

**Navajo Nation EPA
Underground Storage Tank Program
Procedures for Implementing the Delivery Prohibition in NNUSTA § 201(C)**

I. Introduction

Section 201(C) of the Navajo Nation Underground Storage Tank Act (NNUSTA) prohibits the placement of a regulated substance into an underground storage tank if the owner or operator is not in compliance with the requirements of the NNUSTA and implementing regulations. This document describes the procedures that the Navajo Nation Environmental Protection Agency (NNEPA) will use to implement this delivery prohibition.

II. Affixing Red Tags

The NNEPA UST Program will use red tags to identify underground storage tank systems into which the placement of a regulated substance is prohibited. Upon the discovery of a violation of the NNUSTA or implementing regulations that poses an imminent and substantial threat to the public health, welfare, or the environment, a NNEPA official will immediately affix a red tag to the fill pipe of the non-compliant underground storage tank system. Violations that are likely to pose an imminent and substantial threat to the public health, welfare, or the environment include but are not limited to failures to comply with spill, overfill, leak detection, or corrosion protection requirements, in violation of NNUSTA §§ 201(A)(1) and 402. In the case of an imminent and substantial threat, immediately after affixing a red tag to the non-compliant storage tank NNEPA will issue an emergency compliance order to the owner or operator of the storage tank, pursuant to NNUSTA § 502(C). The order will notify the owner or operator of the violation(s) for which the red tag was issued and will require their immediate correction. The affixing of the red tag and the issuance of the emergency compliance order are subject to appeal as set forth in NNUSTA § 502(C) and § 306 of the NNEPA Uniform Regulations.

Upon the discovery of a violation of any provision of the NNUSTA or implementing regulations not deemed to be an imminent and substantial threat, NNEPA will first issue an order to comply to the owner or operator, pursuant to NNUSTA § 502(B), identifying the violation(s). A NNEPA official may affix a red tag to the fill pipe of the non-compliant underground storage tank system if the owner or operator does not file a written request for a hearing within 30 days of the issuance of the order to comply or upon the decision of the NNEPA Director at the conclusion of such hearing.

Red tags will be affixed to the fill pipe of a non-compliant underground storage tank system using a tamper-resistant strap or straps, fill pipe bag, or any combination thereof so that the tag is visible to any person attempting to deliver a regulated substance to the non-compliant storage tank system. NNEPA will use red tags, fill pipe bags, and tamper-resistant straps made of nylon, plastic, or other durable, damage-resistant material. Before affixing a red tag to the non-compliant storage tank system, the NNEPA official will document the level of stored product in the tank.

No person may deposit or allow the deposit of a regulated substance into an underground

storage tank system that has a red tag affixed to its fill pipe. Except as specifically authorized by NNEPA, as provided in Section III below, no person shall remove, deface, alter, or otherwise tamper with a red tag so as to allow deliveries to be made in violation of the delivery prohibition in NNUSTA § 201(C). Any violation of the delivery prohibition in NNUSTA § 201(C) may result in the assessment of administrative penalties pursuant to NNUSTA § 504 and is also subject to judicial enforcement pursuant to NNUSTA § 503.

III. Removing Red Tags

Once the violation triggering the delivery prohibition has been corrected, a red tag may be removed according to the following procedure. Upon notification by the owner or operator documenting to the satisfaction of the NNEPA UST Program that the violation has been corrected, NNEPA will provide written authorization to the owner or operator to remove the red tag. A NNEPA official will inspect the underground storage tank system within five business days of notification to determine whether the violation has been corrected, regardless of whether removal of the red tag by the owner or operator was previously authorized. If, upon inspection, NNEPA determines that the system is no longer in violation but has not already authorized removal of the red tag, the NNEPA official will immediately remove the red tag.

Upon removing a red tag from an underground storage tank system, the NNEPA official will document the level of stored product in the tank. If the owner or operator removes a red tag pursuant to written authorization from NNEPA, the owner or operator shall document the level of stored product in the tank immediately after removing the red tag and shall submit that information to the NNEPA UST Program within five business days. The owner or operator shall return the red tag to the NNEPA UST Program at the same time as reporting the level of stored product.

IV. Removing Red Tags from Rural and Emergency Generator Tank Systems Prior to Correction of Violation

NNEPA currently considers all areas of Navajo Nation Indian Country to be remote rural areas except for Window Rock. Notwithstanding any other provision of this guidance, NNEPA may remove or authorize the removal of a red tag from an underground storage tank system before a violation has been corrected, or may refrain from affixing a red tag, if NNEPA determines that the delivery prohibition would jeopardize the availability of, or access to, motor fuel in any remote rural area of Navajo Nation Indian Country. However, no underground storage tank system will be exempt from the delivery prohibition for more than 180 days without correction of the violation(s).

Notwithstanding any other provision of this guidance, NNEPA may remove or authorize the removal of a red tag from an emergency generator tank system before a violation has been corrected, or may refrain from affixing a red tag, if NNEPA determines that an emergency situation exists requiring operation of the system and the delivery of petroleum is necessary for the continued operation of the system during the emergency. For purposes of this section, an “emergency generator tank system” means an underground storage tank system that provides power supply in the event of a commercial power failure, stores petroleum, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701,

and 702 of the National Electrical Code of the National Fire Protection Association. The tank system will not be exempt from the delivery prohibition for more than 180 days without correction of the violation(s).

V. Content of Red Tags

Red tags are 3 inches wide by 5 inches long, and bear the following information on both sides of the tag:

- (1) The following wording, printed at the top of the tag in all capital letters in at least 36 point bold-faced type: “DELIVERY PROHIBITED!”
- (2) The following wording, printed below the wording described in (1) in at least 16 point type: “Delivering petroleum, or removing, defacing, altering, or otherwise tampering with this tag may result in civil penalties of up to \$10,000 per day.”
- (3) Printed below the wording described in (2), the following wording in at least 16 point type: “If you have questions, please contact the Navajo Nation Environmental Protection Agency at (928) 871-7993.”
- (4) In the lower left hand corner, a unique identification number.
- (5) In the lower right hand corner, a graphic comprised of the seal of the Navajo Nation EPA.