



**ENVIRONMENTAL PROTECTION AGENCY
WASTE REGULATORY COMPLIANCE DEPARTMENT**

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February 3, 2014

TO WHOM IT MAY CONCERN:

The Navajo Nation EPA Storage Tank Program (STP) and Leaking Storage Tank Program (LSTP) will begin the process of proposing penalty regulations under the Navajo Nation Storage Tank Act (NNSTA) of 2012. The proposed regulations include the amounts for penalties that will be assessed pursuant to field citations and other administrative penalty orders issued by NNEPA for violations of certain requirements of the NNSTA.

The NNEPA Storage Tank Program is providing an opportunity for the public and regulated community to submit written comments on the proposed NNSTA penalty regulations. The comment period will continue for 30 days from the date of January 30, 2014. In addition, the ST Program will hold 3 public hearings at the following dates and locations:

Public Hearings Dates and Locations:

- Wednesday, February 19, 2014 at the Navajo Nation Museum, Window Rock, AZ
- Tuesday, February 25, 2014 at the Shiprock Chapter House, Shiprock, NM
- Wednesday, February 26, 2014 at the Tuba City Chapter House, Tuba City, AZ

The public hearings will be held from 10:00 a.m. to 3:00 p.m., to allow members of the general public and regulated community to voice their concerns and views.

A copy of the proposed penalty regulations is posted on the Navajo Nation website: www.navajo-nsn.gov, under the Public Services sections.

You may contact the NNEPA ST Program at (928) 871-7993 for a copy of the proposed penalty regulations or with any questions concerning this letter. Written comments must be submitted by Monday, March 3, 2013 by e-mail, fax or in person to

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Thank you for your time and cooperation in this matter.

Sincerely,

/S/
Tanya Yazzie
Environmental Specialist

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

**DRAFT
January 24, 2014**

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

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

PART I: GENERAL PROVISIONS

§ 101. Authority.

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

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

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

§ 102. Purpose.

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

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

§ 103. Applicability.

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

§ 104. Definitions.

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

§ 105. Procedure.

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

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

b. **Administrative Penalty Order.**

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

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

c. Field Citation.

1. In general, for facilities with a history of prior violations, if the violations observed at the facility during an inspection are minor and penalties for those violations are included in Table A under Part II of these regulations, an NNSTP officer or employee may issue a field citation according to the instructions included with the Field Citation form, pursuant to which the officer or employee will:
 - A. Fill out Part I of the Field Citation form, indicating the violations found and the proposed penalties.
 - B. Sign Part I of the Field Citation form, have the owner, operator, or onsite representative sign Part I of the form, and provide a copy of the entire form to the owner, operator, or onsite representative, as the case may be.
 - C. Inform the owner, operator, or onsite representative, as the case may be, that he/she has 30 days to pay the penalties, submit documentation that the violations have been corrected, sign Part II of the form and submit it to the Navajo Nation EPA STP.
 - D. Consider any requests made by the owner or operator to withdraw or modify a field citation, if made within 15 days and supported by adequate documentation, and consider any one-time request for a 30-day extension to comply, 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. 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.

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

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

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|--|---------|---|
| NNSTA §§ 1541(D), 1542(A)&(B), incorporating 40 C.F.R. § 280.22(e) and 40 C.F.R. §112.8(c)(6) | Failure to certify UST/AST system requirements (proper installation, cathodic protection, financial responsibility, release detection) | \$210 | corresponds to § 280.22(e), failure to certify compliance with referenced requirements in notification form |
| NNSTA § 1542(A)&(B), incorporating 40 C.F.R. §§ 280.22(f) and 112.8(c)(6), (8) | Failure to provide installer certification of compliance with new UST/AST installation requirements | \$210 | corresponds to § 280.22(f), failure to provide installer certification in notification form |
| NNSTA § 1540 | Failure to notify NNSTA within 30 days of any storage tank upgrade, replacement, or change-in-use | \$210 | corresponds to half of § 280.22(a) |
| Performance Standards (Design, Construction, Installation) | | | |
| Performance Standards for New USTs | | | |
| NNSTA §§ 1521(A)(1)(d), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(1) | Installation of an improperly constructed fiberglass-reinforced plastic tank | \$420 | corresponds to § 280.20(a)(1) |
| NNSTA §§ 1521(A)(1)(a) or (b), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2) | Installation of an improperly designed and constructed metal tank that fails to meet corrosion protection standards | \$420 | corresponds to § 280.20(a)(2) |
| NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2)(i) | Installation of a metal tank with unsuitable dielectric coating | \$210 | corresponds to § 280.20(a)(2)(i) |
| NNSTA §§ 1521(A)(1)(a), 1542(A), incorporating 40 C.F.R. § 280.20 (a)(2)(ii) | Installation of an improperly designed cathodic protection system for a metal tank | \$420 | corresponds to § 280.20(a)(2)(ii) |

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

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|--|--|---------|--|
| NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.20(b)(2)(iv) | Improper operation and maintenance of cathodic protection system for metal piping | \$210 | corresponds to § 280.20(b)(2)(iv) |
| NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.20(c) | Failure to use spill and overfill prevention systems | \$420 | corresponds to § 280.20(c) |
| NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.20(c)(i) | Installation of inadequate spill prevention equipment in a new tank | \$210 | corresponds to § 280.20(c)(i) |
| NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.20(c)(ii) | Installation of inadequate overfill prevention equipment in a new tank | \$210 | corresponds to § 280.20(c)(ii) |
| NNSTA §§ 1521(A)(1)(d), 1542(A), incorporating 40 C.F.R. § 280.20(d) | Failure to install UST in accordance with accepted codes and standards | \$210 | corresponds to § 280.20(d) |
| NNSTA §§ 1521(A)(1)(d), 1542(A), incorporating 40 C.F.R. § 280.20(d) | Failure to install piping in accordance with accepted codes and standards | \$210 | corresponds to § 280.20(d) |
| NNSTA § 1541(C)(1) | Failure to provide new storage tank systems (including piping) with a secondary containment system | \$420 | analogous to § 280.20(c) |
| NNSTA §§ 1535, 1542(A), incorporating 40 C.F.R. § 280.20(e) | Failure to provide certification to NNSTP of UST installation | \$210 | corresponds to § 280.20(e) |
| Performance Standards for New ASTs | | | |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|---|---------|--|
| NNSTA §§ 1521(A)(1)(a), 1542(B), incorporating NMAC 20.5.4.16(A) | Installation of an improperly designed and constructed AST that does not meet accepted corrosion protection standards | \$420 | analogous to § 280.20(a)(2) |
| NNSTA §§ 1521(A)(1)(e), 1542(B), incorporating NMAC 20.5.4.16(A) | Failure to ensure AST system is compatible with any regulated substance conveyed | \$210 | analogous to § 280.32 |
| NNSTA § 1542(B)(2) & (8), incorporating NMAC 20.5.4.16(A) | Failure to install a steel AST | \$420 | analogous to § 280.20(a)(2) |
| NNSTA §§ 1521(A)(1)(b), 1542(B), incorporating 40 C.F.R. § 112.8(d) | Failure to ensure that steel piping routinely containing regulated substances and in contact with the ground or water is properly designed, constructed, and protected from corrosion | \$420 | analogous to § 280.20(b)(2) |
| NNSTA §§ 1521(A)(1)(e), 1542(B), incorporating 40 C.F.R. § 112.8(d) | Failure to ensure that all piping is compatible with any regulated substance conveyed | \$210 | analogous to § 280.32 |
| NNSTA 1542(B), incorporating 40 C.F.R. § 112.8(d) | Failure to protect piping from impact, settlement, vibration, expansion, corrosion, and damage by fire | \$420 | analogous to § 280.20(b)(2) |
| NNSTA §§ 1521(A)(1)(d), 1542(B), incorporating NMAC 20.5.4.19 | Failure to install piping in accordance with accepted codes and standards | \$210 | analogous to § 280.20(d) |
| NNSTA §§1521(A)(1)(d), 1542(B), incorporating NMAC 20.5.4.23 | Installation of improperly designed and constructed steel piping in accordance with accepted codes and standards | \$420 | analogous to § 280.20(b)(1) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|--|---|---------|---|
| NNSTA §§ 1521(A)(1)(c), 1542(B), incorporating NMAC 20.5.4.33(A)(3) & (B) | Failure to use spill and overfill prevention systems unless otherwise exempted | \$420 | analogous to § 280.20(c) |
| NNSTA §§ 1521(A)(1)(d), 1542(B), incorporating NMAC 20.5.4.19 | Failure to install AST in accordance with accepted codes and standards | \$210 | analogous to § 280.20(d) |
| NNSTA §§ 1541(C)(1), 1542(B), incorporating NMAC 20.5.4.27, 40 CFR § 112.7(c)(1) | Failure to provide new storage tank systems (including piping) with a secondary containment system, which must include, as appropriate, dikes, berms, or retaining walls; curbing or drip pans; sumps and collection systems; culverting, gutters, or other drainage systems; weirs, booms, or other barriers; spill diversion ponds; retention ponds; or sorbent materials | \$420 | analogous to § 280.20(c) |
| NNSTA §§ 1521(A)(1)(c), 1542(B), incorporating 40 C.F.R. § 112.7(h) | Installation of a containment system that does not contain all releases of regulated substances during loading and unloading | \$210 | analogous to §§ 280.20(c)(1)(i) or (ii) |
| NNSTA §1542(B), incorporating NMAC 20.5.4.30 | Failure to provide venting, including emergency venting, for new AST systems in accordance with codes and standards | \$420 | analogous to § 280.20(c) |
| NNSTA § 1542(B), incorporating NMAC 20.5.4.17 | Installation of a UST for use as an AST | \$1,300 | analogous to § 280.21(a) |
| NNSTA §§ 1521(A)(1)(d), 1542(B), incorporating NMAC 20.5.4.18 | Failure to install a field-erected AST in accordance with accepted codes and standards | \$210 | analogous to § 280.20(d) |
| Upgrading Existing USTs | | | |
| NNSTA §§ 1521(A)(2), 1542(A), incorporating 40 C.F.R. § 280.21(a) | Failure to replace, upgrade, or close substandard UST system | \$1,300 | corresponds to § 280.21(a) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|--|---------|--|
| NNSTA §§ 1521(A)(2), 1542(A), incorporating 40 C.F.R. § 280.21(b) | Failure to meet all UST upgrade standards | \$420 | corresponds to § 280.21(b) |
| NNSTA §§ 1521(A)(1)(e), 1542(A), incorporating 40 C.F.R. § 280.21(b)(1)(i) | Improper installation of interior lining for upgraded UST | \$210 | corresponds to § 280.21(b)(1)(i) |
| NNSTA §§ 1521(A)(1)(e), 1542(A), incorporating 40 C.F.R. § 280.21(b)(1)(ii) | Failure of interior lining to continue to meet original specifications | \$210 | corresponds to § 280.21(b)(1)(ii) |
| NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.21(b)(2) | If upgrading with cathodic protection, failure to ensure UST is and remains structurally sound by inspecting for corrosion holes, monitoring for releases, or conducting tightness tests | \$210 | corresponds to § 280.21(b)(2)(i) |
| NNSTA §§ 1521(A)(1)(b), 1542(A), incorporating 40 C.F.R. § 280.21(c) | Failure to install cathodic protection for metal piping that routinely contains regulated substances and is in contact with the ground | \$420 | corresponds to § 280.21(b)(c) |
| NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.21(c) | Failure to meet piping tightness test requirements for metal piping after upgrade with cathodic protection | \$210 | corresponds to § 280.21(d) |
| NNSTA §§ 1521(A)(1)(c), 1542(A), incorporating 40 C.F.R. § 280.21(d) | Failure to comply with new spill or overfill prevention equipment requirements | \$420 | corresponds to § 280.21(d) |
| Upgrading Existing ASTs | | | |
| NNSTA §§ 1521(a)(2), 1542(B), incorporating 40 C.F.R. § 112.8(c)(8) | Failure to upgrade existing AST systems to meet all performance standards for new AST systems | \$420 | analogous to § 280.21(b) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|--|--|---------|--|
| NNSTA § 1521(A)(2) | Failure to close any AST system that does not meet performance standards | \$1,300 | analogous to § 280.21(a) |
| NNSTA § 1521(A)(2) | Failure to close any UST being used as AST | \$1,300 | analogous to § 280.21(a) |
| Vaults | | | |
| NNSTA § 1521(A)(9) | Placement of storage tank within an underground vault or other structure restricting visual inspection or access | \$1,300 | no comparable federal or state requirement |
| Motor Fuel Dispensers | | | |
| NNSTA § 1541(C)(2) | Failure to install under-dispenser spill containment for each motor fuel dispenser system installed after the enactment of the NNSTA | \$210 | analogous to § 280.20(c)(1) |
| General Operating Requirements | | | |
| NNSTA § 1542(A)&(B)(8), incorporating 40 C.F.R. § 280.30(a) and NMAC 20.5.4.33 | Failure to take precautions against overfill or spillage during the transfer of product to or from a UST or AST system | \$420 | corresponds to § 280.30(a) |
| NNSTA § 1542(B)(5) &(8), incorporating NMAC 20.5.4.25 | Failure to equip ASTs located at elevation with anti-siphon or solenoid valve | \$210 | analogous to § 280.20(c)(1)(i)& (ii) |
| NNSTA § 1542(B)(5) & (8), incorporating NMAC 20.5.4.25 | Failure to appropriately protect AST systems at marinas by installing automatic break-away devices, isolating dock piping where necessary, and protecting piping from stress | \$420 | analogous to § 280.20(c), alternatively to § 280.20(c)(1)(i) and (ii), \$210 |
| NNSTA § 1542(A) & (B)(7), incorporating 40 C.F.R. §§ 280.31(a), 112.8(c)(6) | Failure to continuously operate and maintain cathodic protection system | \$210 | corresponds to § 280.31(a) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|---|---------|--|
| NNSTA §§ 1521(A)(1)(b), 1542(A) & (B)(7), incorporating 40 C.F.R. §§ 280.31(b), 112.8(c)(6) | Failure to ensure proper operation of cathodic protection system, including regular testing | \$210 | corresponds to § 280.31(b) |
| NNSTA §§ 1521(A)(7), 1542(B)(7), incorporating 40 C.F.R. § 112.8(c)(6) | Failure to test integrity of ASTs on a regular schedule and whenever material repairs are made | \$210 | corresponds to § 280.31(b) |
| NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.31(c) | Failure to inspect impressed current systems every 60 days | \$210 | corresponds to § 280.31(c) |
| NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.31(d) | Failure to maintain records of cathodic protection inspections | \$70 | corresponds to § 280.31(d) |
| NNSTA §§ 1521(A)(1)(e), 1542(A), incorporating 40 C.F.R. § 280.32 | Failure to ensure UST system is made of or lined with materials that are compatible with any regulated substance conveyed | \$210 | corresponds to § 280.32 |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.33(a)&(b) | Failure to repair UST system in accordance with accepted codes and standards | \$210 | corresponds to § 280.33(a) |
| NNSTA §§ 1521(A)(8), 1542(A), incorporating 40 C.F.R. § 280.33(c) | Failure to repair metal piping that has released product | \$210 | corresponds to § 280.33(c) |
| NNSTA §§ 1521(A)(8), 1542(A), incorporating 40 C.F.R. § 280.33(c) | Failure to repair fiberglass-reinforced piping in accordance with manufacturer's specifications | \$210 | corresponds to § 280.33(c) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|--|---|---------|--|
| NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.33(d) | Failure to conduct tightness test within 30 days of completion of repairs | \$420 | corresponds to § 280.33(d) |
| NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.33(e) | Failure to test a cathodic protection system within six months of repair of a UST system | \$210 | corresponds to § 280.33(e) |
| NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.33(f) | Failure to maintain records of each repair to a UST system | \$70 | corresponds to § 280.33(f) |
| NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(1) | Failure to maintain records of corrosion expert's analysis of site corrosion potential, if corrosion protection equipment is not used | \$70 | corresponds to § 280.34(b)(1) |
| NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(2) | Failure to maintain records of the operation of corrosion protection equipment | \$70 | corresponds to § 280.34(b)(2) |
| NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(3) | Failure to maintain documentation of UST system repairs | \$70 | corresponds to § 280.34(b)(3) |
| NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. § 280.34(b)(4) | Failure to maintain documentation of compliance with release detection requirements for UST systems | \$70 | corresponds to § 280.34(b)(4) |
| NNSTA §§ 1521(A)(5), 1542(A), incorporating 40 C.F.R. §§ 280.34(c)(1), (2) | Failure to maintain records at the UST site and immediately available for inspection or at alternate site and available upon request | \$70 | corresponds to §§ 280.34(c)(1), (2) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|---|---------|--|
| Release Detection Requirements for USTs | | | |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 270.40(a) | Failure to provide an adequate release detection method | \$420 | corresponds to § 270.40(a) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 270.40(d) | Failure to close UST system not meeting release detection | \$420 | corresponds to § 270.40(a) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(a) | Failure to monitor USTs at least every 30 days, or as provided in 40 C.F.R. § 280.41(a) | \$420 | corresponds to § 280.41(a) |
| NNSTA § 1542(A), incorporating 40 C.F.R. §§ 280.41(a)(1), (2) | Failure to tightness test once every five years or annually, as may be required | \$420 | corresponds to § 280.41(a)(1)&(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(b)(1)(i) | Failure to equip pressurized piping with an automatic line leak detector | \$420 | corresponds to § 280.41(b)(1)(i) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(b)(1)(ii) | Failure to conduct an annual tightness test on pressurized piping, or to perform monthly monitoring | \$420 | corresponds to § 280.41(b)(1)(ii) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.41(b)(2) | Failure to conduct a line tightness test at least once every three years on suction piping, or to use monthly monitoring | \$420 | corresponds to § 280.41(b)(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(a) | Failure to conduct inventory control on a monthly basis | \$420 | corresponds to § 280.43(a) |
| NNSTA §§ 1521(A)(7), 1542(A), incorporating 40 C.F.R. § 280.43(b) | Inadequate operation or maintenance of manual tank gauging | \$420 | corresponds to § 280.43(b) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|--|---------|--|
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(1) | Inaccurate or ill-timed tank level measurements* | \$70 | corresponds to § 280.43(b)(1) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(2) | Miscalculated tank level measurements* | \$70 | corresponds to § 280.43(b)(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(3) | Inadequate equipment for manual tank gauging* | \$70 | corresponds to § 280.43(b)(3) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(b)(4) | Failure to suspect a leak and to treat it appropriately* | \$70 | corresponds to § 280.43(b)(4) |
| | * If more than <u>three</u> of these provisions would be cited, “Inadequate operation or maintenance of manual tank gauging” per 40 C.F.R. 280.43(b) or “Failure to monitor USTs at least every 30 days” per 40 C.F.R. 280.41(a) should be cited instead. Also, use of manual tank gauging as the sole method of release detection for USTs greater than 550 gallons is not allowed, per 40 C.F.R. § 280.43(c)(5). | | |
| NNSTA § 1521(A)(7), 1542(A) incorporating 40 C.F.R. § 280.43(c), (c)(5) | Inadequate operation or maintenance of tank tightness testing | \$210 | corresponds to § 280.43(c)(5) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(c)(5)&(d) | Inadequate operation or maintenance of automatic tank gauging | \$420 | corresponds to § 280.43(d) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|--|---|---------|--|
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(c)(5)&(d)(1) | Failure to use a sufficiently sensitive automatic product level monitor test | \$210 | corresponds to § 280.43(d)(1) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(c)(5)&(d)(2) | Inadequate inventory control | \$210 | corresponds to § 280.43(d)(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e) | Inadequate operation or maintenance of vapor monitoring | \$420 | corresponds to § 280.43(e) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(1) | For vapor monitoring, use of insufficiently porous materials as backfill [†] | \$210 | corresponds to § 280.43(e)(1) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(2) | For vapor monitoring, use of insufficiently volatile stored regulatory substance or tracer compound [†] | \$210 | corresponds to § 280.43(e)(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(3) | For vapor monitoring, inoperative monitoring device [†] | \$210 | corresponds to § 280.43(e)(3) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(4) | For vapor monitoring, interference due to background contamination [†] | \$210 | corresponds to § 280.43(e)(4) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(5) | Inadequately designed and operated vapor monitors [†] | \$210 | corresponds to § 280.43(e)(5) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(6) | For vapor monitoring, inadequate assessment of the underground excavation zone [†] | \$210 | corresponds to § 280.43(e)(6) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(e)(7) | For vapor monitoring, inadequate marking and securing of monitoring wells [†] | \$210 | corresponds to § 280.43(e)(7) |
| | [†] If more than <u>one</u> of these provisions would be cited, “Inadequate operation or maintenance of vapor monitoring” should be cited instead. | | |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|--|---|---------|--|
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f) | Inadequate operation or maintenance of groundwater monitoring | \$420 | corresponds to § 280.43(f) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(1) | For groundwater monitoring, failure of regulated substance to be immiscible in water and or to have a specific gravity of more than one [‡] | \$210 | corresponds to § 280.43(f)(1) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(2) | For groundwater monitoring, improper placement of monitoring wells in relation to groundwater and hydraulic conductivity of the soils [‡] | \$210 | corresponds to § 280.43(f)(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(3) | For groundwater monitoring, improper design of monitoring well casing [‡] | \$210 | corresponds to § 280.43(f)(3) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(4) | For groundwater monitoring, failure to seal monitoring well from the ground surface to the top of the filter pack [‡] | \$210 | corresponds to § 280.43(f)(4) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(5) | For groundwater monitoring, improper placement of monitoring wells or devices in relation to excavation zone [‡] | \$210 | corresponds to § 280.43(f)(5) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(6) | For groundwater monitoring, inadequate continuous monitoring devices [‡] | \$210 | corresponds to § 280.43(f)(6) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(7) | For groundwater monitoring, inadequate site assessment [‡] | \$210 | corresponds to § 280.43(f)(7) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(f)(8) | For groundwater monitoring, failure to mark and secure monitoring wells [‡] | \$210 | corresponds to § 280.43(f)(8) |
| | [‡] If more than <u>one</u> of these provisions would be cited, “Inadequate operation or maintenance of groundwater monitoring” should be cited instead. | | |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|--|---------|--|
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.43(g) | Inadequate operation or maintenance of interstitial monitoring | \$420 | corresponds to § 280.43(g) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.44 | Failure to provide release detection for underground piping | \$420 | corresponds to § 280.44 |
| NNSTA § 1542(A), incorporating 40 C.F.R. §§ 280.44(a), (b) | Failure to provide an adequate line leak detector system or an adequate line tightness testing system | \$210 | corresponds to § 280.44(a), (b) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.44(c) | Inadequate use of applicable tank release detection methods | \$210 | corresponds to § 280.44(c) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.45 | Failure to maintain records of release detection monitoring | \$210 | corresponds to § 280.45 |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.45(a) | Failure to document all release detection performance claims | \$70 | corresponds to § 280.45(a) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.45(b) | Failure to maintain results of sampling, testing, or monitoring for release detection, or failure to retain results of tank tightness testing until the next test is conducted | \$70 | corresponds to § 280.45(b) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.45(c) | Failure to document calibration, maintenance, and repair of release detection equipment | \$70 | corresponds to § 280.45(c) |
| Out-of-Service USTs and UST Closures | | | |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.70(a) | Failure to operate and maintain corrosion protection system in temporarily closed UST system | \$210 | corresponds to § 280.70(a) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.70(a) | Failure to operate and maintain release detection in a corrosion protection system for a temporarily closed UST system | \$420 | corresponds to § 280.70(a) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|--|---|---------|--|
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.70(b) | Failure to comply with temporary closure requirements for a UST system that is temporarily closed for 3 months or more | \$420 | corresponds to § 280.70(b) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.70(b)(1) | Failure to leave vent lines open and functioning in a UST system that is temporarily closed for 3 months or more | \$210 | corresponds to § 280.70(b)(1) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.70(b)(2) | Failure to cap and secure all other lines, pumps, manways, and ancillary equipment in a UST system that is temporarily closed for 3 months or more | \$210 | corresponds to § 280.70(b)(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.70(c) | Failure to permanently close or upgrade a UST system that has been temporarily closed more than twelve months | \$420 | corresponds to § 280.70(c) |
| NNSTA §§ 1540, 1542(A), incorporating 40 C.F.R. § 280.71(a) | Failure to notify NNSTP of a UST system closure or change-in-service at least 30 days in advance | \$420 | corresponds to § 280.71(a) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.71(b) | Failure to remove all liquids and sludges from the UST in preparation for tank closure | \$420 | corresponds to § 280.71(b) |
| NNSTA § 1542(C)(1); NNSTA § 1542(A), incorporating 40 C.F.R. § 280.71(b) | Failure to remove a closed UST from the ground, unless removal would result in unnecessary destruction to a structure or harm to cultural resources, in which case failure to fill the UST with an inert solid for tank closure | \$420 | corresponds to § 280.71(b) |
| Financial Responsibility | | | |
| NNSTA §§ 1521(A)(4), 1543(A) | Failure to maintain financial assurance | \$210 | corresponds to § 280.93 |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.93(a)(1)-(2) | Failure to obtain per-occurrence coverage as required | \$210 | corresponds to § 280.93(a)(1)-(2) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.93(b)(1)-(2) | Failure to obtain annual aggregate coverage as required | \$210 | corresponds to § 280.93(b)(1)-(2) |

| Citation | Violation | Penalty | Comments (Basis for Penalty Amount) |
|---|---|---------|--|
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.93(f) | Failure to review and adjust financial assurance | \$210 | corresponds to § 280.93(f) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.94 | Use of an unapproved financial assurance mechanism | \$210 | corresponds to § 280.94 |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.110(a)(1) | Failure to report evidence of financial responsibility within 30 days of detecting a known or suspected release | \$210 | corresponds to § 280.106(a)(1) (per penalty table) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.110(a)(2) | Failure to report evidence of financial responsibility if the provider of financial assurance becomes incapable of providing same and alternate coverage not obtained | \$210 | corresponds to § 280.106(a)(2) (per penalty table) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.110(b) | Failure to report evidence of financial responsibility when new USTs are installed | \$210 | corresponds to § 280.106(b) (per penalty table) |
| NNSTA § 1542(A), incorporating 40 C.F.R. § 280.111 | Failure to maintain copies of financial assurance mechanism(s) and certification of compliance | \$210 | corresponds to § 280.107 (per penalty table) |

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

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