
FIELD CITATIONS: A TOOL FOR ENFORCING UST REGULATIONS IN NEW MEXICO

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SUMMARY

New Mexico has implemented a statewide field citation program for enforcement of the Underground Storage Tank (UST) Regulations. This program has increased compliance rates from 14% to 82%. This streamlined field enforcement has substantially increased the agency's efficiency in responding to UST violations and brought the UST owners and operators into compliance with the Regulations.

1 INTRODUCTION

The success of any regulatory program is largely dependant on the ability of the regulatory officials to both encourage voluntary compliance with the regulations and to bring violators into compliance without investing the majority of the program's resources. Underground Storage Tank (UST) regulatory authorities face enormous challenges as they respond to violations of UST Regulations. Enforcing UST Regulations can put considerable strain on staff time and agency resources, due to the large size of the regulated community. Traditional enforcement procedures are often too time consuming and resource-intensive.

An alternative to traditional enforcement is an inspector-issued field citation for clear-cut UST violations. Field citations are similar to traffic tickets: the citations, issued in the field, address a clear-cut violation, require the violator to correct the violation, carry a small penalty, and provide for some type of appeal. New Mexico has developed such a field citation program for expediting enforcement of UST Regulations.

2 DEVELOPMENT OF FIELD CITATION PROGRAM IN NEW MEXICO

The New Mexico Underground Storage Tank Program is administered by the Underground Storage Tank Bureau, New Mexico Environment Department (NMED). The Underground Storage Tank Regulations were promulgated by the Environmental Improvement Board pursuant to the New Mexico Hazardous Waste Act, subsection 74-4-1 *et seq* NMSA 1978. The release detection, new tank and upgrade requirements track precisely with the federal UST Regulations. In September 1990 the Prevention/Inspection Section, Underground Storage Tank Bureau implemented a program to conduct inspections at UST facilities to determine compliance with the release detection requirements. The program utilized 13 field inspectors in 9 locations throughout the state. The highest priority of the Section was to conduct release detection compliance inspections at facilities with tanks installed prior to 1965 or age unknown located in areas where the depth to ground water is less than 100 feet. If the inspector noted a violation during his inspection he wrote a letter to the owner/operator informing him of the violation and seeking compliance with the Regulations. For serious violations a Notice of Violation was issued by the Bureau Chief. If an owner/operator fails to comply with the Notice of Violation, a Compliance Order may be issued which might include a civil penalty of \$10,000 per tank per day of noncompliance or the Bureau may commence a civil action in state district court. However, the Bureau had very little success with this program and it was very lengthy and time consuming. In

addition, enforcement actions involved an attorney which was very costly. Consequently, the Bureau sought to develop an effective enforcement program that would be more efficient, more timely, and less costly.

February 1, 1991, New Mexico implemented the first statewide field citation program to enhance compliance with the UST Regulations. This program addresses clear-cut UST violations; specifically operation and maintenance, record keeping and release detection. Release reporting and remediation are not covered by the field citation program.

At the time the citation program was developed, the priority of the Section was to conduct release detection compliance inspections at facilities with UST systems installed prior to 1970 and located in areas where depth to groundwater is less than 100 feet. If the inspector detects a violation of USTR while conducting these inspections, a field Notice of Violation or citation (see Figure 1) is immediately issued to the owner/operator of the UST system, pursuant to subsection 74-4-10 NMSA 1978. A prelitigation settlement penalty is assessed at the time of the inspection or sent by certified mail immediately following the inspection. Most violations carry a \$100.00 per violation penalty. Violations concerning proper tank closure or change in service carry a \$500.00 penalty. (See Figure 2 for list of violations and penalties.) The owner/operator must pay the penalty, correct the violation and certify compliance within 30 days of the receipt of the citation (Figure 3). If the violation is not corrected and/or the penalty is not paid within 30 calendar days of the citation, the NMED may exercise its prosecutorial discretion to issue an administrative compliance order, pursuant to subsection 74-4-12 NMSA 1978, or commence a civil action in state district court against the owner/operator. A Compliance Order may include a civil penalty not to exceed \$10,000 per tank per day of noncompliance. Failure to comply with the Compliance Order may result in the assessment of civil penalties not to exceed \$25,000 per tank per day of noncompliance with the order.

3 RESULTS

From September 1990 to January 31, 1991 field inspectors conducted 433 compliance inspections at UST facilities. The inspectors issued 86 violation letters and 12 of these or 14% complied (Table 1).

Table 1. Inspection Data Prior to Field Citation

Number of compliance inspections, September 1990 - January 31, 1991	433	—
Number of violation letters issued, August 1990 - January 31, 1991	86	20%
Number of above violations corrected	12	14%

Beginning February 1, 1991 the USTB initiated the field citation program. The results of the program are presented in Table 2. From February 1, 1991 to September 30, 1993 the field inspectors conducted 2113 inspections and issued 815 field Notices of Violation (citations). About 61% of the facilities inspected were found to be in compliance while 39% were not. Six hundred seventy or 82% of the 815 non-compliant facilities corrected the violations and were in compliance with the USTR. A total of 93% of facilities inspected are now in compliance with USTR. As a result of failure to correct violations and/or pay penalties, 23 matters have been referred to the Office of General Counsel for commencing judicial action and seeking the statutory maximum penalty of \$10,000 per day per tank for each violation. Four of these matters has been filed in District Court for injunctive relief and civil penalties: two were settled out of Court; the owners complied and paid a substantial penalty; two are pending.

In addition, the Environment Department has issued 17 Compliance Orders to owners/operators. Two Compliance Orders have been settled. The remaining 15 are in the process of litigation or settlement.



Underground Storage Tank Bureau
 PREVENTION/INSPECTION SECTION
 P.O. Box 26110—Santa Fe, NM 87502-6110
 (505) 827-0188

FIELD NOTICE OF VIOLATION

3100

		Date
1. Facility Name	Facility No.	Phone No.
Address	Zip Code	
2. Owner Name	Owner No.	Phone No.
Address	Zip Code	
3. Facility Operator	Phone No.	
Address	Zip Code	
4. Contractor Name	Phone No.	
Address	Zip Code	

Pursuant to the New Mexico Hazardous Waste Act (Sections 74-4-1 et seq NMSA 1978), this document serves as Notice of Violation of the following Level A (closure) violations:

USTR No.: _____ Penalty: _____	USTR No.: _____ Penalty: _____
Regulation: _____ (short form wording)	Regulation: _____ (short form wording)

The Level A (closure) violations listed above cannot be corrected. The penalty is due immediately. Please remit payment within thirty (30) days to the Underground Storage Tank Bureau, P.O. Box 26110, Santa Fe, New Mexico 87502-6110, attention: UST Field Citation Penalty Payment (HWA). Failure to remit payment may result in a formal enforcement action being taken against you pursuant to section 74-4-10 NMSA 1978, including the filing of an action in district court.

Total A penalty: _____ due immediately.

Additionally, pursuant to the New Mexico Hazardous Waste Act (Sections 74-4-1 et seq NMSA 1978), this document serves as Notice of Violation of the following Level B (correctable) violations:

USTR No.: _____ Penalty: _____	USTR No.: _____ Penalty: _____
Regulation: _____ (short form wording)	Regulation: _____ (short form wording)
USTR No.: _____ Penalty: _____	Total B Penalty: _____
Regulation: _____ (short form wording)	Compliance date: _____

You must correct all Level B (correctable) violations listed above by the Compliance date listed above. The penalty is due immediately. When you have corrected the violations, you must fill out the attached Certification of Compliance and mail it to Underground Storage Tank Bureau, P.O. Box 26110, Santa Fe, New Mexico 87502-6110. Failure to correct these Level B violations will result in a formal enforcement action being taken against you pursuant to Section 74-4-10C NMSA 1978, including filing an action in District Court or issuing a compliance order which may include a penalty of \$10,000 per violation per day of noncompliance. If you do not comply with the terms of the compliance order, you risk a civil penalty of up to \$25,000 per day, pursuant to Section 74-4-10C NMSA 1978.

I personally observed the violations cited above

Compliance officer's signature _____ Date _____ Phone No. _____

Without admitting the violations, I hereby acknowledge receipt of this Notice of Violation

Signature of on-site representative _____ Date _____ Phone No. _____

CERTIFICATE OF SERVICE

The undersigned states that he or she is over 18 years of age and (check all that apply):

_____ Personally served a true copy of this notice on Facility's owner _____ (name)

at _____ (time and date) at _____ (address of person served).

_____ Personally served a true copy of this notice on Facility's operator _____ (name)

at _____ (time and date) at _____ (address of person served).

_____ Mailed a copy of this notice to the last known home or business address of the owner at the address indicated in Number 2 above.

_____ Mailed a copy of this notice to the operator at the facility address. _____ Posted a copy of this notice at the facility.

The undersigned further states that he/she is an employee of the New Mexico Environment Department, and knows this Certificate of Service to be true to the best of his/her knowledge.

Compliance officer's signature _____ Date _____

INFORMAL CONFERENCE

The owner and operator may request an informal conference regarding this Notice of Violation. The informal conference is further described in other materials distributed with this citation. If neither the owner or operator requests an informal conference in writing within ten (10) working days, the right to an informal conference is waived.

DISTRIBUTION: WHITE - USTB CANARY - Owner PINK - USTB GOLDENROD - Operator

Figure 1. Example of citation.

LEVEL A

REGULATION CITATION	SHORT-FORM WORDING	PENALTY
Permanent Closure and Changes-in-Service		
801	Failure to empty and clean UST system prior to permanent closure or change-in-service.	\$500

LEVEL B

REGULATION CITATION	SHORT-FORM WORDING	PENALTY
Notification Requirements		
200	Failure to notify USTB of existing tank within three months after April 14, 1988.	\$100
201	Failure to notify USTB of change in ownership within thirty days.	\$100
203	Failure to notify thirty days prior to replacement or modification.	\$100
Performance Standards for New UST Systems		
400	Failure to meet tank corrosion protection standards.	\$100
400	Improper construction of a fiberglass-reinforced plastic tank.	\$100
400	Failure to provide cathodic protection for a metal tank.	\$100
400	Improper construction of cathodic protection for a metal tank.	\$100
400	Improper maintenance of cathodic protection for a metal tank.	\$100
400	Improper construction of a steel fiberglass-reinforced plastic tank.	\$100
400	Failure to meet requirements for exemption from tank cathodic protection.	\$100
400	Failure to meet piping corrosion protection standards.	\$100
400	Improper construction of fiberglass reinforced plastic piping.	\$100
400	Failure to provide cathodic protection for metal piping.	\$100
400	Improper construction of cathodic protection for metal piping.	\$100
400	Improper maintenance of cathodic protection for metal piping.	\$100
400	Failure to meet requirements for exemption from piping cathodic protection.	\$100
400	Failure to install spill prevention system in a new tank.	\$100
400	Inadequate spill prevention equipment in a new tank.	\$100
400	Failure to install an overfill prevention system in a new tank.	\$100
400	Inadequate overfill prevention equipment in a new tank.	\$100

Figure 2. List of violations and penalties.

LEVEL B

REGULATION CITATION	SHORT-FORM WORDING	PENALTY
400	Failure to install tank in accordance with accepted codes and standards.	\$100
400	Failure to install piping in accordance with accepted codes and standards.	\$100
400	Failure to ensure that the installer has been certified by Department.	\$100
Upgrading of Existing UST Systems (Upgrade deadline is December 22, 1998)		
401	Failure to meet tank upgrade standards.	\$100
401	Failure to install interior lining for tank upgrade requirements.	\$100
401	Improper installation of interior lining for tank upgrade requirements.	\$100
401	Failure to meet interior lining inspection requirements for tank upgrade.	\$100
401	Failure to meet tank upgrade requirements for cathodic protection.	\$100
401	Failure to ensure that tank is structurally sound before installing cathodic protection.	\$100
401	Failure to meet tightness test requirements for an upgraded tank.	\$100
401	Failure to install cathodic protection for metal piping upgrade requirements.	\$100
401	Failure to provide spill prevention system.	\$100
401	Failure to provide overfill prevention system.	\$100
Operation and Maintenance of Corrosion Protection		
501	Failure to operate corrosion protection system continuously.	\$100
501	Failure to properly maintain cathodic protection system.	\$100
501	Failure to ensure that cathodic protection system is tested within six months of installation.	\$100
501	Failure to ensure that cathodic protection system is tested every three years.	\$100
501	Failure to inspect cathodic protection system in accordance with accepted codes.	\$100
501	Failure to inspect impressed current cathodic protection systems every sixty days.	\$100
501	Failure to maintain records of cathodic protection inspections.	\$100
Compatibility		
502	Failure to ensure that UST system is made of or lined with materials compatible with substance stored.	\$100

Figure 2. List of violations and penalties (continued).

LEVEL B

REGULATION CITATION	SHORT-FORM WORDING	PENALTY
Repairs Allowed		
503	Failure to repair UST system in accordance with accepted codes and standards.	\$100
503	Failure to ensure that a repaired UST system is tightness-tested within thirty days of repair.	\$100
503	Failure to test cathodic protection system within six months of repair of an UST system.	\$100
503	Failure to maintain records of each repair to an UST system.	\$100
Reporting and Record-keeping		
504	Failure to maintain all required records.	\$100
504	Failure to provide records for inspection by Department.	\$100
505	Failure to notify twenty-four hours prior to critical juncture in installation, replacement, repair, substantial modification, installation of leak detection system and UST closure.	\$100
General Release Detection Requirements for All UST Systems		
600	Failure to provide an adequate release detection method.	\$100
600	Release detection method incapable of detecting a release from any portion of the tank or piping that routinely contains product.	\$100
600	Failure to install release detection method in accordance with manufacturer's instructions.	\$100
600	Failure to calibrate release detection method in accordance with manufacturer's instructions.	\$100
600	Failure to operate release detection method in accordance with manufacturer's instructions.	\$100
600	Failure to maintain release detection method in accordance with manufacturer's instructions.	\$100
600	Failure to comply with release detection requirements by specified date.	\$100
600	Failure to close tank that cannot apply a method of release detection by specified date.	\$100
Release Detection Requirements for Petroleum UST Systems		
601	Failure to monitor UST system at least every thirty days.	\$100
601	Failure to use an UST monitoring method.	\$100
601	Inadequate UST release monitoring.	\$100
601	Failure to use an underground piping monitoring method.	\$100
601	Inadequate underground piping release monitoring.	\$100

Figure 2. List of violations and penalties (continued).

LEVEL B

REGULATION CITATION	SHORT-FORM WORDING	PENALTY
Release Detection Requirements for Hazardous Substance UST Systems		
602	Failure to provide release detection for an existing hazardous substance UST system.	\$100
602	Inadequate release detection for a new hazardous substance UST system.	\$100
602	Inadequate secondary containment of tank for a new hazardous substance UST system.	\$100
602	Inadequate double-walled tank for a new hazardous substance UST system.	\$100
602	Inadequate external liners for a new hazardous substance UST system.	\$100
602	Inadequate secondary containment of underground piping in a new hazardous substance UST system.	\$100
Methods of Release Detection for Tanks		
603	Inadequate operation or maintenance of inventory control.	\$100
603	Inadequate operation or maintenance of manual tank gauging.	\$100
603	Inadequate operation or maintenance of tank tightness testing.	\$100
603	Inadequate operation or maintenance of automatic tank gauging.	\$100
603	Inadequate operation or maintenance of vapor monitoring.	\$100
603	Inadequate operation or maintenance of ground-water monitoring.	\$100
603	Inadequate operation or maintenance of interstitial monitoring.	\$100
Methods of Release Detection for Piping		
604	Failure to provide release detection for underground piping.	\$100
604	Inadequate line leak detector system for underground piping.	\$100
604	Inadequate line tightness testing for underground piping.	\$100
604	Inadequate use of applicable UST release detection methods.	\$100
Release Detection Record Keeping		
605	Failure to maintain records of release detection monitoring.	\$100
605	Failure to maintain records of all written release detection performance claims for five years after installation.	\$100
605	Failure to maintain results of any sampling, testing, or monitoring for release detection for at least one year.	\$100
605	Failure to retain results of tightness testing until next test is conducted.	\$100
605	Failure to maintain records of written documentation of maintenance, and repair of release detection equipment.	\$100

Figure 2. List of violations and penalties (continued).

LEVEL B

REGULATION CITATION	SHORT-FORM WORDING	PENALTY
Temporary Closure		
800	Failure to continue operation and maintenance of corrosive protection system in a temporarily closed UST system.	\$100
800	Failure to continue operation and maintenance of release detection in a temporarily closed UST system.	\$100
800	Failure to comply with temporary closure requirements for an UST closed for three or more months.	\$100
800	Failure to leave vent lines open and functioning.	\$100
800	Failure to cap and secure all other appropriate equipment for temporary closure.	\$100
800	Failure to permanently close an UST system that is temporarily closed for more than twelve months.	\$100
Assessing the Site at Closure or Change-In-Service		
802	Failure to measure for the presence of a release before a permanent closure or change-in-service.	\$100
Closure Records		
804	Failure to maintain records of the results of the excavation zone assessment for at least three years after closure.	\$100
804	Failure to maintain records of the results of the assessment for at least three years after change-in-service.	\$100
Certification of Tank Installers General Requirements		
1404	Failure to be certified by Department to install and repair UST system.	\$100

Figure 2. List of violations and penalties (continued).



Environment Department
 Underground Storage Tank Bureau
 PREVENTION/INSPECTION SECTION
 Harold Runnels Bldg. — Rm. N-2150
 1190 St. Francis Dr. - P.O. Box 26110
 Santa Fe, New Mexico 87502-6110

**OWNER / OPERATOR
 Certification of Compliance**

Field Notice of Violation No. _____ Date _____

 FACILITY NAME & NUMBER

 OWNER NAME & NUMBER

I CERTIFY UNDER PENALTY OF LAW THAT:

1. I am the owner operator of the above-named facility.
 (Check all that apply.)
2. The facility has corrected the violation(s) specified in the
 Field Notice Violation No. _____.
3. I have personally examined the documentation attached to this certification to establish that the
 violation(s) have been corrected.
4. Based on my examination of the attached documentation and inquiry of the individuals who pre-
 pared or obtained it, I believe that the information is true, accurate, and complete.
5. I am authorized to file this certification on behalf of the facility.
6. I am aware that there are significant penalties for submitting false information, including the pos-
 sibility of fine(s) and/or imprisonment for knowing violations.

Dated: _____

Signed: _____

Print or Type Name: _____

Title: _____
 (Owner or Operator)

*Please send this completed form within thirty (30) days of the date of the Field Notice of
 Violation to:*

UST Bureau
 Prevention/Inspection Section
 Harold Runnels Bldg. — Rm. N-2150
 1190 St. Francis Drive - P.O. Box 26110
 Santa Fe, New Mexico 87502-6110

DISTRIBUTION: WHITE - USTB

PINK - USTB

CANARY - Owner

GOLDENROD - Operator

Figure 3. Example of certificate of compliance.

Table 2. Field Citation Data, February 1 - September 30, 1993

Number of compliance inspections	2113	—
Number of facilities in compliance	1298	61%
Number of field Notices of Violation issued	815	39%
Number of informal conferences	275	34%
Number of field Notices of Violation corrected	670	82%
Total number of facilities in compliance	1968	93%
Total amount of penalties paid		\$80,650.00

The 815 field Notices of Violation were issued for 1793 violations of the UST Regulations. The violations fall into three main categories: failure to register, failure to permanently close a UST system that has been out of service for more than 12 months and failure to have required release detection. Various other violations of the Regulations were also cited.

The highest compliance rate is obtained from citations for failure to register. This is because it is relatively easy to register a system and there is no expense involved. The Bureau has a good compliance rate for release detection violations. Once owner/operators were informed of the regulatory requirements they complied. Also the petroleum industry has communicated to owner/operators that New Mexico is actively enforcing the Regulations and assessing penalties for noncompliance. Owner/operators are installing and maintaining release detection to avoid penalties. The lowest compliance rate is for violations regarding out of service USTs. These systems are usually abandoned and it is difficult to convince an uncooperative owner that he must remove a UST system at a site that has been out of service for a long period of time and is no longer producing an income for the owner. Eighteen of the 23 cases referred to the Office of General Counsel for further enforcement action fall in this category.

4 SOLID WASTE PROGRAM IN NEW MEXICO

The field citation has proven to be very effective in New Mexico. Other Bureaus in the Environment Department are examining this enforcement tool. The Solid Waste Bureau has developed a field citation program and implementation is imminent.

The Solid Waste field citation is similar to the UST field citation program. Solid Waste Bureau Field Compliance Officers have the authority to issue citations at the time of inspection. If the Field Compliance Officer detects a violation of the Solid Waste Regulations while conducting an inspection of a Solid Waste Facility, a compliance order ("citation") may be immediately issued to the owner or operator of the solid waste facility, pursuant to NMSA 1978, Section 74-9-36.

A prelitigation penalty may be assessed at the time of the inspection or sent by certified mail immediately following the inspection. Upon receipt of the citation, the person named must 1) pay the penalty if any within 30 days, correct the violation and certify compliance by the date agreed upon by the Field Compliance Officer and the person named, or 2) appeal the citation.

5 CONCLUSIONS

With traditional enforcement only 14% of the owner/operators cited complied with the USTR. This traditional enforcement program was too lengthy and cumbersome to be effective. The field citation program has been very successful for gaining compliance with USTR. By September 30, 1993, 82% of the owner/operators cited complied with the Regulations for a total compliance rate of 93%.

The Bureau will continue to utilize expedited enforcement. It should be noted that a field citation program is not a replacement for formal enforcement, that it is a complement to existing administrative, civil, and criminal authorities. The citation program enables the Bureau to address more violations and to reallocate resources to new or more serious cases. The procedures are relatively easy for the inspector and the violator to use, and they require less of both parties' time than formal enforcement action. Thus, the program's enforcement resources are conserved for contested or serious violators.

The purpose of an inspection is both education and enforcement. Inspections provide an opportunity for the inspector to inform owner/operators of their legal requirements, and further explain the release detection regulations. By implementing an inspection program to effectively educate owner/operators and enforce the Regulations, the UST Bureau has significantly increased compliance with the Regulations; and thereby reduced the threats to New Mexico's environment posed by petroleum products and hazardous substances released from underground storage tanks.