see text)	
TPH					
Gasoline			500		8015B – G 8015B – D 1664
Diesel			500		
Waste Oil			500		
Lead	7439-92-1	B2	54	State of New Mexico	6010B, 6020
Additives					
MTBE	1634-04-4	NA*	0.0006	Calculated (see text)	8260B
TBA	75-65-0	B2	0.003	Calculated (see text)	
EDB	106-93-4	B2	0	Calculated (see text)	
EDC OR 1, 2 DCA	107-06-2	B2	0.001	Calculated (see text)	

* Not Assigned

+ The soil standards are based on values protective of groundwater and where calculated using NNEPA LUST target water concentrations and a DAF of 1.

** The estimated analytical method detection limit is in parentheses after the clean up standards. Due to variations in instruments and laboratory practices, Detection Levels may vary somewhat.

APPENDIX D

Navajo Nation Storage Tank Act



Navajo Nation Storage Tank Act



NNEPA Underground Storage Tank Act of 1998
Amended February 13, 2012

NAVAJO NATION UNDERGROUND AND
ABOVEGROUND STORAGE TANK ACT

As enacted
February 13, 2012

* * * *

Section 3. Effective Date

This Act shall be effective upon its approval pursuant to 2 N.N.C. §221.

Section 4. Codification

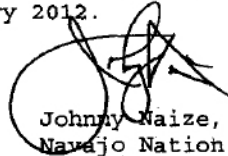
The provisions of this Act which delete or amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such provisions in the next codification of the Navajo Nation Code.

Section 5. Savings Clause

If any provision of this Act is determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the portions of this Act which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 19 in favor and 0 opposed, this 24th day of January 2012.




Johnny Naize, Speaker
Navajo Nation Council

Feb 07, 12
Date

Motion: David Tom
Second: Alton Shepherd

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of FEB 13 2012 2012.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing Legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2012 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation

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

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TITLE 4, NAVAJO NATION CODE
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%.

Appendix E

EPA Policy for the Administration of Environmental Programs on Indian Reservations November 8, 1984

Introduction:

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-governments" relations between federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

Policy:

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes, similar to what we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an expressed grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work e effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of governments. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local Governments. This is not intended to lend Federal support to anyone party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATION TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. When the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ON GOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.

William D. Ruckelshaus

Appendix E

EPA Policy for the Administration of Environmental Programs on Indian Reservations November 8, 1984

Introduction:

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-governments" relations between federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

Policy:

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes, similar to what we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an expressed grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work e effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of governments. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local Governments. This is not intended to lend Federal support to anyone party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATION TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

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It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.

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