

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

February 2018

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PART I: GENERAL PROVISIONS

§ 101. Authority.

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

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

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

§ 102. Purpose.

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

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

§ 103. Applicability.

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

§ 104. Definitions.

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

§ 105. Procedure.

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

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

b. **Administrative Penalty Order.**

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

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

c. Field Citation.

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

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

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

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

PART II: FIELD CITATION PENALTIES

§ 201. Table of Penalties.

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

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

PART III: OTHER ADMINISTRATIVE PENALTIES

§ 301. Table of Penalties.

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

PART IV: MISCELLANEOUS

§ 401. No Preclusion of Further Enforcement.

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

§ 402. Interest on Any Unpaid Penalty Amount.

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

§ 403. Failure to Pay Penalty.

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

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

§ 404. Revision of Penalty Amounts

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