

**New Mexico  
Petroleum Storage Tank Regulations  
20.5 NMAC**

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2. NMSA 1978 74-4-1 to -14, Hazardous Waste Act . . . . . 401
3. NMSA 1978 74-6B-1 to -14, Ground Water Protection . . . . . 429

Typographical errors in 20.5 NMAC as published in the New Mexico Register have been corrected in this book. To see the uncorrected published version, go to: <http://164.64.110.134/nmac/T20C005>. If you see additional errors, please contact the Petroleum Storage Tank Bureau at 505-476-4397, 2905 Rodeo Park Dr. East, Building 1, Santa Fe, NM 87505, or through the Petroleum Storage Tank website, [https://www.env.nm.gov/petroleum\\_storage\\_tank/](https://www.env.nm.gov/petroleum_storage_tank/).

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 101 GENERAL PROVISIONS**

**20.5.101.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.101.1 NMAC - N, 07/24/2018]

**20.5.101.2 SCOPE:**

- A.** This part applies to 20.5.101 through 20.5.125 NMAC.
- B.** Any UST system holding hazardous wastes that are listed or identified under Subtitle C of the federal Resource Conservation and Recovery Act, or a mixture of such hazardous waste and other hazardous regulated substances, is excluded from these regulations. This subsection does not apply to any UST system containing petroleum.
- C.** Previously deferred storage tank systems: Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of 20.5 NMAC, including those in 20.5.114 NMAC, and storage tank systems that store fuel for use by emergency power generators must meet all applicable requirements of 20.5 NMAC, including those in 20.5.112 NMAC or 20.5.113 NMAC.
- D.** The following types of storage tank systems are excluded from the requirements of 20.5.102 through 20.5.125 NMAC:
  - (1) any wastewater treatment tank systems and any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the federal Clean Water Act;
  - (2) equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
  - (3) any UST system with a capacity of 110 gallons or less or any AST system with a capacity of 1,320 gallons or less, or any AST system with a capacity of 55,000 gallons or more not associated with an airport hydrant fuel distribution system or a UST system with a field-constructed tank;
  - (4) any UST system that contains a de minimis concentration of regulated substances;
  - (5) any emergency spill or overflow containment UST system that is expeditiously emptied after use;
  - (6) any storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954;
  - (7) any storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR Part 50 Appendix A;
- E.** Partial Exclusions. 20.5.103 NMAC through 20.5.116 NMAC, 20.5.120 NMAC through 20.5.123 NMAC, and 20.5.125 NMAC do not apply to:
  - (1) wastewater treatment tanks that do not fall under Paragraph (1) of Subsection D of this section;
  - (2) ASTs with a capacity of 55,000 gallons or more associated with airport hydrant fuel distribution systems;

(3) ASTs with a capacity of 55,000 gallons or more associated with UST systems with field-constructed tanks;

F. Notwithstanding the foregoing exclusions, no person may install a storage tank system listed in Subsection D of this section for the purpose of storing regulated substances unless such storage tank system (whether of single- or double-walled construction):

(1) will prevent releases due to corrosion or structural failure for the operational life of the storage tank system; and

(2) is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) the material used in the construction or lining of the tank is compatible with the substance to be stored.

G. 20.5.106 NMAC, 20.5.107 NMAC, 20.5.108 NMAC, 20.5.115 NMAC, 20.5.117 NMAC, and 20.5.118 NMAC shall not apply to an existing AST or UST system which has never contained a regulated substance until the system is placed in service.

[20.5.101.2 NMAC - N, 07/24/2018]

**20.5.101.3 STATUTORY AUTHORITY:** 20.5.101 through 20.5.125 NMAC are promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.101.3 NMAC - N, 07/24/2018]

**20.5.101.4 DURATION:** Permanent.

[20.5.101.4 NMAC - N, 07/24/2018]

**20.5.101.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.1.5 NMAC -N, 07/24/2018]

**20.5.101.6 OBJECTIVE:** The purpose of this part is to provide definitions for use in 20.5.101 through 20.5.125 NMAC.

[20.5.101.6 NMAC - N, 07/24/2018]

**20.5.101.7 DEFINITIONS:**

A. Terms beginning with numerals or the letter "A."

(1) "Above ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of an underground storage tank system and releases associated with overfills and transfer operations during regulated substance deliveries to or dispensing from an UST system.

(2) "Above ground storage tank" or "AST" means a single tank or combination of manifolded tanks, including pipes connected thereto, that is 1,320 gallons or more, and less than 55,000 gallons, is permanently installed, and is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven-tenths pounds per square inch absolute,

and the volume of which is more than ninety percent above the surface of the ground. Tanks in vaults and special enclosures are ASTs. A compartment tank with combined total capacity greater than 1,320 gallons and less than 55,000 gallons is an AST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. Above ground storage tank does not include (regardless of size) any:

(a) farm, ranch or residential tank used for storing motor fuel for noncommercial purposes;

(b) pipeline facility, including gathering lines regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(c) surface impoundment, pit, pond or lagoon;

(d) storm water or wastewater collection system;

(e) flow-through process tank;

(f) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or to oil field service industry operations;

(g) tank used for storing heating oil for consumptive use on the premises where stored;

(h) tanks, bulk terminals, or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business; bulk plants are not included in the exemption;

(i) multiple tanks at a facility, that are individually less than 1,320 gallons, unless tanks that are siphoned together have a cumulative total capacity greater than 1,320 gallons;

(j) pipes connected to any tank exempted by Subparagraphs (a) through (i) of this paragraph.

(3) “Accidental release” means any sudden or non-sudden release neither expected nor intended by the tank owner or operator of petroleum or other regulated substance from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage.

(4) “Airport hydrant fuel distribution system” (also called airport hydrant system) means an AST or UST system or a combination thereof which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more regulated tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier. AST systems with a capacity of 55,000 gallons or more associated with airport hydrant fuel distribution systems must comply with 20.5.101 NMAC, 20.5.102 NMAC, 20.5.117 NMAC, 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.124 NMAC.

(5) “Ancillary equipment” means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps associated with a storage tank.

(6) “Applicable standards” means the most relevant target concentrations that legally apply to a site.

(7) “AST system” means an above ground storage tank and its associated ancillary equipment and containment system, if any.

**B. Terms beginning with the letter “B.”**

- (1) “Basin sump” means a liquid-tight collection container with no valves, joints or other penetrations.
- (2) “Below ground release” means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below ground portions of a storage tank system and releases associated with overfills and transfer operations as the regulated substance is delivered to or dispensed from a storage tank.
- (3) “Beneath the surface of the ground” means beneath the ground surface or otherwise covered with materials so that physical inspection is precluded.
- (4) “Bodily injury” shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
- (5) “Bulk plant” means a facility which is not a bulk terminal, and which is used for the temporary storage of petroleum products prior to delivery to gasoline stations, convenience stores, and commercial accounts, which is smaller than a bulk terminal and is not equipped with any processing equipment.
- (6) “Bulk terminal” means a large facility for storing and handling petroleum products that receives and stores bulk deliveries of gasoline and other products from a pipeline, barges, or directly from a nearby refinery. Equipment at the terminal facility is usually capable of further processing the product, including but not limited to: injection of additives or conversion of gasoline vapors received from transports after making deliveries using stage one vapor recovery back to liquid form.
- (7) “Bureau” means the New Mexico petroleum storage tank bureau.

**C. Terms beginning with the letter “C.”**

- (1) “Cathodic protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current.
- (2) “Certified installer” refers generally to both AST and UST certified installers.
- (3) “Certified installer-AST” means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify AST systems in this state.
- (4) “Certified installer-UST” means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify UST systems in this state.
- (5) “Certified junior installer” refers generally to both AST and UST certified junior installers.
- (6) “Certified junior installer-AST” means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify spill prevention equipment and overfill prevention equipment on AST systems regulated under 20.5 NMAC.
- (7) “Certified junior installer-UST” means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify spill prevention equipment and overfill prevention equipment on UST systems regulated under 20.5 NMAC.

(8) “Certified operator” means a class A, B, or C operator trained and certified according to the requirements of 20.5.105 NMAC.

(9) “Change in service” means removing a regulated substance from a storage tank system and placing something in the system that is not a regulated substance.

(10) “Chief financial officer,” in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(11) “Class A operator” means the individual who has primary responsibility to operate and maintain the storage tank system in accordance with 20.5 NMAC. The class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

(12) “Class B operator” means the individual who has day-to-day responsibility for implementing the requirements of 20.5 NMAC. The class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the storage tank system.

(13) “Class C operator” means the individual responsible for initially addressing emergencies presented by a spill or release from a storage tank system. The class C operator typically controls or monitors the dispensing or sale of regulated substances.

(14) “Class I liquid” means any flammable liquid having a flashpoint below 100.0 degrees fahrenheit (37.8 degrees celsius) and that meets one of the following sub classes:

(a) Class IA liquids include those having flashpoints below 73 degrees fahrenheit (22.8 degrees celsius) and boiling points below 100 degrees fahrenheit (37.8 degrees celsius);

(b) Class IB liquids include those having flashpoints below 73 degrees fahrenheit (22.8 degrees celsius) and boiling points at or above 100 degrees fahrenheit (37.8 degrees celsius); or

(c) Class IC liquids include those having flash points at or above 73 degrees fahrenheit (22.8 degrees celsius) but below 100 degrees fahrenheit (37.8 degrees celsius).

(15) “Class II Liquid” means a combustible liquid having flash points at or above 100 degrees fahrenheit (37.8 degrees celsius) and below 140 degrees fahrenheit (60 degrees), except any mixture having components with flashpoints of 200 degrees fahrenheit (93.3 degrees celsius) or higher, the volume of which make up ninety-nine percent or more of the total volume of the mixture.

(16) “Class III Liquid” means a combustible liquid having flashpoints at or above 140 degrees fahrenheit (60 degrees celsius) and that meets one of the following sub classes. Where the term “Class III liquid” is used, it shall mean only Class IIIA liquids.

(a) Class IIIA liquids include those having flash points at or above 140 degrees fahrenheit (60 degrees celsius) and below 200 degrees fahrenheit (93.3 degrees celsius) except any mixture having components with flashpoints of 200 degrees fahrenheit (93.3 degrees celsius), or higher, the total volume of which make up ninety-nine percent or more of the total volume of the mixture;

(b) Class IIIB liquids include those having flash points at or above 200 degrees fahrenheit (93.3 degrees celsius);

(17) “Community water system” means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(18) “Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the storage tank system and under varied environmental conditions (i.e., at different temperatures).

(19) “Connected piping” means all above ground and underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual storage tank system, the piping which joins the two storage tank systems should be allocated equally between them.

(20) “Consumptive use” with respect to heating oil means the oil is burned on the premises.

(21) “Contain” means the stopping of further migration of a regulated substance from a release into or through groundwater, surface water or soil.

(22) “Containment” means that contamination from a release has been contained and is not spreading, migrating, spilling, infiltrating or otherwise traveling into uncontaminated areas. Verification of containment requires the performance of physical measurements that provide positive proof that contamination is contained.

(23) “Containment sump” means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump). Containment sumps may have valves, joints or penetrations, such as piping penetrations.

(24) “Contaminant” means any regulated substance as defined in this section, any constituent of a regulated substance, or any combination of a regulated substance or constituent thereof with any other substance or matter.

(25) “Contaminant of concern” means any contaminant which is suspected of being released at the site based on site history for which:

(a) the New Mexico water quality control commission has adopted standards pursuant to the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978;

(b) the New Mexico environmental improvement board has adopted standards, action levels, risk-based screening levels or site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act; or

(c) the New Mexico environment department has established or approved site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act.

(26) “Contaminant saturated soil” means soil exclusive of the water table and capillary fringe in which non-aqueous phase liquid is observable in the soil or, if sufficiently liquid, drains from the soil when the soil is suspended on filter paper or its equivalent.

(27) “Contaminated soil” means soil containing detectable quantities of contaminants of concern.

(28) “Contractor” means a person who has an agreement to perform corrective action on behalf of the state or owners or operators.



(29) “Controlling interest” means direct ownership or other legal control of at least fifty percent of the voting stock of another entity.

(30) “Corrective action” means an action taken to investigate, minimize, eliminate, or clean up a release to protect the public health, safety, and welfare or the environment.

(31) “Corrective action fund” or “fund” means the fund created pursuant to the Ground Water Protection Act, Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action performed pursuant to 20.5 NMAC and the Ground Water Protection Act.

(32) “Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers international (NACE). A corrosion expert shall only perform the specific activities required by these rules for which he is qualified, certified, registered or licensed; for example, a NACE licensed cathodic protection tester shall not design a cathodic protection system unless he is also a NACE licensed cathodic protection technologist, specialist or has another equivalent qualification, certification, registration or license.

(33) “Corrosion prevention plan” means a plan approved in writing by a corrosion expert for a UST or AST or associated piping, or secondary containment, which plan is designed to maintain the integrity of the tank or piping for its useful life.

(34) “Corrosion protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current, or by isolating the metal surface from soil, water, or other elements that can cause corrosion, including but not limited to application of a paint or coating material approved for use as corrosion protection.

(35) “Critical junctures” means the steps of an installation, replacement, modification, repair or removal of a storage tank system or any part of a storage tank system, which are important to the prevention of releases and which are more specifically described in 20.5.106, 20.5.107, 20.5.109, 20.5.110 and 20.5.115 NMAC.

**D.** Terms beginning with the letter “D.”

(1) “Deductible” means the first ten thousand dollars (\$10,000) of minimum site assessment costs, or any lesser amount determined in accordance with 20.5.123 NMAC.

(2) “Department” means the New Mexico environment department, also known as the New Mexico department of environment.

(3) “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of storage tank systems, such as tank from piping.

(4) “Director” means the secretary of the New Mexico environment department also known as the secretary of the environment or as delegated to the director of the resource protection division of the department.

(5) “Direct responsible supervisory control” means responsibility for the direction, control, or supervision of investigation and remediation activities to assure that the work is performed in accordance with appropriate industry and regulatory quality standards.

(6) “Dispenser” means equipment located above ground that dispenses regulated substances from the storage tank system.

(7) “Dispenser system” means the dispenser and the equipment necessary to connect the dispenser to the storage tank system.

**E.** Terms beginning with the letter “E.”

(1) “Effectively mitigating” means that the approach taken to corrective action has contained the release and is achieving reductions in contamination levels such that the standards described in 20.5.119 and 20.5.120 NMAC will be met in a manner protective of public health, safety and welfare and the environment, within the period of time specified in the plan for remediation by monitored natural attenuation or otherwise.

(2) “EIB” means the environmental improvement board.

(3) “EIB standards” means standards set forth in 20.5.119, 20.5.120 and 20.7.10 NMAC.

(4) “Electrical equipment” means equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

(5) “Emergency generator system” means any UST or AST system that stores any regulated substance for use by emergency power generators.

(6) “Emergency repair” means a repair required by immediate danger of a release, or by an immediate threat to public health, safety and welfare, or to the environment.

(7) “Environmental improvement board” (EIB) means the board created in the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

(8) “Environmental Improvement Act” means the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

(9) “Excavation zone” means the area containing the storage tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(10) “Existing AST system” means an AST system which is used to contain an accumulation of regulated substances or for which installation commenced on or before June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(11) “Existing UST system” means a UST system which is used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(12) “Exposed petroleum products” means petroleum that is present in the non-aqueous phase (i.e. not dissolved in water) on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements and manholes.

(13) “Exposed hazardous substance” means a regulated substance other than petroleum that is present on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements or manholes.

**F.** Terms beginning with the letter “F.”

(1) “Facility” means a property location that contains storage tanks.

(2) “Facility ID number” is a department-issued facility identification number.

(3) “Farm tank” is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, range land and nurseries with growing operations.

(4) “Field-constructed tank” means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field. AST systems with a capacity of 55,000 gallons or more associated with UST systems with field-constructed tanks must comply with 20.5.101 NMAC, 20.5.102 NMAC, 20.5.117 NMAC, 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.124 NMAC.

(5) “Financial reporting year” means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(a) a 10-K report submitted to the SEC;

(b) an annual report of tangible net worth submitted to Dun and

Bradstreet; or

(c) annual reports submitted to the energy information administration or the rural utilities service; “financial reporting year” may thus comprise a fiscal or a calendar year period.

(6) “Flow restrictor” means an overflow prevention device that decreases the flow of a regulated substance into a UST during a delivery at a preset height by decreasing the flow of vapors out of the UST.

(7) “Flow-through process tank” is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(8) “Free product” refers to a regulated substance that is present as a non-aqueous phase liquid (for example, liquid not dissolved in water).

(9) “Functionality test” means a test for automatic line leak detectors which determines whether they are operating correctly.

(10) “Fund” means the corrective action fund which was created pursuant to Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action required at leaking storage tank sites.

**G.** Terms beginning with the letter “G.”

(1) “Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(2) “Ground Water Protection Act” means the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978.

**H.** Terms beginning with the letter “H.”

(1) “Hazardous substance UST system” or “hazardous substance UST” means an underground storage tank system that contains an accumulation of hazardous substances defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Hazardous substance UST includes a tank with a mixture of such substances and petroleum, but which is not a petroleum UST system.

(2) “Hazardous Waste Act” means the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978.

(3) “Heating oil” means petroleum that is No. 1; No. 2; No. 4--light; No. 4-heavy; No. 5-light; No. 5-heavy; and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(4) “Hybrid storage tank system” means a storage tank system where any combination of above ground and underground storage tank systems are connected in a manner where fuel enters one tank from the other tank under pressure or gravity flow but is not part of a siphon system.

(5) “Hydraulic lift tank” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

**I.** Terms beginning with the letter “I”.

(1) “Imminent threat to public health and the environment” means a condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to public health and the environment.

(2) “Incurred” means billed to the owner or operator.

(3) “Initiation of containment” means the point in time at which a system designed to achieve containment is put into continuous operation.

(4) “Install” or “installation” means the work involved in placing a storage tank system or any part thereof in, on or above the ground and preparing it to be placed in service.

(5) “Installation Date” means for existing storage tank systems, the date when a regulated substance was placed in the tank, or where the date is unknown, the approximate date the installation was completed. For a new installation, the date a regulated substance is first placed in each tank.

(6) “Installation of a new or replaced motor fuel dispenser system” means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the storage tank system, but shall not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank system may include

check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

(7) “Integrity test” means an evaluation process that has been independently tested and approved by a nationally recognized association or independent testing laboratory to determine, in the case of a UST, the suitability of the tank for continuous containment of a regulated substance, or, in the case of an AST, both the suitability of the tank for continuous containment of a regulated substance and the necessary hydraulic properties of the tank to contain the outward pressure of the regulated substance.

(8) “Internal inspection” means a formal inspection of an AST by an inspector authorized by the American petroleum institute or certified by the steel tank institute. The inspection shall determine whether the AST tank bottom or shell is severely corroded and leaking and shall include an evaluation of the tank bottom and shell thickness to see whether they meet minimum thickness requirements. The inspector shall visually examine all tanks included in the inspection and, if applicable, check for tank bottom settlement.

(9) “Interstitial monitoring” is a leak detection method which surveys the space between a storage tank system’s walls and the secondary containment system for a change in steady state conditions.

(10) “Inventory controls” are techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

**J.** Terms beginning with the letter “J.” [RESERVED]

**K.** Terms beginning with the letter “K.” [RESERVED]

**L.** Terms beginning with the letter “L.”

(1) “Landfarming” is the remediation of petroleum contaminated soils on or at ground surface using natural aeration and volatilization, disking and natural and enhanced bioremediation to reduce the concentrations of petroleum hydrocarbons to regulatory levels; requires a groundwater discharge permit.

(2) “Leak” means any spilling, emitting, discharging, escaping, or disposing of a regulated substance due to the failure of components of a storage tank system to contain a regulated substance as designed. A leak may or may not result in a release to the environment.

(3) “Legal defense cost” is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(a) by EPA or a state to require corrective action or to recover the costs of corrective action;

(b) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) by any person to enforce the terms of a financial assurance mechanism.

(4) “Liquid” means any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with *ASTM D 5, “Test for Penetration for Bituminous Materials”*. When not otherwise identified, the term liquid shall mean both flammable and combustible liquids.

(5) “Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps

may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream or may collect and separate liquids from a gas stream.

(6) “Loading rack” means the area around and including loading arms, pumps, meters, shutoff valves, relief valves, and other equipment used to load and unload fuel cargo tanks, trucks, tank trucks, railroad cars, cars, other distribution containers or other transport vehicles, if the loading rack services or is attached to one or more storage tank(s) regulated in 20.5 NMAC.

(7) “Local government” shall have the meaning given this term by applicable state law. The term is generally intended to include counties, municipalities, school districts, and special districts, including flood control and conservancy districts.

(8) “Lower explosive limit” means the lowest percentage of a substance in an airspace that is explosive.

(9) “LST ranking system” means the leaking storage tank ranking system, the ranking or site prioritization system developed for and modified by the department using the analytical hierarchy process to rank sites where a release from a storage tank has occurred based upon public health, safety and welfare and environmental concerns.

**M.** Terms beginning with the letter “M.”

(1) “Magnitude of contamination” means the maximum concentrations of contaminants of concern that resulted from a release.

(2) “Maintenance” means the normal operational upkeep to prevent a storage tank system from releasing product.

(3) “Minimum site assessment” or “MSA” means the sum total of all of the following activities:

(a) reporting, investigating and confirming a release pursuant to 20.5.118 NMAC; and

(b) determining the on-site extent, magnitude and impact of contamination by conducting investigations and reporting to the department pursuant to 20.5.119.1902 NMAC or 20.5.120.2002 NMAC (initial abatement), 20.5.119.1903 NMAC or 20.5.120.2003 NMAC (report on initial abatement), 20.5.119.1907 NMAC or 20.5.120.2007 NMAC (preliminary investigation), and 20.5.119.1909 NMAC or 20.5.120.2009 NMAC (report on the preliminary investigation).

(4) “Mining” means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. “Mining” does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal nuclear regulatory commission.

(5) “Mobile AST” means an above ground storage tank that is not field-erected, and which is capable of changes in location.

(6) “Modification” means any change to any portion of a storage tank system that is not a repair. For purposes of 20.5.105 NMAC, the term does not include the process of relining a tank through the application of such materials as epoxy resins.

(7) “Monitored natural attenuation” means a methodology for remediation that relies upon a variety of naturally occurring chemical, physical and biological processes to achieve target concentrations in a manner that is equally as protective of public health, safety and welfare, and the environment as other methods, and that is accompanied by a program of monitoring to document the progress and results of the above-mentioned processes.

(8) “Monthly” means once per month, not to exceed 30 days.

(9) “Motor fuel” means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: motor gasoline blended with alcohol).

(10) “Motor fuel dispenser system” or “dispenser system” means a motor fuel dispenser and the equipment necessary to connect the dispenser to a storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank may include check valves, shear valves, unburied risers of flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

N. Terms beginning with the letter “N.”

(1) “NAPL” means non-aqueous phase liquid as defined in this section.

(2) “New AST system” means an AST system for which installation has commenced after June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(3) “New storage tank system” means a new AST system or a new UST system.

(4) “New UST tank system” means an UST system for which installation has commenced after December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction at the site or installation of the tank, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(5) “Non-aqueous phase liquid” (NAPL) means an interstitial body of liquid oil, petroleum product or organic solvent or other organic substance, including an emulsion containing such material; in the case of liquid oil or a petroleum product, the term is synonymous with “phase separated hydrocarbon” and “free product.”

(6) “Non-commercial purposes” with respect to motor fuel means not for resale.

(7) “Non-community water system” means a public water system that is not a community water system.

(8) “Normal maintenance” means an activity involving work on a storage tank system that is not a repair, replacement, or installation, which may include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overflow systems, or work on line or tank leak detection systems, then the activity is not normal maintenance but is instead a repair.

**O.** Terms beginning with the letter “O.”

(1) “Occurrence” means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank. This definition is intended to assist in the understanding of 20.5.123 NMAC and is not intended either to limit the meaning of “occurrence” in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of “occurrence.”

(2) “On the premises where stored” with respect to heating oil means storage tank systems located on the same property where the stored heating oil is used.

(3) “Operational life” is the period beginning from the time when the installation of the tank system is commenced until it is properly closed pursuant to 20.5.115 NMAC.

(4) “Operator” means any person in control of, or having responsibility for, the daily operation of a storage tank system.

(5) “Overflow release” is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(6) “Owner” means, in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns a storage tank used for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use. For purposes of the registration requirements of 20.5.102 NMAC only, the term “owner” excludes any person who:

(a) had a UST taken out of operation on or before January 1, 1974;

(b) had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984; or

(c) had an AST taken out of operation on or before July 1, 2001.

(7) “Owner ID number” means a department issued owner identification number.

**P.** Terms beginning with the letter “P.”

(1) “Permanently installed AST” means an AST or mobile AST that is on site for more than 365 consecutive days and dispensing or storing a regulated substance for distribution at any time during that period.

(2) “Person” means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. “Person” also includes a consortium, a joint venture, a commercial entity, and the United States government.

(3) “Petroleum” means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.



(4) “Petroleum marketing facilities” include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(5) “Petroleum marketing firms” are all firms owning petroleum marketing facilities. Firms owning other types of facilities with storage tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(6) “Petroleum tank system,” “petroleum storage tank” or “petroleum UST” means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(7) “Pipe” or “piping” means the hollow cylinder or the tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated substances within a storage tank system. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the storage tank to the dispenser or other end-use equipment.

(8) “Pipeline facilities, including gathering lines,” are new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act.

(9) “Positive sampling, testing or monitoring results” refers to the results of sampling, testing or monitoring using a method described in 20.5.108 NMAC or 20.5.111 NMAC that indicate a release from a storage tank system has occurred.

(10) “Potable drinking water well” means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which may supply water for a community water system, a non-community public water system, or otherwise may supply water for human consumption (consisting of drinking, bathing, cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(11) “Potentially explosive levels of petroleum hydrocarbon vapors” means vapors which register in excess of ten percent LEL (lower explosive limit) on a combustible gas indicator properly calibrated for pentane.

(12) “Potentially harmful petroleum hydrocarbon vapors” means vapors which register a reading of five whole units above ambient concentrations total aromatic hydrocarbons in any structure in the vicinity of the release site, on a photoionization detector, flame ionization detector or an equivalent device properly calibrated to detect hydrocarbon vapors at a minimum detection limit of at least one ppm.

(13) “Product” means a regulated substance.

(14) “Product deliverer” means any person who delivers or deposits product into a storage tank system. This term includes, but is not limited to, major oil companies, jobbers, petroleum transportation companies, brokers and other product delivery entities.

(15) “Professional engineer” is an individual licensed in New Mexico to engage in the practice of engineering under the New Mexico Engineering and Surveying Practices Act, Sections 61-23-1 through 61-23-32 NMSA 1978.

(16) “Project drawings” means schematic drawings of tanks, piping, and ancillary equipment, which need not be prepared, stamped or signed by a professional engineer.

(17) “Property damage” shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(18) “Provider of financial assurance” means an entity that provides financial assurance to an owner or operator of a storage tank system through one of the mechanisms listed in 20.5.117.1705 through 20.5.117.1716 NMAC, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(19) “Public water system” means a system for the provision to the public of piped water for human consumption (consisting of drinking, bathing, cooking, or other similar uses) if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a “community water system” or a “non-community water system.”

**Q.** Terms beginning with the letter “Q”.

(1) “Qualified firm” means a person, as defined in this section, qualified by the department under 20.5.122 NMAC to undertake corrective action.

(2) “Qualified tester” means an individual who has the training, testing equipment manufacturer’s certifications, and experience to test spill and overflow prevention equipment, containment sumps, interstitial and sump sensors, automatic line leak detectors, cathodic protection systems, and to conduct precision tank and line tightness testing on any above ground or underground storage tank systems. Also, the individual meets the requirements for testers in 20.5.105 NMAC and has submitted the information required in 20.5.105 NMAC to the department.

**R.** Terms beginning with the letter “R”.

(1) “RBSL” means risk-based screening level as used in 20.5.119 NMAC.

(2) “Receptor” means a person, plant or animal community, structure, utility, surface water, designated wellhead or source water protection area or water supply well that is or may be adversely affected by a release.

(3) “Red tag” means a tamper-resistant tag on a storage tank system’s fill pipes that clearly identifies a storage tank system as ineligible for product delivery, deposit or acceptance. The tag shall be easily visible and state that it is unlawful to deliver to, deposit into, or accept product into, the ineligible storage tank system.

(4) “Regulated substance” means:

(a) for USTs: any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act, as amended; and

(b) for ASTs and USTs: petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven-tenths pounds per square inch absolute; asphalt is not a regulated substance; the term “regulated substance” includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude

oil through processes of separation, conversion, upgrading and finishing, such as motor fuels (including ethanol-based motor fuels), jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(5) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance from a storage tank system into groundwater, surface water or soil.

(6) “Release detection” means determining whether a release of a regulated substance has occurred from a storage tank system into the environment or a leak has occurred into the interstitial area between a storage tank system and a secondary barrier around it.

(7) “Remediation” is the process of reducing the concentration of contaminants in air, water or soil to a level that poses an acceptable risk to public health, safety and welfare and the environment.

(8) “Repair” means to restore to proper operating condition any defective or damaged part of a storage tank system. Repair does not include normal maintenance. For these purposes, normal maintenance shall include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance and is a repair.

(9) “Replace” or “replaced” means:

(a) for a storage tank or dispenser system, to remove an existing tank or dispenser system and install a new tank or dispenser; and

(b) for piping, to remove either 20 feet or more or fifty percent or more of piping, whichever is less, and install other piping, excluding flex connectors and other transitional components, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

(10) “Residential tank” is a tank located on property used primarily for dwelling purposes.

(11) “Responsible party-lead site” means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes corrective action.

(12) “Return to service” means to bring a storage tank into operation after the tank has been in temporary or permanent closure.

(13) “Risk-based screening level” (RBSL) means an action level or target level for a contaminant of concern determined using default criteria set by the department and site-specific data for thickness of the contaminated zone and depth to groundwater in accordance with 20.5.119 NMAC.

(14) “Rural and remote area” means that a storage tank facility is located in an area that is more than 20 miles from another facility that sells fuel to the public and that is open year-round.

**S.** Terms beginning with the letter “S.”

(1) “Secondary containment” or “secondarily contained” means:

(a) for USTs and ASTs: a release prevention and release detection system for a storage tank, its piping and associated ancillary equipment that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, synthetic

impervious liners. This term includes containment sumps when used for interstitial monitoring of piping.

**(b)** For USTs: a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks.

**(2)** “Secretary” means the secretary of the New Mexico environment department also known as the secretary of the environment.

**(3)** “Septic tank” is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

**(4)** “Siphon system” means two or more storage tanks where the tops of the tanks are installed at the same level, the fuel levels equalize by atmospheric pressure, and the piping connecting them is installed through penetrations on the tops of the tanks.

**(5)** “Site” means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks.

**(6)** “Site conceptual exposure scenario” means a qualitative evaluation of exposure information for a site that identifies the relevant contaminant source, release mechanisms, media of concern, complete and incomplete exposure pathways, and receptors.

**(7)** “Site-specific target level” (SSTL) means an action level or target level for a contaminant of concern determined using more site-specific data as used in 20.5.119 NMAC.

**(8)** “Source water” means water that could be used for domestic purposes, including but not limited to ground water, natural springs, and surface water, even if such water is not currently being used for domestic purposes.

**(9)** “Special enclosure” means an above or below grade AST installation that surrounds an AST or ASTs, including but not limited to pits, cellars, and basements.

**(10)** “Spill” means:

**(a)** any spill or overflow of a regulated substance that exceeds its reportable quantity under 40 CFR 302 in accordance with CERCLA;

**(b)** any spill or overflow of petroleum that exceeds 25 gallons or causes a sheen on surface water or reaches groundwater; or

**(c)** any spill or overflow of petroleum of 25 gallons or less, the cleanup of which cannot be accomplished within 24 hours.

**(11)** “SSTL” means site-specific target level as used in 20.5.119 NMAC.

**(12)** “State-lead site” means a site where the department takes corrective action using the fund because the owners and operators are unknown, unable or unwilling to take corrective action as described in 20.5.121.2102 NMAC or because the department determines that a single entity is necessary to lead the corrective action.

**(13)** “Storage tank” means any above ground storage tank or underground storage tank.

**(14)** “Storage tank fee” means fees required by Section 74-4-4.4 NMSA 1978 and Section 74-6B-9 NMSA 1978.

**(15)** “Storage tank system” means a storage tank and its associated ancillary equipment and containment system, if any.

(16) “Storm water or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

(17) “Substantial business relationship” means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(18) “Substantial governmental relationship” means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from a clear commonality of interest in the event of a storage tank release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(19) “Sump” means any pit or reservoir that meets the definition of tank (including troughs or trenches connected to it that serves to temporarily collect regulated substances.

(20) “Surface impoundment” is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well.

**T.** Terms beginning with the letter “T”.

(1) “Tangible net worth” means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, “assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(2) “Tank” is a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(3) “Tank chart” means a table that converts the number of inches of liquid in the tank into the number of gallons.

(4) “Target concentrations” means any concentration of a contaminant to which a medium is required to be remediated under any provision of 20.5 NMAC protective of human health, safety and welfare, and the environment. For purposes of 20.5.120 NMAC, target concentrations as they apply to soil contamination shall be based on standards prescribed by applicable law or, if there are no applicable standards, the standard set forth in 20.6.3.10 NMAC.

(5) “Temporary closure” is the state of a storage tank system that is not receiving deliveries, has no regulated substance being transmitted through its piping, and whose owner or operator has notified the department that it is in temporary closure. Temporary closure shall not exceed 12 months unless the owner or operator receives an extension from the department and meets the requirements of 20.5.115 NMAC.

(6) “Termination” under Subsections A and B of 20.5.117.1757 NMAC means only those changes that could result in a gap in coverage as where the insured has not obtained

substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(7) “Tester” means an individual who has the training, testing equipment manufacturer’s certifications, and experience to test spill and overflow prevention equipment, containment sumps, interstitial and sump sensors, automatic line leak detectors, cathodic protection systems, and to conduct precision tank and line tightness testing on any above ground or underground storage tank systems.

(8) “Third party” means an independent entity that is not affiliated with the owner and operator of a storage tank system.

(9) “Third party certified” means a process whereby release detection equipment or a method of release detection has been evaluated by an independent third-party testing laboratory which has published a report stating the equipment or method meets the claims made by the manufacturer.

(10) “Tightness testing” means a procedure for testing the ability of a storage tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of groundwater into a storage tank system).

(11) “Training program” means any program that meets the requirements of 20.5.104 NMAC and provides information to and evaluates the knowledge of a class A, class B, or class C operator through testing, practical demonstration, or another approach acceptable to the department regarding requirements for storage tank systems.

(12) “Trap door” means a device installed on the fill riser above the connection of remote fill line on a UST system that is designed to prevent a regulated substance from escaping the fill riser in the event of an overflow, and it allows for the manual gauging of the tank through this riser.

**U.** Terms beginning with the letter “U”.

(1) “Under-dispenser containment” or “UDC” means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.

(2) “Underground area” means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(3) “Underground release” means any below ground release.

(4) “Underground storage tank” or “UST” means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. A compartment tank with combined total capacity greater than 110 gallons is a UST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. The term does not include any:

(a) farm, ranch or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) septic tank;

(c) pipeline facility, including gathering lines which are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act;

- (d) surface impoundment, pit, pond or lagoon;
- (e) storm water or wastewater collection system;
- (f) flow-through process tank;
- (g) liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;
- (h) storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;
- (i) tank used for storing heating oil for consumptive use on the premises where stored;
- (j) tank exempted by rule of the EIB after finding that the type of tank is adequately regulated under another federal or state law; or
- (k) pipes connected to any tank exempted by Subparagraphs (a) through (j) of this paragraph.

(5) “Un-manned facility” means a storage tank system without a sales office, store or other business establishment associated with it. Examples of un-manned facilities include, but are not limited to, a card-lock fueling station with no attendant and a tank serving an emergency generator at a utility transfer station.

(6) “Unsaturated zone” is the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

(7) “Upgrade” means the addition, modification, or retrofit of some systems such as but not limited to cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of product.

(8) “USTR” means the version of the environmental improvement board’s underground storage tank regulations in effect prior to adoption of the standard format in the New Mexico Administrative Code in 1995.

(9) “UST system” means an underground storage tank and its associated ancillary equipment and containment system, if any.

V. Terms beginning with the letter “V.”

(1) “Vault” means a liquid-tight structure that completely surrounds a tank that is above, below or partially above or below the ground surface.

W. Terms beginning with the letter “W.”

(1) “Wastewater treatment tank” means a tank that is designed to receive and treat an influent of wastewater through physical, chemical, or biological methods.

(2) “Workplan” means a written plan for corrective action, including, but not limited to, a scope of work, schedule for implementation, and description of qualifications of persons who will perform the work.

(3) “WQCC” means the New Mexico water quality control commission.

(4) “WQCC standards” means standards set forth in 20.6.4 NMAC, standards for interstate and intrastate streams, and 20.6.2 NMAC, ground and surface water protection.

X. Terms beginning with the letter “X.” [RESERVED]

Y. Terms beginning with the letter “Y.” [RESERVED]

Z. Terms beginning with the letter “Z.” [RESERVED]

[20.5.101.7 NMAC - N, 07/24/2018]

**20.5.101.8 to 20.5.101.99 [RESERVED]**

**20.5.101.100 SAVINGS CLAUSE:** This rule shall not affect any administrative or judicial enforcement action pending on the effective date of 20.5.101 through 20.5.125 NMAC.  
[20.5.101.100 NMAC - N, 07/24/2018]

**20.5.101.101 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with 20.5 NMAC does not relieve a person of the obligation to comply with other applicable state and federal regulations.  
[20.5.101.101 NMAC - N, 07/24/2018]

**20.5.101.102 CONSTRUCTION:** The petroleum storage tank regulations, 20.5 NMAC, shall be liberally construed to effectuate the purposes of the Hazardous Waste Act and the Ground Water Protection Act.  
[20.5.101.102 NMAC - N, 07/24/2018]

**20.5.101.103 SEVERABILITY:** If any part, section or application of 20.5 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.  
[20.5.101.103 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.101 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 3/15/88;  
EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 9/12/88;  
EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 2/14/89;  
EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 8/4/89;  
EIB/USTR 11, Underground Storage Tank Regulations - Part XI - Miscellaneous, filed 9/12/88.

**History of Repealed Material:**

20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 10/6/95), repealed 2/2/00;  
20.5.1 NMAC, Petroleum Storage Tank Regulations - General Provisions (filed 12/30/99), repealed 6/14/02;  
20.5.1 NMAC, Petroleum Storage Tank Regulations - General Provisions, (filed 4/30/02), repealed 8/15/03.  
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 7/16/03), repealed 4/4/08.  
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 3/5/08), repealed 6/15/09.  
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 6/15/09), repealed 7/24/18.

**Other History:**

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 8/4/89 and EIB/USTR 11, Underground Storage Tank Regulations - Part XI - Miscellaneous (filed 9/12/88) both renumbered, reformatted and replaced by 20 NMAC 5.1, Underground Storage Tanks - General Provisions, effective 11/5/95;



20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 10/6/95), was replaced by 20 NMAC 5.1, Underground Storage Tanks - General Provisions, effective 2/2/00;  
20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 12/30/99), was replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 6/14/02  
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 4/30/02), was replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 8/15/03.  
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 7/16/03), replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 4/4/08.  
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 3/5/08), replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 6/15/09.  
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 3/5/08), replaced by 20.5.101 NMAC, Petroleum Storage Tanks - General Provisions, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 102 REGISTRATION OF TANKS**

**20.5.102.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.102.1 NMAC - N, 07/24/2018]

**20.5.102.2 SCOPE:** This part applies to any owner and operator of a storage tank as provided in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.  
[20.5.102.2 NMAC - N, 07/24/2018]

**20.5.102.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.102.3 NMAC - N, 07/24/2018]

**20.5.102.4 DURATION:** Permanent.  
[20.5.102.4 NMAC - N, 07/24/2018]

**20.5.102.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.102.5 NMAC - N, 07/24/2018]

**20.5.102.6 OBJECTIVE:** The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.102.6 NMAC - N, 07/24/2018]

**20.5.102.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.102.7 NMAC - N, 07/24/2018]

**20.5.102.8 TO 20.5.102.199 [RESERVED]**

**20.5.102.200 EXISTING TANKS:**

A. The owner of any underground storage tank, as those terms are defined in 20.5.101 NMAC, must have registered such tank or tanks with the petroleum storage tank bureau of the department within three months after April 14, 1988, the effective date of this part as first adopted, except that any owner who has filed the form of notice entitled “notification for underground storage tanks,” prescribed by the United States environmental protection agency

and described in 40 CFR 280 Appendix I (EPA form 7530-1), is not required to register a tank for which a notice has been filed, provided that the information as stated therein is still current.

**B.** The owner of any above ground storage tank, as those terms are defined in 20.5.101 NMAC, must have registered such tank or tanks with the petroleum storage tank bureau of the department no later than June 14, 2002.

**C.** The owner of any storage tank emergency generator system must have registered such tank with the petroleum storage tank bureau of the department no later than June 15, 2012.

**D.** Registration becomes effective upon receipt of the first year's annual fee described in 20.5.103 NMAC. Registration shall be renewed annually by payment of the annual fee until the permanent closure of the tank pursuant to 20.5.115 NMAC.

**E.** If owners and operators do not have a current and valid registration certificate because of the failure to pay tank fees in accordance with 20.5.102.207 NMAC, the storage tank system shall not be operated and owners and operators shall comply with the temporary closure requirements of 20.5.115 NMAC or shall immediately permanently close the storage tank system in accordance with 20.5.115.1502 NMAC.

[20.5.102.200 NMAC - N, 07/24/2018]

#### **20.5.102.201 TRANSFER OF OWNERSHIP:**

**A.** No purported transfer of any storage tank system shall be effective to create, alter or extinguish any right or responsibility of any person subject to this part, unless the following transfer requirements are met.

(1) Prior to any transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a regulated storage tank system, the transferor shall notify the department and shall provide the name, address and phone number of the transferee, as well as the date and type of transfer (sale or lease, for example). The transferor shall also notify the transferee, prior to the transfer, of the existence of the storage tank system, of the transferee's registration obligations under this part, and of these rules.

(2) Upon receipt of such notification, the transferee shall re-register the tank with the department within 30 days of transfer of ownership, and shall provide all information required for registration in 20.5.102.206 NMAC. The transferee also shall have the duty to inquire into all of the provisions and requirements of this part.

(3) A transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. A transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after the transfer.

**B.** Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the storage tank system.

[20.5.102.201 NMAC - N, 07/24/2018]

**20.5.102.202 NEW STORAGE TANK SYSTEMS:** The owner shall notify the department in writing at least 30 days before any new above ground or underground storage tank system is installed and shall register any new tank or storage tank system with the department within 60 days of placing a regulated substance in the tank, unless the owner applies for an extension in writing and an extension is granted in writing by the department. Annual registration certificates required for operation will be issued in accordance with 20.5.102.207 NMAC.

[20.5.102.202 NMAC - N, 07/24/2018]

**20.5.102.203 SUBSTANTIALLY MODIFIED STORAGE TANK SYSTEMS:** Except as provided in 20.5.102.205 NMAC below, when an existing storage tank system is substantially modified or replaced, the owner shall notify the department in writing of such modification or replacement, at least 30 days prior to the modification or replacement. Emergency repairs or replacements made pursuant to 20.5.102.205 NMAC are exempt from the notification requirements of this section.

[20.5.102.203 NMAC - N, 07/24/2018]

**20.5.102.204 NOTIFICATION OF SPILL OR RELEASE:** Notice of any known or suspected release from a storage tank system, any spill or any other emergency situation shall be given to the department in accordance with 20.5.118 NMAC.

[20.5.102.204 NMAC - N, 07/24/2018]

**20.5.102.205 EMERGENCY REPAIRS AND TANK REPLACEMENT:** The owner or operator may make immediate repairs or replacement of a storage tank system in the event an emergency situation presents a threat to the public health, provided the owner or operator gives notice to the department as set forth in 20.5.102.204 NMAC and complies with the requirements of 20.5.107 NMAC for UST systems and 20.5.110 NMAC for AST systems.

[20.5.102.205 NMAC - N, 07/24/2018]

**20.5.102.206 REGISTRATION:**

**A.** Required information. An owner or operator shall register all storage tanks unless EPA form 7530-1 entitled “notification for underground storage tanks” has been submitted to the department and all information contained thereon is still accurate. The registration shall contain at a minimum the following for each location with tanks:

- (1) facility name and address, including county, zip code and telephone number, and whether the tanks are located on Indian lands;
- (2) the department issued owner ID number and facility ID number for existing facilities;
- (3) whether the facility is currently listed as a leaking petroleum storage tank site;
- (4) storage tank system owner's name and address, including county, zip code and telephone number;
- (5) property owner's name and address, including county, zip code and telephone number;
- (6) storage tank system operator's name and address, including county, zip code and telephone number (if operator is different from owner);
- (7) facility contact person, job title and phone number;
- (8) type of facility: government (federal, state, county, municipality or other); individual; retail or non-retail (petroleum producer, petroleum refiner, school district, construction company, manufacturer);
- (9) whether a suspected or confirmed release as described in 20.5.118 NMAC has been reported at the facility to the bureau;

(10) type of tank (list all that apply): AST, UST, steel double-wall, steel with cathodic protection, horizontal, vertical, compartment, with secondary containment, convault, field erected, shop built, vaulted, fiberglass, fiberglass double wall;

(11) for each tank, (list all that apply): type of internal protection (cathodic protection, interior lining or other), type of external protection (asphalted, painted, epoxy coated, fiberglass reinforced plastic, cathodically protected or other), and type of corrosion protection (impressed current, sacrificial anode, internal lining or other);

(12) type of piping (list all that apply): bare or galvanized steel, coated steel, fiberglass reinforced plastic, pressurized, suction, cathodically protected or unknown;

(13) products stored (list all that apply): diesel, unleaded or leaded gasoline, alcohol-enriched gasoline, used oil, lubricating oil, heating oil, kerosene, aviation gas, jet fuel, hazardous substance, other or unknown;

(14) use of tank (list all that apply): bulk fuel storage, retail fuel sales, aviation, fleet fuel supply, emergency generator, on-site heating, other (please specify);

(15) method of release detection for each tank: visual inspection, tank tightness testing with inventory control, automatic tank gauging, vapor monitoring, groundwater monitoring, interstitial monitoring, statistical inventory reconciliation, secondary containment or other (please specify);

(16) method of release detection for piping: visual inspection, secondary containment, vapor monitoring, interstitial monitoring, automatic line leak detectors, line tightness testing or other (please specify);

(17) installation date of each tank;

(18) status of each tank (list all that apply): new installation, upgraded or modified, currently in service or out of service less than 12 months, change in service and for tanks out of use: estimated date last used, estimated quantity of substance remaining in tank in gallons, date tank filled with solid material (if applicable), and date tank removed (if applicable);

(19) certifications required in 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, 20.5.110 NMAC, and 20.5.105 NMAC;

(20) whether any part of the storage tank system is within 1,000 feet of any water supply well;

(21) a description of the method and provider of financial responsibility meeting the requirements of 20.5.117 NMAC;

(22) a description of the spill and overfill prevention systems for each tank (product level sensor/alarm, automatic tank fill shut-off and type, spill catchment basin, less than 25 gallons at a time transferred to tank, none, or other); and

(23) the name of the class A or B operator, if available. If the name of the class A or B operator is not available at the time of registration, this information shall be provided within 60 days of placing the storage tank system in service.

**B.** Signature required. A registration submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president or a duly authorized agent of the corporation with authority to represent the corporation in these matters. A registration submitted by a partnership or a sole proprietorship shall be signed by a general partner or proprietor. A registration submitted by a municipal, state or other public facility shall be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

**C.** Registrations shall be sent or delivered to the petroleum storage tank bureau.  
[20.5.102.206 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for registration. The form is available on the Petroleum Storage Tank Bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.102.207 REGISTRATION CERTIFICATE:**

**A.** No person shall operate a storage tank system without a current and valid registration certificate.

(1) The operator of any storage tank system shall display a current and valid registration certificate on the premises of the storage tank system at all times.

(2) Upon submittal to the department of a complete registration application or EPA form 7530-1 and payment of the annual fee, the department shall issue an initial registration certificate. An initial registration certificate shall expire on the next succeeding June 30, regardless of its date of issuance.

(3) After issuance of the initial registration certificate, except as provided in Paragraph (5) of this subsection, the department shall issue a renewed registration certificate upon payment of the annual fee on or before July 1 of each year. A renewed registration certificate shall expire on June 30 of each year.

(4) After receiving a registration form for a transfer as provided in Paragraph (2) of Subsection A of 20.5.102.201 NMAC, the department shall issue a registration certificate within 30 days for the transferee if the annual fees for the current fiscal year have been paid as required in 20.5.102.201 NMAC.

(5) When fees, including late fees, for any of an owner's tanks are delinquent as of June 30 of any year, no registration certificate for any of that owner's tanks shall be renewed until:

(a) all past due annual fees and late fees for all of the owner's tanks have been paid; or

(b) the department and the owner or operator have agreed to a schedule for payment, provided any renewed certificate issued to an owner or operator who has agreed to such a schedule shall be valid only so long as the owner or operator continues to make payments in accordance with the payment schedule.

**B.** In the event any information provided on the registration form or EPA form 7530-1 changes or is no longer accurate, the owner or operator shall report the change within 30 days to the department.

[20.5.102.207 NMAC - N, 07/24/2018]

**20.5.102.208 REQUIREMENT FOR A CORRECT MAILING ADDRESS:** All registration forms, inspection reports, correspondence, or other documents sent by owners or operators to the department shall include the correct mailing address of the owner or operator, and the owner and operator shall advise the department, in writing, within seven days of any change in mailing address.

[20.5.102.208 NMAC - N, 07/24/2018]

## **HISTORY OF 20.5.102 NMAC:**

### **Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, filed 3/15/98;

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, filed 9/12/88;

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, filed 8/4/89.

### **History of Repealed Material:**

20 NMAC 5.2, Petroleum Storage Tank Regulations, Registration of Tanks (filed 02/27/97) repealed 6/14/02.

20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks (filed 4/30/02) repealed 4/4/08.

20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks (filed 04/04/2008), repealed 07/24/2018.

### **Other History:**

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks (filed 8/4/89) renumbered, reformatted and replaced by 20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks, effective 11/5/95.

20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks (filed 10/6/95) renumbered and replaced by 20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks, effective 4/1/97.

20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks (filed (2/27/97) renumbered, reformatted and replaced by 20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks, effective 6/14/02.

20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks (filed 4/30/02) replaced by 20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks, effective 4/4/08.

20.5.2 NMAC, Petroleum Storage Tanks, Registration of Tanks (filed 4/4/08), was renumbered, reformatted, and replaced by 20.5.102 NMAC, Petroleum Storage Tanks, Registration of Tanks, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 103 ANNUAL FEE**

**20.5.103.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.103.1 NMAC - N, 07/24/2018]

**20.5.103.2 SCOPE:** This part applies to any owner and operator of a storage tank as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirement of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.  
[20.5.103.2 NMAC - N, 07/24/2018]

**20.5.103.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; provisions of the Ground Water Protection Act, 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-16 NMSA 1978.  
[20.5.103.3 NMAC - N, 07/24/2018]

**20.5.103.4 DURATION:** Permanent.  
[20.5.103.4 NMAC - N, 07/24/2018]

**20.5.103.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.103.5 NMAC - N, 07/24/2018]

**20.5.103.6 OBJECTIVE:** The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to interpret, implement and enforce the provisions of the Hazardous Waste Act relating to storage tank systems.  
[20.5.103.6 NMAC - N, 07/24/2018]

**20.5.103.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.103.7 NMAC - N, 07/24/2018]

**20.5.103.8 -20.5.103.299 [RESERVED]**

**20.5.103.300 PAYMENT OF FEE:**

**A.** The owner or operator shall pay an annual per tank fee to the department on July 1 for each current fiscal year (July 1 through June 30) or portion of a year that a tank is in use. A storage tank shall be deemed “in use” until notice is received by the department that the storage tank has been permanently closed in a manner acceptable to the department.

**B.** Schedule for payment.

**(1)** For USTs, the owner or operator shall pay the annual fee:

(a) for a UST in use on June 1, 1988, for calendar year 1988, the fee was due on June 1, 1988;

(b) for the period from January 1, 1989 through June 30, 1990, the fee was due on May 1, 1989;

(c) for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

(d) for a new UST, within 60 days after a regulated substance has been placed in the UST.

(2) For ASTs, the owner or operator shall pay the annual fee:

(a) for an AST in use on July 1, 2002, for fiscal year 2003, the fee was due on September 14, 2002; or within 30 days after the AST was placed in use for any AST installed after September 14, 2002;

(b) for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

(c) for a new AST, within 60 days after a regulated substance has been placed in the AST.

**C.** The department shall waive the annual tank fee for the current fiscal year for a storage tank system permanently closed in accordance with 20.5.115 NMAC on or before July 31.

**D.** When there is a transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a registered storage tank system, the transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. The transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after any transfer. In addition, both parties shall comply with 20.5.102.201 NMAC.

[20.5.103.300 NMAC - N, 07/24/2018]

#### **20.5.103.301 AMOUNT OF FEE:**

**A.** The annual fee for all underground storage tanks shall be:

(1) \$28.00 per UST in calendar year 1988;

(2) \$75.00 per UST in calendar year 1989; and

(3) for subsequent years, \$100 per UST as established by Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978.

**B.** The annual fee for all above ground storage tanks shall be \$100 per AST as established by Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978, beginning July 1, 2002.

[20.5.103.301 NMAC - N, 07/24/2018]

#### **20.5.103.302 TIMELINESS AND LATE FEES:**

**A.** Due date. A tank owner and operator become liable for a fee as soon as the event generating the fee occurs, such as a due date. The fact that the owner has not registered a tank is not material to the owner's and operator's liability for payment of a fee.

**B.** Late fee. In the event the annual fee is not paid when due, the department shall impose a late fee of \$25.00 or twenty-five percent of the unpaid balance, whichever is greater, which shall accumulate on the entire unpaid balance until all annual fees and all accrued late fees

are paid. The department may waive the late fees if payment is made within 15 days of the due date.

**C. Determination of timeliness.**

(1) Fees and late fees are timely if the postmark on the envelope made by the United States postal service bears the date on or before the date the payment is due. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service.

(2) Illegible postmark. If the postmark on the envelope is not legible and the department receives the contents by the second business day following the due date, the payment will be deemed timely. If the department receives the contents after the second business day following the due date, the owner or operator who is liable for the fees has the burden of proving the time when the postmark was made.

(3) If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of these rules. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(4) If the payment is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the payment due date. Received by the department means received at the department or bureau during the department's normal business hours.

**D. Saturday, Sunday or holiday due date.**

(1) If a payment due date falls on a Saturday, Sunday or a state of New Mexico or national holiday, the payment shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for payment of annual fees is July 1. If July 1 is a Saturday, the due date for payment of annual fees is Monday July 3. In this example, the department will consider any payment postmarked on July 3 to be timely.  
[20.5.103.302 NMAC - N, 07/24/2018]

**20.5.103.303 DESIGNATION OF FEES:** All fees described in this part shall be deposited in the storage tank fund.  
[20.5.103.303 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.103 NMAC:**

**Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee, 3/15/88;

EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee, 2/14/89.

**History of Repealed Material:**

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee (filed 02/27/97) repealed 06/14/02.

20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee (filed 04/30/02) repealed 4/4/08.

20.5.3 NMAC, Petroleum Storage Tanks, Payment of Fee (filed 4/4/08) repealed 7/24/18.

**Other History:**

EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee (filed 2/14/89) renumbered, reformatted, amended and replaced by 20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, effective 11/05/95.

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee (filed 10/06/95) replaced by 20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, effective 4/01/97.

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee (filed 2/27/97) renumbered, reformatted, and replaced by 20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee, effective 6/14/02.

20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee (filed 4/30/02) replaced by 20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee, effective 4/4/08.

20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee (filed 4/4/08) was renumbered, reformatted, and replaced by 20.5.103 NMAC, Petroleum Storage Tanks, Annual Fee, effective 7/24/18.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 104 OPERATOR TRAINING**

**20.5.104.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.104.1 NMAC - N, 07/24/2018]

**20.5.104.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirement of this part, including any notice, reporting, designation of certified operators, and payment requirements; however, both parties are liable in the event of noncompliance.  
[20.5.104.2 NMAC - N, 07/24/2018]

**20.5.104.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.104.3 NMAC - N, 07/24/2018]

**20.5.104.4 DURATION:** Permanent.  
[20.5.104.4 NMAC - N, 07/24/2018]

**20.5.104.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.104.5 NMAC - N, 07/24/2018]

**20.5.104.6 OBJECTIVE:** The purpose of this part is to ensure that operators of regulated storage tanks are effectively trained to manage and prevent environmental and public health emergencies and other situations requiring on-site response, in order to protect public health, safety and welfare and the environment of the state.  
[20.5.104.6 NMAC - N, 07/24/2018]

**20.5.104.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part. The terms operator and certified operator as used in this part are different terms, as defined in 20.5.101.7 NMAC.  
[20.5.104.7 NMAC - N, 07/24/2018]

**20.5.104.8 TO 20.5.104.399 [RESERVED]**

**20.5.104.400 CLASSES OF OPERATORS:** There shall be three classes of operators identified as class A, class B, and class C.

**A. Designation.** Owners and operators shall identify and designate, for each storage tank system or group of storage tank systems at a facility, at least one named individual for each class of operator and provide the department the name(s) and certificate number(s) of the

designated class A and B operator in writing within 30 days of a change in the designated operator.

(1) Owners and operators may designate different individuals for each class of operator, or one individual for more than one of the operator classes.

(2) Any individual designated for more than one operator class shall be trained and certified for each class of operator.

**B. Training.** All individuals designated as a class A, B or C operator shall, at a minimum, be trained and certified according to these regulations by the applicable deadlines in this part. Class A and B operators shall receive department approved training that applies to both AST systems and UST systems.

[20.5.104.400 NMAC - N, 07/24/2018]

**20.5.104.401 CLASS A OPERATOR:** A class A operator has primary responsibility to operate and maintain the storage tank system. The class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

**A. General requirements.** The class A operator focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the storage tank system (20.5 NMAC). For example, the class A operator ensures that appropriate individuals:

- (1) properly operate and maintain the storage tank system;
- (2) maintain appropriate records;
- (3) are trained to operate and maintain the storage tank system and keep records;
- (4) properly respond to emergencies caused by releases or spills from storage tank systems at the facility; and
- (5) make financial responsibility documents available to the department as required.

**B. Minimum training requirements.** At a minimum, the class A operator shall be trained in:

(1) a general knowledge of storage tank system requirements so he can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements and standards of 20.5 NMAC regarding:

- (a) spill prevention;
  - (b) overfill protection;
  - (c) release detection;
  - (d) corrosion protection;
  - (e) emergency response; and
  - (f) product compatibility;
- (2) financial responsibility documentation requirements;
  - (3) notification requirements;
  - (4) release and suspected release reporting requirements;
  - (5) temporary and permanent closure requirements; and
  - (6) operator training requirements.

[20.5.104.401 NMAC - N, 07/24/2018]

**20.5.104.402 CLASS B OPERATOR:** A class B operator implements applicable storage tank regulatory requirements and standards (20.5 NMAC) in the field. This individual implements the day-to-day aspects of operating, maintaining, and recordkeeping for storage tanks at one or more facilities.

**A.** General requirements. The class B operator monitors, maintains and ensures:

- (1) release detection method, recordkeeping and reporting requirements are met;
- (2) release prevention equipment, recordkeeping and reporting requirements are met;
- (3) all relevant equipment complies with performance standards; and
- (4) appropriate individuals are trained to properly respond to emergencies caused by releases or spills from storage tank systems at the facility.

**B.** Minimum training requirements. Compared with training for the class A operator, training for the class B operator shall provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements. At a minimum, class B operator training shall include:

- (1) components of storage tank systems;
- (2) materials of storage tank system components;
- (3) methods of release detection and release prevention applied to storage tank system components;
- (4) operation and maintenance requirements of 20.5 NMAC that apply to storage tank systems and include:
  - (a) spill prevention;
  - (b) overfill protection;
  - (c) release detection;
  - (d) corrosion protection;
  - (e) emergency response; and
  - (f) product compatibility;
- (5) reporting and recordkeeping requirements; and
- (6) class C operator training requirements.

[20.5.104.402 NMAC - N, 07/24/2018]

**20.5.104.403 CLASS C OPERATOR:** A class C operator is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual is responsible for responding to alarms or other indications of emergencies caused by spills or releases from storage tank systems. This individual notifies the class B or class A operator and appropriate emergency responders when necessary. Not all employees of a facility are necessarily class C operators.

**A.** General requirements. The class C operator:

- (1) controls or monitors the dispensing or sale of regulated substances; and
- (2) is responsible for initial response to alarms or releases.

**B.** Minimum training requirements. At a minimum, the class C operator shall be trained to take action in response to emergencies (such as situations posing an immediate danger or threat to the public or to the environment and that require immediate action) and alarms potentially caused by spills or releases from a storage tank system.

- C. Training elements for class C.
  - (1) Trained class A or class B operators shall:
    - (a) provide training to class C operators on emergency response procedures and on contacts for alarms potentially caused by spills or releases;
    - (b) provide simple written instructions on these procedures and contacts; and
    - (c) post signage with these procedures and contacts in prominent areas of the storage tank facility that are easily visible to any person dispensing a regulated substance.
  - (2) For purposes of this subsection, emergency response procedures shall include but are not limited to:
    - (a) procedures for overfill protection during delivery of regulated substances;
    - (b) operation of the emergency shut off system and alarm response;
    - (c) release reporting; and
    - (d) any site-specific emergency procedures.

[20.5.104.403 NMAC - N, 07/24/2018]

**20.5.104.404 TRAINING AND CERTIFICATION DEADLINES AND SCHEDULES:**

**A.** Owners and operators of storage tank systems shall post at each facility owned a list of designated and certified class A and B operators and provide the department the name(s) and certificate number(s) of the designated class A and B operator(s) in writing within 30 days of a change in the designated operator.

**B.** When requested and at any inspection conducted by the department, owners and operators shall provide to the department a list of designated certified class A and B operators for each facility owned.

**C.** Owners shall maintain documentation identifying designated and certified class C operators, with proof of training, at each facility.

**D.** All designated certified class A, B and C operators shall be trained and possess a current certificate issued by a trainer approved pursuant to this part.

**E.** New operators shall be trained and certified within the following timeframes:

(1) Class A and class B operators shall be trained and certified within 60 days of assuming full operation and maintenance responsibilities of a storage tank system. Owners and operators in rural and remote areas of the state may apply in writing for a 60-day deferral of this requirement. To apply for this deferral, owners and operators must demonstrate to the department that they are located in a rural and remote area, as defined in 20.5.101.7 NMAC.

(2) Class C operators shall be trained before assuming responsibility for responding to emergencies and before dispensing a regulated substance.

**F.** Owners and operators shall provide the department the name(s) and certificate number(s) of the designated class A and B operator(s) within 30 days of when they assume full operation and maintenance responsibilities of a storage tank system.

[20.5.104.404 NMAC - N, 07/24/2018]

**20.5.104.405 OPERATOR PRESENT:** Owners and operators shall ensure that every facility has either a class A, class B, or class C operator on-site whenever it is open for business and dispensing any regulated substance, except:

**A.** pursuant to Paragraph 1 of Subsection E of 20.5.104.404 NMAC;



- B.** at un-manned facilities, which shall conspicuously post signage required in Paragraph 1 of Subsection C of 20.5.104.403 NMAC, and shall either:
- (1) be visited by a class A or B operator every week; or
  - (2) have a remote monitoring system that:
    - (a) meets the requirements for UST systems in 20.5.108 NMAC and for AST systems in 20.5.111 NMAC;
    - (b) will automatically shut off the delivery or transfer of regulated substances if a suspected release is detected; and
    - (c) is visited monthly by a class A or B operator;
- C.** at emergency generator systems, which shall comply with the requirements of Subsection B above, unless an owner or operator requests an alternate method and such request is approved by the department.  
[20.5.104.405 NMAC - N, 07/24/2018]

**20.5.104.406 RE-TRAINING AND RE-CERTIFICATION:**

- A.** Class A and B operators shall be re-certified every five years, in the same manner as original training and certification required in this part. It is the responsibility of owners, operators and certified operators to track certification dates and expiration, and to ensure that a certified operator as required by this part is designated and on-site for every storage tank system by the deadlines in this part and as required in this part. Owners and operators shall provide the department with the certificate number and expiration date of their designated class A and B operators upon their certification.
- B.** In addition to the requirements of Subsection A, if the department finds that a storage tank system is out of compliance, the class A and class B operator shall be re-trained within 60 days unless they meet the requirements in Subsection C of this section. The class A and B operator may select training specific only to the area of non-compliance (if available) or attend a training program that includes all training elements required by this part. Owners and operators shall provide the department with verification of department approved re-training. At a minimum, a storage tank system is out of compliance for purposes of this section if the system is in violation of:
- (1) release detection requirements in 20.5 NMAC; or
  - (2) release prevention requirements (spill, overfill, or corrosion prevention) requirements in 20.5 NMAC.
- C.** An owner may elect to certify class A and B operators annually for a storage tank system. Class A and B operators that are certified annually need not re-train as required in Subsection B of this section if the department finds the storage tank system is out of compliance. Owners and operators shall provide the department with the certificate number and expiration date of their designated class A and B operators upon their certification.
- D.** No re-training or re-certification is required for class C operators. Class C operators must be trained and certified each time they are designated for a particular storage tank system.
- E.** Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC and have a designated trained class A or class B operator are exempt from re-training requirements unless one or both of the following conditions is present:
- (1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with soil, water or concrete.  
[20.5.104.406 NMAC - N, 07/24/2018]

**20.5.104.407 DEFERRAL OF RE-TRAINING:**

**A.** An owner or operator that is a certified operator may apply in writing to the department for a one-time five-year deferral of re-training required in 20.5.104.406 NMAC if he can demonstrate the following:

- (1) he owns no more than two facilities;
- (2) no significant changes, modifications or upgrades to either of the facilities have been made during the five-year period immediately preceding the deferral application, including changes to spill prevention equipment, overfill protection equipment, leak detection equipment or corrosion protection equipment;
- (3) the average monthly throughput at each facility is less than 20,000 gallons over the last 12 months; and
- (4) the facility has not been out of compliance as defined in 20.5.104.406 NMAC during the five-year period immediately preceding the deferral application.

**B.** The department shall promptly evaluate applications for deferral of re-training, and shall respond in writing within 60 days of receipt whether the application is granted, denied, or whether more information is needed. The department shall not unreasonably withhold approval if the applicant meets all requirements of Subsection A of this section. It is the responsibility of owners and operators to timely apply for deferrals of re-training so that they may be processed and evaluated well before the expiration of operator certification.

**C.** The department shall place facilities where the owner or operator has received a deferral of re-training on a priority list for technical assistance and inspection.

**D.** Owners and operators that receive a deferral of re-training shall complete re-training as required in 20.5.104.406 NMAC within five years after the deferral is granted. In other words, if approved, these owners and operators shall re-certify class A and B operators after 10 years.

[20.5.104.407 NMAC - N, 07/24/2018]

**20.5.104.408 APPROVAL OF TRAINERS AND TRAINING:**

**A.** Training elements. Training materials must be updated within 90 days of the effective date of the regulations. The following topics shall be covered in approved training courses for class A and class B operators:

- (1) general overview of department UST and AST program, to include emergency generator systems, airport hydrant systems, USTs with field-constructed tanks, hybrid storage tank systems, any other storage tank system regulated under 20.5 NMAC, and administrative requirements, including:
  - (a) registration forms and certificates, and process for filing and modifying them;
  - (b) notification process and general technical requirements for new installations, repairs, replacements and modifications;
  - (c) confirmed and suspected releases (including confirmation steps for suspected releases), monthly monitoring or release detection test failures, and other system failures that may indicate a release of regulated substance has or is occurring;

- (d) annual tank fees and invoicing process;
- (e) general requirements for maintaining and demonstrating financial responsibility;
- (f) department process for inspections and technical assistance resources available, including written checklists required in 20.5.104.409 NMAC; and
- (g) enforcement process for violations;
- (2) general overview of other regulations pertaining to ASTs, USTs, and any other storage tank systems regulated under 20.5 NMAC, including but not limited to, fire codes, occupational health and safety, and any related industry practices pertaining to safety;
- (3) spill prevention and overfill protection:
  - (a) rule requirements, including record keeping;
  - (b) equipment requirements;
  - (c) periodic inspection and testing requirements; and
  - (d) operation and maintenance records and reporting requirements;
- (4) containment sumps:
  - (a) rule requirements, including record keeping;
  - (b) equipment requirements;
  - (c) periodic inspection and testing requirements; and
  - (d) operation and maintenance records and reporting requirements;
- (5) release detection: for each type of release detection method listed and approved in 20.5.108 NMAC for UST systems, and 20.5.111 NMAC for AST systems:
  - (a) rule requirements, including record keeping;
  - (b) monitoring and equipment requirements, including third party approval requirements;
  - (c) periodic inspection and testing requirements; and
  - (d) operation and maintenance records and reporting requirements;
- (6) corrosion protection:
  - (a) rule requirements, including record keeping and reporting requirements;
  - (b) equipment requirements; and
  - (c) operation and maintenance needs, including periodic inspections and testing;
- (7) walk-through inspection requirements to include rule requirements and recordkeeping;
- (8) classes of operators and operator training requirements, including designation and certification;
- (9) temporary and permanent closure requirements:
  - (a) rule requirements, including record keeping;
  - (b) return to service;
  - (c) site assessment; and
  - (d) change in service;
- (10) general requirements for tank installer and junior installer certification and tester requirements:
  - (a) rule requirements, including record keeping;
  - (b) when certified installers are required;
  - (c) qualification for testers; and

(d) how to find certified installers and verify certified status.

**B.** Training standards. In determining whether to approve any trainer or training, the department shall consider the following:

- (1) whether the trainer is a third-party, in-house, educational institution or other;
- (2) whether the trainer will offer training in multiple locations throughout the state, regionally or locally;
- (3) how often the trainer will offer training;
- (4) what fee (if any) the trainer will charge;
- (5) whether the trainer will offer classes only to employee or in-house operators, to the general public, or to independent contract operators.

**C.** Training options may cover all or a portion of the required elements, and may include:

- (1) live training sessions in a classroom setting or at a storage tank system;
- (2) internet or computer training program; or
- (3) any other equivalent training method approved by the department.

**D.** Application for approval of training class. Trainers shall apply to the department for approval of training classes. An application for approval of training class shall include at a minimum:

- (1) name, address and contact information of the proposed trainer;
- (2) detailed description of the proposed trainer's experience, education and qualifications to conduct training;
- (3) agenda and materials to be used for the proposed class that shall include the elements required in this section;
- (4) final tests or other proposed methods of evaluating attendee success;
- (5) copies of proposed documentation to certify successful attendees as certified operators as required in 20.5.104.412 NMAC and to be used for the monthly and annual inspections required in 20.5.104.409 NMAC;
- (6) the proposed fee schedule for the training class; and
- (7) the proposed calendar for the proposed training classes that includes location and frequency.

**E.** Applications for approval of training classes shall only be accepted during the months of January and October.

**F.** The department shall evaluate applications for approval of training classes and provide a written approval, denial or request for additional information within the following timeframes:

- (1) within 90 days of receipt of the original application;
- (2) if the original application is denied and a second application is submitted, within 60 days of receipt of the second application; and
- (3) if the second application is denied and a third application is submitted, within 60 days of receipt of the third application.

**G.** If the department has denied an application three times pursuant to Subsection F above, the applicant shall not re-submit an application for a period of one year from the date of receipt of the third denial.

**H.** The department may periodically audit or review any training class, and the trainer shall allow a maximum of two department employees to attend any training class on

request without charge and without certification (except a reasonable charge for copying and materials). Upon an audit, the department may require the trainer to update or amend the training material.

**I.** The department may revoke approval of a training class if it determines that the trainer is not performing adequately or has misrepresented information about the content of the course material.

[20.5.104.408 NMAC - N, 07/24/2018]

[The department provides a form for application for approval of a training class, available on the petroleum storage tank bureau's pages on the department website

([https://www.env.nm.gov/petroleum\\_storage\\_tank/operator-training/](https://www.env.nm.gov/petroleum_storage_tank/operator-training/)) or by calling the department at 505-476-4397 or by writing to the Petroleum Storage Tank Bureau at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, Santa Fe, New Mexico. Owners shall submit applications for approval of the training to the bureau.]

#### **20.5.104.409 RESPONSIBILITIES OF CERTIFIED OPERATORS:**

**A.** A certified operator shall not represent himself or herself as certified unless the person has a current valid certificate from an approved trainer.

**B.** Monthly inspections. Each class A or class B operator shall perform a monthly inspection of each storage tank system for which he is designated, and shall record the results of each inspection on a checklist.

**(1)** At a minimum, monthly inspections shall be conducted and shall include an inspection of the following:

**(a)** release detection methods, including monitoring systems and all associated sensors, and whether they appropriately responded to all alarms and any conditions that might have indicated a release of regulated substance had occurred;

**(b)** integrity of spill prevention equipment (for cracks, holes, or bulges), and for the presence of regulated substance, water, or debris in the spill prevention equipment;

**(c)** dispenser and dispenser sumps for the presence of regulated substances, water, and debris;

**(d)** containment sumps, such as those which contain the submersible pump on the top of underground tanks, for the presence of regulated substances or any indication a release may have occurred; and

**(e)** overfill prevention equipment for proper operation and if maintenance is required.

**(2)** The certified operator(s) shall ensure that all inspections as outlined in the operations and maintenance plan, required in 20.5.107.701 NMAC for UST systems and 20.5.110.1001 NMAC for AST systems, are properly performed and conducted by qualified personnel.

**(3)** Certified operators may use checklists contained in the operations and maintenance plan, required in 20.5.107.701 NMAC for UST systems and 20.5.110.1001 NMAC for AST systems, to document monthly inspections only if the checklists meet the requirements of this section.

**(4)** The certified operator(s) shall provide the owner and operator with a copy of each inspection checklist, and alert the owner or operator of any condition discovered during the monthly inspection that may require follow-up actions.

(5) Owners and operators shall maintain a copy of inspection checklists and all attachments for the previous 12 months at all attended facilities or, if approved in writing by the department, off-site at a readily available location.

(6) Owners and operators shall provide monthly inspection reports and all attachments for the previous 12 months to the department on request.

C. The certified operator(s) shall be present or available during compliance inspections at the request of the department.

[20.5.104.409 NMAC - N, 07/24/2018]

[The department provides an optional checklist for compliance with this section. The checklist is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/guidance-documents-ast-and-ust/](https://www.env.nm.gov/petroleum_storage_tank/guidance-documents-ast-and-ust/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.104.410 RECIPROCITY:** No reciprocity, training, or certification from any other state or territory shall qualify an operator to be certified pursuant to this part.

[20.5.104.410 NMAC - N, 07/24/2018]

**20.5.104.411 ALTERNATE METHODS:**

A. If owners and operators want to propose an alternate method of operator presence at facilities with either AST emergency generator systems or UST emergency generator systems, other than that specified by this part, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the proposed method unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) citation to regulation for which alternate method is requested;
- (5) brief description of the proposed alternate method;
- (6) justification of proposed alternate method, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety, and welfare and the environment.

The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety, and welfare and the environment.

[20.5.104.411 NMAC - N, 07/24/2018]

**20.5.104.412 DOCUMENTATION AND RECORDKEEPING:**

A. Approved trainers shall provide written verification of training completion for class A, B and C operators that shall include:

- (1) the operator's name;
- (2) the date and location where training was completed;

(3) the facility name, address and department facility ID number for each facility for which the operator is trained; and

(4) the name, address and phone number of the approved trainer that conducted the training.

**B.** Written verification of training shall include a certificate of training and wallet card.

**C.** Owners and operators shall maintain written verification of training for class A, B, and C operators at every storage tank system for all designated certified operators, and make the written verification available for review when requested by the department.

**D.** Approved trainers shall maintain records of successful completion of training, including examination results, for at least 10 years, and shall make the records available to the department on request.

[20.5.104.412 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.104 NMAC:**

**Pre-NMAC History:** none

**History of Repealed Material:**

20.5.18 NMAC, Petroleum Storage Tanks, Operator Training (filed 6/15/09), repealed 07/24/2018.

**Other History:**

20.5.18 NMAC, Petroleum Storage Tanks, Operator Training (filed 6/15/09), was renumbered, reformatted, and replaced by 20.5.104 NMAC, Petroleum Storage Tanks, Operator Training, effective 07/24/2018.





**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 105 CERTIFICATION OF TANK INSTALLERS AND JUNIOR INSTALLERS;**  
**REQUIREMENTS FOR TESTERS**

**20.5.105.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.105.1 NMAC - N, 07/24/2018]

**20.5.105.2 SCOPE:** This part applies to persons installing, replacing, repairing, modifying, testing, or removing storage tank systems. The requirements for persons installing, replacing, repairing, or modifying airport hydrant systems, USTs with field-constructed tanks, and hybrid storage tank systems can be found in 20.5.114 NMAC.  
[20.5.105.2 NMAC - N, 07/24/2018]

**20.5.105.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.105.3 NMAC - N, 07/24/2018]

**20.5.105.4 DURATION:** Permanent.  
[20.5.105.4 NMAC - N, 07/24/2018]

**20.5.105.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.105.5 NMAC - N, 07/24/2018]

**20.5.105.6 OBJECTIVE:** The purpose of this part is to provide for the regulation of persons installing, replacing, repairing, modifying, testing, and removing storage tank systems that contain regulated substances in order to assure that storage tank systems are being installed, replaced, repaired, modified, tested, and removed in a manner which shall not encourage or facilitate leaking, and which shall protect the public health, safety and welfare and the environment of the state.  
[20.5.105.6 NMAC - N, 07/24/2018]

**20.5.105.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part. Additionally, “entirely above ground piping” means all portions of the piping are completely above ground, are completely visible, and are not in contact with the ground or soil. This definition does not include piping for a system where any portion of the piping is within a transition sump or is below ground.  
[20.5.105.7 NMAC - N, 07/24/2018]

**20.5.105.8 to 20.5.105.499 [RESERVED]**

**20.5.105.500 GENERAL REQUIREMENTS FOR INSTALLER OF UST SYSTEMS:**

**A.** Beginning September 16, 1989, no person may install, replace, repair or modify UST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on UST systems. This provision requires certification of the individual who exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or employee of the UST system owner or operator performing its own installation, replacement, repair or modification, or as an officer or employee of the person agreeing to perform the installation, replacement, repair or modification for the owner or operator. Exceptions to this requirement for a certified installer include:

- (1) internal lining of a tank through the application of such materials as epoxy resins;
- (2) installation, replacement, repair or modification of cathodic protection systems;
- (3) any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified installer;
- (4) an applicant for UST installer certification pursuant to Subsection C of 20.5.105.510 NMAC;
- (5) normal maintenance;
- (6) work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department; and
- (7) persons closing storage tank systems pursuant to 20.5.115 NMAC.

**B.** Beginning September 16, 1989, no person may install, replace, repair or modify an UST system in this state unless the person is or employs a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**C.** An individual who has met the requirements for certified UST installer may perform the work of a UST certified junior installer.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.500 NMAC - N, 07/24/2018]

**20.5.105.501 GENERAL REQUIREMENTS FOR INSTALLER OF AST SYSTEMS:**

**A.** Beginning August 15, 2004, no person may install, replace, repair or modify AST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on AST systems. This provision requires certification of the individual who exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or employee of the AST system owner or operator performing its own installation, replacement, repairs or modification, or as an officer or employee of the person agreeing to perform the installation, replacement, repair or modification for the owner or operator. Exceptions to this requirement for a certified installer include:

- (1) internal lining of a tank through the application of such materials as epoxy resins;
- (2) coating or lining of secondary containment for AST systems;
- (3) installation, replacement, repair or modification of cathodic protection systems;
- (4) any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified installer;
- (5) an applicant for AST installer certification pursuant to Subsection C of 20.5.105.510 NMAC;
- (6) normal maintenance;
- (7) work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department; and
- (8) persons closing storage tank systems pursuant to 20.5.115 NMAC.

**B.** Beginning August 15, 2004, no person may install, replace, repair or modify an AST system in this state unless the person is or employs a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**C.** An individual who has met the requirements for certified AST installer may perform the work of an AST certified junior installer.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.501 NMAC - N, 07/24/2018]

**20.5.105.502 GENERAL REQUIREMENTS FOR JUNIOR INSTALLER OF AST SYSTEMS:**

**A.** Beginning July 24, 2019, no person may install, replace, repair or modify spill and overfill prevention equipment on AST systems in this state unless the person is an individual who has been certified by the department to perform that work on AST systems. Exceptions to the requirement for an AST certified junior installer are listed in Paragraphs (1) through (8) of Subsection A of 20.5.105.501 NMAC.

**B.** An individual who is an AST junior installer shall be certified to perform installations, repairs, replacements, and modifications of spill and overfill prevention equipment.

**C.** Individuals who are AST junior installers shall be certified to repair and replace entirely above ground piping on ASTs if they are licensed by the New Mexico construction industries division in accordance with 14.6.6 NMAC as a journeyman pipe fitter (JPF), MM-4, or MM-98.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as an AST certified junior installer exercises responsible supervisory control and is physically present on-site during the replacement, repair or modification.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.502 NMAC - N, 07/24/2018]

**20.5.105.503 GENERAL REQUIREMENTS FOR JUNIOR INSTALLER OF UST SYSTEMS:**

**A.** Beginning July 24, 2019, no person may install, replace, repair or modify spill and overfill prevention equipment on UST systems in this state unless the person is an individual who has been certified by the department to perform that work on UST systems. Exceptions to the requirement for a UST certified junior installer are listed in Paragraphs (1) through (7) of Subsection A of 20.5.105.500 NMAC.

**B.** An individual who is an UST junior installer shall be certified to perform installations, repairs, replacements, and modifications of spill and overfill prevention equipment. An UST junior installer shall not repair or replace piping that routinely contains a regulated substance.

**C.** A UST certified junior installer shall not install UST systems or piping.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a UST certified junior installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification of spill and overfill prevention equipment.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.503 NMAC - N, 07/24/2018]

**20.5.105.504 GENERAL REQUIREMENTS FOR PERSONS PERFORMING TESTS ON STORAGE TANK SYSTEMS AND EQUIPMENT:**

**A.** Beginning on July 24, 2019, owners and operators shall demonstrate that persons who perform tests on storage tank systems regulated under 20.5 NMAC have the experience, training, and education to perform the following:

(1) periodic testing of spill prevention equipment and containment sumps as required in 20.5.107.704 NMAC, 20.5.107.706 NMAC, 20.5.110.1005 NMAC, and 20.5.110.1007 NMAC;

(2) periodic functionality testing and inspections of overfill prevention equipment as required in 20.5.107.704 NMAC and 20.5.110.1005 NMAC;

(3) functionality testing and inspections of automatic tank gauging systems as required in 20.5.108.805 NMAC and 20.5.111.1104 NMAC;

(4) precision tank tightness tests and line tightness tests;

(5) functionality testing of automatic line leak detectors, interstitial sensors, and sump sensors; and

(6) periodic testing of cathodic protection systems as required in 20.5.107.705 NMAC and 20.5.110.1006 NMAC.

**B.** Owners and operators shall ensure information on the tester's education, experience, and training is submitted to the department for each required test conducted on storage tank systems regulated under 20.5 NMAC. Testers may submit this information on the owner's and operator's behalf prior to conducting any testing on regulated storage tank systems and subsequently after changes to the information required in Paragraphs (1) through (5) of this subsection. The information to be submitted is as follows:

(1) any business name used by the tester, with the business address, telephone number, electronic mail address, and facsimile transmission number;

(2) name of the tester;

(3) tester's certification number from each testing equipment manufacturer and the expiration date for the certification;

(4) name of the manufacturer, association, or institute where they gained their certification or education.

(5) testers who use the testing procedures from petroleum equipment institute's *Recommended Practice, PEI RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"* shall include the date they took and passed the test from the petroleum equipment institute.

(6) Number of years of experience in each of the testing protocols or procedures the tester will use.

C. Owners and operators shall ensure testers meet the following:

(1) perform only those tests and inspections for which they have training, experience, and certification from either the manufacturer of the testing equipment or the manufacturer of the equipment being tested or inspected.

(2) maintain certification with the equipment manufacturer for the tester and any testing apparatus they use, if they have a certification process or requirements. If the testing equipment manufacturer has periodic calibration and maintenance requirements the tester shall meet them.

D. A person shall not perform any test on storage tank systems for which they are also the owner and operator as defined in 20.5.101 NMAC or they are an employee of the owner or operator.

E. A tester who is trained and certified to functionality test automatic line leak detectors may replace line leak detectors that no longer meet the requirements in Subsection A of 20.5.108.810 NMAC or Subsection A of 20.5.111.1105 NMAC.

F. A person who has met the requirements for either AST or UST certified installer may perform non-precision integrity tests of the storage tank systems during the installation, modification, repair, or replacement without having to meet the requirements of a tester.

G. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

H. The provisions of this part are not intended to relieve owners and operators of storage tank systems of their obligations and liabilities under applicable state and federal laws and regulations.

[20.5.105.504 NMAC - N, 07/24/2018]

#### **20.5.105.505 INDIVIDUAL CERTIFICATION FOR INSTALLER OF UST SYSTEMS:**

A. An applicant for an individual's UST installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50. At a minimum the application shall contain the following information:

(a) applicant's name, permanent residence address and telephone number;

(b) applicant's business address and any business name used by the applicant, with the business address, telephone number and facsimile transmission number;

(c) applicant's date of birth;

(d) applicant's social security number;

(e) construction industries division license number, type of license, name of license holder under which applicant is working and expiration of license;

(f) whether the construction industries division license in subparagraph (e) of Paragraph (1) of this subsection has ever been suspended or revoked; if so, an explanation of the circumstances of the suspension or revocation;

(g) the supervisor's name, business name, address and telephone number with whom the applicant apprenticed as a tank installer;

(h) a description of the number of years of experience the applicant has as a tank installer (specify USTs and ASTs);

(i) a description of the types and number of tanks the applicant has installed (specify USTs and ASTs) in the past four years;

(j) a description of the types and number of piping systems the applicant has installed, replaced, repaired or modified (specify USTs and ASTs) in the past four years; and

(k) whether applicant owes child support in New Mexico.

(2) The applicant shall be an individual and at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of 20.5.105.509 NMAC.

(6) The applicant shall pass the on-site examination for which 20.5.105.510 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank, dispenser system or meter, venting, ancillary equipment and initial testing.

(7) The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a) a New Mexico laws and rules UST test administered by the department pursuant to 20.5.105.514 NMAC; and

(b) a national technical UST installer's test administered by an approved certification educator and has been certified by that educator. For purposes of this section, the international code council is an approved certification educator.

(8) As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair, or modify UST systems.

[20.5.105.505 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for certification. The form is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/tank-installer-certification/](https://www.env.nm.gov/petroleum_storage_tank/tank-installer-certification/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.105.506 INDIVIDUAL CERTIFICATION FOR INSTALLER OF AST SYSTEMS:**

**A.** An applicant for an individual's AST installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department with the information required in Paragraph (1) of Subsection A of 20.5.105.505 NMAC, accompanied by a nonrefundable fee of \$50.00.

(2) The applicant shall be an individual and at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of 20.5.105.509 NMAC.

(6) The applicant shall pass the on-site examination for which 20.5.105.510 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank and tank foundation, dispenser system or meter, venting, ancillary equipment and initial testing. Installation of a self-contained, concrete-encased or self-contained, skid-mounted AST system is not an AST system installation for purposes of this requirement.

(7) The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a) a New Mexico laws and rules AST test administered by the department pursuant to 20.5.105.514 NMAC; and

(b) a national technical AST installer's test administered by an approved certification educator and has been certified by that educator. For purposes of this section, the international code council is an approved certification educator.

(8) As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.



(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair or modify AST systems.

[20.5.105.506 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for certification. The form is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/tank-installer-certification/](https://www.env.nm.gov/petroleum_storage_tank/tank-installer-certification/)) or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

### **20.5.105.507 INDIVIDUAL CERTIFICATION FOR JUNIOR INSTALLER OF AST SYSTEMS:**

**A.** An applicant for an individual's AST junior installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department with the information required in Paragraph (1) of Subsection A of 20.5.105.508 NMAC, accompanied by a nonrefundable fee of \$50.00.

(2) The applicant shall be an individual at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of Subsection B of 20.5.105.509 NMAC.

(6) Applicants shall demonstrate certification by the manufacturer of the spill and overfill equipment they install, repair, replace, or modify.

(7) Applicants shall submit a copy of their journeyman pipe fitter (JPF), MM-4, or MM-98 license if they are applying to repair and replace entirely above ground piping in addition to activities listed in Subsection B of 20.5.105.502 NMAC.

(8) The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a) a New Mexico laws and rules AST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC; and

(b) a national technical AST test administered by a certification educator approved by the department and has been certified by that educator.

(9) As an alternative to the tests required in Paragraph (8) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or

organization, but these courses shall not be approved for the requirements in Paragraph (8) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical AST requirements.

(10) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair or modify AST spill and overfill prevention equipment.

[20.5.105.507 NMAC - N, 07/24/2018]

#### **20.5.105.508 INDIVIDUAL CERTIFICATION FOR JUNIOR INSTALLER OF UST SYSTEMS:**

**A.** An applicant for an individual's UST junior installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50.00. At a minimum the application shall contain the following information:

- (a) applicant's name, permanent residence address and telephone number;
  - (b) applicant's business address and any business name used by the applicant, with telephone number and facsimile transmission number;
  - (c) applicant's date of birth;
  - (d) applicant's social security number;
  - (e) construction industries division license number, type of license, name of license holder under which applicant is working and expiration of license;
  - (f) whether the construction industries division license in Subparagraph (e) of Paragraph (1) of this subsection has ever been suspended or revoked; if so, an explanation of the circumstances of the suspension or revocation;
  - (g) the supervisor's name, business name, address and telephone number with whom the applicant worked as a junior installer;
  - (h) a description of the number of years of experience the applicant has installing, replacing, modifying, and repairing spill and overfill prevention equipment (specify USTs and ASTs);
  - (i) a description of the number of spill and overfill prevention equipment installations, repairs, replacements, or modifications the applicant has performed (specify USTs and ASTs) in the past four years; and
  - (j) whether applicant owes child support in New Mexico.
- (2) The applicant shall be an individual and at least 18 years of age.
- (3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of Subsection B of 20.5.105.509 NMAC.

(6) Applicants shall demonstrate certification by the manufacturer of the spill and overfill equipment they install, repair, replace, or modify.

(7) The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a) a New Mexico laws and rules UST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC; and

(b) a national technical UST test administered by a certification educator approved by the department and has been certified by that educator.

(8) As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical UST requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair, or modify UST spill and overfill prevention equipment.

[20.5.105.508 NMAC - N, 07/24/2018]

#### **20.5.105.509 EXPERIENCE REQUIREMENTS:**

##### **A. Installer:**

(1) To qualify for individual certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC, an applicant shall demonstrate that the applicant has had two years of experience, within the three years immediately prior to making the application, of field experience in the installation, replacement, repair or modification of the type of storage tank systems for which the applicant is applying for certification or, with the approval of the department, closely related work. Additionally, the applicant shall demonstrate they have hands-on supervised experience in the installation of two petroleum storage tank systems of the tank type (AST or UST) they are applying for within the two years of experience. The applicant's demonstration shall include copies of inspection reports (or other similar documents) for the

work performed, which shall include the name, phone number and email contact of the supervising inspector. For purposes of this part, the applicant's field experience may be demonstrated in New Mexico or other states.

(2) An engineering degree or a license to practice engineering may substitute for six months of the experience required by Subsection A of this section.

**B. Junior installer:**

(1) To qualify for individual certification under 20.5.105.507 NMAC or 20.5.105.508 NMAC, an applicant shall demonstrate that the applicant has had one year, within the three years immediately prior to making the application, of field experience with storage tank spill and overflow equipment installations, replacements, modifications, or repairs.

(2) To qualify for individual certification under 20.5.105.507 NMAC as an AST junior installer who can repair or replace entirely above ground piping, applicants shall demonstrate that they meet the requirements in Subsection C of 20.5.105.502 NMAC in addition to the requirements in Paragraph (1) of this subsection.

(3) The applicant's demonstration shall include copies of inspection reports (or other similar documents) for the work performed which shall include the name, phone number and email contact of the supervising inspector. For purposes of this part, the applicant's field experience may be demonstrated in New Mexico or other states.

[20.5.105.509 NMAC - N, 07/24/2018]

**20.5.105.510 ON-SITE EXAMINATION FOR INSTALLER:**

**A.** To qualify for individual certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC, an applicant shall pass an on-site examination consisting of a successful installation of the regulated and applicable (AST or UST) type of storage tank system in the presence of a designated employee of the department. The applicant shall complete each aspect of the installation successfully in order to pass the examination, including use of proper materials, proper assembly of materials and proper testing of the tank and piping at the appropriate times during the installation.

**B.** An applicant may request an on-site examination for UST or AST certification any time within 180 days of the date of submission of the application provided for in Paragraph (1) of Subsection A of 20.5.105.505 NMAC or Paragraph (1) of Subsection A of 20.5.105.506 NMAC and shall accompany the request with a nonrefundable \$300 fee. The applicant shall notify the department of the date and the site of the on-site examination 30 days prior to the examination. For good cause shown, the department may, in its sole discretion, grant an applicant one 180-day extension of the time period during which the applicant must take the on-site examination. The department shall not grant more than one extension. If the applicant does not schedule an on-site examination within these time periods, the applicant shall file a new application for certification and comply with all the application requirements in 20.5.105.505 NMAC or 20.5.105.506 NMAC as applicable.

**C.** The applicant shall be responsible, subject to approval by department staff, for identifying a satisfactory site and date(s) for the on-site examination. The applicant is also responsible for ensuring that all necessary equipment and appropriate materials necessary for the installation are on site. Department staff shall fail any applicant who has three significant errors during the on-site examination. For purposes of this section, significant errors include, but are not limited to, use of materials or installation practices that violate these regulations, manufacturer's installation instructions, or other industry standards. As long as a department

staff member responsible for assessing the on-site exam is present, the applicant may perform the activities involved in the exam even though the applicant is not a certified installer.

**D.** The installation shall be assessed by the department employee present at the examination who shall present findings to the department, with a recommendation as to whether or not the applicant passed the on-site examination. The department shall make the determination as to the success of the installation and notify the applicant by mail within 30 days of completion of the installation. If the applicant did not pass the examination, the department shall inform the applicant that the applicant may retake the examination upon payment of a nonrefundable \$300.00 fee and upon such conditions as the department may impose to ensure that the applicant is prepared to perform a more successful installation. If the applicant does not retake the examination within 180 days of being notified that the applicant did not pass the examination or if the applicant fails the on-site examination a second time, the applicant shall file a new application for certification with the department if the applicant desires to become a certified installer.

**E.** The department employee may stop an on-site examination if the employee determines that the installation being conducted constitutes a threat to public health, safety or welfare or the environment. If the examiner stops the installation, the examiner's findings shall be presented to the department with a "do not pass" recommendation. The department shall notify the applicant of its decision as provided in Subsection D of this section.  
[20.5.105.510 NMAC - N, 07/24/2018]

**20.5.105.511 DENIAL OF CERTIFICATION:** An applicant whose application for certification is denied shall be afforded an opportunity for a hearing before the secretary under 20.5.5.519 NMAC, in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978, and the department's adjudicatory procedures in 20.1.5 NMAC.  
[20.5.105.511 NMAC - N, 07/24/2018]

**20.5.105.512 RENEWAL OF CERTIFICATION FOR INSTALLER:**

**A.** A certification shall expire March 16 of the fourth calendar year after it was issued. Applications for renewal of certification issued under 20.5.105.505 NMAC and 20.5.105.506 NMAC shall be submitted no later than February 16 of the fourth year after the certification was granted to ensure renewal by March 16. Certification for installers who do not submit a timely renewal application shall be considered lapsed and invalid on March 16; the department shall not accept applications for renewal after February 16. Any installer whose certification has lapsed as provided in this subsection shall submit an application for new certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC and comply with the requirements thereof.

**B.** At least 90 days before the expiration date of certification, the department shall mail a renewal application reminder to the installer, at the installer's address of record with the department. It is the duty and responsibility of the installer to timely submit the renewal application for certification pursuant to Subsection A whether or not an application reminder has been received from the department.

**C.** To qualify for renewal, a UST certified individual or installer shall:  
**(1)** file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.505 NMAC, accompanied by a nonrefundable \$50.00 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the installer has completed at least two UST system installations, replacements, repairs or modifications during the four-year period preceding the renewal application; and

(3) demonstrate that the installer has passed a New Mexico laws and rules UST test administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

**D.** To qualify for renewal, an AST certified installer shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.506 NMAC, accompanied by a nonrefundable \$50.00 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the installer has completed at least two AST system installations, replacements, repairs or modifications during the four-year period preceding the renewal application; and

(3) demonstrate that the installer has passed a New Mexico laws and rules AST test administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

**E.** An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.105.519 NMAC, in the event the department contemplates withholding renewal for any cause other than failure to pay the required renewal fee.

**F.** For purposes of this section, “demonstrate” means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified installer’s on-site, physical, hands-on participation in critical junctures of a particular installation, replacement, repair or modification.

[20.5.105.512 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for renewal of certification. The form is available on the petroleum storage tank bureau’s pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/tank-installer-certification/](https://www.env.nm.gov/petroleum_storage_tank/tank-installer-certification/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit renewal forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

### **20.5.105.513 RENEWAL OF CERTIFICATION FOR JUNIOR INSTALLER:**

**A.** A certification for junior installer shall expire March 16 of the fourth calendar year after it was issued. Applications for renewal of certification issued under 20.5.105.507 NMAC and 20.5.105.508 NMAC shall be submitted no later than February 16 of the fourth year after the certification was granted to ensure renewal by March 16. Certification for junior installers who do not submit a timely renewal application shall be considered lapsed and invalid on March 16; the department shall not accept applications for renewal after February 16. Any junior installer whose certification has lapsed as provided in this subsection shall submit an application for new certification under 20.5.105.507 NMAC or 20.5.105.508 NMAC and comply with the requirements thereof.

**B.** At least 90 days before the expiration date of certification, the department shall mail a renewal application reminder to the junior installer, at the junior installer's address of record with the department. It is the duty and responsibility of the junior installer to timely

submit the renewal application for certification pursuant to Subsection A whether or not an application reminder has been received from the department.

C. To qualify for renewal, a UST certified junior installer shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.508 NMAC, accompanied by a nonrefundable \$50 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the junior installer has completed at least two spill and overfill prevention equipment installations, replacements, repairs or modifications on UST systems during the four-year period preceding the renewal application; and

(3) demonstrate that the junior installer has passed a New Mexico laws and rules UST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

D. To qualify for renewal, AST certified junior installers shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (10) of Subsection A of 20.5.105.507 NMAC, accompanied by a nonrefundable \$50.00 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the junior installer has completed at least two replacements, repairs or modifications of spill and overfill prevention equipment on AST systems during the four-year period preceding the renewal application;

(3) demonstrate that the junior installer has passed a New Mexico laws and rules AST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months; and

(4) if seeking to renew their certification to repair and replace entirely above ground piping, demonstrate that they have completed at least two repairs or replacements of above ground piping on AST systems during the four-year period preceding the renewal application or submit a current journeyman pipe fitter (JPF), MM-4, or MM-98 license from the New Mexico construction industries division in accordance with 14.6.6 NMAC.

E. An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.105.519 NMAC, in the event the department contemplates withholding renewal for any cause other than failure to pay the required renewal fee.

F. For purposes of this section, “demonstrate” means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified junior installer’s on-site, physical, hands-on participation in critical junctures of a particular installation, replacement, repair or modification of spill and overfill prevention equipment.

[20.5.105.513 NMAC - N, 07/24/2018]

#### **20.5.105.514 NEW MEXICO LAWS AND RULES TEST:**

A. The department shall create and administer written tests on the rules contained in 20.5 NMAC, petroleum storage tanks. Tests for AST and UST installer applicants and AST and UST junior installer applicants may be different tests. The department shall offer tests at least monthly at a charge of \$45 per installer or junior installer applicant per test, paid to the storage tank fund.

B. Applicants may apply to take the New Mexico laws and rules test at any office of the bureau, at least 15 days before a test is given. The department shall post on its webpage

dates, times and locations that tests will be offered. The department shall not administer any test until payment is received.

**C.** An applicant must pass a test by a grade of seventy percent or higher. The department will notify applicants in writing of a passing or failing grade no later than 15 working days after they took a test.

**D.** An applicant may re-take the New Mexico laws and rules test for each type of test once within 30 days of receipt of notice of a failing grade. If the applicant does not pass a test the second time, the applicant must reapply for certification complying with the requirements for initial certification in the applicable sections of this part.

[20.5.105.514 NMAC - N, 07/24/2018]

### **20.5.105.515 INSTALLER DUTIES AND OBLIGATIONS:**

**A.** No person shall agree to perform installation, replacement, repair or modification services unless the person is or employs a certified installer competent to perform the particular installation, replacement, repair or modification involved.

**B.** A certified installer shall have adequate knowledge of appropriate materials, technical requirements and installation, replacement, repair or modification procedures for any storage tank system that the installer undertakes to install, replace, repair or modify. A certified installer shall not perform any installation, replacement, repair or modification, or affix an installer signature or certification number to any installation, replacement, repair or modification for which the installer lacks competence.

**C.** A certified installer shall:

(1) exercise responsible supervisory control over any installation, replacement, repair or modification undertaken;

(2) at a minimum, be physically present on-site at all critical junctures in the installation, replacement, repair or modification; and

(3) give notice as required by these regulations, 20.5 NMAC.

**D.** A certified installer shall not certify to an owner or operator of a storage tank system that an installation, replacement, repair or modification is complete unless the installation, replacement, repair, or modification complies with the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the petroleum storage tank regulations promulgated pursuant to the act, 20.5 NMAC. The certified installer is responsible for the accuracy of any representations made to the owner or operator.

**E.** Certified installers have a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.118 NMAC, detected at a site or the surrounding area by the installer or persons working under the installer's supervisory control, as required by 20.5.118 NMAC.

**F.** Certified installers shall not perform any installation, replacement, repair, modification or removal without providing notice as required by the provisions of 20.5 NMAC, except for emergency repairs as described in 20.5.107 NMAC and 20.5.110 NMAC and defined in 20.5.101 NMAC. Certified installers shall not perform any activity described as a critical juncture in 20.5.105 NMAC, without providing the 24-hour notice required by that part, except for emergency repairs.

**G.** Certified installers shall comply with all of the provisions of the petroleum storage tank regulations, 20.5 NMAC.

[20.5.105.515 NMAC - N, 07/24/2018]



**20.5.105.516 CERTIFIED JUNIOR INSTALLER DUTIES AND OBLIGATIONS:**

**A.** No individual shall agree to perform an installation, replacement, repair or modification of spill and overfill prevention equipment unless the individual is a certified junior installer and is competent to perform the installation, replacement, repair or modification.

**B.** Junior installers shall acquire and maintain certification from the manufacturers of the spill and overfill prevention equipment they modify, install, replace, or repair, as applicable.

**C.** A junior installer of AST systems who is certified to repair or replace entirely above ground piping shall maintain all certifications and licenses as required by 20.5.105 NMAC.

**D.** A junior installer shall exercise responsible supervisory control when helpers are used.

**E.** A junior installer has a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.118 NMAC, detected at a site or the surrounding area by the junior installer or persons working under the junior installer's supervisory control, as required by 20.5.118 NMAC.

**F.** A junior installer shall not perform any installation, replacement, repair, modification or removal of spill and overfill prevention equipment without providing notice as required by the provisions of 20.5 NMAC.

**G.** A junior installer shall comply with all of the provisions of the petroleum storage tank regulations, 20.5 NMAC.

[20.5.105.516 NMAC - N, 07/24/2018]

**20.5.105.517 COMPLAINTS:**

**A.** When the department receives a signed written complaint from any person which indicates an apparent violation of applicable law by an individual certified under this part, the department shall provide a copy of the complaint to the certified individual along with a letter from the department specifying the statute, regulation, order or license alleged to be violated. The letter shall include a reasonable description of the acts or practices alleged to be in violation of applicable law. The department shall provide a copy of the letter to the complainant.

**B.** The certified individual may, but need not, file a response to the complaint with the department. After reviewing the complaint together with any other matter in the certified individual's record, the department shall determine whether further action is to be taken.

[20.5.105.517 NMAC - N, 07/24/2018]

**20.5.105.518 INVESTIGATIONS, ENFORCEMENT, PENALTIES:**

**A.** The department may undertake such investigations and take such actions as it deems necessary to ensure compliance with the provisions of this part, including the issuance of compliance orders and the commencement of civil actions under the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978. The department may also initiate proceedings to revoke certification of an individual certified under Subsection C of Section 74-4-4.4 NMSA 1978 and 20.5.105.519 NMAC. The department may revoke certification upon grounds that the certified individual:

(1) exercised fraud, misrepresentation or deception in obtaining the certification;

(2) exhibited gross incompetence in the installation, replacement, repair, modification or removal of a storage tank system; or

(3) was derelict in the performance of a duty as a certified installer or junior installer, as required in the applicable sections of this part (including repeated failure to provide notice of releases or of the installation, replacement, repair, modification or removal of storage tank systems as required in the applicable sections of this part).

**B.** Persons violating the provisions of this part may be subject to the imposition of penalties under the Hazardous Waste Act.  
[20.5.105.518 NMAC - N, 07/24/2018]

**20.5.105.519 DEPARTMENT ACTIONS AGAINST CERTIFIED INSTALLERS AND CERTIFIED JUNIOR INSTALLERS:**

**A.** When the department contemplates denying an application for or revoking certification, it shall serve upon the applicant or certified individual a written notice of contemplated action as required by the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978.

**B.** Proceedings under this section shall be conducted in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978 and in accordance with the department's adjudicatory procedures in 20.1.5 NMAC.

**C.** If the department revokes certification pursuant to this section, the certified individual may not apply for certification for a minimum of two years for the type of certification revoked. However, if the certified individual is certified for another type of certification in this part, the certified individual shall not be affected by the revocation of the certification for the other type of certification.

[20.5.105.519 NMAC - N, 07/24/2018]

**20.5.105.520 AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND HYBRID STORAGE TANK SYSTEMS:**

**A.** Certified installers shall only install, modify, repair, or replace airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems if they also meet the requirements in 20.5.114.1400 NMAC.

**B.** Certified installers and junior installers shall only install, replace, modify, or repair spill and overfill prevention equipment associated with airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems if they also meet the requirements in 20.5.114.1400 NMAC.

[20.5.105.520 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.105 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-14, Underground Storage Tank Regulations - Part XIV - Certification of Tank Installers, filed 2/14/89.

EIB/USTR-14, Underground Storage Tank Regulations - Part XIV - Certification of Tank Installers, filed 8/4/89.

**History of Repealed Material:**

20 NMAC 5.14, Environmental Protection, Underground Storage Tanks, Certification of Tank Installers (filed 2/27/97), repealed 8/15/03.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 7/16/03) repealed 4/4/08.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 3/5/08) repealed 6/15/09.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 6/15/09) repealed 7/24/18.

**Other History:**

EIB/USTR-14, Underground Storage Tank Regulations - Part XIV - Certification of Tank Installers, (filed 8/14/89) renumbered, reformatted and replaced by 20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, effective 11/5/95.

20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, (filed 10/6/95) replaced by 20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, effective 4/1/97.

20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, (filed 2/27/97) renumbered, reformatted and replaced by 20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers, effective 8/15/03.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 7/16/03) replaced by 20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers, effective 4/4/08.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 3/5/08) replaced by 20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers, effective 6/15/09.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 6/15/09) replaced by 20.5.105 NMAC, Petroleum Storage Tanks, Certification of Tank Installers and Junior Installers; Requirements for Testers, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 106 NEW AND UPGRADED UNDERGROUND STORAGE TANK SYSTEMS:**  
**DESIGN, CONSTRUCTION, AND INSTALLATION**

**20.5.106.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.106.1 NMAC - N, 07/24/2018]

**20.5.106.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.106.2 NMAC - N, 07/24/2018]

**20.5.106.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.106.3 NMAC - N, 07/24/2018]

**20.5.106.4 DURATION:** Permanent.  
[20.5.106.4 NMAC - N, 07/24/2018]

**20.5.106.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.106.5 NMAC - N, 07/24/2018]

**20.5.106.6 OBJECTIVE:** The purpose of 20.5.106 NMAC is to set forth the requirements for the design, construction, installation and upgrading of underground storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state.  
[20.5.106.6 NMAC - N, 07/24/2018]

**20.5.106.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.106.7 NMAC - N, 07/24/2018]

**20.5.106.8 to 20.5.106.599 [RESERVED]**

**20.5.106.600 GENERAL PERFORMANCE STANDARDS FOR UST SYSTEMS:**

**A.** In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as a UST system is used to store regulated substances, owners and operators of any UST system shall:

- (1) properly design, construct, and initially test each new UST system;
- (2) provide project drawings to the bureau 30 days prior to installation; and
- (3) ensure that any portion of a UST system that routinely contains regulated substances and is in contact with the ground, water, or other electrolyte shall be protected from

corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Owners and operators shall ensure that the entire UST system is compatible with any regulated substance conveyed, as required by 20.5.107.708 NMAC.

**C.** Tanks and piping installed or replaced after April 4, 2008 must be secondarily contained in accordance with 20.5.106.606 NMAC and use interstitial monitoring in accordance with 20.5.108.808 NMAC, 20.5.108.811 NMAC, and 20.5.108.813 NMAC, except for suction piping that meets the requirements of Subsection B of 20.5.108.813 NMAC.

**D.** Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST.  
[20.5.106.600 NMAC - N, 07/24/2018]

**20.5.106.601 PERFORMANCE STANDARDS FOR FIBERGLASS-REINFORCED PLASTIC USTS:** If a UST is constructed of fiberglass-reinforced plastic, owners and operators shall comply with the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

**A.** *Underwriters Laboratories Standard 1316, “Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures”*; or

**B.** *Underwriters’ Laboratories of Canada Standard 615, “Standard for Fibre Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids”*.  
[20.5.106.601 NMAC - N, 07/24/2018]

**20.5.106.602 PERFORMANCE STANDARDS FOR STEEL USTS:**

**A.** Owners and operators shall cathodically protect steel USTs by:

- (1) coating the tank with a suitable dielectric material;
- (2) ensuring that field-installed cathodic protection systems are designed by a corrosion expert;
- (3) designing and installing impressed current or galvanic systems to allow ready determination of current operating status as required in Subsection C of 20.5.107.705 NMAC; and
- (4) operating and maintaining cathodic protection systems in accordance with 20.5.107 NMAC.

**B.** If a UST is constructed of steel, owners and operators shall comply with the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the applicable requirements of this section:

(1) *Steel Tank Institute, “STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks”*;

(2) *Underwriters Laboratories Standard 1746, “Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks”*;

(3) *Underwriters Laboratories of Canada Standard 603, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids”;*

(4) *Underwriters Laboratories of Canada Standard 603.1, “External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids”;*

(5) *Underwriters’ Laboratories of Canada S631, “Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems”;*

(6) *NACE International Standard Practice SP0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”;*

(7) *Steel Tank Institute Standard F841, “Standard for Dual Wall Underground Steel Storage Tanks”;* or

(8) *Underwriters Laboratories Standard 58, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids”.*

[20.5.106.602 NMAC - N, 07/24/2018]

**20.5.106.603 PERFORMANCE STANDARDS FOR USTS CONSTRUCTED OF STEEL AND CLAD OR JACKETED WITH A NON-CORRODIBLE MATERIAL:**

If a UST is constructed of steel and clad or jacketed with a non-corrodible material, owners and operators shall meet the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

A. *Underwriters Laboratories Standard 1746, “Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks”;*

B. *Steel Tank Institute ACT-100® Specification F894, “Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks”;*

C. *Steel Tank Institute ACT-100-U® Specification F961, “Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks”;* or

D. *Steel Tank Institute Specification F922, “Specification for Permatank®”.*

[20.5.106.603 NMAC - N, 07/24/2018]

**20.5.106.604 PERFORMANCE STANDARDS FOR METAL USTS WITHOUT CORROSION PROTECTION:**

If a UST is constructed of metal without additional corrosion protection measures, owners and operators shall only install the tank at a site that is approved in writing in advance of installation by a corrosion expert not to be corrosive enough to cause the UST to have a release due to corrosion during its operational life. Owners and operators shall maintain records that demonstrate compliance with this paragraph for the remaining life of the tank.

[20.5.106.604 NMAC - N, 07/24/2018]

**20.5.106.605 INSTALLATION OF UST SYSTEMS:**

A. Owners and operators shall properly install all USTs and piping:

(1) in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; and

(2) in accordance with the manufacturer's instructions.

**B.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;

(2) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*; or

(3) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"*.

[20.5.106.605 NMAC - N, 07/24/2018]

#### **20.5.106.606 SECONDARY CONTAINMENT FOR UST SYSTEMS:**

**A.** Owners and operators shall install secondary containment as follows:

(1) for any new or replaced UST system;

(2) for any new or replaced dispenser system. A dispenser system is considered replaced when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at a UST facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping. Under-dispenser containment shall allow for access to the components in the containment system for visual inspections; and

(3) for any UST piping replaced after April 4, 2008.

**B.** Owners and operators shall design, provide project drawings for, and construct the entire new UST system with the secondary containment system in compliance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The project drawings shall be approved in advance by the department. The secondary containment system shall:

(1) include all tanks, piping, dispenser systems, and all containment sumps for any piping and ancillary equipment that routinely contains regulated substances;

(2) include containment sumps, including under-dispenser containment, transition sumps, and containment sumps for submersible turbine pumps, that are liquid-tight on their sides, bottoms, and at any penetrations; and

(3) be interstitially monitored in accordance with the requirements in 20.5.108 NMAC.

**C.** If owners and operators:

(1) replace a UST, they shall install a double-walled tank with an inner and outer barrier and a release detection system that meets the requirements of 20.5.108 NMAC;

(2) replace a dispenser system, they shall install, in accordance with manufacturer's recommendations, an under-dispenser containment system that shall be hydrostatically tested and approved by the department prior to use; types of under-dispenser containment systems include, but are not limited to, dispenser liners, containment sumps, dispenser pans and dispenser sump liners; or

(3) replace piping, they shall install only double-walled piping with an inner and outer barrier and a release detection system that meets the requirements of 20.5.108 NMAC for the replaced piping.



**D.** Owners and operators shall use one or more of the following to comply with secondary containment requirements:

- (1) *Petroleum Equipment Institute Publication RPI100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;
- (2) *American Petroleum Institute RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;
- (3) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*; or
- (4) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"*.

**E.** The secondary containment requirements of this section shall not apply to:

- (1) existing USTs in a manifolded system (as secondary containment is only required for a new or replaced UST in a manifolded system);
- (2) repairs meant to restore a UST, piping or dispenser system to operating condition;
- (3) piping runs that are not new or replaced for USTs with multiple piping runs;
- (4) suction piping that meets the requirements of Subsection B of 20.5.108.813 NMAC; and
- (5) non-pressurized piping that manifolds two or more underground tanks together, such as a siphon piping system.

[20.5.106.606 NMAC - N, 07/24/2018]

#### **20.5.106.607 PERFORMANCE STANDARDS FOR EXISTING UST SYSTEMS:**

**A.** All existing UST systems (installed on or before December 22, 1988), by the effective date of these regulations, must have complied with one of the following requirements:

- (1) new UST performance standards in 20.5.106 NMAC;
- (2) upgrade requirements in Subsection B of 20.5.106.607 NMAC; or
- (3) closure requirements in 20.5.115 NMAC.

**B.** UST upgrading requirements. Owners and operators must have upgraded existing steel USTs by the effective date of these regulations to meet one of the following requirements in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Steel USTs that have not been upgraded by the effective date of these regulations shall be immediately permanently closed in accordance with 20.5.115 NMAC.

(1) Internal lining.

(a) USTs upgraded by internal lining must meet the following:

(i) the lining was installed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory that was approved in advance by the department, and

(ii) within 10 years after installation of internal lining and every five years thereafter, the lined UST is required to be internally inspected in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendation, approved in advance by the department.

(b) One of the following shall be used to comply with internal lining upgrading requirements:

(i) *National Leak Prevention Association Standard 631, Chapter B, “Future Internal Inspection Requirements for Lined Tanks”;*

(ii) *American Petroleum Institute Recommended Practice 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”;* or

(iii) *Ken Wilcox Associates Recommended Practice, “Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera”.*

(c) Owners and operators shall permanently close USTs in accordance with the requirements of 20.5.115 NMAC if the internal lining is not performing in accordance with the original design specifications and cannot be repaired in accordance with one of the following codes:

(i) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”;*

(ii) *American Petroleum Institute Recommended Practice RP 2200, “Repairing Hazardous Liquid Pipelines”;*

(iii) *American Petroleum Institute Recommended Practice RP 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”;*

(iv) *National Fire Protection Association Standard 326, “Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair”* or;

(v) *National Leak Prevention Association Standard 631, Chapter A, “Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks”.*

(2) Cathodic protection. USTs upgraded by cathodic protection shall meet the requirements of 20.5.106.602 NMAC and owners and operators must have ensured the integrity of the tank by:

(a) performing internal inspections and assessments to ensure that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(b) if the tank had been installed for less than 10 years, by either having monitored monthly for releases in accordance with 20.5.108 NMAC or by having assessed for corrosion holes by conducting two tightness tests that met the requirements of 20.5.108 NMAC and that were approved in advance by the department. Owners and operators must have conducted the first tightness test prior to installing the cathodic protection system. Owners and operators must have conducted the second tightness test between three and six months following the first operation of the cathodic protection system.

(c) Owners and operators shall use one or more of the following to comply with cathodic protection upgrade requirements:

(i) *Steel Tank Institute Recommended Practice R972, “Recommended Practice for the Addition of Supplemental Anodes to STI-P3® USTs”;*

(ii) *NACE International Standard Practice SP0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”;* or

(iii) *American Petroleum Institute Publication RP 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”.*

(3) Internal lining combined with cathodic protection. USTs upgraded by internal lining combined with cathodic protection must have met the following:

(a) the lining was installed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, as follows:

(i) *National Leak Prevention Association Standard 631, Chapter B, “Future Internal Inspection Requirements for Lined Tanks”;*

(ii) *American Petroleum Institute Recommended Practice 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”;*

(iii) *National Fire Protection Association Standard 326, “Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair”, or*

(iv) *National Leak Prevention Association Standard 631, Chapter A, “Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks”;* and

(b) the cathodic protection meets the requirements of 20.5.106.602 NMAC and has complied with one of the following:

(i) *Steel Tank Institute Recommended Practice R972, “Recommended Practice for the Addition of Supplemental Anodes to STI-P3®USTs”;* or

(ii) *NACE International Standard Practice SP0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”;* or

(iii) *American Petroleum Institute Publication RP 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”.*

**C.** Piping upgrade requirements. Owners and operators shall cathodically protect and upgrade metal piping in existing UST systems that routinely contain regulated substances and are in contact with an electrolyte, such as soil, to meet the requirements of 20.5.106.609 NMAC or 20.5.106.610 NMAC.

**D.** Spill and overflow prevention equipment. Owners and operators shall comply with the spill and overflow prevention requirements in 20.5.106.613 NMAC. Owners and operators of existing UST systems who installed oil/water separators to meet spill prevention requirements shall discontinue their use in meeting these requirements and shall install new spill prevention equipment that meets the requirements in Subsection F of 20.5.106.613 NMAC no later than three years after the effective date of these regulations.

**E.** Owners and operators of existing fiberglass reinforced plastic UST systems may install an internal lining in order to address compatibility issues in accordance with *Fiberglass Tank and Pipe Institute Recommended Practice T-95-1, “Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks”.*

[20.5.106.607 NMAC - N, 07/24/2018]

### **20.5.106.608 GENERAL PERFORMANCE STANDARDS FOR PIPING:**

**A.** Owners and operators shall properly design and construct new piping, provide project drawings, initially test piping, and ensure that any steel portion of piping that routinely contains regulated substances and is in contact with an electrolyte, such as soil or water, shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) third party certification from a nationally recognized laboratory;

- (2) *American Society of Mechanical Engineering Standard B31.3, “Process Piping”*;
- (3) *American Society of Testing and Materials A53, “Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless”*;
- (4) *American Society of Testing and Materials A106, “Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service”*; or
- (5) *American Society of Testing and Materials A135, “Standard Specification for Electric-Resistance-Welded Steel Pipe”*.

**B.** Owners and operators shall ensure that piping is compatible with any regulated substance conveyed in accordance with 20.5.107.708 NMAC.

**C.** Owners and operators shall protect all piping from impact, settlement, vibration, expansion, corrosion, and damage by fire.

**D.** Owners and operators shall install a containment sump at any point where piping transitions from above the surface of the ground to below the ground surface.

**E.** If owners and operators install more than one type of piping at an underground storage tank system, then owners and operators shall comply with the requirements applicable to each type of piping for that run of piping.

[20.5.106.608 NMAC - N, 07/24/2018]

**20.5.106.609 PERFORMANCE STANDARDS FOR PIPING CONSTRUCTED OF NON-CORRODIBLE MATERIAL:**

**A.** If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, the piping shall:

- (1) be completely underground;
- (2) be within secondary containment that includes a release detection system that meets the requirements of 20.5.108 NMAC;
- (3) have a suitable cover approved by the piping manufacturer; or
- (4) have equivalent protection approved by the piping manufacturer and approved by the department prior to installation.

**B.** Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Underwriters Laboratories Standard 971, “Standard for Nonmetallic Underground Piping for Flammable Liquids”*; or

(2) *Underwriters Laboratories of Canada Standard S660, “Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids”*.

[20.5.106.609 NMAC - N, 07/24/2018]

**20.5.106.610 PERFORMANCE STANDARDS FOR STEEL PIPING FOR UST SYSTEMS:**

**A.** If owners and operators construct or operate piping of steel for a UST system, owners and operators shall:

- (1) coat the piping with a suitable dielectric material;

(2) field-install a cathodic protection system designed by a corrosion expert; and

(3) design any impressed current system to allow ready determination of current operating status as required in Subsection C of 20.5.107.705 NMAC.

**B.** Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute Recommended Practice 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”;*

(2) *Underwriters Laboratories Subject 971A, “Outline of Investigation for Metallic Underground Fuel Pipe”;*

(3) *Steel Tank Institute Recommended Practice R892, “Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems”;*

(4) *NACE International Standard Practice SP0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”;* or

(5) *NACE International Standard Practice SP0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”.*

**C.** If owners and operators construct piping of steel for a UST system without additional corrosion protection measures, owners and operators shall only install the piping at a site that is approved, in writing, in advance of installation, by a corrosion expert, to not be corrosive enough to cause the piping to have a release due to corrosion during its operational life. Owners and operators shall maintain records that demonstrate compliance with this requirement for the remaining life of the piping.

**D.** If owners and operators install or operate steel piping above ground that connects to an emergency generator or loading rack, they shall:

(1) meet the requirements in Subsection D of 20.5.106.608 NMAC;

(2) meet the requirements in Subsection A of 20.5.106.610 NMAC; and

(3) meet the requirements in 20.5.109.915 NMAC for the above ground steel portion of the piping.

[20.5.106.610 NMAC - N, 07/24/2018]

#### **20.5.106.611 UNDERGROUND STORAGE TANK SYSTEMS AT MARINAS:**

**A.** Owners and operators of underground storage tank systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser system and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

**B.** Owners and operators of underground storage tank systems at marinas shall electrically isolate dock piping where excessive stray electrical currents are encountered.

C. Owners and operators of underground storage tank systems at marinas shall protect piping from stress due to tidal action.

D. Owners and operators shall use *Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems"*, or, if applicable, the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.106.611 NMAC - N, 07/24/2018]

#### **20.5.106.612 VENTING FOR UNDERGROUND STORAGE TANK SYSTEMS:**

A. Owners and operators shall design and construct venting for all underground storage tank systems, following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Vent pipes that are provided for normal tank venting shall be located so that the discharge point is outside of buildings higher than the fill pipe opening. Vent pipes shall be installed not less than 15 feet from power ventilation air intake devices and not less than five feet from a building opening. Vent outlets and devices shall be designed and installed to minimize blockage.

C. Types of vent pipes.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) If attached to a structure, vent pipes shall extend at least 5 feet above the highest projection of the canopy or roof.

(3) Vent pipes for normal tank venting shall be of appropriate size for the capacity and operating conditions of the tank.

D. Owners and operators shall use one of more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*;

(3) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"*;

(4) *Underwriters Laboratories Standard 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids"*; or

(5) *International Code Council, "International Fire Code"*.

[20.5.106.612 NMAC - N, 07/24/2018]

#### **20.5.106.613 SPILL AND OVERFILL PREVENTION:**

A. Except as provided in subsection B of this section, to prevent spilling and overfilling associated with transfers of regulated substances to underground storage tank systems, owners and operators shall use the following spill and overfill prevention equipment:

(1) spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe; and

(2) overfill prevention equipment for USTs that will:

(a) automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or

(b) alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level audible alarm.

**B.** Owners and operators are not required to use the spill and overfill prevention equipment specified in Subsection A of this section if approved in writing in advance by the department where:

(1) alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1) and (2) of Subsection A of this section; or

(2) the underground storage tank system is filled by transfers of no more than 25 gallons at one time;

**C.** Flow restrictors or ball float valves used in vent lines shall not be used as overfill prevention equipment for USTs when overfill prevention is installed or replaced after the effective date of these rules.

**D.** Spill and overfill prevention equipment must be periodically tested or inspected in accordance with 20.5.107.704 NMAC.

**E.** Owners and operators of UST systems with remote fill piping shall install a trap door or equivalent device and shall meet the following:

(1) Flow restrictors or ball float valves shall not be installed or used on a UST system with a remote fill pipe.

(2) Owners and operators who install or modify remote fill piping shall install a containment sump where remote fill piping connects to the UST.

**F.** Overfill prevention and spill prevention equipment for new UST systems shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids.

**G.** Owners and operators shall not install oil/water separators to meet spill prevention requirements for UST systems.

[20.5.106.613 NMAC - N, 07/24/2018]

#### **20.5.106.614 LOADING RACKS:**

**A.** Owners and operators who install loading racks shall design and construct them in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements in this section:

(1) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance & Inspection of Terminal and Tank Facilities";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *International Code Council, "International Fire Code";* or

(4) *Petroleum Equipment Institute RP 800, "Recommended Practices for Installation of Bulk Storage Plants."*

**B.** Owners and operators of aviation fuel storage tank systems who install loading racks shall comply with *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing"*.

**C.** Owners and operators shall install a containment system that is designed to contain all releases of regulated substances that occur during loading and unloading operations at the loading rack. For all loading racks, owners and operators shall install either:

(1) a drainage system, or secondary containment system meeting the requirements of 20.5.106 NMAC, with a catchment basin capable of containing the largest compartment of a tank car or tanker truck that is loaded or unloaded at the facility; or

(2) a drainage system that is connected to a treatment facility designed to receive releases of regulated substances that occur during loading and unloading operations.

**D.** Owners and operators shall ensure that loading racks are at least 25 feet from ASTs containing class I liquids (such as gasoline), buildings, and property lines. Owners and operators shall ensure that loading racks are at least 15 feet from ASTs containing class II or class III liquids.

[20.5.106.614 NMAC - N, 07/24/2018]

**20.5.106.615 REQUIRED NOTIFICATION PRIOR TO INSTALLATION:** To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the installation of an underground storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For installations, the term "critical junctures" means:

(1) preparation of the excavation immediately prior to receiving backfill and a UST or piping for a UST;

(2) installation of any tank pad, vault, or secondary containment for a storage tank system;

(3) setting of a storage tank and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(4) placing a regulated substance in the tank;

(5) any time during the installation in which components of piping are connected;

(6) all pressure testing or integrity testing of an underground storage tank system, including associated piping, performed during the installation; and

(7) completion of backfill and filling of the excavation.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the installation of an underground storage tank system. At a minimum, the installation notice shall contain the following information:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county), and telephone number;

(3) owner name, owner ID number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) tank details (number and size, type and materials, products to be stored);

(6) piping material and type of leak detection;



- (7) type of spill and overfill prevention;
- (8) type of corrosion protection (sacrificial, impressed current, or none with explanation why corrosion protection not required);
- (9) method of leak detection (statistical inventory reconciliation, automatic tank gauges, visual, vapor monitoring, interstitial monitoring, inventory control with tightness testing);
- (10) approximate date installation will take place; and
- (11) the signature of the owner or owner's representative filling out the form.

**C.** Owners, operators and certified tank installers shall provide required project drawings with the 30-day written notice.

**D.** In addition to the written notice described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**E.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.106.615 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for notification of installation. The form is available on the petroleum storage tank bureau's pages on the department's website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.106.616 REQUIRED CERTIFICATIONS:**

**A.** Certification of compliance. All owners and operators of new underground storage tank systems shall certify in the registration form required by 20.5.102 NMAC compliance with the following requirements:

- (1) installation of tanks and piping in 20.5.106.605 NMAC for UST systems;
- (2) cathodic protection of steel tanks and piping in 20.5.106.602 NMAC and 20.5.106.610 NMAC for UST systems, or 20.5.106.604 NMAC for UST systems;
- (3) financial responsibility under 20.5.117 NMAC; and
- (4) release detection in 20.5.108 NMAC.

**B.** Installer certification. All owners and operators of new underground storage tank systems shall ensure that the installer certifies in the registration form required by 20.5.102 NMAC that the methods used to install the storage tanks and piping comply with the requirements in 20.5.106 NMAC.

**C.** Certification of installation. Owners and operators shall demonstrate compliance with the installation standards in 20.5.106 NMAC. Owners and operators shall provide a certification of installation on the UST registration form required by 20.5.102 NMAC, which asserts that all of the following methods of certification, testing, and inspection were used to demonstrate compliance with installation requirements of the UST system:

- (1) the installer has been certified by the tank and piping manufacturers;
- (2) the installer has been certified or licensed as required in 20.5.105 NMAC;

(3) the installer has notified, submitted required documentation to, and the installation has been inspected by the department; and

(4) all work listed in the manufacturer's installation checklists has been completed.

[20.5.106.616 NMAC - N, 07/24/2018]

**20.5.106.617 ALTERNATE METHODS:**

**A.** If owners and operators want to install tanks, piping, underground storage tank systems, spill and overfill equipment, secondary containment, or any other requirement of this part with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.106.617 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department's website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**HISTORY OF 20.5.106 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 9/12/88

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 8/4/89

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 6/12/90

**History of Repealed Material:** 20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 2/27/97), repealed 8/15/03.  
20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation (filed 7/16/03) repealed 4/4/08.  
20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation (filed 4/4/08) repealed 07/24/2018.

**Other History:**

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation (filed 6/12/90), renumbered, reformatted and replaced by 20 NMAC 5.4, New and Upgraded UST Systems: Design, Construction, and Installation, effective 11/5/95.

20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 10/6/95) replaced by 20 NMAC 5.4, New and Upgraded UST Systems: Design, Construction, and Installation, effective 4/1/97.

20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.4 NMAC, New and Upgraded Tank Systems: Design, Construction and Installation, effective 08/15/03.

20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation (filed 8/15/03) was replaced by 20.5.106 NMAC, Petroleum Storage Tanks, New and Upgraded Underground Storage Tank Systems: Design, Construction and Installation, effective 07/24/2018.



**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 PETROLEUM STORAGE TANKS  
PART 107 GENERAL OPERATING REQUIREMENTS FOR UNDERGROUND  
STORAGE TANK SYSTEMS**

**20.5.107.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.107.1 NMAC - N, 07/24/2018]

**20.5.107.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.107.2 NMAC - N, 07/24/2018]

**20.5.107.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.107.3 NMAC - N, 07/24/2018]

**20.5.107.4 DURATION:** Permanent.  
[20.5.107.4 NMAC - N, 07/24/2018]

**20.5.107.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.107.5 NMAC - N, 07/24/2018]

**20.5.107.6 OBJECTIVE:** The purpose of 20.5.107 NMAC is to ensure that the operation and maintenance of storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.  
[20.5.107.6 NMAC - N, 07/24/2018]

**20.5.107.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.107.7 NMAC - N, 07/24/2018]

**20.5.107.8 to 20.5.107.699 [RESERVED]**

**20.5.107.700 OPERATION AND MAINTENANCE OF UNDERGROUND STORAGE TANK SYSTEMS:** Owners and operators shall properly maintain all tanks, piping, secondary containment and other associated equipment required in 20.5.106 NMAC, and shall ensure that all tanks, piping, secondary containment and other associated equipment for all storage tank systems are fully operational at all times. Owners and operators shall notify the department in accordance with 20.5.118 NMAC if a visual inspection, other inspection or testing conducted in accordance with this part or 20.5.108 NMAC indicates that a release may have occurred.

**A.** Owners and operators shall mark fill port lids of USTs in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized

association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *American Petroleum Institute RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gas Dispensing Facilities and Distribution Terminals"*. Owners and operators shall clearly label the contents of all storage tanks.

**B.** If any steel piping installed in a trench is used in a UST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any liquid that has accumulated in the trench within one week of the accumulation and shall remove any other debris that has accumulated inside the trench. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of accumulated liquid and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

[20.5.107.700 NMAC - N, 07/24/2018]

**20.5.107.701 OPERATIONS AND MAINTENANCE PLAN:** Owners and operators of all storage tank systems shall adopt and implement a written operations and maintenance plan, which they shall keep at the facility for the life of the storage tank system. Owners and operators of unmanned storage tank systems may keep the operations and maintenance plan at an alternate location as long as it is made readily available to the department upon request. The operations and maintenance plan shall be as specific as possible for each facility and shall include the piping and ancillary equipment that routinely contains regulated substances or controls the flow of regulated substances. Owners and operators may use, by reference, operational and maintenance guidance from the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators who reference a current edition of an industry standard or code of practice shall maintain a copy of the code or standard they reference. Owners and operators shall not implement the plan until it has been approved by the department.

**A.** At a minimum, the operations and maintenance plan shall include the following:

- (1)** a detailed plan showing inspections, operations, testing and maintenance to be done on a daily, monthly, quarterly and annual basis; the plan shall include tank charts for each tank, a description of how owners and operators properly dispose of regulated substances spilled at the facility, and any water or soil removed from any part of the storage tank system where there is any indication it might be or have been contaminated with a regulated substance;
- (2)** a description of periodic operation and maintenance walk-through inspections in accordance with 20.5.107.707 NMAC; and
- (3)** responses to emergency situations; this information shall be readily accessible at the facility; responses to emergency situations shall include the following:
  - (a)** the location of equipment to be shut down during an emergency and how to safely perform these tasks;
  - (b)** actions to be taken in the event of a fire, flooding, a spill, or a release of regulated substances;
  - (c)** a site diagram; and
  - (d)** a list of whom to notify or call during or after an emergency situation.

**B.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems"*,
- (2) *U.S. Environmental Protection Agency #510-R-05-001, "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets"*; or
- (3) *U.S. Environmental Protection Agency #510-R-05-002, "Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists"*.

**C.** Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

**D.** Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC shall not be required to have an operations and maintenance plan, unless one or both of the following conditions is present:

- (1) the storage tank contains greater than one inch of regulated substance; or
- (2) the storage tank system has steel components that are in contact with an electrolyte, such as soil, water or concrete.

[20.5.107.701 NMAC - N, 07/24/2018]

#### **20.5.107.702 OPERATION, REPAIR, AND MAINTENANCE OF SECONDARY CONTAINMENT FOR USTS:**

**A.** Owners and operators of underground storage tank systems shall operate, maintain and repair secondary containment in accordance with the manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *U.S. Environmental Protection Agency #510-R-05-001, "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets"*; or
- (2) *U.S. Environmental Protection Agency #510-R-05-002, "Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists"*;
- (3) *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps"*.

**B.** Owners and operators shall draw off liquid that has accumulated in the secondary containment, including all sumps, within one week of any accumulation of liquid, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen.

**C.** Under-dispenser containment must allow for access to the components in the containment system for visual inspections in accordance with 20.5.107.707 NMAC.

**D.** Under-dispenser containment for UST systems installed after April 4, 2008 shall be maintained to meet requirements in 20.5.106.606 NMAC.

**E.** Owners and operators shall operate, maintain, and repair containment sumps on UST systems in order to prevent any leaks or spills from escaping the containment sumps.

[20.5.107.702 NMAC - N, 07/24/2018]

**20.5.107.703 OPERATION, REPAIR, AND MAINTENANCE OF VENTING SYSTEMS:**

Owners and operators shall operate, maintain and repair venting systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, “Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Particulate Solids”*.

[20.5.107.703 NMAC - N, 07/24/2018]

**20.5.107.704 OPERATION AND MAINTENANCE OF SPILL AND OVERFILL**

**PREVENTION:** Owners and operators shall ensure that releases due to spilling or overfilling do not occur.

**A.** Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *National Fire Protection Association Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”*;

(2) *International Code Council, “International Fire Code”*;

(3) *Petroleum Equipment Institute Publication RP600, “Recommended Practices for Overfill Prevention for Shop-Fabricated Aboveground Tanks”*; or

(4) *American Petroleum Institute Standard 2350, “Overfill Protection for Storage Tanks in Petroleum Facilities”*.

**B.** For additional guidance on Subsection A, see the following:

(1) *National Fire Protection Association Standard 385, “Standard for Tank Vehicles for Flammable and Combustible Liquids”*;

(2) *American Petroleum Institute Recommended Practice 1007, “Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles”*;

(3) *American Petroleum Institute Bulletin 1621, “Recommended Good Practices for Bulk Liquid-Loss Control in Service Stations”*; or

(4) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”*.

**C.** Owners and operators of UST systems shall ensure that spill prevention equipment required in 20.5.106.613 NMAC is liquid tight, maintained, and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these rules, meet the following requirements:

(1) Single walled spill prevention equipment shall be tested every three years either by a vacuum, pressure, or liquid test method that meets one of the following:

(a) the equipment manufacturer’s developed and published testing requirements; or

(b) *Petroleum Equipment Institute RP 1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities”*.



(2) Single walled spill prevention equipment installed in a containment sump shall be tested every three years or the containment sump shall be tested every three years. Testing shall either be by a vacuum, pressure, or liquid method that meets one of the following:

(a) the equipment manufacturer's developed and published testing requirements; or

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*.

(3) Double walled spill prevention equipment that is periodically monitored every 30 days shall have records of the monitoring maintained in accordance with the requirements in 20.5.107.714 NMAC. If monthly monitoring is not being conducted or records of the monitoring cannot be produced, a test in accordance with Subsection C of this section shall be conducted within the next thirty days of discontinuing periodic monitoring of the equipment.

(4) Single walled containment sumps installed to meet spill prevention requirements shall be tested every three years. Testing shall be by a vacuum, pressure, or liquid method that meets one of the following:

(a) the equipment manufacturer's developed and published testing requirements; or

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*.

(5) Double walled containment sumps that are installed to meet spill prevention requirements shall either be tested every three years or monitored as follows:

(a) Testing shall be by a vacuum, pressure, or liquid method that meets one of the following:

(i) the equipment manufacturers developed and published testing requirements; or

(ii) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*;

(b) Monitoring shall be performed either continuously or monthly with a sensor or visual inspection as follows:

(i) continuous monitoring by liquid, pressure, or vacuum shall be done electronically and shall activate an alarm when liquid is detected in the interstice of the sump;

(ii) monthly monitoring with a sensor shall be conducted at least every 30 days and in accordance with either the manufacturer's instructions or the current edition of a national code or standard;

(iii) monthly monitoring by visual inspection may be used if a leak from the inner wall of the sump can be detected by a visual check of the interstice;

(6) Containment sumps installed prior to the effective date of these regulations shall be tested in accordance with Paragraph (2) of Subsection C of this section prior to the beginning of monthly monitoring, if applicable;

(7) Sensors used for monthly monitoring of spill prevention equipment or containment sumps associated with spill prevention equipment shall be functionality tested annually in accordance with the requirements in Subsection B of 20.5.108.808 NMAC;

(8) If evidence is found during the monthly monitoring that containment sumps or spill prevention equipment are no longer liquid tight, owners and operators shall have the equipment repaired or replaced in accordance with the requirements in 20.5.107.709 NMAC;

(9) A report shall be produced which includes the results of any vacuum, pressure, or liquid testing conducted on spill prevention equipment and the report shall be submitted to the department in accordance with the requirements in 20.5.107.715 NMAC and maintained in accordance with the requirements in 20.5.107.714 NMAC.

**D.** Spill prevention equipment that either fails when tested or is found to be damaged during periodic monitoring shall be repaired or replaced in accordance with 20.5.107.709 NMAC.

**E.** Owners and operators of UST systems shall ensure that overfill prevention equipment required in 20.5.106.613 NMAC is maintained and fully operational at all times. Owners and operators shall either use the methods and procedures for the inspection as listed in *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities,"* or those developed and published by the equipment manufacturer. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these regulations, and every three years thereafter, have the overfill prevention equipment inspected or tested and shall meet the following:

(1) The inspection shall verify the equipment meets the requirements in 20.5.106.613 NMAC, and if the equipment fails to meet these requirements, it shall be repaired or replaced. The repair or replacement shall be in accordance with 20.5.107.709 NMAC.

(2) Prior to the inspection of flow restrictors on vent lines on existing USTs, either a vacuum or pressure decay test shall be conducted in order to ensure all of the penetrations on top of the tank are vapor tight. If the tank fails the test it shall be repaired prior to placing the tank back into service.

(3) Flow restrictors on vent lines that are found to be inoperable during the inspection shall be replaced with different type of overfill prevention equipment. Flow restrictors shall not be installed or replaced with another flow restrictor on or after the effective date of these regulations.

(4) Drop tube style overfill prevention equipment shall be removed from the tank and inspected for operability.

(5) If more than one type of overfill prevention equipment is installed on a UST, owners and operators shall ensure that none of them will interfere with the proper operation of any of the others.

(6) A report on tests and inspections of overfill prevention equipment shall be produced which meets the requirements in Subsection D of 20.5.107.715 NMAC, and the report shall be maintained in accordance with the requirements in 20.5.107.714 NMAC. The report shall be submitted to the department in accordance with the requirements in Subsections B and C of 20.5.107.715 NMAC.

**F.** Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with 20.5.118 NMAC.

**G.** Owners and operators of a storage tank system that meets the requirements for temporary closure where the tank is empty as defined in 20.5.115.1501 NMAC shall not be required to periodically test the spill and overflow prevention equipment.

**H.** Owners and operators of storage tank systems shall ensure that tests of all spill and overflow prevention equipment as required in this section are performed by a qualified tester. The requirements for testers can be found in 20.5.105 NMAC.  
[20.5.107.704 NMAC - N, 07/24/2018]

**20.5.107.705 OPERATION AND MAINTENANCE OF CORROSION PROTECTION:**

Owners and operators of metal storage tank systems with any metal tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

**A.** Owners and operators shall operate and maintain corrosion protection systems to continuously provide corrosion protection to all metal components of the storage tank system that routinely contain regulated substances and are in contact with an electrolyte, to include, but not limited to, soil or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *Steel Tank Institute, “STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks”;*
- (2) *Underwriters Laboratories Standard 1746, “Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks”;*
- (3) *Underwriters’ Laboratories of Canada CAN4-S603-14-ER1, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids”;*
- (4) *Underwriters’ Laboratories of Canada CAN4-603.1, “Standard for External Corrosion Protection Systems for Underground Steel Tanks for Flammable and Combustible Liquids”;*
- (5) *Underwriters’ Laboratories of Canada CAN4-S631-M84, “Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems”;*
- (6) *NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”;* or
- (7) *Underwriters Laboratories Standard 58, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids.”*

**B.** Owners and operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified corrosion expert in accordance with the following requirements:

- (1) Frequency: owners and operators shall test all cathodic protection systems as follows:
  - (a) within six months of installation and at least every three years thereafter;
  - (b) within six months of a modification or repair; or
  - (c) another reasonable time frame approved in advance in writing by the department;

(2) Inspection criteria: the criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(3) Owners and operators of storage tank systems shall provide the department a report on the cathodic protection system test that includes the following:

- (a) name of facility, facility address, and facility ID number;
- (b) name of the technician who performed the test;
- (c) certification of the technician in the type of test performed, including certification numbers, national association where the certification was obtained, and expiration date of the certification;
- (d) description of cathodic protection system, for example impressed current, galvanic;
- (e) description of storage tank system including tank ID number, product, capacity, tank type, piping, flex connectors;
- (f) type of test conducted, such as: three-year test; test within six months of installation; test within six months after repair or modification; test within three months after failed test;
- (g) whether all flex connectors or metal risers that routinely contain a regulated substance and are in contact with an electrolyte are protected from corrosion. If isolation boots, jackets, or other non-corrodible materials are used to protect this equipment from corrosion, it shall be determined if they are still providing protection from corrosion.
- (h) tester's pass/fail evaluation and actions to be taken after evaluation;
- (i) facility drawing of the storage tank system and cathodic protection system, indicating location of test points on the storage tank system, cathodic protection test stations, and reference electrode placement; and
- (j) description of cathodic protection system repair or modification.

(4) Owners and operators of storage tank systems shall provide the department a report on impressed current systems that includes all requirements listed in Paragraph (3) of Subsection B of this section and:

- (a) rectifier manufacturer, model, serial number, and what the rectifier is rated for in direct current output voltage and amperage;
- (b) rectifier tap settings, direct current output voltage and amperage, and hour meter readings;
- (c) description of structure tested, contact point of test lead, and reference electrode placement;
- (d) structure to soil potential with current applied in millivolts;
- (e) structure to soil potential with current interrupted, instant OFF in millivolts;
- (f) 100 millivolts polarization shift, end voltage and voltage change; and
- (g) test results.

(5) Owners and operators of storage tank systems shall provide the department a report on galvanic systems that includes all requirements listed in Paragraph (3) of Subsection B of this section and:

(a) description of structure tested, contact point of test lead, and reference electrode placement;

(b) structure to soil potential measured locally in millivolts;

(c) structure to soil potential measured remotely in millivolts; and

(d) test results.

(6) Owners and operators shall use one or more of the following to comply with the requirements of this section:

(a) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”*;

(b) *National Fire Protection Association Standard 30A “Code for Motor Fuel Dispensing Facilities and Repair Garages”*;

(c) *American Petroleum Institute Publication RP 1615, “Installation of Underground Petroleum Storage Systems”*;

(d) *American Petroleum Institute Publication RP 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”*;

(e) *International Code Council, “International Fire Code”*;

(f) *NACE International Test Method TM 0101, “Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems”*;

(g) *NACE International Test Method TM0497, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems”*;

(h) *Steel Tank Institute Recommended Practice R051, “Cathodic Protection Testing Procedures for STI-P3® USTs”*;

(i) *NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”*; or

(j) *NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”*.

**C.** Owners and operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility, and indicate who performed each inspection.

**D.** Owners and operators shall monthly inspect any equipment or materials used to isolate metal components of UST systems and shall repair or replace equipment and materials used to meet corrosion protection requirements in this section.

**E.** For storage tank systems using cathodic protection, owners and operators shall maintain records of the operation of the cathodic protection in accordance with 20.5.107.714 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(1) the results of the last three inspections required in Subsection C of this section; and

(2) the results of testing from the last two inspections required in Subsection B of this section.

[20.5.107.705 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for the cathodic protection system test report required in Subsection B. The form is available on the Petroleum Storage Tank Bureau’s pages on the department website]

([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)), or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.107.706 OPERATION AND MAINTENANCE OF CONTAINMENT SUMPS FOR UST SYSTEMS:**

**A.** Owners and operators shall maintain all containment sumps (including but not limited to turbine sumps, under dispenser sumps, and transition sumps) and draw off liquid that has accumulated in the containment sumps within one week of the accumulation and shall remove any other debris that has accumulated inside the containment sumps. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations.

**B.** Owners and operators shall maintain all containment sumps associated with interstitial monitoring of underground piping; the sumps shall be liquid tight and kept free of water.

**C.** Owners and operators of UST systems with single walled containment sumps associated with interstitial monitoring shall have the integrity of the sump tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with the following:

(1) Hydrostatic or other test methods shall be conducted to ensure the containment sumps are liquid tight including at all penetrations in accordance with one of the following:

(a) the equipment manufacturers developed and published testing requirements;

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(c) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Hydrostatic test methods using a test apparatus developed specifically for testing containment sumps shall ensure the containment sumps are liquid tight including at all penetrations and comply with one of the following:

(a) protocols developed by the manufacturer of the test apparatus and the certification as listed on <http://www.nwglde.org>, the web site of the national work group on leak detection evaluation; or

(b) protocols developed and published by the manufacturer of the containment sump; or

(c) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(3) A low liquid level hydrostatic test method may be conducted if all of the following conditions are met:

(a) test method used shall be in accordance with the following:

(i) the liquid level meets the third-party certification for the sensor installed in the sump;

(ii) the duration of the test shall be a minimum of one hour unless a different test period is specified by the containment sump manufacturer or in Item (iii) below;

(iii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(b) either a hydrostatic test shall be conducted every 12 years in accordance with Paragraph (1) and (2) of Subsection C or a site check shall be conducted every 12 years in accordance with in Subsection B of 20.5.118.1801 NMAC.

(c) a sump sensor that automatically shuts off equipment associated with the sump and meets the requirements for placement and testing of sensors used for interstitial monitoring in Paragraph 2 of Subsection B of 20.5.108.811 NMAC;

(4) A low liquid level test per Paragraph (3) of this subsection shall not be conducted if the following conditions exist:

(a) a liquid is discovered in the sump or evidence is found that a liquid has been at a level equal to or higher than the lowest penetration in the sump then testing has to be conducted in accordance with Paragraph (1) of this subsection;

(b) sensors in containment sumps are discovered to be located higher than the lowest part of the sump a test shall be conducted in accordance with Paragraph (1) of this subsection and owners and operators shall report and investigate a suspected release in accordance with the requirements in 20.5.118 NMAC; or

(c) a site check conducted in accordance with Paragraph (3) of this subsection indicates there has been a release from the containment sump.

**D.** Owners and operators of UST systems with double-walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with one of the following:

(1) interstices under vacuum, pressure, or brine filled, are continuously monitored by use of interstitial sensors or visually inspected every 30 days, and the monitoring records are maintained in accordance with 20.5.107.714 NMAC. Owners and operators shall ensure that annual functionality testing or annual inspections of the monitoring equipment are conducted in accordance with 20.5.108.805 NMAC. Owners and operators who cannot demonstrate that the interstices of the containment sumps are continuously monitored or inspected every 30 days shall have the sumps tested in accordance with Subsection C above; or

(2) containment sumps with dry interstices that are not continuously monitored are integrity tested in accordance with Subsection C of this section.

**E.** All sensors and equipment used to monitor containment sumps shall be functionality tested annually in accordance with Subsection B of 20.5.108.805 NMAC.

**F.** A report shall be produced which includes the results of the testing, and the report shall be submitted in accordance with 20.5.107.715 NMAC and maintained in accordance with the requirements in 20.5.107.714 NMAC.

**G.** Owners and operators of storage tank systems shall ensure that tests of containment sumps as required in this section are performed by qualified testers. The requirements for testers can be found in 20.5.105 NMAC.

**H.** Owners and operators of storage tank systems shall dispose of water or other test media used in testing of components of petroleum storage tank systems, or any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. Owners and operators who temporarily store the test media or water on-site shall do so in accordance with all federal, state, and local statutes, ordinances, and regulations.

[20.5.107.706 NMAC - N, 07/24/2018]

### **20.5.107.707 PERIODIC OPERATION AND MAINTENANCE WALK-THROUGH INSPECTIONS:**

**A.** Owners and operators shall conduct walk-through inspections that, at a minimum, check equipment as specified below:

(1) For spill and overfill prevention equipment, every 30 days (exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

(a) visually check all spill and overfill prevention equipment for damage;

(b) remove liquid or debris;

(c) check for and remove obstructions in the fill pipe;

(d) check all fill and vapor caps to verify a tight seal; and

(e) for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

(f) check overfill prevention equipment for proper operation and determine whether maintenance is required.

(2) For release detection equipment, every 30 days:

(a) check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(b) ensure records of release detection testing are reviewed and current.

(3) For containment sumps, every 30 days:

(a) visually check the containment sump for damage, liquid in or leaks into the containment area, and releases to the environment;

(b) remove liquid and debris from containment sumps; and

(c) for double walled sumps with interstitial monitoring, check for liquid or a leak in the interstitial area.

(4) Annually: check hand held release detection equipment, such as, but not limited to, tank gauge sticks or groundwater bailers for operability and serviceability;

**B.** Owners and operators shall conduct these walk-through inspections in accordance with one of the following:

(1) *Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems"*;

(2) the current edition of a national code of practice or standard developed by a nationally recognized association or independent testing laboratory that checks equipment included in Subsection A of 20.5.107.707 NMAC; or

(3) a checklist developed by the department.

**C.** Owners and operators must maintain records of operation and maintenance walkthrough inspections in accordance with 20.5.107.714 NMAC. Records must include a list of



each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

[20.5.107.707 NMAC - N, 07/24/2018]

**20.5.107.708 COMPATIBILITY:** Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system.

**A.** Owners and operators must notify the department at least 30 days prior to changing the substance in any of their tanks to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department.

**B.** In addition, owners and operators with storage tank systems storing the regulated substances identified in Subsection A of this section must meet one of the following:

**(1)** demonstrate compatibility of the storage tank system, including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment. Owners and operators may demonstrate compatibility of the storage tank system by using one of the following options:

**(a)** certification or listing of storage tank system equipment or components by a nationally recognized, independent testing laboratory approved in advance by the department for use with the regulated substance stored; or

**(b)** equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

**(2)** for storage tank systems or system components that contain, but are not compatible with, one of the regulated substances listed in Subsection A of this section, or for those storage tank systems where compatibility cannot be determined, remove all regulated substances from the storage tank system by the effective date of these regulations and comply with one of the following:

**(a)** replace the storage tank system or system components in accordance with the requirements for a new storage tank system in 20.5.106 NMAC; or

**(b)** prior to putting the tank back in service, repair the storage tank system in accordance 20.5.107.702 NMAC and comply with one of the following:

**(i)** install an internal lining in the tank in accordance with the requirements in Subsection E of 20.5.106.607 NMAC to address compatibility issues; or

**(ii)** comply with tank or equipment manufacturer's instructions;

**(c)** change the regulated substance stored to one that is compatible with the storage tank system; or

**(d)** permanently close the storage tank system within 12 months of the effective date of these regulations in accordance with the permanent closure requirements in 20.5.115 NMAC; or

**(3)** use another option determined by the department to be no less protective of human health and the environment than the options listed in this subsection.

C. Owners and operators must maintain records documenting compliance with this section for as long as the storage tank system is used to store the regulated substance.

D. Owners and operators shall use the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department to comply with the compatibility requirements of this section. *American Petroleum Institute Recommended Practice RP 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"*, shall be used to comply with the requirements of this section as they pertain to storage of ethanol blends. [20.5.107.708 NMAC - N, 07/24/2018]

**20.5.107.709 REPAIRS, REPLACEMENTS AND MODIFICATIONS:** Owners and operators of a storage tank system shall ensure that repairs, replacements, and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances.

A. Determining whether repair, replacement or modification is necessary. Owners and operators shall determine whether a repair, replacement or modification to a storage tank system is necessary in consultation with a department inspector, after providing notice required by this part.

(1) If owners and operators are repairing, replacing or modifying piping of any kind that is connected to a storage tank, the determination shall be made during an on-site inspection that provides the inspector the opportunity to view the piping while it is exposed.

(2) If, during an on-site inspection, the inspector determines that:

(a) any steel piping connected to a tank indicates corrosion; or

(b) any non-corrodible piping connected to a tank shows signs of deterioration or failure;

(3) Then the owner and operator shall replace all piping connected to that tank, and shall inspect all other piping at the same facility that is made of the same material to determine its condition prior to returning the facility to operation.

B. Owners and operators shall properly conduct repairs, replacements and modifications to storage tank systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and in accordance with the manufacturer's instructions and recommended practices. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*;

(2) *American Petroleum Institute Recommended Practice RP 2200, "Repairing Hazardous Liquid Pipelines"*;

(3) *American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"*;

(4) *National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"*;

(5) *National Leak Prevention Association Standard 631, Chapter D, "Lining of Fiberglass Tanks for Compatibility and Repairs That Are Allowed"*;

(6) *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps"*;

- (7) *National Fire Protection Association Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”;*
- (8) *Petroleum Equipment Institute Publication RP200, “Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling”;*
- (9) *American Society for Testing and Materials ES40, “Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection”;*
- (10) *American Petroleum Institute 570, “Piping Inspection Code: In-Service Inspection, Repair, and Alteration Piping Systems”;*
- (11) *American Society of Mechanical Engineering Standard B31.1, “Power Piping”;*
- (12) *International Code Council, “International Fire Code”;*
- (13) *Steel Tank Institute Recommended Practice R972, “Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks”;*
- (14) *NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”;*
- (15) *Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, “Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks”;*
- (16) *Petroleum Equipment Institute Publication RP100, “Recommended Practices for the Installation of Underground Storage Tank Systems for Motor Vehicle Fueling”;*
- (17) *Petroleum Equipment Institute Publication RP800, “Recommended Practices for Installation of Bulk Storage Plants”;*
- (18) *Petroleum Equipment Institute Publication RP1000, “Recommended Practices for the Installation of Marina Fueling Systems”;*
- (19) *Petroleum Equipment Institute Publication RP1300, “Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems”;* or
- (20) *Petroleum Equipment Institute Publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems”.*

**C.** Owners and operators shall tightness test a storage tank system that has been replaced, modified or repaired, prior to returning the system to service, in accordance with 20.5.108.804 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC except as provided below:

- (1) the repaired or modified tank is internally inspected in accordance with the current edition of an industry standard or code of practice approved in advance by the department; or
- (2) owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

**D.** The following codes of practice shall be used to comply with Subsection C of this section:

- (1) *Steel Tank Institute Recommended Practice R012, “Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks”;*

(2) *Fiberglass Tank and Pipe Institute Publication RP 2007-2, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"*; or

(3) *Petroleum Equipment Institute Recommended Practice RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment of UST Facilities"*.

**E.** Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with Subsections B and C of 20.5.107.705 NMAC to ensure that it is operating properly.

**F.** Owners and operators of a storage tank system shall maintain records of each repair, replacement and modification until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

**G.** Owners and operators shall meet all applicable installation requirements of 20.5.106 NMAC, including testing requirements, when repairing, replacing or modifying a storage tank system involves installing new components. If any tank or piping of a storage tank system is replaced, owners and operators shall follow all requirements for properly assessing the site for contamination in compliance with 20.5.115 NMAC prior to installing the new components.

**H.** Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the implementing agency within 30 days following the date of completion of the repair.

**I.** Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with 20.5.107.704 NMAC to ensure it is operating properly.

[20.5.107.709 NMAC - N, 07/24/2018]

#### **20.5.107.710 INSPECTIONS, MONITORING AND TESTING:**

**A.** For the purpose of enforcing the provisions of these regulations, all owners and operators of storage tanks shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit any department representative at all reasonable times to have access to, and to copy all records relating to such tanks. Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, Sections 50-9-1 through 50-9-25 NMSA 1978, so that storage tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized to:

- (1) enter at reasonable times any establishment or place where a storage tank is located;
- (2) inspect the storage tank system and obtain samples of its contents;
- (3) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and
- (4) retrieve all data from any electronic release detection equipment or device.

**B.** The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

**C.** Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures.

**D.** Owners and operators shall not intentionally delete any history from any electronic release detection equipment or device.  
[20.5.107.710 NMAC - N, 07/24/2018]

**20.5.107.711 REQUIRED NOTIFICATION PRIOR TO REPLACEMENT, REPAIR AND MODIFICATION:** To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the replacement, repair, and modification of the storage tank system are to take place. Notice need not be provided for normal maintenance. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For replacements, modifications (including internal lining or changes to cathodic protection systems), and repairs, the term “critical junctures” means:

- (1) completion of the excavation of existing tanks or piping;
- (2) actual performance of the repair, lining or modification;
- (3) any time during the project in which components of piping are connected;
- (4) any time during the project in which a tank, its associated piping, spill prevention equipment, or secondary containment sumps are tested; and
- (5) any time during the project when overflow prevention equipment is inspected to ensure it meets the requirements in 20.5.106.613 NMAC.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the replacement, modification or repair of a storage tank system. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide notice of emergency repairs as soon as possible after completing emergency repairs. At a minimum, the notice for replacements, modifications, and repairs shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) contractor name, address, and telephone number;
- (5) description of type of replacement, modification or repair to be performed (such as spill containment, overspill prevention, release detection, piping or other);
- (6) expected date on which replacement, modification or repair will be performed; and

(7) whether any part of the storage tank system is within 1,000 feet of a community water system or a potable drinking water well; and

(8) signature of owner, operator or an authorized representative.

**C.** In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**D.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.107.711 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification. The form is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)), or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Santa Fe, NM 87505.]

#### **20.5.107.712 DEPARTMENT REVIEW AND APPROVAL OF PLANS,**

**INSTALLATION, OPERATION, AND MAINTENANCE:** Owners and operators shall view any inspection, review or approval by the department as permission to proceed in accordance with all applicable rules, codes and standards. Review and approval by the department shall not relieve any owner, operator, or certified tank installer of his responsibility for compliance. If the department overlooks any deficiencies or violations in the course of plan review or inspection provided in 20.5 NMAC, the department may later require correction and compliance.

[20.5.107.712 NMAC - N, 07/24/2018]

#### **20.5.107.713 ALTERNATE METHODS:**

**A.** If owners and operators want to operate, maintain, replace, repair or modify any part of a storage tank system with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin to operate, maintain, replace, repair or modify the storage tank system, unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.107.713 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)), or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

#### **20.5.107.714 RECORD KEEPING:**

**A.** Owners and operators shall maintain the following information for the life of the storage tank system:

- (1) a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used, in accordance with 20.5.106.604 NMAC and 20.5.106.610 NMAC;
- (2) documentation of operation of corrosion protection equipment that demonstrates compliance with 20.5.107.705 NMAC;
- (3) documentation of storage tank system repairs, replacements and modifications that demonstrates compliance with 20.5 NMAC;
- (4) documentation of compliance with release detection requirements in accordance with 20.5.108 NMAC;
- (5) inspection logs required by 20.5.107 NMAC and 20.5.108 NMAC;
- (6) tank tightness, internal inspection and integrity test documents required by 20.5 NMAC;
- (7) any document approving any alternate method;
- (8) spill and overfill prevention equipment testing/inspection records;
- (9) containment sump testing records;
- (10) documentation of compatibility for UST systems;
- (11) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;
- (12) documentation of periodic walkthroughs;
- (13) documentation of operator training in accordance with 20.5.104 NMAC;
- (14) the operation and maintenance plan and related documentation as required by 20.5.107.701 NMAC; and
- (15) any other record or written approval required in 20.5 NMAC.

**B.** Availability and maintenance of records. Owners and operators shall keep the required records for the operational life of a tank, piping and storage tank system either:

- (1) at the storage tank site and immediately available for inspection by the department; or
- (2) at a readily available alternative site and the records shall be provided for inspection to the department upon request; if records are not available at a site during inspection, owners and operators shall send to the inspector within 10 working days all records requested by the inspector.

**C.** Owners and operators shall maintain permanent closure records required under 20.5.115 NMAC. Owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

**D.** If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of noncompliance.

[20.5.107.714 NMAC - N, 07/24/2018]

**20.5.107.715 REPORTING:** Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the federal Solid Waste Disposal Act, as amended.

**A.** Owners and operators shall provide the following information to the department:

(1) registration for all storage tank systems in accordance with 20.5.102 NMAC, which includes certification of installation for new UST systems in accordance with Subsection C of 20.5.106.616 NMAC;

(2) reports of all releases in accordance with 20.5.102 NMAC and the requirements in 20.5.118 NMAC for reporting suspected releases, spills and overfills and confirmed releases;

(3) corrective actions planned or taken as required by 20.5.119 NMAC and 20.5.120 NMAC;

(4) notification before storage tank system installation, replacement, repair or modification in accordance with 20.5.106 NMAC and 20.5.107 NMAC; notification when any person assumes ownership of a storage tank system in accordance with 20.5.102 NMAC and notification before permanent closure or change in service in accordance with 20.5.115 NMAC; it may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs;

(5) notification prior to storage tank systems changing to certain regulated substances in accordance with Subsection A of 20.5.107.708 NMAC; and

(6) updated project drawings for any addition, replacement or modification of a storage tank system;

**B.** Owners and operators shall provide to the department all reports as required in 20.5.107 NMAC within 60 days of completion of the tests.

**C.** Owners and operators shall report any failed tests or inspections to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118 NMAC.

**D.** Owners and operators shall ensure all reports required in 20.5.107 NMAC contain, at a minimum, the following:

(1) facility name and address;

(2) facility ID number;

(3) owner and operator name and address;

(4) owner ID number;

(5) date report was completed;

(6) date of the test;

(7) duration of the test;



- (8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
- (9) type of equipment being tested;
- (10) type of test, including test procedures and methods;
- (11) results of the test;
- (12) name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;
- (13) name of the regulated substance stored in the tank associated with the equipment being tested; and
- (14) for the inspections and testing of spill prevention equipment, overflow prevention equipment, and containment sumps include the information from the following forms, as applicable, from *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overflow, Leak Detection and Secondary Containment Equipment at UST Facilities"*:
  - (a) spill bucket integrity testing, hydrostatic test method, single and double-walled vacuum method;
  - (b) containment sump integrity testing, hydrostatic testing method;
  - (c) UST overflow equipment inspection, automatic shutoff device and ball float valve; or
  - (d) automatic tank gauge operation inspection.

[20.5.107.715 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.107 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 9/12/88.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 2/14/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 8/4/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 6/12/90.

**History of Repealed Material:** 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements (filed 2/27/97), repealed 8/15/03.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) repealed 4/4/08.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) repealed 07/24/2018.

**Other History:**

EIB/USTR-5, Underground Storage Tank Regulations - Part V - General Operating Requirements, filed 6/12/90,

renumbered, reformatted and replaced by 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, effective 11/5/95;

20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements filed 10/6/95 replaced by 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, effective 4/1/97;

20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, filed 2/27/97 was renumbered, reformatted and replaced by 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 8/15/03.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) replaced by 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 4/4/08.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) was renumbered, reformatted, and replaced by 20.5.107 NMAC, Petroleum Storage Tanks, General Operating Requirements for Underground Storage Tanks, effective 07/24/2018.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 108 RELEASE DETECTION FOR UNDERGROUND STORAGE TANK**  
**SYSTEMS**

**20.5.108.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.108.1 NMAC - N, 07/24/2018]

**20.5.108.2 SCOPE:** This part applies to owners and operators of underground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.108.2 NMAC - N, 07/24/2018]

**20.5.108.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.108.3 NMAC - N, 07/24/2018]

**20.5.108.4 DURATION:** Permanent.  
[20.5.108.4 NMAC - N, 07/24/2018]

**20.5.108.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.108.5 NMAC - N, 07/24/2018]

**20.5.108.6 OBJECTIVE:** The purpose of 20.5.108 NMAC is to ensure that releases from underground storage tanks are detected early to minimize potential harmful resulting effects, and to regulate underground storage tank systems in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.108.6 NMAC - N, 07/24/2018]

**20.5.108.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.108.7 NMAC - N, 07/24/2018]

**20.5.108.8 to 20.5.108.799 [RESERVED]**

**20.5.108.800 GENERAL RELEASE DETECTION REQUIREMENTS FOR UST SYSTEMS:** Owners and operators of all UST systems shall comply with the following:

**A.** Owners and operators of UST systems shall provide a method or combination of methods of release detection that:

**(1)** can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance;

- (2) is installed and calibrated in accordance with the manufacturer's instructions;
- (3) is operated and maintained in accordance with one of the following, beginning on the effective date of these regulations:
- (a) manufacturer's instructions;
  - (b) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or
  - (c) requirements determined by the implementing agency to be no less protective of human health and the environment than Paragraph (1) and (2) of this subsection.
- (4) has electronic and mechanical components that are tested to ensure proper operation;
- (5) with the exceptions of inventory control in 20.5.108.802 NMAC and manual tank gauging in 20.5.108.803 NMAC, meets the performance requirements in 20.5.108 NMAC in accordance with a third party certified method as listed by the national work group on leak detection evaluations; and
- (6) is capable of detecting the leak rate or quantity specified for that method in 20.5.108 NMAC with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**B.** Owners and operators shall maintain written confirmations of performance claims and their method of determination. These statements shall be written by the equipment manufacturer or installer and shall confirm that the equipment meets the applicable requirements of 20.5.108 NMAC.

**C.** Prior to implementing a new method or combination of methods of release detection, owners and operators shall have the UST system components tested to ensure the new method is capable of detecting a release.

**D.** When a release detection method indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.102.204 and 20.5.118 NMAC.

**E.** Owners and operators of underground storage tank systems installed prior to April 4, 2008 that meet the performance standards in 20.5.106 NMAC shall provide release detection for storage tank systems by monitoring monthly for releases using one of the methods listed in Sections 20.5.108.805 NMAC through 20.5.108.809 NMAC with the following exceptions:

(1) Monthly inventory control may be used in accordance with the requirements in 20.5.108 NMAC, in conjunction with tank tightness testing conducted in accordance with this part at least every five years until 10 years after the tank was installed.

(2) UST systems that do not meet the performance standards in 20.5.106 NMAC shall upgrade under 20.5.106 NMAC or permanently close under 20.5.115 NMAC.

(3) Manual tank gauging may be used if conducted in accordance with 20.5.108.803 NMAC.

(4) Underground pressurized piping that was installed prior to April 4, 2008 may use annual line tightness testing in conjunction with automatic line leak detectors in accordance with 20.5.108.810 NMAC, and

(5) Underground suction piping that was installed prior to April 4, 2008 may use line tightness testing every three years in accordance with 20.5.108.812 NMAC.

**F.** Owners and operators of UST systems installed or replaced after April 4, 2008 shall monitor the UST system monthly for releases using interstitial monitoring in accordance with 20.5.108.808 NMAC and either 20.5.108.811 or 20.5.108.813 NMAC.

**G.** Owners and operators shall ensure that any person who performs a test on their UST system in order to meet the requirements of 20.5.108 NMAC shall comply with the requirements in 20.5.105 NMAC.

**H.** Owners and operators shall ensure that equipment used to perform a test on their storage tank system is calibrated and maintained according to the manufacturer's requirements.

**I.** Owners and operators of UST systems shall maintain and provide to the department all reports required in 20.5.108 NMAC in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.800 NMAC - N, 07/24/2018]

### **20.5.108.801 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS:**

**A.** Owners and operators of hazardous substance UST systems installed before April 4, 2008 shall provide containment that meets the requirements in Subsection C of 20.5.108.801 NMAC, and these UST systems shall be monitored every 30 days using one or more of the UST methods allowed in 20.5.108 NMAC. Owners and operators may request to use an alternate method in accordance with the requirements of 20.5.108.814 NMAC and shall provide the department with information in writing on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance along with the characteristics of the UST site.

**B.** Owners and operators of hazardous substance UST systems installed on or after April 4, 2008 shall provide containment that meets the requirements in Subsection C of 20.5.108.801 NMAC and shall monitor these UST systems at least every 30 days using interstitial monitoring in accordance with 20.5.108.808 NMAC and either 20.5.108.811 NMAC or 20.5.108.813 NMAC.

**C.** Release detection of hazardous substance UST systems shall meet the following requirements.

**(1)** Owners and operators shall design, construct and install secondary containment systems to:

**(a)** contain regulated substances that escape the primary containment until they are detected and removed;

**(b)** prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

**(c)** be checked for evidence of a release monthly; the provisions of 40 CFR 265.193, containment and detection of releases, may be used to comply with these requirements for storage tank systems installed on or before the effective date of these regulations.

**(2)** Double-walled tanks shall be designed, constructed, and installed to:

**(a)** contain a release from any portion of the inner tank within the outer wall; and

**(b)** detect the failure of the inner wall.

**(3)** External liners (including vaults) shall be designed, constructed and installed to:

(a) contain one hundred percent of the capacity of the largest tank within its boundary;

(b) prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(c) surround the tank completely, thereby preventing lateral as well as vertical migration of regulated substances.

(4) Underground piping shall be equipped with secondary containment that satisfies the requirements of this section (for example: trench liners or double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with Subsection A of 20.5.108.810 NMAC. [20.5.108.801 NMAC - N, 07/24/2018]

#### **20.5.108.802 INVENTORY CONTROL WITH TANK TIGHTNESS TESTING**

**REQUIREMENTS FOR USTS:** Owners and operators of underground storage tanks installed on or before April 4, 2008 may use inventory control in conjunction with tank tightness testing every five years as release detection for 10 years after the storage tank system is installed. After the 10-year anniversary of the storage tank system installation, owners and operators shall use one of the methods in 20.5.108.805 NMAC through 20.5.108.809 NMAC. Inventory control with tank tightness testing shall meet the following requirements:

**A.** Inventory control or another test of equivalent performance shall be conducted monthly to detect a release of at least one percent of flow-through plus 130 gallons on a monthly basis.

**B.** Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the UST are recorded each operating day.

**C.** The equipment used is capable of measuring the level of regulated substance over the full range of the UST's height to the nearest one-eighth of an inch.

**D.** The regulated substance inputs are reconciled with delivery receipts by measurement of the UST inventory volume before and after delivery.

**E.** Deliveries are made through a drop tube that extends to within one foot of the UST bottom.

**F.** Regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn.

**G.** The measurement of any water level in the bottom of the UST is made to the nearest one-eighth of an inch at least once a month.

**H.** Practices described in the *American Petroleum Institute Publication RP 1621, "Bulk Liquid Stock Control at Retail Outlets"* may be used, where applicable, as guidance in meeting the requirements of 20.5.108.802 NMAC.

**I.** Owners and operators shall meet all the requirements for tank tightness testing in 20.5.108.804 NMAC.

**J.** At least annually, owners and operators shall check the operability and serviceability of any measuring device or equipment used for inventory control in accordance with Subsection A of 20.5.108.800 NMAC.

**K.** Measurements and results of each monthly monitoring period shall be maintained in accordance with the recordkeeping requirements in 20.5.108.815 NMAC and shall be provided to the department upon request.

[20.5.108.802 NMAC - N, 07/24/2018]

**20.5.108.803 MANUAL TANK GAUGING REQUIREMENTS FOR USTS:**

**A.** Manual tank gauging:

(1) may be used as the sole method of release detection for regulated underground tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of 551 to 1,000 gallons that meet the tank diameter of 48 inches or 64 inches for the life of these tanks;

(2) may be used as a method of release detection for regulated underground tanks with a nominal capacity of 551 to 1,000 gallons, with a diameter other than either 48 inches or 64 inches, for 10 years after installation in conjunction with periodic tank tightness testing in accordance with 20.5.108.802 NMAC and 20.5.108.804 NMAC;

(3) may be used as a method of release detection for regulated underground tanks with a nominal capacity of 1,001 to 2,000 gallons with any diameter for 10 years after installation in conjunction with periodic tank tightness testing in accordance with 20.5.108.802 NMAC and 20.5.108.804 NMAC;

(4) shall not be used after the 10<sup>th</sup> year of the installation for tanks described in Paragraphs (2) and (3) of this subsection; after the 10<sup>th</sup> year, owners and operators shall change to a method described in 20.5.108.805 NMAC through 20.5.108.809 NMAC; and

(5) shall not be used to meet the requirements of this part for tanks of greater than 2,000 gallons nominal capacity.

**B.** Owners and operators of underground storage tanks who use manual tank gauging as release detection shall ensure the following:

(1) tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(4) a suspected release is reported in accordance with the requirements of 20.5.118 NMAC if the variation between beginning and ending measurements exceeds any of the weekly or monthly standards as follows:

(a) underground storage tank with a nominal capacity of 550 gallons or less, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 10 gallons, or the monthly standard for a four-test average exceeds five gallons;

(b) underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons with a tank diameter of 64 inches and a minimum test duration of 44 hours, where the weekly standard for one test exceeds nine gallons or the monthly standard for a four-test average exceeds four gallons;

(c) underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons with a tank diameter of 48 inches and a minimum test duration of 58 hours, where the weekly standard for one test exceeds 12 gallons or the monthly standard for a four-test average exceeds six gallons;

(d) underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 13 gallons or the monthly standard for a four-test average exceeds seven gallons;

(e) underground storage tank with a nominal capacity of 1,001 gallons through 2,000 gallons, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 26 gallons or the monthly standard for a four-test average exceeds 13 gallons.

C. At least annually, owners and operators shall check the operability and serviceability of any measuring device or equipment used for manual tank gauging in accordance with Subsection A of 20.5.108.800 NMAC.

D. Measurements and results of each monthly monitoring period shall be maintained in accordance with the recordkeeping requirements in 20.5.108.815 NMAC and shall be provided to the department upon request.  
[20.5.108.803 NMAC - N, 07/24/2018]

#### **20.5.108.804 TANK TIGHTNESS TESTING FOR USTS:**

A. Tank tightness testing (or another test of equivalent performance) shall be capable of detecting a one-tenth gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. Owners and operators may not use tank tightness testing alone as a method of release detection.

B. Owners and operators shall ensure any person conducting this testing shall meet the tester requirements in 20.5.105 NMAC.

C. Owners and operators of UST systems shall maintain and provide the department with reports for all tank tightness testing conducted on their storage tank systems in accordance with 20.5.108.815 NMAC and 20.5.8.816 NMAC.

D. An automatic tank gauge system conducting a one-tenth gallon per hour leak test does not meet the requirements for tank tightness testing in this section.  
[20.5.108.804 NMAC - N, 07/24/2018]

#### **20.5.108.805 AUTOMATIC TANK GAUGING REQUIREMENTS FOR USTS:**

A. Owners and operators of underground storage tanks may use automatic tank gauging as a method of release detection if the automatic tank gauging system:

(1) tests for the loss of product and can detect a two-tenths gallon per hour leak rate from any portion of the storage tank system that routinely contains regulated substances;

(2) meets inventory control or another test of equivalent performance requirements in accordance with 20.5.108.802 NMAC; and

(3) tests the storage tank system using one of the following modes:  
(a) in-tank static testing conducted at least once every 30 days;  
(b) continuous in-tank leak detection operating on an uninterrupted basis to determine the leak status of the tank at least once every 30 days; or  
(c) continuous in-tank leak detection operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.



**B.** Owners and operators shall at least annually test the automatic tank gauging system for proper operation beginning three years after the effective date of these regulations. Inspections and testing shall be conducted by a person who is certified as a technician by the manufacturer of the automatic tank gauging system and meets the tester requirements in 20.5.105 NMAC. The annual tests shall, at a minimum and as applicable, include the following:

(1) automatic tank gauge and other controllers: test alarm; verify system programming and configuration; test battery backup;

(2) probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller; and

(3) vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

**C.** Owners and operators shall use one of the following to comply with Paragraph B of this section:

(1) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(2) The manufacturer's testing or inspection instructions.

**D.** Owners and operators shall review the monitoring reports on a monthly basis and notify the department in accordance with 20.5.118 NMAC if there is a failed or inconclusive result.

**E.** Owners and operators shall maintain records for all inspections and testing required in this section in accordance with 20.5.108.815 NMAC. Owners and operators shall provide the department with a report of each annual test of the automatic tank gauge system in accordance with 20.5.108.816 NMAC.

**F.** A one tenth gallon per hour leak test conducted by an automatic tank gauge system does not meet the requirements for tank tightness testing in 20.5.108.804 NMAC. [20.5.108.805 NMAC - N, 07/24/2018]

**20.5.108.806 VAPOR MONITORING REQUIREMENTS FOR USTS:** Owners and operators of underground storage tanks may use vapor monitoring or testing as a method of release detection as long as the testing or monitoring for vapors within the soil gas of the excavation zone meets all of the following requirements:

**A.** The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area.

**B.** The stored regulated substance, or a tracer compound placed in the UST system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the UST.

**C.** The measurement of vapors by the monitoring device is not rendered inoperative by groundwater, rainfall, soil moisture or other known interferences so that a release could go undetected for more than 30 days.

**D.** The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the UST, and

**E.** The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the UST system, a component or components of that substance, or a tracer compound placed in the UST system.

**F.** In the UST excavation zone, the site is assessed:  
(1) to ensure compliance with the requirements in Subsections A through D of this section; and

(2) to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance.

**G.** Site assessments conducted after the effective date of these regulations are signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department and approved in advance by the department.

**H.** Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

**I.** Hand-held electronic sampling equipment that is used for vapor monitoring is:  
(1) annually checked to ensure that the equipment is functioning properly; and  
(2) calibrated prior to each sampling event in accordance with the manufacturer's instructions.

**J.** All records of the site assessment and vapor monitoring system are maintained in accordance with 20.5.108.815 NMAC, and

**K.** Monthly reports of vapor monitoring and annual reports of functionality checks of electronic sampling equipment are maintained and provided to the department in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.806 NMAC - N, 07/24/2018]

**20.5.108.807 GROUNDWATER MONITORING REQUIREMENTS FOR USTS:** Owners and operators of underground storage tanks may use groundwater monitoring as a method of release detection as long as the testing or monitoring for liquids on the groundwater meets all of the following requirements:

**A.** The regulated substance stored is immiscible in water and has a specific gravity of less than one.

**B.** Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the UST system and the monitoring wells or devices is not less than one one-hundredth centimeters per second (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials).

**C.** The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions.

**D.** Monitoring wells shall be sealed from the ground surface to the top of the filter pack.

**E.** Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible.

**F.** The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of non-aqueous phase liquid on top of the groundwater in the monitoring wells.

**G.** Within and immediately below the UST system excavation zone, the site is assessed to:

(1) ensure compliance with the requirements in Subsections A through E of this section; and

(2) establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product.

**H.** Site assessments conducted after the effective date of these regulations are signed by a qualified professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department and approved in advance by the department.

**I.** Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

**J.** Owners and operators shall ensure that hand-held electronic and field equipment that is used for groundwater monitoring is:

(1) annually checked to ensure that the equipment is functioning properly; and

(2) calibrated prior to each sampling event in accordance with the manufacturer's instructions.

**K.** All records of the site assessment and groundwater monitoring system are maintained in accordance with 20.5.108.815 NMAC.

**L.** Monthly reports of groundwater monitoring and annual reports of functionality checks of electronic sampling equipment are maintained and provided to the department in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.807 NMAC - N, 07/24/2018]

#### **20.5.108.808 INTERSTITIAL MONITORING REQUIREMENTS FOR USTS:**

**A.** Owners and operators of underground storage tanks may use interstitial monitoring between the UST and a secondary barrier immediately around and underneath the tank, but only if the system is designed, constructed and installed to detect a leak from any portion of the storage tank system that routinely contains any regulated substance and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains a regulated substance, and the sampling or testing method complies with the requirements of the current edition of an industry code or standard approved in advance by the department; *Steel Tank Institute Standard F841*, "Standard for Dual Wall Underground Storage Tanks" may be used to meet this requirement.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; the monitoring system shall meet all of the following requirements:

(a) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least one X 10(-6)) centimeters per second for the regulated substance stored) to direct a release to the monitoring point and permit its detection.

(b) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

(c) For cathodically protected USTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

(d) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty days.

(e) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions.

(f) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering, or

(3) For USTs with an internally fitted liner, an automated device can detect a release between the inner wall of the UST and the liner, and the liner is compatible with the regulated substance stored.

**B.** For all interstitially monitored USTs, owners and operators shall have all sensors tested by a qualified tester at least annually to ensure proper operation and functionality, including for alarm operability and communication with controller or monitoring equipment, and sensors shall be verified as set to the proper height, placement, and location in accordance with Subsection A of 20.5.108.800 NMAC and 20.5.107 NMAC. At a minimum, these tests shall follow either:

(1) liquid sensor functionality testing procedures described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(2) the equipment manufacturer's published testing procedures.

**C.** Owners and operators shall ensure the requirements in 20.5.108.800 NMAC are met prior to implementing interstitial monitoring.

**D.** Owners and operators shall maintain and provide the department reports relating to the requirements of this section in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.808 NMAC - N, 07/24/2018]

### **20.5.108.809 STATISTICAL INVENTORY RECONCILIATION (SIR) FOR UST SYSTEMS:**

**A.** Owners and operators of underground storage tanks may use release detection methods based on the application of statistical principles to inventory data similar to those described in 20.5.108.802 NMAC. Owners and operators who use SIR shall:

(1) comply with the requirements in Subsections B through G of 20.5.108.802 NMAC;

(2) use a third-party certified quantitative method;

(3) use a third-party vendor to analyze the data and include the name of the SIR provider and the name and version of the SIR method used for analysis;

(4) use a method that is capable of detecting a leak rate of two-tenths gallon per hour or a release of 150 gallons within 30 days;

(5) use a method with a threshold that does not exceed one-half the minimum detectible leak rate; and

(6) use a method that reports a quantitative result with a calculated leak rate.

**B.** Owners and operators shall ensure that the data is collected, analyzed, and reported within the same 30-day period in order to check for releases at least monthly.

- C. Owners and operators shall:
- (1) notify the department within 24 hours of discovery of an inconclusive or fail result;
  - (2) provide the department all data collected for the statistical analysis where the results are either inconclusive or fail and identify any further investigation necessary to determine whether there is a suspected release as part of the seven-day report required in 20.5.118 NMAC;
  - (3) perform an investigation within 14 days of receiving an inconclusive result, or another time frame approved in advance by the department to determine whether a suspected release should be investigated under 20.5.118 NMAC; and
  - (4) report a suspected release to the department within 24 hours in accordance with 20.5.118 NMAC if the investigation indicates a fail result.
- D. Owners and operators shall inspect all mechanical equipment and test all electronic equipment annually to ensure proper operation and calibration.
- E. Qualitative SIR methods are no longer accepted as meeting the requirements for monthly monitoring.
- F. Owners and operators shall maintain results and records of monthly monitoring in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC, and shall provide them to the department upon request.  
[20.5.108.809 NMAC - N, 07/24/2018]

**20.5.108.810 REQUIREMENTS FOR UST UNDERGROUND PRESSURIZED PIPING INSTALLED PRIOR TO APRIL 4, 2008:** Owners and operators of underground storage tank systems with piping installed prior to April 4, 2008, except those used for emergency power generation, shall provide release detection for underground pressurized piping that routinely contains regulated substances by following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

- A. Owners and operators of UST systems shall:
- (1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;
  - (2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour; and
  - (3) use a method, or combination of methods, for monitoring the piping for releases that complies with one of the following:
    - (a) A precision line tightness test is conducted every 12 months that is capable of detecting a leak of 0.1 gallons per hour at one and one-half times the operating pressure.
    - (b) The method is capable of detecting a two-tenths gallon per hour leak and is used every 30 days.

(c) One of the methods in 20.5.108.805 NMAC through 20.5.108.809 NMAC is used, if it is capable of detecting a release from any portion of the underground piping that routinely contains a regulated substance.

(d) Interstitial monitoring is used in accordance with all of the requirements in 20.5.108.808 NMAC and 20.5.108.811 NMAC.

**B.** Owners and operators who use statistical inventory reconciliation for monthly monitoring of underground pressurized piping shall conduct annual line tightness testing in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC.

**C.** Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced and tested in accordance with 20.5.108.800 NMAC and Paragraph (1) of Subsection A of 20.5.108.810 NMAC. A line tightness test shall be conducted in accordance with Subsection A of this section after an automatic line leak detector has been replaced.

**D.** Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

**E.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*; or

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems"*.

**F.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all leak detector testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.  
[20.5.108.810 NMAC - N, 07/24/2018]

**20.5.108.811 REQUIREMENTS FOR UST UNDERGROUND PRESSURIZED PIPING INSTALLED ON OR AFTER APRIL 4, 2008:** Owners and operators of underground storage tank systems with piping installed on or after April 4, 2008 shall use interstitial monitoring as release detection for underground pressurized piping that routinely contains regulated substances by following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**A.** Owners and operators of UST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour.

**B.** Owners and operators shall use interstitial monitoring that complies with all of the requirements in 20.5.108.808 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and submersible turbine pump containment sumps used to monitor the interstice.

(2) Sensors shall:

- (a) monitor the interstice;
- (b) monitor all containment sumps associated with the piping;
- (c) sound an alarm and automatically shut off the submersible turbine pump when a regulated substance or water is detected;
- (d) be positioned in the lowest point of the containment sump; and
- (e) be tested annually in accordance with Subsection B of

20.5.108.805 NMAC.

(3) Containment sumps used for interstitial monitoring shall be tested every three years starting three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(b) the equipment manufacturer's published testing procedures.

C. Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced and tested in accordance with 20.5.108.800 NMAC and Paragraph (1) of Subsection A of 20.5.108.811 NMAC. A line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC after an automatic line leak detector has been repaired or replaced.

D. Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

E. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems"*; or

(3) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*.

F. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all release detector testing, line tightness testing, containment sump testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.811 NMAC - N, 07/24/2018]

#### **20.5.108.812 REQUIREMENTS FOR UST UNDERGROUND SUCTION PIPING INSTALLED PRIOR TO APRIL 4, 2008:**

A. Owners and operators of underground storage tank systems with piping installed prior to April 4, 2008 that conveys regulated substances under suction where the piping system does not meet the requirements in Subsection B of 20.5.108.812 NMAC shall use one of the

following methods. These methods shall be designed to detect a release from any portion of underground piping.

(1) A line tightness test shall be conducted every three years and the tightness test shall be capable of detecting a one-tenth gallon per hour leak rate.

(2) Interstitial monitoring shall be used in accordance with all of the requirements in 20.5.108.808 NMAC and 20.5.108.813 NMAC.

(3) Statistical inventory reconciliation shall be used in accordance with 20.5.108.809 NMAC for monthly monitoring of underground suction piping in conjunction with line tightness testing in accordance with Paragraph (1) of Subsection A of this section.

(4) Vapor monitoring shall be used in accordance with 20.5.108.806 NMAC.

(5) Groundwater monitoring shall be used in accordance with 20.5.108.807 NMAC.

**B.** Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) The below-grade piping operates at less than atmospheric pressure.

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(3) Only one check valve is included in each suction line.

(4) The check valve is located directly below and as close as practical to the suction pump.

(5) Compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*; or

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems"*.

**D.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.15 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.812 NMAC - N, 07/24/2018

### **20.5.108.813 REQUIREMENTS FOR UST UNDERGROUND SUCTION PIPING INSTALLED ON OR AFTER APRIL 4, 2008:**

**A.** Owners and operators of underground storage tank systems with piping installed on or after April 4, 2008 where the piping conveys regulated substances under suction shall meet the requirements for interstitial monitoring in 20.5.108.808 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and secondary containment sumps used to monitor the interstice.

(2) Sensors shall:

(a) monitor the interstice;

(b) monitor all containment sumps associated with the piping;



- (c) sound an alarm and automatically shut off the pump when a regulated substance or water is detected;
- (d) be positioned in the lowest point of the containment sump; and
- (e) be tested annually in accordance with Subsection B of

20.5.108.805 NMAC.

(3) Containment sumps used for interstitial monitoring shall be tested every three years beginning three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(b) the equipment manufacturer's published testing procedures.

**B.** Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) The below-grade piping operates at less than atmospheric pressure.

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(3) Only one check valve is included in each suction line.

(4) The check valve is located directly below and as close as practical to the suction pump.

(5) Compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems"*; or

(3) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*.

**D.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all containment sump testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC. [20.5.108.813 NMAC - N, 07/24/2018]

#### **20.5.108.814 ALTERNATE METHODS:**

**A.** If owners and operators want to install materials or methods of release detection equipment for tanks or piping required in 20.5.108 NMAC that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the form is completed;

- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if it can detect a two-tenths gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.108 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.

**D.** In addition to the requirements in Subsections B and C of this section, any request for an alternate method of release detection for hazardous substance UST systems shall also include information on effective corrective action technologies, health risks and chemical and physical properties of the stored substance, and the characteristics of the UST site.

[20.5.108.814 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department's website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.108.815 RELEASE DETECTION RECORDKEEPING:**

**A.** All storage tank system owners and operators shall maintain records in accordance with 20.5.107 NMAC demonstrating compliance with all applicable requirements of 20.5.108 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

- B.** Records to be maintained shall include, but not be limited to:
- (1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer;
  - (2) the results of any sampling, testing, or monitoring;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site and any schedules of calibration and maintenance required by the release detection equipment manufacturer;

(4) no later than three years after the effective date of these rule, records of site assessments required under 20.5.108.806 NMAC and 20.5.108.807 NMAC. Records of site assessments developed after the effective date of these rules must be signed by a professional engineer, professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department; and

(5) the results of annual operational tests of release detection equipment. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria for the specified equipment or needs to have action taken, and describe any action taken to correct an issue.

[20.5.108.815 NMAC - N, 07/24/2018]

#### **20.5.108.816 REPORTING:**

**A.** Owners and operators shall provide to the department all reports as required in 20.5.108 NMAC within 60 days of completion of the tests.

**B.** Owners and operators shall report any test or inspection results that are anything other than a “pass” or “normal” result to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118 NMAC.

**C.** Owners and operators shall ensure all reports required in 20.5.108 NMAC contain, at a minimum, the following:

(1) facility name and address;

(2) facility ID number;

(3) owner and operator name and address;

(4) owner ID number;

(5) date report was completed;

(6) date of the test;

(7) duration of the test;

(8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;

(9) type of equipment being tested;

(10) type of test, including test procedures and methods;

(11) results of the test;

(12) name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;

(13) brand name and model number of the testing equipment used during the test and the date the testing equipment was last calibrated (only applies to tests performed in accordance with 20.5.108.800 NMAC, 20.5.108.804 NMAC, 20.5.108.806 NMAC, 20.5.108.807 NMAC, 20.5.108.808 NMAC, 20.5.108.810 NMAC through 20.5.108.813 NMAC);

(14) monitoring well number and instrument reading in parts per million (only applies to tests performed in accordance with 20.5.108.807 NMAC);

(15) monitoring well number, depth to groundwater and confirmation that free product was observed or not (only applies to tests performed in accordance with 20.5.108.807 NMAC);

(16) a completed copy of the automatic tank gauge operation inspection form in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"* (only applies to tests performed in accordance with 20.5.108.805 NMAC);

(17) for testing of automatic line leak detectors:

- (a) serial number of the leak detector;
- (b) description of storage tank system;
- (c) detected leak rate in gallons per hour;
- (d) line pressure and functional element holding pressure in pounds

per square inch;

(e) type, diameter and length of piping;

(f) test results, including the following:

- (i) whether flow is restricted by a mechanical line leak detector when a leak is detected;
- (ii) whether the turbine shuts down when a leak is detected by an electronic line leak detector;

(18) for testing of sensors used for monitoring secondary containment and interstitial spaces:

(a) the information in the liquid sensor functionality testing form in the *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; and

(b) information on whether each individual sensor meets automatic shutdown requirements in 20.5.108.811 NMAC and 20.5.108.813 NMAC; and

(19) for line tightness testing:

- (a) leak rate;
- (b) testing pressure;
- (c) bleed back;
- (d) piping type;
- (e) piping diameter; and
- (f) length of piping.

**D.** Owners and operators may use forms and checklist developed by the department, when available, to meet the reporting requirements in 20.5.108 NMAC.

[20.5.108.816 NMAC - N, 07/24/2018]

[Provide reports as required in Subsection A of this section as directed at the department's website. The forms or checklists referred to in Subsection D of this section are available on the Petroleum Storage Tank Bureau's pages on the department's website

([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**HISTORY OF 20.5.108 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 9/12/88.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 2/14/89.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 8/4/89.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/12/90.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/26/90.

**History of Repealed Material:**

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) repealed 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) repealed 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) repealed 07/24/2018.

**Other History:**

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection (filed 6/26/90) renumbered, reformatted and replaced by 20 NMAC 5.6, Underground Storage Tanks - Release Detection, effective 11/5/95;

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 10/6/95) replaced by 20 NMAC 5.6, Underground Storage Tanks - Release Detection, effective 4/1/97;

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) replaced by 20.5.108 NMAC, Petroleum Storage Tanks - Release Detection for Underground Storage Tank Systems, effective 7/24/2018.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 109 NEW AND UPGRADED ABOVE GROUND STORAGE TANK SYSTEMS:**  
**DESIGN, CONSTRUCTION, AND INSTALLATION**

**20.5.109.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.109.1 NMAC - N, 07/24/2018]

**20.5.109.2 SCOPE:** This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of an above ground storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.109.2 NMAC - N, 07/24/2018]

**20.5.109.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.109.3 NMAC - N, 07/24/2018]

**20.5.109.4 DURATION:** Permanent.  
[20.5.109.4 NMAC - N, 07/24/2018]

**20.5.109.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.109.5 NMAC - N, 07/24/2018]

**20.5.109.6 OBJECTIVE:** The purpose of 20.5.109 NMAC is to set forth the requirements for the design, construction, installation and upgrading of above ground storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state.  
[20.5.109.6 NMAC - N, 07/24/2018]

**20.5.109.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.109.7 NMAC - N, 07/24/2018]

**20.5.109.8 to 20.5.109.899 [RESERVED]**

**20.5.109.900 INSTALLATION OF AST SYSTEMS:**

**A.** Owners and operators shall properly install all ASTs and piping in accordance with the manufacturer's instructions and in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, or in accordance with 20.5.109.920 NMAC. Installations shall address the following:

(1) support, if required in the sole discretion of the department, by the use of saddles or longitudinal supports;

(2) a foundation that is of sufficient thickness and reinforcement to support the tank when the tank is filled to maximum capacity with a regulated substance and that is constructed of concrete with a minimum compression strength of 3,000 pounds per square inch at 28 days (or other comparable material approved by the department), and shall be used for:

(a) double-walled or double-bottomed above ground storage tanks;

(b) horizontal tanks with saddles, which shall be placed at a minimum on footings constructed of concrete or other comparable material approved in advance by the department;

(c) horizontal tanks with longitudinal supports, which shall be placed on a concrete slab that extends at least 12 inches beyond the perimeter of the tank and is constructed of concrete or other comparable material approved in advance by the department;

(d) vertical tanks, which shall be placed on a concrete slab that extends at least 12 inches beyond the perimeter of the tank and is constructed of concrete or other comparable material approved in advance by the department; and

(e) single-walled above ground storage tanks, which shall be installed inside secondary containment that meets the requirements of 20.5.109.904 NMAC;

(3) anchorage;

(4) fills, gauges and vents;

(5) environmental protection; and

(6) testing and inspection.

**B.** Tanks and underground piping installed or replaced after July 1, 2013 must be secondarily contained in accordance with 20.5.109.903 NMAC or 20.5.109.904 NMAC, except for any piping that meets the requirements for safe suction in 20.5.111.1108 NMAC.

**C.** Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the AST.

**D.** Owners and operators shall provide an approval from the New Mexico state fire marshal's office to the department for any exceptions to the requirements of the international fire code, including any AST at a retail fueling facility that exceeds the size limit on ASTs;

**E.** In addition to other requirements of this section, if owners or operators want to place into service any shop-fabricated AST that has been permanently closed at any location, owners and operators shall:

(1) not use the AST until they have provided to the department:

(a) the age and type of tank;

(b) the tank manufacturer;

(c) a list of regulated and non-regulated substances previously stored in the tank and for what duration;

(d) a description of any unusual circumstances involving the AST; and

(e) any other information requested by the bureau based on the circumstances; and

(2) install the system in compliance with all requirements for new AST systems in this part.

**F.** Based on the information received in Subsection D of this section, the department may require owners and operators who want to relocate an AST that has been temporarily or



permanently closed to have the tank recertified by a certified tank inspector, the tank manufacturer, or a professional engineer prior to use.

**G.** Owners and operators shall use the applicable national code or standard listed below to comply with the requirements for the installation of above ground storage tank systems in this part:

- (1) *American Petroleum Institute Standard 650, “Welded Tanks for Oil Storage”*;
- (2) *American Petroleum Institute Standard 2610, “Design, Construction, Operation, Maintenance, and Inspection of Terminal & Tank Facilities”*;
- (3) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”*;
- (4) *National Fire Protection Association Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”*;
- (5) *Petroleum Equipment Institute Publication RP200, “Recommended Practices for Installation of Above Ground Storage Tank Systems for Motor Vehicle Fueling”*;
- (6) *Petroleum Equipment Institute Publication RP700, “Recommended Practices for the Design and Maintenance of Fluid Distribution Systems at Vehicle Maintenance Facilities”*;
- (7) *Petroleum Equipment Institute Publication RP800, “Recommended Practices for the Design and Installation of Bulk Storage Plants”*;
- (8) *Petroleum Equipment Institute Publication RP1000, “Recommended Practices for the Installation of Marina Fueling Systems”*;
- (9) *Petroleum Equipment Institute Publication RP1300, “Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems”*;
- (10) *Petroleum Equipment Institute Publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems”*;
- (11) *Steel Tank Institute RP R912, “Installation Instructions for Shop Fabricated Aboveground Storage Tanks for Flammable, Combustible Liquids”*; or
- (12) *International Code Council, “International Fire Code”*.

[20.5.109.900 NMAC - N, 07/24/2018]

**20.5.109.901 REQUIRED NOTIFICATION PRIOR TO INSTALLATION:** To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the installation of a storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For installations, the term “critical junctures” means:

- (1) installation of any tank pad, vault, or secondary containment for a storage tank system;
- (2) setting of a storage tank and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;
- (3) placing a regulated substance in the tank;

- (4) any time during the installation in which components of piping are connected;
- (5) preparation of any excavation immediately prior to receiving backfill for piping or containment sumps;
- (6) all pressure testing or integrity testing of a storage tank system, including associated piping, spill prevention equipment, and containment sumps performed during the installation;
- (7) completion of backfill and filling of any excavation;
- (8) installation and testing of overfill prevention equipment and release detection equipment.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the installation of a storage tank system. At a minimum, the installation notice shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) contractor name, address, and telephone number;
- (5) tank details (number and size, type and materials, products to be stored);
- (6) piping material and type of leak detection;
- (7) type of spill and overfill prevention;
- (8) type of corrosion protection (sacrificial, impressed current, or none with explanation why corrosion protection not required);
- (9) method of leak detection (automatic tank gauges, visual, interstitial monitoring);
- (10) approximate date installation will take place; and
- (11) the signature of the owner or owner's representative filling out the form.

**C.** Owners, operators and certified tank installers shall provide required project drawings with the 30-day written notice.

**D.** In addition to the written notice described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**E.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.109.901 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for notification of installation. The form is available on the Petroleum Storage Tank Bureau's pages on the department's website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

## **20.5.109.902 PERFORMANCE STANDARDS FOR AST SYSTEMS:**

**A.** In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as an AST system is used to store regulated substances, owners and operators of new AST systems shall properly design, construct and initially test each new AST system, provide project drawings in accordance with 20.5.109.901 NMAC, and ensure that any portion of an AST system that routinely contains regulated substances and is in contact with an electrolyte, such as soil, concrete or water shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall ensure that the entire AST system is compatible with any regulated substance conveyed. Owners and operators shall use the applicable national code or standard listed below to meet the requirements of this section:

- (1) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”;*
- (2) *National Fire Protection Association Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”;*
- (3) *National Fire Protection Association Standard 407, “Standard for Aircraft Fuel Servicing”;* or
- (4) *International Code Council, “International Fire Code”.*

**B.** Owners and operators shall install and operate only ASTs made of steel that are constructed in accordance with one or more of the following, as applicable:

- (1) *Underwriters Laboratories 142, “Steel Aboveground Tanks for Flammable and Combustible Liquids”;*
- (2) *Underwriters Laboratories 2085, “Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids”;*
- (3) *Underwriters Laboratories 2245, “Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks”;*
- (4) *American Petroleum Institute Standard 650, “Welded Tanks for Oil Storage”;* or
- (5) *International Code Council, “International Fire Code”.*

**C.** Owners and operators shall protect newly installed ASTs from corrosion in accordance with one or more of the following:

- (1) *American Petroleum Institute Publication RP 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”;*
- (2) *National Association of Corrosion Engineers International Standard RP0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”;*
- (3) *Steel Tank Institute R892, “Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems”;*
- (4) *Steel Tank Institute R893, “Recommended Practice for External Corrosion Protection of Shop Fabricated Aboveground Storage Tank Floors”;*
- (5) *American Petroleum Institute Publication RP651, “Cathodic Protection of Aboveground Petroleum Storage Tanks”.*

**D.** Above ground tanks located at an elevation so as to produce a gravity head on the dispenser system or piping shall be equipped with an anti-siphon or solenoid valve which meets

the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install and adjust the anti-siphon or solenoid valve so that fuel cannot flow by gravity or siphon from the tank to the dispenser system, loading rack, or other equipment, if the piping fails when the dispensing or transferring equipment is not in use. One of the following shall be used to meet the requirements of this Subsection:

(1) *National Fire Protection Association Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”*; or

(2) *International Code Council, “International Fire Code”*.

[20.5.109.902 NMAC - N, 07/24/2018]

### **20.5.109.903 AST SECONDARY CONTAINMENT: DOUBLE WALLED AST**

**SYSTEMS:** Owners and operators shall design, provide project drawings for, and install double walled above ground storage tank systems in accordance with the following:

**A.** Double-walled above ground storage tanks shall be installed in accordance with the applicable installation requirements in this part and shall use one or more of the following, as applicable, to comply with the requirements of this section:

(1) *Underwriters Laboratories 142, “Steel Aboveground Tanks for Flammable and Combustible Liquids”*;

(2) *Underwriters Laboratories 2085, “Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids”*; or

(3) *Underwriters Laboratories 2245, “Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks”*.

**B.** Above ground piping shall meet the requirements in 20.5.109.913 NMAC and 20.5.109.915 NMAC;

**C.** Underground piping shall be double-walled and meet the requirements for underground piping in this part. Owners and operators shall use one or more of the following, as applicable, to meet these requirements:

(1) *Underwriters Laboratories Standard 971, “Standard for Nonmetallic Underground Piping for Flammable Liquids”*;

(2) *Underwriters Laboratories Standard 567, “Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-gas”*;

(3) *Underwriters’ Laboratories of Canada Guide ULC-107.7, “Glass-fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids”*;

(4) *ULC Standards CAN/ULC-S633:2017, “Standard for Flexible Connector Piping for Fuels”*.

**D.** Containment sumps shall be installed in accordance with the requirements in this part.

**E.** Owners and operators shall base all secondary containment systems on the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. One or more of the following shall be used, as applicable, to comply with these requirements:

(1) *Petroleum Equipment Institute Publication RP 200, “Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling”*;

- (2) *Society of Protective Coatings SSPC-TU2/NACE6G197, “Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment”;*
  - (3) *American Concrete Institute Publication ACI 350-06, “Code Requirements for Environmental Engineering Concrete Structures”;*
  - (4) *American Petroleum Institute Standard 650, “Welded Tanks for Oil Storage”;* or
  - (5) *Steel Tank Institute RP R912, “Installation Instructions for Shop Fabricated Aboveground Storage Tanks for Flammable, Combustible Liquids”.*
- [20.5.109.903 NMAC - N, 07/24/2018]

**20.5.109.904 AST SECONDARY CONTAINMENT: SINGLE-WALLED TANKS AND PIPING:** Owners and operators shall construct a containment area under and around single-walled ASTs and piping, except for piping that meets the requirements of Paragraph (1) of Subsection A of 20.5.109.915 NMAC. Internal lining of ASTs shall not be used as a method of secondary containment.

**A.** General requirements:

- (1) Owners and operators shall design and construct secondary containment to minimize damage to the surfaces of the tanks due to corrosion, accumulation of water, and stray electrical current.
- (2) Owners and operators shall ensure that any regulated substance stored in an AST system is chemically compatible with the secondary containment material. If owners and operators store more than one type of regulated substance within a single containment area, owners and operators shall ensure that the substances are chemically compatible with each other and with the containment material.
- (3) Owners and operators shall construct a containment area which has a capacity of at least one hundred ten percent of the size of the largest AST in the containment area plus the volume displaced by the other AST(s).
- (4) Owners and operators shall not use clay for the construction of secondary containment.
- (5) Owners and operators may use a vault which complies with the requirements of this section as secondary containment.

**B.** Concrete secondary containment. Owners and operators may use concrete for construction of the containment area except for masonry or cinder block which shall not be used.

(1) If owners and operators use concrete for construction of secondary containment installed on or after July 1, 2011, the concrete containment shall be designed and constructed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, which shall be approved in advance of construction by the department. New concrete secondary containment shall comply with Subparagraph (a), (b) or (c) below:

(a) be coated or internally lined with a material which, in conjunction with the concrete, has a demonstrated permeability rate to the regulated substance stored of  $1 \times 10^{-7}$  centimeters per second or less;

(b) be installed in accordance with a set of plans that have been stamped by a professional engineer demonstrating that the secondary containment system is able to contain a release of regulated substances for seven days and properly support the above ground storage tank systems within the secondary containment; or

(c) be installed in accordance with an alternate method for concrete secondary containment design and construction that is approved in advance by the department pursuant to 20.5.109.920 NMAC.

(2) One of the following shall be used to comply with the concrete secondary containment requirements:

(a) *American Concrete Institute 350-06, "Code Review for Environmental Engineering Concrete Structures"*;

(b) *American Concrete Institute 350.2R-04, "Concrete Structures for Containment of Hazardous Materials"*;

(c) *American Concrete Institute 224R-01, "Control of Cracking in Concrete Structures"*;

(d) *National Association of Corrosion Engineers International RP0892-2007, "Coatings and Linings Over Concrete for Chemical Immersion and Containment Service"*;

(e) *Society of Protective Coatings TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment"*;

(f) *National Association of Corrosion Engineers International Standard Number 6/SSPC-SP 13, "Surface Preparation of Concrete"*;

(g) *National Association of Corrosion Engineers International RP0281, "Method for Conducting Coating (Paint) Panel Evaluation Testing in Atmospheric Exposures"*; or

(h) *American Society for Testing and Materials D4258, "Standard Practice for Surface Cleaning Concrete for Coating"*.

(3) Owners and operators of existing AST systems shall have the option of fulfilling the requirements of this subsection by submitting to the department a report stamped by a professional engineer demonstrating that the secondary containment system is able to contain a release of regulated substances for seven days and properly support the above ground storage tank systems within the secondary containment.

C. Liners as secondary containment.

(1) If owners and operators use geo-synthetic membrane for secondary containment, the geo-synthetic membranes or liners shall have a minimum thickness of 60 mils.

(2) Owners and operators shall install liners in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, or in accordance with the manufacturer's specifications. Owners and operators shall submit to the department a report on the installation of the geo-synthetic membrane which shall certify that the geo-synthetic membrane has been installed in accordance with the manufacturer's recommendations or an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The report shall contain the date of the inspection and installation of the geo-synthetic membrane, the test methods used during the inspection, data collected during the inspection, and the standard or code of practice according to which the installation was conducted. An installer or inspector with appropriate certification or experience (which shall be documented in the report) shall prepare the report.

(3) Earthen dike fields shall be lined with a geo-synthetic membrane to qualify as secondary containment.

**D.** Steel as secondary containment. If owners and operators use steel for construction of the secondary containment area, and if the steel is routinely in contact with soil, water, concrete, or another electrolyte, owners and operators shall cathodically protect the containment area in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.  
[20.5.109.904 NMAC - N, 07/24/2018]

**20.5.109.905 USTS USED AS ASTS:** Effective July 1, 2013, the use of USTs as ASTs is prohibited.  
[20.5.109.905 NMAC - N, 07/24/2018]

**20.5.109.906 [RESERVED]**

**20.5.109.907 ADDITIONAL PERFORMANCE STANDARDS FOR FIELD-ERECTED ASTS:**

**A.** If owners and operators install a field-erected tank, owners and operators shall comply with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute Standard 620, "Design and Construction of Large, Welded, Low Pressure Storage Tanks";*

(2) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage";*

(3) *American Petroleum Institute Specification 12B, "Bolted Tanks for Storage of Production Liquids";*

(4) *American Petroleum Institute Specification 12D, "Field Welded Tanks for Storage of Production Liquids";* or

(5) *American Society of Mechanical Engineers B96.1, "Welded Aluminum-Alloy Storage Tanks".*

[20.5.109.907 NMAC - N, 07/24/2018]

**20.5.109.908 PERFORMANCE STANDARDS FOR EXISTING AST SYSTEMS:**

**A.** Owners and operators of existing single walled AST systems (installed on or before July 1, 2001), must have complied with the following requirements:

(1) New AST performance standards in 20.5.109 NMAC by July 1, 2011;

(2) Upgrade requirements in Subsections C, D, and E of 20.5.109.908 NMAC by the deferred date of July 1, 2013; or

(3) Closure requirements in 20.5.115 NMAC by July 1, 2011.

(4) Any good faith upgrades to an AST system secondary containment made in compliance with this part prior to December 3, 2010 shall be deemed in compliance with this section.

**B.** Owners and operators of existing AST systems that do not comply with the requirements of the International Fire Code shall provide approval from the state fire marshal's office to the department no later than three years after the effective date of these regulations.

**C.** Tank Upgrade Requirements. Owners and operators must have upgraded existing single walled ASTs by installing secondary containment or replaced them with double walled ASTs by July 1, 2013 in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. ASTs that have not been upgraded by the effective date of these regulations shall be permanently closed in accordance with 20.5.115 NMAC.

(1) Owners and operators of ASTs must have met secondary containment requirements either by the installation new concrete secondary containment in accordance with 20.5.109.904 NMAC or upgraded the existing concrete secondary containment to meet the general requirements in Subsection A of 20.5.109.904 NMAC along with one of the following:

(a) submit to the department a report stamped by a professional engineer for the existing concrete secondary containment that demonstrates the secondary containment system is able to contain a release of regulated substance for seven days and properly supports the AST systems within the secondary containment; or

(b) coat the interior of, or install an internal lining in, the existing concrete secondary containment in accordance with the manufacturer's instructions or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Owners and operators of ASTs must have upgraded the secondary containment by the installation of liners that meet the following:

(a) requirements for liners as secondary containment in Subsection C of 20.5.109.904 NMAC; and

(b) requirements for installation of AST systems in 20.5.109.900 NMAC; or

(3) Owners and operators of ASTs must have met the secondary containment requirements by the installation of steel secondary containment in accordance with the requirements in Subsection D of 20.5.9.904 NMAC.

**D.** Piping upgrade requirements. Owner and operators of ASTs must have met the requirements of 20.5.109.916 NMAC for secondary containment of piping.

**E.** Owners and operators must have used one or more of the following to comply with the existing secondary containment requirements:

(1) *American Concrete Institute 350-06, "Code Review for Environmental Engineering Concrete Structures";*

(2) *American Concrete Institute 350.2R-04, "Concrete Structures for Containment of Hazardous Materials";*

(3) *American Concrete Institute 224R-01, "Control of Cracking in Concrete Structures";*

(4) *National Association of Corrosion Engineers International RP0892-2007, "Coatings and Linings Over Concrete for Chemical Immersion and Containment Service";*

(5) *Society of Protective Coatings TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment";*



(6) *National Association of Corrosion Engineers International Standard Number 6/SSPC-SP 13, "Surface Preparation of Concrete"*;

(7) *National Association of Corrosion Engineers International RP0281, "Method for Conducting Coating (Paint) Panel Evaluation Testing in Atmospheric Exposures"*;  
or

(8) *American Society for Testing and Materials D4258, "Standard Practice for Surface Cleaning Concrete for Coating"*.

[20.5.109.908 NMAC - N, 07/24/2018]

#### **20.5.109.909 ABOVE GROUND STORAGE TANKS AT MARINAS:**

**A.** Owners and operators of AST systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser system and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

**B.** Owners and operators of AST systems at marinas shall electrically isolate dock piping where excessive stray electrical currents are encountered.

**C.** Owners and operators of AST systems at marinas shall protect piping from stress due to tidal action.

**D.** Owners and operators of AST systems at marinas shall install spill catchment basins in addition to a system that will allow the level of regulated substance in the AST to be monitored during a delivery of fuel to the AST. Unless the AST system is equipped with an audible overfill alarm that will alert the transfer operator at ninety percent of capacity and overfill protection which will shut off flow of product during a fuel delivery to the tank at ninety-five percent, owners and operators shall visually monitor the delivery of fuel.

**E.** Owners and operators shall use one or more of the following to comply with the requirements in this section:

(1) *Petroleum Equipment Institute Publication RP 1000, "Recommended Practices for the Installation of Marina Fueling Systems"*; or

(2) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"*.

[20.5.109.909 NMAC - N, 07/24/2018]

#### **20.5.109.910 SPILL AND OVERFILL PREVENTION:**

**A.** Except as provided in Subsection B of this section, to prevent spilling and overfilling associated with transfers of regulated substances to above ground storage tank systems, owners and operators shall use the following spill and overfill prevention equipment:

(1) spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket); and

(2) overfill prevention equipment for ASTs that will:

(a) automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or

(b) alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level audible and visual alarm.

**B.** Owners and operators are not required to use the spill and overfill prevention equipment specified in Subsections A and G of this section if approved in writing in advance by the department where:

(1) alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1) or (2) of Subsection A of this section; or

(2) the above ground storage tank system is filled by transfers of no more than 25 gallons at one time;

**C.** Flow restrictors shall not be used in vent lines and shall not be used as overfill prevention equipment for ASTs.

**D.** Spill and overfill prevention equipment must be periodically tested or inspected in accordance with 20.5.110.1005 NMAC.

**E.** Owners and operators of AST systems that were previously exempt from spill and overfill requirements shall install no later than three years after the effective date of these regulations, spill and overfill prevention equipment required in Paragraphs (1) and (2) of Subsection A of this section for any AST system at retail and fleet refueling facilities where the fill port is located within a secondary containment system.

**F.** Overfill prevention and spill prevention equipment shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation in accordance with Paragraph (1) of Subsection B of this section. [20.5.109.910 NMAC - N, 07/24/2018]

#### **20.5.109.911 VENTING FOR ABOVE GROUND STORAGE TANK SYSTEMS:**

**A.** Owners and operators shall design and construct venting for all above ground storage tank systems, following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Normal atmospheric tank vents shall be located so that the discharge point is outside of buildings and higher than the fill pipe opening. Vent pipes shall be installed not less than 15 feet from power ventilation air intake devices and not less than five feet from a building opening. Vent outlets and devices shall be designed and installed to minimize blockage. Normal vent piping on AST systems installed after the effective date of these regulations shall not be used for any purpose other than venting the tank.

**C.** Types of vent pipes.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) If attached to a structure, vent pipes shall extend at least five feet above the highest projection of the canopy or roof.

(3) Vent pipes for normal tank venting shall be of appropriate size for the capacity and operating conditions of the tank.

(4) Emergency vents shall be of appropriate size for the capacity of the AST and shall be installed on the primary tank and on the interstice of all double-walled tanks.

**D.** One of the following shall be used to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP200 “Recommended Practices for Installation of Above Ground Storage Tank Systems for Motor Vehicle Fueling”;*

(2) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”;*

(3) *Underwriters Laboratories 142, “Steel Aboveground Tanks for Flammable and Combustible Liquids”;* or

(4) *International Code Council, “International Fire Code”.*

[20.5.109.911 NMAC - N, 07/24/2018]

### **20.5.109.912 VAULTS:**

**A.** Owners and operators shall provide project drawings for and install new AST systems which include vaults in accordance with the following requirements:

(1) A vault must completely enclose each tank, with no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank. Each tank shall be enclosed in its own vault, although adjacent vaults may share a common wall. However, for good cause shown, the department, in its sole discretion, may grant a variance from the one-tank-one-vault requirement, for existing tanks only, if owners and operators demonstrate that the variance will provide equivalent protection of health, safety and welfare and the environment.

(2) Every vault shall be liquid tight or sealed with no backfill around the tank. If a vault is constructed of concrete, owners and operators shall ensure it meets the requirements of Subsection B of 20.5.109.904 NMAC.

(3) There shall be adequate space between the tank and the vault for inspection of the tanks and its appurtenances.

(4) Above-grade vaults shall be resistant to damage from the impact of a motor vehicle, or suitable collision barriers shall be installed.

(5) A vault shall include connections to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.

(6) A vault shall be equipped with a detection system capable of detecting liquids, including water, and capable of activating an audible alarm.

(7) A vault shall include a means for recovering liquid from the vault.

(a) If a pump is used to meet this requirement, it shall not be permanently installed in the vault.

(b) Electric-powered portable pumps shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

(c) *National Fire Protection Association Standard 70, “National Electrical Code”* shall be used to comply with the requirements of this paragraph.

**B.** Vault construction. Owners and operators shall design and construct:

(1) the walls and floor of a vault of reinforced concrete at least six inches thick;

(2) the top of an above-grade vault of noncombustible material, and shall design and construct the top:

(a) to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault; and

(b) to safely relieve or contain the force of any explosion occurring inside the vault.

(3) the top and floor of the vault and the tank foundation to withstand the anticipated loading, including loading from vehicular traffic, where applicable; and

(4) the walls and floor of any vault installed below grade in compliance with good engineering practice to withstand anticipated soil and hydrostatic loading.

C. All tanks, piping and other associated equipment in the interior of a vault shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. One of the following shall be used to comply with this requirement:

(1) *National Fire Protection Association Standard 70, "National Electrical Code"*; or

(2) *Underwriters Laboratories 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks"*.

D. Venting of vaults.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) Emergency vents shall be vapor tight and may be permitted to discharge inside the vault.

(3) Owners and operators shall not use long-bolt manhole covers for this purpose.

(4) Owners and operators shall ensure that all vault vents meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids"*.

E. Vault entry.

(1) A vault shall include a method of personnel entry.

(2) Owners and operators shall post a warning sign indicating procedures for safe entry at each entry point.

(3) Owners and operators shall secure each entry point against unauthorized entry and vandalism.

(4) Owners and operators shall provide each vault with a suitable means for admission of a fire suppression agent.

[20.5.109.912 NMAC - N, 07/24/2018]

### **20.5.109.913 GENERAL PERFORMANCE STANDARDS FOR PIPING:**

A. Owners and operators shall properly design and construct new piping, provide project drawings, initially test piping, and ensure that any steel portion of piping that routinely contains regulated substances and is in contact with an electrolyte, such as soil or water, shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory

approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) third party certification from a nationally recognized laboratory;
- (2) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*;
- (3) *American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless"*;
- (4) *American Society of Testing and Materials A106, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service"*; or
- (5) *American Society of Testing and Materials A135, "Standard Specification for Electric-Resistance-Welded Steel Pipe"*.

**B.** Owners and operators shall ensure that piping is compatible with any regulated substance conveyed in accordance with 20.5.110.1009 NMAC.

**C.** Owners and operators shall protect all piping from impact, settlement, vibration, expansion, corrosion, and damage by fire.

**D.** Owners and operators shall install a containment sump at any point where piping transitions from above the surface of the ground to below the ground surface. Containment sumps shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation by the Department in accordance with the alternate methods requirements in 20.5.109.920 NMAC.

**E.** If owners and operators install more than one type of piping at a storage tank system, then owners and operators shall comply with the requirements applicable to each type of piping for that run of piping.

[20.5.109.913 NMAC - N, 07/24/2018]

#### **20.5.109.914 PERFORMANCE STANDARDS FOR PIPING CONSTRUCTED OF NON-CORRODIBLE MATERIAL:**

**A.** If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, the piping shall:

- (1) be completely underground;
- (2) be within secondary containment that includes a release detection system that meets the requirements of 20.5.111 NMAC;
- (3) have a suitable cover approved by the piping manufacturer; or
- (4) have equivalent protection approved by the piping manufacturer and approved by the department prior to installation.

**B.** If owners and operators install non-corrodible piping in an AST system, the piping shall be double-walled.

**C.** Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with this requirement:

- (1) *Underwriters Laboratories Standard 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids"*; or

(2) *Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids"*.  
[20.5.109.914 NMAC - N, 07/24/2018]

**20.5.109.915 PERFORMANCE STANDARDS FOR STEEL PIPING FOR AST**

**SYSTEMS:** If owners and operators construct or operate piping of steel for an AST system, owners and operators shall properly design and construct and provide project drawings for piping that routinely contains regulated substances in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install all piping in accordance with the piping manufacturer's recommendations.

**A.** Steel piping for ASTs shall be coated with a suitable material approved by the piping manufacturer and shall be either:

(1) totally above the ground with all surfaces visible; or

(2) entirely contained in secondary containment that complies with the requirements of 20.5.109.916 NMAC.

**B.** Steel piping with an internal diameter greater than two inches shall be welded or flanged together.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*;

(2) *American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless"*; or

(3) *American Society of Testing and Materials A 135, "Standard Specification for Electric-Resistance-Welded Steel Pipe"*.

[20.5.109.915 NMAC - N, 07/24/2018]

**20.5.109.916 SECONDARY CONTAINMENT FOR AST PIPING:** To install new piping or replace existing piping in an AST system, owners and operators shall only use piping that is:

**A.** double-walled in compliance with 20.5.109.903 NMAC;

**B.** designed and constructed with secondary containment that meets the requirements of 20.5.109.904 NMAC; or

**C.** steel piping that meets the requirements of 20.5.109.915 NMAC.

[20.5.109.916 NMAC - N, 07/24/2018]

**20.5.109.917 SECONDARY CONTAINMENT FOR AST DISPENSERS:** Owners and operators shall install a containment sump underneath each dispenser system associated with an AST, unless the dispenser is located within secondary containment.

**A.** Owners and operators shall hydrostatically test the sump upon installation, in accordance with manufacturer's recommendations.

**B.** The following may be used to comply with this containment sump requirement: dispenser liners, under-dispenser containment, dispenser pans, and dispenser sump liners.

**C.** Under-dispenser containment sumps shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior

to installation by the department in accordance with the alternate methods requirements in 20.5.109.920 NMAC.

[20.5.109.917 NMAC - N, 07/24/2018]

### **20.5.109.918 LOADING RACKS:**

**A.** Owners and operators shall design, construct and install loading racks following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance & Inspection of Terminal and Tank Facilities";*
- (2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*
- (3) *International Code Council, "International Fire Code";* or
- (4) *Petroleum Equipment Institute RP 800, "Recommended Practices for Installation of Bulk Storage Plants".*

**B.** Owners and operators of aviation fuel storage tank systems who install loading racks shall comply with *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing"*.

**C.** Owners and operators shall install a containment system that is designed to contain all releases of regulated substances that occur during loading and unloading operations at the loading rack. For all loading racks, owners and operators shall install either:

- (1) a drainage system, or secondary containment system meeting the requirements of 20.5.109 NMAC, with a catchment basin capable of containing the largest compartment of a tank car or tanker truck that is loaded or unloaded at the facility; or
- (2) a drainage system that is connected to a treatment facility designed to receive releases of regulated substances that occur during loading and unloading operations.

**D.** Owners and operators shall ensure that loading racks are at least 25 feet from ASTs containing class I liquids (such as gasoline), buildings, and property lines. Owners and operators shall ensure that loading racks are at least 15 feet from tanks containing class II or class III liquids.

[20.5.109.918 NMAC - N, 07/24/2018]

### **20.5.109.919 REQUIRED CERTIFICATIONS:**

**A.** Certification of compliance. All owners and operators of new above ground storage tank systems shall certify in the registration form required by 20.5.102 NMAC compliance with the following requirements:

- (1) installation of tanks and piping in 20.5.109 NMAC;
- (2) installation of cathodic protection of steel tanks and piping in 20.5.109.902 NMAC and Subsection D of 20.5.109.904 NMAC;
- (3) financial responsibility under 20.5.117 NMAC; and
- (4) release detection in 20.5.111 NMAC.

**B.** Installer certification. All owners and operators of new above ground storage tank systems shall ensure that the installer certifies in the registration form required by 20.5.102

NMAC that the methods used to install the tanks and piping comply with the requirements in 20.5.109 NMAC.

**C.** Certification of installation. For installations after August 15, 2003, owners and operators shall demonstrate compliance with the installation standards in 20.5.109.900 NMAC. Owners and operators shall provide a certification of installation on the AST registration form required by 20.5.102 NMAC, which asserts that all of the following methods of certification, testing, and inspection were used to demonstrate compliance with installation requirements of the AST system:

- (1) the installer has been certified by the tank and piping manufacturers;
- (2) the installer has been certified or licensed as required in 20.5.105 NMAC;
- (3) the installer has notified, submitted required documentation to, and the installation has been inspected by the department; and
- (4) all work listed in the manufacturer's installation checklists has been completed.

[20.5.109.919 NMAC - N, 07/24/2018]

### **20.5.109.920 ALTERNATE METHODS:**

**A.** If owners and operators want to install tanks, piping, storage tank systems, spill and overfill equipment, secondary containment, or any other requirement of this part with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.109.920 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]



## **HISTORY OF 20.5.109 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of

public records - state records center and archives.

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design,

Construction, and Installation, filed 9/12/88

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design,

Construction, and Installation, filed 8/4/89

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design,

Construction, and Installation, filed 6/12/90

**History of Repealed Material:** 20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems:

Design, Construction, and Installation (filed 2/27/97), repealed 8/15/03.

20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation

(filed 7/16/03) repealed 4/4/08.

20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation

(filed 4/4/08) repealed 07/24/2018.

## **Other History:**

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design,

Construction, and Installation (filed 6/12/90), renumbered, reformatted and replaced by 20 NMAC 5.4, New and

Upgraded UST Systems: Design, Construction, and Installation, effective 11/5/95.

20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and

Installation (filed 10/6/95) replaced by 20 NMAC 5.4, New and Upgraded UST Systems: Design, Construction, and

Installation, effective 4/1/97.

20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and

Installation (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.4 NMAC, New and Upgraded Tank

Systems: Design, Construction and Installation, effective 8/15/03.

20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation

(filed 8/15/03) was replaced by 20.5.109 NMAC, Petroleum Storage Tanks, New and Upgraded Above Ground Storage Tank Systems: Design, Construction and Installation, effective 7/24/18.

20.5.109 NMAC – New and Upgraded Above Ground Storage Tank Systems: Design, Construction, and Installation



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 110 GENERAL OPERATING REQUIREMENTS FOR ABOVE GROUND STORAGE TANK SYSTEMS**

**20.5.110.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.110.1 NMAC - N, 07/24/2018]

**20.5.110.2 SCOPE:** This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.110.2 NMAC - N, 07/24/2018]

**20.5.110.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.110.3 NMAC - N, 07/24/2018]

**20.5.110.4 DURATION:** Permanent.  
[20.5.110.4 NMAC - N, 07/24/2018]

**20.5.110.5 EFFECTIVE DATE:** July 24, 2018 unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.110.5 NMAC - N, 07/24/2018]

**20.5.110.6 OBJECTIVE:** The purpose of 20.5.110 NMAC is to ensure that the operation and maintenance of above ground storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.  
[20.5.110.6 NMAC - N, 07/24/2018]

**20.5.110.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.110.7 NMAC - N, 07/24/2018]

**20.5.110.8 to 20.5.110.999 [RESERVED]**

**20.5.110.1000 OPERATION AND MAINTENANCE OF ABOVE GROUND STORAGE TANK SYSTEMS:** Owners and operators shall properly maintain all tanks, piping, secondary containment and other associated equipment required in 20.5.109 NMAC, and shall ensure that all tanks, piping, secondary containment and other associated equipment for all storage tank systems are fully operational at all times. Owners and operators shall notify the department in accordance with 20.5.118 NMAC if a visual inspection, other inspection or testing conducted in accordance with 20.5.110 NMAC or 20.5.111 NMAC indicates that a release may have occurred.

**A.** Owners and operators shall visually inspect monthly an AST and all its components that are readily accessible to visual inspection.

**B.** Owners and operators shall maintain the exterior coating of an AST and ancillary equipment not in contact with soil in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) *Society of Protective Coatings SSPC-PA 1, “Shop, Field, and Maintenance Painting of Steel”;*

(2) *Society of Protective Coatings, “The Inspection of Coatings and Linings: A Handbook of Basic Practice for Inspectors, Owners and Specifiers”;*

(3) *Society of Protective Coatings SSPC-PA Guide 4, “Guide to Maintenance Repainting with Oil Base or Alkyd Painting Systems”;* or

(4) *Society of Protective Coatings SSPC-PA Guide 5, “Guide to Maintenance Coating of Steel Structures in Atmospheric Service”.*

**C.** Owners and operators shall mark fill port lids and label the tanks of ASTs as to the regulated substance stored in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *American Petroleum Institute RP 1637, “Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals”.*

**D.** If any steel piping installed in a trench is used in an AST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any liquid that has accumulated in the trench within one week of the accumulation and shall remove any other debris that has accumulated inside the trench. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of accumulated liquid and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

**E.** Owners and operators shall check ASTs monthly for the presence of any accumulated liquids, other than the intended regulated substance. ASTs shall be checked at the lowest possible point inside the tank. Any accumulated liquid other than the intended regulated substance shall be removed to the extent technically possible. Owners and operators shall properly dispose of any liquid removed from an AST.

[20.5.110.1000 NMAC - N, 07/24/2018]

**20.5.110.1001 OPERATIONS AND MAINTENANCE PLAN:** Owners and operators of all storage tank systems shall adopt and implement a written operations and maintenance plan, which they shall keep at the facility for the life of the storage tank system. Owners and operators of unmanned storage tank systems may keep the operations and maintenance plan at an alternate location as long as it is made readily available to the department upon request. The operations and maintenance plan shall be as specific as possible for each facility and shall include the piping and ancillary equipment that routinely contains regulated substances or controls the flow of regulated substances. Owners and operators shall use, by reference, operational and maintenance guidance from the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators who

reference a current edition of an industry standard or code of practice shall maintain a copy of the code or standard they reference. Owners and operators shall not implement the plan until it has been approved by the department.

**A.** At a minimum, the operations and maintenance plan shall include the following:

(1) a detailed plan showing inspections, operations, testing and maintenance to be done on a daily, monthly, quarterly and annual basis; the plan shall include a description of how owners and operators properly dispose of regulated substances spilled at the facility, and any water or soil removed from any part of the storage tank system where there is any indication it might be or have been contaminated with a regulated substance;

(2) a description of periodic operation and maintenance walk-through inspections in accordance with 20.5.110.1008 NMAC; and

(3) responses to emergency situations; this information shall be readily accessible at the facility; responses to emergency situations shall include the following:

(a) the location of equipment to be shut down during an emergency and how to safely perform these tasks;

(b) actions to be taken in the event of a fire, flooding, a spill, or a release of regulated substances;

(c) a site diagram; and

(d) a list of whom to notify or call during or after an emergency situation.

**B.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration Piping Systems"*;

(2) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"*; or

(3) *Steel Tank Institute Standard SP001, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids"*; or

**C.** Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

**D.** Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC shall not be required to have an operations and maintenance plan, unless one or both of the following conditions is present:

(1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with an electrolyte, such as soil, water or concrete.

[20.5.110.1001 NMAC - N, 07/24/2018]

#### **20.5.110.1002 OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT OF SECONDARY CONTAINMENT FOR ASTS:**

**A.** Owners and operators shall operate, maintain and repair secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Owners and operators shall not store inside the secondary containment any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself. Owners and operators shall not store any material in the secondary containment that reduces the capacity of the secondary containment below the requirements in 20.5.109.904 NMAC.

**C.** Owners and operators shall draw off any accumulation of liquid in the secondary containment, including all sumps, within one week of the accumulation, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen. If gravity drain valves are used to remove the accumulated liquid from the secondary containment, owners and operators shall keep all valves closed except during the process of draining the accumulated liquid.

**D.** In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system, owners and operators shall keep the spill containment buckets, catchment basins, containment sumps, basin sumps, and piping trenches free of water, regulated substances and debris.

**E.** Owners and operators shall, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department:

(1) maintain, repair and replace any concrete secondary containment systems;  
and

(2) repair all significant cracks in the floors and walls of concrete secondary containment systems.

**F.** Owners and operators shall use one or more of the following to comply with the concrete secondary containment system repair requirements in Subsection E above:

(1) *Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment";*

(2) *American Concrete Institute 224R, "Control of Cracking in Concrete Structures";* or

(3) *American Concrete Institute "Concrete Repair Manual".*

**G.** Owners and operators shall maintain, repair and replace any geo-synthetic liner according to manufacturer's instructions, which owners and operators shall keep readily available at the facility for the life of the liner.

**H.** Owners and operators shall protect from corrosion any secondary containment constructed of steel and shall cathodically protect any portion of the steel secondary containment that is in contact with an electrolyte, including soil or water. Owners and operators shall maintain the exterior of any steel secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *Society of Protective Coatings SSPC-PA-1, "Shop, Field, and Maintenance Painting of Steel"*.

**I.** Owners and operators of above ground storage tanks which are either double-walled or which have an interstitial space that is monitored as a method of release detection shall comply with the following applicable requirements:

(1) where design and release detection method allow the interstice of a double-walled above ground storage tank to be visually inspected without disturbance of the release detection system, owners and operators shall monthly visually inspect for the presence of water, regulated substances or debris;

(2) if testing conducted in accordance with 20.5.109, 20.5.110 or 20.5.111 NMAC indicates that the stored regulated substance is leaking into the interstice of the AST, then owners and operators shall have the tank repaired in accordance with the tank manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Also, owners and operators shall ensure the repair is conducted in accordance with the requirements in 20.5.110.1010 NMAC;

(3) owners and operators shall monitor all vertical ASTs with an interstitial space between the tank bottom and secondary containment for the presence of water or regulated substances; if gravity drain valves are used for monitoring and removal of water or regulated substances, owners and operators shall keep them closed except during the process of monitoring and draining;

(4) owners and operators shall keep all sumps associated with interstitial monitoring free of water;

(5) owners and operators shall annually inspect and test all sensors used to monitor interstitial spaces, in accordance with manufacturer's testing protocol, or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; and

(6) owners and operators shall remove any liquid found in interstitial spaces and dispose of it properly.

**J.** Owners and operators shall operate, maintain, and repair containment sumps on AST systems in order to prevent any leaks or spills in the containment area from entering the environment.

**K.** Under-dispenser containment must allow for visual inspection and access to the components in the containment system or be periodically monitored for liquid in the sump in accordance with 20.5.110.1008 NMAC.

**L.** Containment sumps shall be maintained to meet requirements in 20.5.110.1007 NMAC.

[20.5.110.1002 NMAC - N, 07/24/2018]

### **20.5.110.1003 OPERATION, REPAIR, AND MAINTENANCE OF VAULTS:**

**A.** Owners and operators shall operate, maintain and repair the walls and floor of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment";*

(2) *American Concrete Institute 224R, "Control of Cracking in Concrete Structures"*; or

(3) *American Concrete Institute, "Concrete Repair Manual"*.

**B.** Owners and operators shall visually inspect the interior of any vault from the outside monthly, and annually shall enter and inspect the interior of the vault. Owners and operators shall draw off any liquid that has accumulated in a vault within one week of any accumulation of liquid if the liquid is in contact with the tank or piping (but need not draw off liquid only in contact with a tank's saddles, skid or other support), and shall remove any other debris that has accumulated inside the vault and which is in contact with the tank, piping or saddle, skid or other support. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a sump is located in the vault, owners and operators shall keep the liquid trap free of water and debris. Owners and operators shall not install any valves in any sump in a vault.

**C.** Owners and operators shall not store inside a vault any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself.

**D.** Owners and operators shall ensure that a vault is well vented before any fuel transfer begins and shall keep open all vents during the transfer.

**E.** For vaults with roofs, owners and operators shall properly maintain and repair the roof of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.110.1003 NMAC - N, 07/24/2018]

#### **20.5.110.1004 OPERATION, REPAIR, AND MAINTENANCE OF VENTING SYSTEMS:**

Owners and operators shall operate, maintain and repair venting systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. At least monthly, owners and operators shall check emergency vents to ensure they are operational. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids"*.

[20.5.110.1004 NMAC - N, 07/24/2018]

#### **20.5.110.1005 OPERATION AND MAINTENANCE OF SPILL AND OVERFILL**

**PREVENTION:** Owners and operators shall ensure that releases due to spilling or overfilling do not occur.

**A.** Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with this requirement:



- (1) *National Fire Protection Association Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”*;
- (2) *International Code Council, “International Fire Code”*;
- (3) *Petroleum Equipment Institute Publication RP600, “Recommended Practices for Overfill Prevention for Shop-Fabricated Above Ground Tanks”*; or
- (4) *American Petroleum Institute Standard 2350, “Overfill Protection for Storage Tanks in Petroleum Facilities”*.

**B.** For additional guidance on Subsection A, see the following:

- (1) *National Fire Protection Association Standard 385, “Standard for Tank Vehicles for Flammable and Combustible Liquids”*;
- (2) *American Petroleum Institute Recommended Practice 1007, “Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles”*;
- (3) *American Petroleum Institute Publication 1621, “Bulk Liquid Stock Control at Retail Outlets”*; or
- (4) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Codes”*.

**C.** Owners and operators of AST systems shall ensure that spill prevention equipment required in 20.5.109.910 NMAC is liquid tight, maintained, and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall no later than three years after the effective date of these regulations meet the following requirements:

(1) Spill prevention equipment installed where the outer and inner walls along with bottom of the equipment are clearly visible shall be either monitored monthly or tested every three years. A liquid, pressure, or vacuum test method shall be used in accordance with one of the following:

(a) the equipment manufacturer’s developed and published testing requirements;

(b) *Petroleum Equipment Institute RP 1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities”*; or

(c) the current edition of another industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

(2) Spill prevention equipment installed where the outer walls and the bottom are not visible shall be tested by a liquid, pressure, or vacuum test method every three years in accordance with one of the documents in Paragraph (1) of this subsection.

(3) Factory installed spill prevention equipment installed as an integral component of a double walled storage tank system shall either be tested every three years in accordance with Paragraph (1) of this subsection or, where a leak in the spill prevention equipment can be detected in the interstice of the tank, owners and operators shall monitor the interstice of the tank every 30 days.

(4) Spill prevention equipment that either fails when tested or is found to be damaged during monthly monitoring shall be repaired or replaced in accordance with 20.5.110.1010 NMAC.

(5) A report shall be produced which includes the results of any vacuum, pressure, or liquid testing conducted on spill prevention equipment and the report shall be

submitted to the department in accordance with the requirements in 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

(6) Records of the monthly monitoring and testing required in this subsection shall be maintained in accordance with 20.5.110.1015 NMAC.

**D.** Owners and operators of AST systems shall ensure that overfill prevention equipment required in 20.5.109.910 NMAC is maintained and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these regulations, and every three years thereafter have the overfill prevention equipment inspected or tested and shall meet the following:

(1) The inspection shall verify the equipment meets the requirements in 20.5.109.910 NMAC, and if the equipment fails to meet these requirements, it shall be repaired, replaced, or re-installed. The repair, replacement, or re-installation shall be in accordance with the manufacturer's instructions or the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Drop tube style overfill prevention equipment shall be removed from the tank for the inspection;

(3) Owners and operators shall ensure the inspections or tests are performed in accordance with the methods and procedures listed in one of the following:

(a) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*, or

(b) testing requirements developed and published by the overfill prevention equipment manufacturer;

(4) If more than one type of overfill prevention equipment is installed on an AST, owners and operators shall ensure that none of them will interfere with the proper operation of any of the others; and

(5) A report shall be produced which includes the results of any inspections or testing conducted on overfill prevention equipment and the report shall be submitted to the department in accordance with the requirements in 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

**E.** Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with 20.5.118 NMAC.

**F.** Owners and operators of a storage tank system that meets the requirements for temporary closure and the tank is empty as defined in 20.5.115.1501 NMAC shall not be required to periodically test the spill and overfill prevention equipment.

**G.** Owners and operators of storage tank systems shall ensure tests of all spill and overfill prevention equipment as required in this section are performed by a qualified tester. The requirements for testers can be found in 20.5.105 NMAC.

[20.5.110.1005 NMAC - N, 07/24/2018]

#### **20.5.110.1006 OPERATION AND MAINTENANCE OF CORROSION PROTECTION:**

Owners and operators of metal storage tank systems with any metal tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the storage tank system is permanently closed or undergoes a change in service pursuant to 20.5.115 NMAC.

**A.** Owners and operators shall operate and maintain corrosion protection systems to continuously provide corrosion protection to all metal components of the system that routinely contain regulated substances and are in contact with an electrolyte, to include soil or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *American Petroleum Institute Publication 651, “Cathodic Protection of Aboveground Petroleum Storage Tanks”*;
- (2) *American Petroleum Institute Publication 652, “Linings of Aboveground Petroleum Storage Tank Bottoms”*;
- (3) *American Petroleum Institute Publication 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”*
- (4) *National Association of Corrosion Engineers Publication RP0193, “External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms”*;
- (5) *National Association of Corrosion Engineers Publication SP0169, “Standard Practice for Control of External Corrosion on Underground or Submerged Metallic Piping Systems”*.

**B.** Owners and operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified corrosion expert in accordance with the following requirements:

(1) Frequency: owners and operators shall test all cathodic protection systems as follows:

- (a) within six months of installation and at least every three years thereafter;
- (b) within six months of a modification or repair; or
- (c) another reasonable time frame approved in advance in writing by the department;

(2) Inspection criteria: the criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(3) Owners and operators of storage tank systems shall provide the department a report on the cathodic protection system test that includes the following:

- (a) name of facility, facility address, and facility ID number issued by the department;
- (b) name of the technician who performed the test;
- (c) certification of the technician in the type of test performed, including certification numbers, national association where the certification was obtained, and expiration date of the certification;
- (d) description of cathodic protection system, for example impressed current, galvanic;
- (e) description of storage tank system including tank ID number, product, capacity, tank type, piping, flex connectors;

- (f) type of test conducted, such as: routine three-year test; test within six months of installation; test within six months after repair or modification;
  - (g) whether all flex connectors or metal risers that routinely contain a regulated substance and are in contact with an electrolyte are protected from corrosion. If isolation boots, jackets, or other non-corrodible materials are used to protect this equipment from corrosion, it shall be determined if they are still providing protection from corrosion.
  - (h) tester's pass/fail evaluation and actions to be taken after evaluation;
  - (i) facility drawing of the storage tank system and cathodic protection system, indicating location of test points on the storage tank system, cathodic protection test stations, and reference electrode placement; and
  - (j) description of cathodic protection system repair or modification.
- (4) Owners and operators of storage tank systems shall provide the department a report on impressed current systems that includes all requirements listed in 20.5.110.1016 NMAC; and
- (a) rectifier manufacturer, model, serial number, rated direct current output voltage and amperage;
  - (b) rectifier tap settings, direct current output voltage and amperage, and hour meter reading;
  - (c) description of structure tested, contact point of test lead, and reference electrode placement;
  - (d) structure to soil potential with current applied in millivolts;
  - (e) structure to soil potential with current interrupted, instant OFF in millivolts;
  - (f) 100 millivolts polarization shift, end voltage and voltage change; and
  - (g) test results.
- (5) Owners and operators of storage tank systems shall provide the department a report on galvanic systems that includes all requirements listed in 20.5.110.1016 NMAC; and
- (a) description of structure tested, contact point of test lead, and reference electrode placement;
  - (b) structure to soil potential measured locally in millivolts;
  - (c) structure to soil potential measured remotely in millivolts; and
  - (d) test results.
- (6) Owners and operators shall use one or more of the following to comply with the requirements of this section:
- (a) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*;
  - (b) *National Fire Protection Association Standard 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages"*;
  - (c) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems"*;
  - (d) *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"*;
  - (e) *International Code Council, "International Fire Code"*;

(f) *NACE International Test Method TM 0101, “Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems”;*

(g) *NACE International Test Method TM0497, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems”;*

(h) *Steel Tank Institute Recommended Practice R051, “Cathodic Protection Testing Procedures for STI-P3® USTs”;*

(i) *NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”;* or

(j) *NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”.*

C. Owners and operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility and indicate who performed each inspection.

D. Owners and operators shall monthly inspect any equipment or materials used to isolate metal components of AST systems and shall repair or replace equipment and materials used to meet corrosion protection requirements in this section.

E. For storage tank systems using cathodic protection, owners and operators shall maintain records of the operation of the cathodic protection in accordance with 20.5.110.1015 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(1) the results of the last three inspections required in Subsection C of this section; and

(2) the results of testing from the last two inspections required in Subsection B of this section.

[20.5.110.1006 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for the cathodic protection system test report required in Subsection B. The form is available on the petroleum storage tank bureau’s pages on the department website

([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.110.1007 OPERATION AND MAINTENANCE OF CONTAINMENT SUMPS FOR AST SYSTEMS:**

A. Owners and operators shall maintain all containment sumps (including but not limited to under dispenser sumps and transition sumps) and draw off liquid that has accumulated in the containment sumps within one week of the accumulation and shall remove any other debris that has accumulated inside the containment sumps. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If gravity drain valves are used to remove accumulated liquid from the containment sumps, owners and operators shall keep all valves closed except during the process of draining the accumulated liquid.

**B.** In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system, owners and operators shall keep the containment sumps and basin sumps free of water, regulated substances, and debris.

**C.** Owners and operators shall maintain all containment sumps associated with interstitial monitoring of underground piping; the sumps shall be liquid tight and kept free of water.

**D.** Owners and operators of AST systems with single walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with the following:

(1) Hydrostatic or other test methods shall be conducted to ensure the containment sumps are liquid tight including at all penetrations in accordance with one of the following:

(a) the equipment manufacturer's developed and published testing requirements;

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overflow, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(c) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Hydrostatic test methods using a test apparatus developed specifically for testing containment sumps shall ensure the containment sumps are liquid tight including at all penetrations and comply with one of the following:

(a) protocols developed by the manufacturer of the test apparatus and the certification as listed on the web site of the national work group on leak detection evaluation;

(b) protocols developed and published by the manufacturer of the containment sump;

(c) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overflow, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(d) an alternate test method approved by the department in writing in advance in accordance with the requirements for Alternate Methods Requests in 20.5.110.1014 NMAC.

(3) A low liquid level hydrostatic test method may be conducted if all of the following conditions are met:

(a) test method used shall be in accordance with the following:

(i) the liquid level meets the third-party certification for the sensor installed in the sump;

(ii) the duration of the test shall be a minimum of one hour unless a different test period is specified by the containment sump manufacturer or in (iii) below;

(iii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(b) either a hydrostatic test shall be conducted every 12 years in accordance with Paragraph (1) and (2) of Subsection D or a site check shall be conducted every 12 years in accordance with in Subsection B of 20.5.118.1801 NMAC.

(c) a sump sensor that automatically shuts off equipment associated with the sump and meets the requirements for placement and testing of sensors used for interstitial monitoring in Subparagraph (b) of Paragraph (3) of Subsection A of 20.5.111.1106 NMAC;

(4) A low liquid level test per Paragraph (3) of this subsection shall not be conducted if the following conditions exist:

(a) a liquid is discovered in the sump or evidence is found that a liquid has been at a level equal to or higher than the lowest penetration in the sump; then testing has to be conducted in accordance with Paragraph (1) of this subsection;

(b) sensors in containment sumps are discovered to be located higher than the lowest part of the sump; then a test shall be conducted in accordance with Paragraph (1) of this subsection and owners and operators shall report and investigate a suspected release in accordance with the requirements in 20.5.118 NMAC; or

(c) a site check conducted in accordance with Paragraph (3) of this subsection indicates there has been a release from the containment sump.

**E.** Owners and operators of AST systems with double-walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years from the effective date of these regulations, and every three years thereafter, in accordance with one of the following:

(1) interstices under vacuum, pressure, or brine filled, are continuously monitored by use of interstitial sensors or visually inspected every 30 days, and the monitoring records are maintained in accordance with 20.5.110.1015 NMAC. Owners and operators shall ensure that annual functionality testing or annual inspections of the monitoring equipment are conducted in accordance with 20.5.111.1104 NMAC. Owners and operators who cannot demonstrate that the interstices of the containment sumps are continuously monitored or inspected every 30 days shall have the sumps tested in accordance with Subsection D above; or

(2) containment sumps with dry interstices that are not continuously monitored are integrity tested in accordance with Subsection D of 20.5.110.1007 NMAC.

**F.** All sensors and equipment used to monitor containment sumps and their interstices shall be functionality tested annually in accordance with 20.5.111.1104 NMAC.

**G.** A report shall be produced which includes the results of the testing, and the report shall be submitted in accordance with 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

**H.** Owners and operators of storage tank systems shall ensure that tests of containment sumps as required in this section are performed by qualified testers. The requirements for testers can be found in 20.5.105 NMAC.

**I.** Owners and operators of storage tank systems shall dispose of water or other test media used in testing of components of petroleum storage tank systems, or any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. Owners and operators who temporarily store the test media or water on-site shall do so in accordance with all federal, state, and local statutes, ordinances, and regulations.

[20.5.110.1007 NMAC - N, 07/24/2018]

**20.5.110.1008 PERIODIC OPERATION AND MAINTENANCE WALK-THROUGH INSPECTIONS:**

**A.** Owners and operators shall conduct walk-through inspections that, at a minimum, check equipment as specified below:

(1) For spill and overflow prevention equipment, every 30 days (exception: spill prevention equipment at AST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

- (a) visually check all spill and overflow prevention equipment for damage;
- (b) remove liquid or debris;
- (c) check for and remove obstructions in the fill pipe;
- (d) check the fill cap to make sure it is securely on the fill pipe; and
- (e) for double walled spill prevention equipment with interstitial monitoring, check for liquid or a leak in the interstitial area; and
- (f) check overflow prevention equipment for proper operation and determine whether maintenance is required.

(2) For release detection equipment, every 30 days:

- (a) check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and
- (b) ensure records of release detection testing are reviewed and current.

(3) For containment sumps, every 30 days:

- (a) visually check the containment sump for damage, liquid in the containment area, and releases to the environment;
- (b) remove liquid and debris in containment sumps; and
- (c) for double walled sumps with interstitial monitoring, check for liquid or a leak in the interstitial area.

(4) Annually: check hand held release detection equipment, such as, but not limited to, tank gauge sticks for operability and serviceability;

**B.** Owners and operators shall conduct these walk-through inspections in accordance with one of the following:

(1) the current edition of a national code of practice or standard developed by a nationally recognized association or independent testing laboratory that checks equipment included in Subsection A of 20.5.110.1008 NMAC; or

(2) a checklist developed by the department.

**C.** If monthly visual checks of containment sumps are not being conducted or records of the checks cannot be produced, a test in accordance with Subsection D of 20.5.10.1007 NMAC shall be conducted within 30 days of failing to meet the requirement for monthly monitoring of the equipment.

**D.** Owners and operators must maintain records of operation and maintenance walkthrough inspections in accordance with 20.5.110.1015 NMAC. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

[20.5.110.1008 NMAC - N, 07/24/2018]



**20.5.110.1009 COMPATIBILITY:** Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system.

**A.** Owners and operators must notify the department at least 30 days prior to changing the substance in any of their tanks to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department.

**B.** In addition, owners and operators with storage tank systems storing these regulated substances must meet one of the following:

(1) demonstrate compatibility of the storage tank system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the storage tank system by using one of the following options:

(a) certification or listing of storage tank system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(b) equipment or component manufacturer approval. The manufacturer's approval must be in writing, include an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

(2) for storage tank systems or system components that contain, but are not compatible with, one of the regulated substances listed in Subsection A of 20.5.110.1009 NMAC, or for those storage tank systems where compatibility cannot be determined, remove all regulated substances from the tank system by the effective date of these regulations, and comply with one of the following:

(a) replace the storage tank system or system components in accordance with the requirements for a new storage tank system in 20.5.109 NMAC;

(b) prior to putting the tank back in service, modify the storage tank system in accordance with 20.5.110.1010 NMAC and one of the following:

(i) install an internal lining in the tank, in accordance with the lining manufacturer's installation instructions, to address compatibility issues; or

(ii) comply with tank or equipment manufacturer's instructions;

(c) change the regulated substance stored to one that is compatible with the storage tank system; or

(d) permanently close the storage tank system within 12 months of the effective date of these regulations in accordance with the permanent closure requirements in 20.5.115.1502 NMAC; or

(3) use another option determined by the department to be no less protective of human health and the environment than the options listed in this section.

**C.** Owners and operators must maintain records documenting compliance with this section for as long as the storage tank system is used to store the regulated substance.

**D.** Owners and operators shall use the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department to comply with the compatibility requirements of this section. *American Petroleum Institute Recommended Practice RP 1626, "Storing and Handling*

*Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations*” shall be used to comply with the requirements of this section as they pertain to storage of ethanol blends. [20.5.110.1009 NMAC - N, 07/24/2018]

**20.5.110.1010 REPAIRS, REPLACEMENTS AND MODIFICATIONS:** Owners and operators of a storage tank system shall ensure that repairs, replacements, and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances. Owners and operators shall remove all regulated substances from a storage tank system when a release has been confirmed until it is repaired or replaced in accordance with the requirements of this section.

**A.** Determining whether repair, replacement or modification is necessary. Owners and operators shall determine whether a repair, replacement or modification to a storage tank system is necessary in consultation with a department inspector, after providing notice required by this part.

(1) If owners and operators are repairing, replacing or modifying piping of any kind that is connected to a storage tank, the determination shall be made during an on-site inspection that provides the inspector the opportunity to view the piping while it is exposed.

(2) If, during an on-site inspection, the inspector determines that:

(a) any steel piping connected to a tank indicates corrosion; or

(b) any non-corrodible piping connected to a tank shows signs of

deterioration or failure,

(3) Then the owner and operator shall replace all piping connected to that tank, and shall inspect all other piping at the same facility that is made of the same material to determine its condition prior to returning the facility to operation.

**B.** Owners and operators shall properly conduct repairs, replacements and modifications to storage tank systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and in accordance with the manufacturer's instructions and recommended practices. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”;*

(2) *American Petroleum Institute Recommended Practice RP 2200, “Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines”;*

(3) *National Fire Protection Association Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”;*

(4) *Petroleum Equipment Institute Publication RP200, “Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling”;*

(5) *American Society for Testing and Materials ES40, “Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection”;*

(6) *American Petroleum Institute 570, “Piping Inspection Code: Inspection, Repair, Alteration and Rerating of In-Service Piping Systems”;*

(7) *American Petroleum Institute Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction”;*

- Piping”;
- (8) *American Society of Mechanical Engineering Standard B31.1, “Process Piping”;*
  - (9) *International Code Council, “International Fire Code”;*
  - (10) *National Leak Prevention Association Publication RP823, “Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps”;*
  - (11) *Petroleum Equipment Institute Publication RP100 “Recommended Practices for the Installation of Underground Storage Tank Systems for Motor Vehicle Fueling”;*
  - (12) *Petroleum Equipment Institute Publication RP800 “Recommended Practices for Installation of Bulk Storage Plants”;*
  - (13) *Petroleum Equipment Institute Publication RP1000 “Recommended Practices for the Installation of Marina Fueling Systems”;*
  - (14) *Petroleum Equipment Institute Publication RP1300 “Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems”;* or
  - (15) *Petroleum Equipment Institute Publication RP1400 “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems”.*

**C.** Owners and operators shall not internally line ASTs as a means of repair.

**D.** Owners and operators shall tightness test a storage tank system that has been replaced, modified or repaired, prior to returning the system to service, in accordance with 20.5.111.1101 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC except as provided below:

- (1) the repaired or modified tank is internally inspected in accordance with the current edition of an industry standard or code of practice approved in advance by the department; or

- (2) owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

**E.** Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with 20.5.110.1006 NMAC to ensure that it is operating properly.

**F.** Owners and operators of a storage tank system shall maintain records of each repair, replacement and modification until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

**G.** Owners and operators shall repair an above ground storage tank if an internal inspection determines that a release is occurring or that the tank bottom or shell thickness is below minimum thickness requirements. Owners and operators shall keep the records of internal inspections for the life of the tank. Minimum thickness requirements shall be determined by one of the following:

- (1) manufacturer’s specifications;
- (2) current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or

(3) minimum thickness for the tank bottom shall never be less than one half of the original bottom plate thickness and minimum thickness for the tank shall never be less than one-tenth inch.

**H.** Owners and operators shall meet all applicable installation requirements of 20.5.109 NMAC, including testing requirements, when repairing, replacing or modifying a storage tank system involves installing new components. If any tank or piping of a tank system is replaced, owners and operators shall follow all requirements for properly assessing the site for contamination in compliance with 20.5.115 NMAC prior to installing the new components.

**I.** Repairs to secondary containment of tanks, piping and containment sumps must be tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the implementing agency within 30 days following the date of completion of the repair.

**J.** Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with 20.5.110.1005 NMAC to ensure it is operating properly.

[20.5.110.1010 NMAC - N, 07/24/2018]

#### **20.5.110.1011 INSPECTIONS, MONITORING AND TESTING:**

**A.** For the purpose of enforcing the provisions of these regulations, all owners and operators of storage tanks shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit any department representative at all reasonable times to have access to, and to copy all records relating to such tanks. Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, Sections 50-9-1 through 50-9-25 NMSA 1978, so that storage tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized to:

- (1) enter at reasonable times any establishment or place where a storage tank is located;
- (2) inspect the storage tank system and obtain samples of its contents;
- (3) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and
- (4) retrieve all data from any electronic release detection equipment or device.

**B.** The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

**C.** Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures.

**D.** Owners and operators shall not intentionally delete any history from any electronic release detection equipment or device.  
[20.5.110.1011 NMAC - N, 07/24/2018]

**20.5.110.1012 REQUIRED NOTIFICATION PRIOR TO REPLACEMENT, REPAIR AND MODIFICATION:** To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the replacement, repair, and modification of the storage tank system are to take place. Notice need not be provided for normal maintenance. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For replacements, modifications (including internal lining or changes to cathodic protection systems), and repairs, the term “critical junctures” means:

- (1) completion of pouring a concrete pad or footings;
- (2) completion of the excavation of existing piping;
- (3) actual performance of the repair, lining, or modification;
- (4) any time during the project in which components of piping are connected;
- (5) any time during the project in which a tank, its associated piping, spill prevention equipment, or secondary containment sumps are tested; and
- (6) any time during the project when overfill prevention equipment is inspected to ensure it meets the requirements in 20.5.110.1005 NMAC.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the replacement, modification or repair of a storage tank system. Owners and operators shall also give at least 30 days written notice before the application of a secondary containment coating. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide notice of emergency repairs as soon as possible after completing emergency repairs. At a minimum, the notice for replacements, modifications, and repairs shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) contractor name, address, and telephone number;
- (5) description of type of replacement, modification or repair to be performed (such as spill containment, overfill prevention, release detection, piping or other);
- (6) expected date on which replacement, modification or repair will be performed;
- (7) whether any part of the system is within 1,000 feet of a community water system or a potable drinking water well; and
- (8) signature of owner, operator or an authorized representative.

**C.** In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**D.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.110.1012 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification. The form is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Santa Fe, NM 87505.]

**20.5.110.1013 DEPARTMENT REVIEW AND APPROVAL OF PLANS,**

**INSTALLATION, OPERATION, AND MAINTENANCE:** Owners and operators shall view any inspection, review or approval by the department as permission to proceed in accordance with all applicable rules, codes and standards. Review and approval by the department shall not relieve any owner, operator, or certified tank installer of his responsibility for compliance. If the department overlooks any deficiencies or violations in the course of plan review or inspection provided in 20.5 NMAC, the department may later require correction and compliance.

[20.5.110.1013 NMAC - N, 07/24/2018]

**20.5.110.1014 ALTERNATE METHODS:**

**A.** If owners and operators want to operate, maintain, replace, repair or modify any part of a storage tank system with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin to operate, maintain, replace, repair or modify the system, unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.110.1014 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting

the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

**20.5.110.1015 RECORD KEEPING:**

**A.** Owners and operators shall maintain the following information for the life of the storage tank system:

- (1) documentation of operation of corrosion protection equipment that demonstrates compliance with 20.5.110.1006 NMAC;
- (2) documentation of storage tank system repairs, replacements and modifications that demonstrate compliance with 20.5 NMAC;
- (3) documentation of compliance with release detection requirements in accordance with 20.5.11 NMAC;
- (4) inspection logs required by 20.5.110 NMAC and 20.5.111 NMAC;
- (5) tank tightness, internal inspection and integrity test documents required by 20.5 NMAC;
- (6) any document approving any alternate method;
- (7) spill and overfill prevention equipment testing/inspection records;
- (8) containment sump testing records;
- (9) documentation of compatibility for AST systems;
- (10) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;
- (11) documentation of periodic walkthroughs;
- (12) documentation of operator training in accordance with 20.5.104 NMAC;
- (13) the operation and maintenance plan and related documentation as required by 20.5.10.1001 NMAC; and
- (14) any other record or written approval required in 20.5 NMAC.

**B.** Availability and maintenance of records. Owners and operators shall keep the required records for the operational life of a tank, piping and tank system either:

- (1) at the storage tank site and immediately available for inspection by the department; or
- (2) at a readily available alternative site and the records shall be provided for inspection to the department upon request; if records are not available at a site during inspection, owners and operators shall send to the inspector within 10 working days all records requested by the inspector.

**C.** Owners and operators shall maintain permanent closure records required under 20.5.115 NMAC. Owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

**D.** If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of noncompliance.

[20.5.110.1015 NMAC - N, 07/24/2018]

**20.5.110.1016 REPORTING:** Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator.

- A.** Owners and operators shall provide the following information to the department:
- (1) registration for all storage tank systems in accordance with 20.5.102 NMAC, which includes certification of installation for new AST systems in accordance with Subsection C of 20.5.109.919 NMAC;
  - (2) reports of all releases in accordance with 20.5.102 NMAC and the requirements in 20.5.18 NMAC for reporting suspected releases, spills and overfills and confirmed releases;
  - (3) corrective actions planned or taken as required by 20.5.119 NMAC and 20.5.200 NMAC;
  - (4) notification before storage tank system installation, replacement, repair or modification in accordance with 20.5.109 NMAC and 20.5.110 NMAC; notification when any person assumes ownership of a storage tank system in accordance with 20.5.102 NMAC and notification before permanent closure or change in service in accordance with 20.5.115 NMAC; it may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs;
  - (5) notification prior to storage tank systems changing to certain regulated substances in accordance with Subsection A of 20.5.110.1009 NMAC; and
  - (6) updated project drawings for any addition, replacement or modification of a storage tank system.
- B.** Owners and operators shall provide to the department all reports as required in 20.5.110 NMAC within 60 days of completion of the tests.
- C.** Owners and operators shall report any failed tests or inspections to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118.1801 NMAC.
- D.** Owners and operators shall ensure all reports required in 20.5.110 NMAC contain, at a minimum, the following:
- (1) facility name and address;
  - (2) facility ID number;
  - (3) owner and operator name and address;
  - (4) owner ID number;
  - (5) date report was completed;
  - (6) date of the test;
  - (7) duration of the test;
  - (8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
  - (9) type of equipment being tested;
  - (10) type of test, including test procedures and methods;
  - (11) results of the test;
  - (12) name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;
  - (13) name of the regulated substance stored in the tank associated with the equipment being tested; and
  - (14) for the inspections and testing of spill prevention equipment, overflow prevention equipment, and containment sumps, include the information from the following forms, as applicable, from *Petroleum Equipment Institute Publication RP 1200, "Recommended*



*Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”:*

(a) *“Spill Bucket Integrity Testing, Hydrostatic Test Method, Single and Double-Walled Vacuum Method”;*

(b) *“Containment Sump Integrity Testing, Hydrostatic Testing Method”;*

(c) *“UST Overfill Equipment Inspection, Automatic Shutoff Device and Ball Float Valve”;* or

(d) *“Automatic Tank Gauge Operation Inspection”.*

[20.5.110.1 NMAC - N, 07/24/2018]

#### **HISTORY OF 20.5.110 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 9/12/88.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 2/14/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 8/4/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 6/12/90.

**History of Repealed Material:** 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements (filed 2/27/97), repealed 8/15/03.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) repealed 4/4/08.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) repealed 7/24/18.

#### **Other History:**

EIB/USTR-5, Underground Storage Tank Regulations - Part V - General Operating Requirements, filed 6/12/90, renumbered, reformatted and replaced by 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, effective 11/5/95;

20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements filed 10/6/95 replaced by 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, effective 4/1/97;

20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, filed 2/27/97 was renumbered, reformatted and replaced by 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 8/15/03.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) replaced by 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 4/4/08.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) was renumbered, reformatted, and replaced by 20.5.110 NMAC, Petroleum Storage Tanks, General Operating Requirements for Above Ground Storage Tanks, effective 7/24/18.

20.5.110 NMAC – General Operating Requirements for Above Ground Storage Tank Systems



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 111 RELEASE DETECTION FOR ABOVE GROUND STORAGE TANK**  
**SYSTEMS**

**20.5.111.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.111.1 NMAC - N, 07/24/2018]

**20.5.111.2 SCOPE:** This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. Release detection requirements for above ground storage tank emergency generator systems are listed in 20.5.112 NMAC.  
[20.5.111.2 NMAC - N, 07/24/2018]

**20.5.111.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.111.3 NMAC - N, 07/24/2018]

**20.5.111.4 DURATION:** Permanent.  
[20.5.111.4 NMAC - N, 07/24/2018]

**20.5.111.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.111.5 NMAC - N, 07/24/2018]

**20.5.111.6 OBJECTIVE:** The purpose of 20.5.111 NMAC is to ensure that releases from above ground storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.111.6 NMAC - N, 07/24/2018]

**20.5.111.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.111.7 NMAC - N, 07/24/2018]

**20.5.111.8 to 20.5.111.1099 [RESERVED]**

**20.5.111.1100 REQUIREMENTS AND DEADLINES FOR RELEASE DETECTION FOR**  
**AST SYSTEMS:**

**A.** Owners and operators of new and existing AST systems shall monitor monthly for releases using a method, or combination of methods, of release detection that can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance and meets the following:

(1) the method:

- (a) meets the performance requirements in 20.5.111 NMAC;
- (b) is installed and calibrated in accordance with the manufacturer's instructions;
- (c) is operated and maintained in accordance with one of the following, beginning on the effective date of these regulations:
  - (i) manufacturer's instructions;
  - (ii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or
  - (iii) an approved method that has been determined by the implementing agency to be no less protective of human health and the environment than Subparagraph (a) and (b) of Subsection (1) above; and
- (d) has electronic and mechanical components that are tested to ensure proper operation; or

(2) the method meets all the requirements for visual inspections in 20.5.111.1102 NMAC.

**B.** Owners and operators of AST systems shall meet release detection requirements as follows:

- (1) for AST systems installed on, or before, August 14, 2003 must have met release detection requirements no later than August 15, 2004; and
- (2) for AST systems installed on, or after, August 15, 2003 must meet release detection requirements upon installation.

**C.** For existing AST systems installed before July 1, 1991, or where the installation date is unknown, owners and operators shall perform either a tightness test, or an internal inspection on the AST system by August 15, 2004. The tightness test or internal inspection shall be conducted in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and shall be approved in advance by the department. If a tightness test or internal inspection shows that an AST system has a suspected release, then owners and operators shall comply with the requirements of 20.5.118 NMAC. Owners and operators shall use one or more of the following, as applicable, to comply with the above testing requirements:

- (1) *American Petroleum Institute Specification 12F: "Shop-welded Tanks For Storage Of Production Liquids"*;
- (2) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage"*, with applicable addenda;
- (3) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"*;
- (4) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;
- (5) *Underwriter's Laboratories Standards: UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids"*; or
- (6) *Steel Tank Institute Standard SP001, "Standard for the Inspection of Aboveground Storage Tanks"*.

**D.** Owners and operators shall ensure that any person who performs a test on their AST system in order to meet the requirements of 20.5.111 NMAC shall comply with the requirements in 20.5.105 NMAC.

**E.** Owners and operators shall ensure that equipment used to perform a test on their storage tank system is calibrated and maintained according to the manufacturer's requirements.

**F.** When a release detection method operated in accordance with the performance standards in 20.5.111 NMAC indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.102.204 and 20.5.118 NMAC.

**G.** Owners and operators shall meet permanent closure requirements in 20.5.115 NMAC for any existing AST system to which an owner and operator cannot apply a method of release detection that complies with the requirements of 20.5.111 NMAC.

[20.5.111.1100 NMAC - N, 07/24/2018]

#### **20.5.111.1101 REQUIREMENTS FOR INTEGRITY TESTING OR TANK TIGHTNESS TESTING OF ASTS:**

**A.** Owners and operators shall perform a tightness test or internal inspection of ASTs 10 years after installation, unless the AST is in secondary containment that complies with the requirements of 20.5.109 NMAC. Owners or operators shall use one or more of the standards and codes listed in Subsection B of this section, as applicable, to comply with this requirement.

**B.** Owners and operators of ASTs shall ensure that integrity testing and tank tightness testing:

(1) detect a two-tenth gallon per hour leak rate from any portion of the AST that routinely contains a regulated substance while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, and evaporation or condensation;

(2) comply with manufacturer's published testing procedures; and

(3) comply with a current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory and shall be approved in advance by the department. Owners and operators shall use one or more of following to comply with the requirements of this section:

(a) *American Petroleum Institute Specification 12F: "Specification for Shop Welded Tanks for Storage of Production Liquids"*.

(b) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage"*, with applicable addenda;

(c) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"*;

(d) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(e) *Underwriter's Laboratories Standards: UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids"*;

(f) *Steel Tank Institute Standard SP001, "Standard for the Inspection of Aboveground Storage Tanks"*; or

(g) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*.

[20.5.111.1101 NMAC - N, 07/24/2018]

**20.5.111.1102 VISUAL INSPECTION REQUIREMENTS FOR ASTS:**

**A.** Owners and operators of ASTs may use visual inspection as a method of release detection if:

- (1) all portions of the ASTs, including the AST bottoms, are completely visible, readily accessible and are inspected monthly;
- (2) owners and operators maintain a written log of the visual inspections for each AST conducted monthly to include the following:
  - (a) the date and time the inspection was conducted;
  - (b) name and signature of the person who conducted the inspection;
  - (c) comments on the condition of each AST;
  - (d) the results of each inspection; and
  - (e) the volume of water found in the AST and if the water has been removed from the tank; and
- (3) owners and operators keep visual inspection logs available at the facility.

**B.** Owners and operators of double-walled and double-bottomed AST systems shall include inspection of the interstice in the monthly visual inspection which shall be recorded in the log required in Paragraph (2) of Subsection A. Owners and operators of AST systems that use interstitial monitoring with an electronic liquid sensor as their monthly method of release detection in accordance with 20.5.111.1103 NMAC do not have to meet the requirements of this subsection. The monthly inspection of the interstice shall use one of the following methods:

- (1) manually stick or gauge the monitoring ports of the tank by use of a tank gauging stick that is calibrated to the nearest one-eighth of an inch;
  - (2) where the interstice is equipped with a mechanical float device that will visually signal when a liquid is present in the interstice, inspect the device;
  - (3) for double-bottomed vertical ASTs with drain valves for the interstice, check for the accumulation of regulated substances or water;
  - (4) inspect the interstice per manufacturer's instructions; or
  - (5) visually inspect vertical ASTs inside secondary containment that meet the requirements of 20.5.109 NMAC where the secondary containment has been constructed so the space between the tank bottom and the concrete floor can be monitored or visually inspected.
- [20.5.111.1102 NMAC - N, 07/24/2018]

**20.5.111.1103 INTERSTITIAL MONITORING REQUIREMENTS FOR ASTS:** Owners and operators of ASTs may use interstitial monitoring to continuously monitor between the AST and a secondary barrier immediately around and underneath the tank, but only if the AST system meets all of the following requirements:

**A.** the ASTs are manufactured or upgraded to include a double-walled bottom in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory which can be remotely monitored, or the ASTs are installed inside secondary containment with an impervious barrier beneath the ASTs meeting the requirements of 20.5.109.904 NMAC and the interstice between them can be remotely monitored;

**B.** the monitoring system between the AST and the secondary barrier shall meet all of the following requirements;

- (1) for cathodically protected ASTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

- (2) the groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;
  - (3) the site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions;
  - (4) the locations and ports of monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;
- C. owners and operators shall have a qualified tester annually test to ensure proper operation of sensors and electrical or mechanical devices, which includes but is not limited to testing alarm operability, communication with controller, and proper height and location of sensors installed. Testing shall be conducted in accordance with the equipment manufacturers' testing instructions or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory.
- D. Owners and operators shall ensure the requirements in 20.5.111.1100 NMAC are met prior to implementing this method.
- E. Owners and operators shall maintain and provide the department reports relating to the requirements of this section in accordance with 20.5.111.1111 NMAC and 20.5.111.1112 NMAC.
- [20.5.111.1103 NMAC - N, 07/24/2018]

#### **20.5.111.1104 AUTOMATIC TANK GAUGING REQUIREMENTS FOR ASTS:**

- A. Owners and operators shall use automatic tank gauging systems that are third party certified for the size and capacity of the AST. Only third-party certifications that have been reviewed and approved by the national work group on leak detection evaluations (NWGLDE) for AST use, as evidenced by their posting on the NWGLDE website, [nwglde.org](http://nwglde.org), will be accepted.
- B. Owners and operators of ASTs may use automatic tank gauging as a method of release detection, every 30 days, if the automatic tank gauging system:
- (1) tests for the loss of product and can detect a two-tenth gallon per hour leak rate from any portion of the tank that routinely contains regulated substances; and
  - (2) can conduct inventory control or another test of equivalent performance in accordance with all of the following:
    - (a) inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the AST are recorded each operating day;
    - (b) the equipment used is capable of measuring the level of regulated substance over the full range of the AST's height to the nearest one-eighth of an inch;
    - (c) the regulated substance inputs are reconciled with delivery receipts by measurement of the AST inventory volume before and after delivery;
    - (d) deliveries are made through a drop tube that extends to within one foot of the AST bottom, unless the AST is bottom loaded;
    - (e) regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn;
    - (f) the measurement of any water level in the bottom of the AST is made to the nearest one-eighth of an inch at least once a month; and

(g) practices described in the *American Petroleum Institute Publication RP1621, "Bulk Liquid Stock Control at Retail Outlets"* may be used, where applicable, as guidance in meeting the requirements of this section.

C. Owners and operators shall ensure a test of the proper operation of the automatic tank gauging system is performed at least annually starting three years after the effective date of these regulations and, at a minimum, as applicable to the facility, cover the following components and criteria:

(1) automatic tank gauge and other controllers: test alarm; verify system programming and configuration; test battery backup;

(2) probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(3) vacuum and pressure pumps and gauges: ensure proper communication with sensors and controller; and

(4) Inspections and testing shall be conducted by a person who is certified as a technician by the manufacturer of the automatic tank gauging system and meets the requirements for qualified testers in 20.5.105 NMAC.

D. Owners and operator shall use one of the following to comply with Paragraph C of this section:

(1) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(2) The manufacturer's testing or inspection instructions.

E. Owners and operators shall review the monitoring reports on a monthly basis and notify the department in accordance with 20.5.118 NMAC if there is a failed or inconclusive result.

F. Owners and operator shall produce a report for all inspections and testing required in this section which includes the results of the inspection or test and it shall be maintained and submitted in accordance with 20.5.111.1111 NMAC and 20.5.111.1112 NMAC.

[20.5.111.1104 NMAC - N, 07/24/2018]

**20.5.111.1105 REQUIREMENTS FOR AST UNDERGROUND PRESSURIZED PIPING INSTALLED PRIOR TO JULY 24, 2018:** Owners and operators of above ground storage tank systems with underground pressurized piping installed prior to the effective date of these regulations must have implemented a method, or a combination of methods, of release detection for the piping. The monitoring method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of AST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and



confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

(3) use a method, or combination of methods, for monitoring the piping for releases that complies with one of the following:

(a) a precision line tightness test is conducted every 12 months that is capable of detecting a leak of one-tenth gallons per hour at one and one-half times the operating pressure; or

(b) use interstitial monitoring that complies with all of the requirements in 20.5.111.1103 NMAC, 20.5.111.1106 NMAC, and all of the following:

(i) shall automatically shut off the submersible turbine pump for the AST if the sensors used for interstitial monitoring detect regulated substances or water within the interstice or in the containment sumps associated with the piping; and

(ii) all sensors shall be tested annually in accordance with Subsection C of 20.5.111.1104 NMAC;

**B.** Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced, and a line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of this section once the repairs or replacements have been completed;

**C.** Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RPI100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";* and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping".*

**E.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all leak detector testing, line tightness testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1105 NMAC - N, 07/24/2018]

**20.5.111.1106 REQUIREMENTS FOR AST UNDERGROUND PRESSURIZED PIPING INSTALLED OR MODIFIED ON, OR AFTER JULY 24, 2018:**

Owners and operators of above ground storage tank systems with underground pressurized piping installed or modified on, or after the effective date of these regulations shall use interstitial monitoring as the method of release detection for the piping. The interstitial monitoring method shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

- A.** Owners and operators of AST systems shall:
- (1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;
  - (2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour;
  - (3) use interstitial monitoring that complies with all of the requirements in 20.5.111.1103 NMAC and all of the following:
    - (a) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and submersible turbine pump containment sumps used to monitor the interstice;
    - (b) Sensors shall:
      - (i) monitor the interstice;
      - (ii) monitor all containment sumps associated with the piping;
      - (iii) sound an alarm and automatically shut off the submersible turbine pump when a regulated substance or water is detected;
      - (iv) be positioned in the lowest point of the containment sump;
    - (c) be tested annually in accordance with Subsection C of 20.5.111.1104 NMAC;
  - (c) Containment sumps used for interstitial monitoring shall be tested every three years starting three years after the effective date of these regulations. The testing of the containment sumps shall comply with one of the following:
    - (i) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or
    - (ii) the equipment manufacturer's published testing procedures.
- B.** Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced, and a line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC once the repairs or replacements have been completed;
- C.** Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.
- D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:
- (1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;
  - (2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;
  - (3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;
  - (4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems"*; and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*.

**E.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, containment sump testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1106 NMAC - N, 07/24/2018]

**20.5.111.1107 REQUIREMENTS FOR AST UNDERGROUND SUCTION PIPING INSTALLED PRIOR TO JULY 24, 2018:**

**A.** Owners and operators of above ground storage tank systems where piping conveys regulated substances under suction and was installed prior to the effective date of these regulations shall use one of the following methods. These methods shall be designed to detect a release from any portion of underground piping:

(1) An annual line tightness test shall be conducted and the tightness testing shall be capable of detecting a one-tenth gallon per hour leak at one and one-half times the operating pressure; or

(2) Interstitial monitoring shall be used in accordance with all of the requirements in 20.5.111.1103 NMAC and 20.5.111.1105 NMAC;

**B.** Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) the below-grade piping operates at less than atmospheric pressure;

(2) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) only one check valve is included in each suction line;

(4) the check valve is located directly below and as close as practical to the suction pump; and

(5) compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems"*; and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*.

**D.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1107 NMAC - N, 07/24/2018]

**20.5.111.1108 REQUIREMENTS FOR AST UNDERGROUND SUCTION PIPING INSTALLED ON OR AFTER JULY 24, 2018:**

**A.** Owners and operators of above ground storage tank systems where piping conveys regulated substances under suction and was installed after the effective date of these regulations shall meet the requirements for interstitial monitoring in 20.5.111.1103 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and secondary containment sumps used to monitor the interstice.

(2) Sensors shall:

(a) monitor the interstice;

(b) monitor all containment sumps associated with the piping;

(c) sound an alarm and automatically shut off the pump when a regulated substance or water is detected;

(d) be positioned in the lowest point of the containment sump; and

(e) be tested annually in accordance with Subsection C of

20.5.111.1104 NMAC.

(3) Containment sumps used for interstitial monitoring shall be tested every three years beginning three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(b) the equipment manufacturer's published testing procedures.

**B.** Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) the below-grade piping operates at less than atmospheric pressure;

(2) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) only one check valve is included in each suction line;

(4) the check valve is located directly below and as close as practical to the suction pump; and

(5) compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *Petroleum Equipment Institute RP 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems"*; and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*.

**D.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1108 NMAC - N, 07/24/2018]

**20.5.111.1109 REQUIREMENTS FOR AST ABOVE GROUND PIPING:**

**A.** Owners and operators of above ground storage tanks with above ground piping that conveys regulated substances either by suction or pressure shall monitor for releases every 30 days and may use visual inspection if all portions of the piping are completely visible, readily accessible, and not in contact with the ground or soil. Owners and operators shall keep a log of visual inspection of piping that meets the requirements of 20.5.111.1102 NMAC.

**B.** Owners and operators of above ground storage tank systems with above ground piping that conveys a regulated substance under pressure shall not be required to install automatic line leak detectors as long as the entire piping run is above ground and a solenoid valve has been installed on the piping at the submersible turbine pump. Also, a manually activated control shall be installed that will permit the submersible turbine pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and shall stop the submersible turbine pump when the dispensing nozzle is returned to the bracket.

**C.** For piping that does not meet these requirements, owners and operators shall use a method, or combination of methods, that meet the requirements in 20.5.111.1105 NMAC through 20.5.111.1108 NMAC depending on the piping type and when the piping was installed or modified.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP 100, “Recommended Practices for Installation of Underground Liquid Storage Systems”;*

(2) *Petroleum Equipment Institute RP 200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling”;*

(3) *American Petroleum Institute Publication RP 1615, “Installation of Underground Hazardous Substances or Petroleum Storage Systems”;*

(4) *American Petroleum Institute 570, “Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems”;*

(5) *American Society of Mechanical Engineering Standard B31.3, “Process Piping”;*

(6) *National Fire Protection Association Standard NFPA 110, “Standard for Emergency and Standby Power Systems”;* and

(7) *Petroleum Equipment Institute Publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems”.*

[20.5.111.1109 NMAC - N, 07/24/2018]

**20.5.111.1110 ALTERNATE METHODS:**

**A.** If owners and operators want to install materials or methods of release detection equipment for tanks or piping required in 20.5.111 NMAC that are not in accordance with the

current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if, for ASTs, it can detect a two-tenth gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.111 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment as the methods provided in this section.

[20.5.111.1110 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.111.1111 RELEASE DETECTION RECORDKEEPING:**

**A.** All storage tank system owners and operators shall maintain records in accordance with 20.5.110 NMAC demonstrating compliance with all applicable requirements of 20.5.111 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

**B.** Records to be maintained shall include, but not be limited to:

- (1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer;

- (2) the results of any sampling, testing, or monitoring;
- (3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site and any schedules of calibration and maintenance required by the release detection equipment manufacturer;
- (4) the results of annual operational tests of release detection equipment. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria for the specified equipment or needs to have action taken, and describe any action taken to correct an issue.

[20.5.111.1111 NMAC - N, 07/24/2018]

**20.5.111.1112 REPORTING:**

**A.** Owners and operators shall provide to the department all reports as required in 20.5.111 NMAC within 60 days of completion of the tests.

**B.** Owners and operators shall report any test or inspection results that are anything other than a “pass” or “normal” result to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118.1801 NMAC.

**C.** Owners and operators shall ensure all reports required in 20.5.111 NMAC contain, at a minimum, the following:

- (1) facility name and address;
- (2) facility ID number;
- (3) owner and operator name and address;
- (4) owner ID number;
- (5) date report was completed;
- (6) date of the test;
- (7) duration of the test;
- (8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
- (9) type of equipment being tested;
- (10) type of test, including test procedures and methods;
- (11) results of the test;
- (12) name of the person who performed the inspection or test and their qualifications as specified in 20.5.105 NMAC;
- (13) brand name and model number of the testing equipment used during the test and the date the testing equipment was last calibrated;
- (14) for inspections and testing of automatic tank gauge systems as required in 20.5.111.1104 NMAC, a completed copy of the automatic tank gauge operation inspection form in *Petroleum Equipment Institute Publication RP 1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”*;
- (15) for testing of automatic line leak detectors:
  - (a) serial number of the leak detector;
  - (b) description of storage tank system;
  - (c) detected leak rate in gallons per hour;
  - (d) line pressure and functional element holding pressure in pounds per square inch;
  - (e) type, diameter and length of piping; and

- (f) test results, including the following:
  - (i) whether flow is restricted by a mechanical line leak detector when a leak is detected;
  - (ii) whether the turbine shuts down, an alarm is triggered, or both, when a simulated leak is induced during the testing of an electronic line leak detector;
- (16) for testing of sensors used for monitoring secondary containment and interstitial spaces:
  - (a) the information in the liquid sensor functionality testing form in the *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; and
  - (b) information on whether each individual sensor used for interstitial monitoring meets automatic shutdown requirements in 20.5.111 NMAC; and
- (17) for line tightness testing:
  - (a) leak rate;
  - (b) testing pressure;
  - (c) bleed back;
  - (d) piping type;
  - (e) piping diameter; and
  - (f) length of piping.

**D.** Owners and operators may use forms and checklist developed by the department, when available, to meet the reporting requirements in 20.5.111 NMAC.

[20.5.111.1112 NMAC - N, 07/24/2018]

[Provide reports as required in Subsection A of this section as directed at the petroleum storage tank bureau's pages on the department website

([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)). The forms or checklists referred to in Subsection E of this section, if available, may be found either on the department's website or by calling the Petroleum Storage Tank Bureau at 505-476-4397.]

#### **HISTORY OF 20.5.111 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 9/12/88.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 2/14/89.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 8/4/89.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/12/90.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/26/90.

#### **History of Repealed Material:**

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) repealed 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) repealed 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) repealed 7/24/2018.



**Other History:**

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection (filed 6/26/90) renumbered, reformatted and replaced by 20 NMAC 5.6, Underground Storage Tanks - Release Detection, effective 11/5/95;

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 10/6/95) replaced by 20 NMAC 5.6, Underground Storage Tanks - Release Detection, effective 4/1/97;

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) replaced by 20.5.111 NMAC, Petroleum Storage Tanks - Release Detection for Above Ground Storage Tank Systems, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 112 ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR**  
**SYSTEMS**

**20.5.112.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.112.1 NMAC - N, 07/24/2018]

**20.5.112.2 SCOPE:** This part applies to owners and operators of above ground storage tank emergency generator systems as provided in 20.5.101 NMAC. If the owner and operator of an above ground storage tank emergency generator system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.112.2 NMAC - N, 07/24/2018]

**20.5.112.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.112.3 NMAC - N, 07/24/2018]

**20.5.112.4 DURATION:** Permanent.  
[20.5.112.4 NMAC - N, 07/24/2018]

**20.5.112.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.112.5 NMAC - N, 07/24/2018]

**20.5.112.6 OBJECTIVE:** The purpose of 20.5.112 NMAC is to ensure that above ground storage tank emergency generator systems are designed, constructed, installed, modified, repaired, operated, and maintained to minimize releases, to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.112.6 NMAC - N, 07/24/2018]

**20.5.112.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.112.7 NMAC - N, 07/24/2018]

**20.5.112.8 to 20.5.112.1199 [RESERVED]**

**20.5.112.1200 GENERAL REQUIREMENTS:** Owners and operators of above ground storage tank emergency generator systems shall meet the requirements in this part in addition to all of the applicable requirements in the rest of 20.5 NMAC.  
[20.5.112.1200 NMAC - N, 07/24/2018]

**20.5.112.1201 DEADLINES FOR CLOSING OR UPGRADING ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:** Not later than July 1, 2013 owners and operators of AST emergency generator systems must have:

**A.** upgraded AST emergency generator systems to meet all performance standards for AST systems in 20.5.109 NMAC, with the exception that existing systems need not submit project drawings; or

**B.** permanently closed any AST emergency generator system that does not meet the performance standards in 20.5.109 NMAC in accordance with 20.5.115.1502 NMAC.

[20.5.112.1201 NMAC - N, 07/24/2018]

**20.5.112.1202 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:** Owners and operators of above ground storage tank emergency generator systems shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.109 NMAC.

**A.** Owners and operators of ASTs used for emergency power generation where the loss of electrical power will not result in the loss of human life or serious injury may install motor fuel dispensers only if the dispensers are connected to the AST by a separate pump and piping system other than that which supplies a regulated substance to the emergency generator.

**B.** Owners and operator who install a normally closed solenoid valve in accordance with Subsection D of 20.5.109.902 NMAC on the supply piping so that a leak will not drain the system by siphon shall meet one of the following:

(1) solenoid valve shall operate from battery voltage and have manual (nonelectric) operation; or

(2) install a manual bypass valve.

**C.** Owners and operators of above ground storage tank emergency generator systems shall use national codes and standards in 20.5.109 NMAC. Owners and operators shall also use or more of the following to comply with the requirements of this part:

(1) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(2) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.112.1202 NMAC - N, 07/24/2018]

**20.5.112.1203 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED ABOVE GROUND SUB-BASE TANK EMERGENCY GENERATOR SYSTEMS:** Owners and operators of above ground storage tanks that are installed underneath emergency generators and are also known as belly tanks or sub-base generator tanks, shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.109 NMAC.

**A.** Owners and operators shall be required to meet the certified installer requirements in 20.5.105 NMAC for new sub-base ASTs.

**B.** Owners and operators shall not be required to meet installation requirements for above ground piping for any above ground piping that connects the sub-base AST to the emergency generator.

C. Owners and operators of sub-base AST systems shall comply with release detection requirements for tanks and piping in 20.5.111 NMAC no later than three years after the effective date of these regulations.

[20.5.112.1203 NMAC - N, 07/24/2018]

**20.5.112.1204 OPERATION AND MAINTENANCE REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:** Owners and operators of above ground storage tank emergency generator systems shall meet all of the requirements for operation and maintenance in 20.5.110 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1204 NMAC - N, 07/24/2018]

**20.5.112.1205 RELEASE DETECTION REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS INSTALLED PRIOR TO JULY 24, 2018:** Owners and operators of AST emergency generator systems installed prior to the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.111 NMAC.

A. Owners and operators of AST emergency generator systems shall implement a method, or combination of methods, no later than three years after the effective date of these regulations that monitors above ground storage tanks every 30 days for releases.

B. Owners and operators of AST emergency generator systems shall provide a method, or combination of methods, of release detection for underground piping no later than three years after the effective date of these regulations. The method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall comply with the requirements for release detection for underground piping as follows:

(1) Owners and operators of AST emergency generator systems with piping that conveys a regulated substance under pressure shall use automatic line leak detectors for emergency generators that alert the operator to the presence of a leak by activating a visual and audible alarm when a leak is detected and that comply with the requirements of 20.5.111.1105 NMAC, except:

(a) Automatic line leak detectors for emergency generators shall not be required to restrict or shut off the flow of regulated substances.

(b) Sensors used for interstitial monitoring shall not be required to automatically shut off the submersible turbine pump when a leak is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected.

(2) Owners and operators of ASTs with piping that conveys a regulated substance by suction shall comply with the requirements in 20.5.111.1107 NMAC, except the sensors used for interstitial monitoring shall not be required to restrict or shut off the flow of regulated substances. Sensors used for interstitial monitoring shall activate an audible and visual external alarm when a liquid is detected.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*
  - (2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*
  - (3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*
  - (4) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*
  - (5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*
  - (6) *National Fire Protection Association Standard NFPA 110, "Standard for Emergency and Standby Power Systems";* and
  - (7) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*
- [20.5.112.1205 NMAC - N, 07/24/2018]

**20.5.112.1206 RELEASE DETECTION REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS INSTALLED OR MODIFIED ON, OR AFTER, JULY 24, 2018:**

Owners and operators of AST emergency generator systems installed on, or after, the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.111 NMAC upon installation.

**A.** Owners and operators of AST emergency generator systems installed or modified on or after the effective date of these regulations must implement a method, or combination of methods, that monitors above ground storage tanks every 30 days for releases using an applicable method in 20.5.111 NMAC.

**B.** Owners and operators of AST emergency generator systems where the piping is installed or replaced on, or after, the effective date of these regulations, and the piping conveys a regulated substance under pressure shall use interstitial monitoring and automatic line leak detectors that alert the operator to the presence of a leak by activating an external audible and visual alarm when liquid is detected. Owners and operators of AST emergency generator systems shall comply with the requirements of 20.5.111.1106 NMAC, except:

(1) automatic line leak detectors for AST emergency generator systems shall not be required to shut off the flow of regulated substances; and

(2) sensors used to meet the interstitial monitoring requirements for AST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate a secondary audible or visual alarm when liquid is detected.

**C.** Owners and operators of ASTs where the piping is installed or replaced on, or after, the effective date of these regulations and the piping conveys a regulated substance by suction shall comply with the requirements in 20.5.111.1108 NMAC, except the sensors used for interstitial monitoring shall activate an external audible and visual alarm when a leak is detected either in the interstice of the piping or in containment sumps. Sensors used to meet the interstitial monitoring requirements for AST emergency generator systems shall not be required

to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”;*

(2) *Petroleum Equipment Institute RP200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling”;*

(3) *American Petroleum Institute publication RP 1615, “Installation of Underground Petroleum Storage Systems”;*

(4) *American Petroleum Institute 570, “Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems”;*

(5) *American Society of Mechanical Engineering Standard B31.3, “Process Piping”.*

(6) *National Fire Protection Association Standard NFPA 110, “Standard for Emergency and Standby Power Systems”;* and

(7) *Petroleum Equipment Institute Publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems”.*

[20.5.112.1206 NMAC - N, 07/24/2018]

**20.5.112.1207 CERTIFIED INSTALLERS:** Owners and operators of above ground storage tank emergency generator systems shall meet the requirements for certified installers in 20.5.105 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1207 NMAC - N, 07/24/2018]

**20.5.112.1208 ALTERNATE METHODS:**

**A.** If owners and operators want to install AST emergency generator systems to meet the requirements in this part or want to install release detection equipment for tanks or piping installed prior to the effective date of these regulations with materials and methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county) and telephone number;

(3) owner name, owner ID number, address and telephone number;

(4) citation to regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material;

(6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** Another type of release detection method, or combination of methods, may be used if approved pursuant to this section for tanks and piping installed prior to the effective date of these regulations, and if, for ASTs, it can detect a 0.2 gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another release detection method for tanks and piping installed prior to the effective date of these regulations if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.111 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.  
[20.5.112.1208 NMAC - N, 07/24/2018]

**20.5.112.1209 RECORDKEEPING:** Owners and operators of AST emergency generator systems shall meet the requirements for recordkeeping in this part in addition to all of the applicable requirements in 20.5.110 NMAC and 20.5.111 NMAC.  
[20.5.112.1209 NMAC - N, 07/24/2018]

**20.5.112.1210 REPORTING:** Owners and operators of AST emergency generator systems shall meet the requirements for reporting in this part in addition to all of the applicable requirements in 20.5.110 NMAC and 20.5.111 NMAC.  
[20.5.112.1210 NMAC - N, 07/24/2018]

**History of 20.5.112 NMAC: [RESERVED]**



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 113 UNDERGROUND STORAGE TANK EMERGENCY GENERATOR**  
**SYSTEMS**

**20.5.113.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.113.1 NMAC - N, 07/24/2018]

**20.5.113.2 SCOPE:** This part applies to owners and operators of underground storage tank emergency generator systems as provided in 20.5.101 NMAC. If the owner and operator of an underground storage tank emergency generator system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.113.2 NMAC - N, 07/24/2018]

**20.5.113.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.113.3 NMAC - N, 07/24/2018]

**20.5.113.4 DURATION:** Permanent.  
[20.5.113.4 NMAC - N, 07/24/2018]

**20.5.113.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.113.5 NMAC - N, 07/24/2018]

**20.5.113.6 OBJECTIVE:** The purpose of 20.5.113 NMAC is to ensure that underground storage tank emergency generator systems are designed, constructed, installed, modified, repaired, operated, and maintained to minimize releases, to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.113.6 NMAC - N, 07/24/2018]

**20.5.113.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.113.7 NMAC - N, 07/24/2018]

**20.5.113.8 to 20.5.113.1299 [RESERVED]**

**20.5.113.1300 GENERAL REQUIREMENTS:** Owners and operators of underground storage tank emergency generator systems shall meet the requirements in this part in addition to all of the applicable requirements in the rest of 20.5 NMAC.  
[20.5.113.1300 NMAC - N, 07/24/2018]

**20.5.113.1301 DEADLINES FOR CLOSING OR UPGRADING EXISTING UST**

**EMERGENCY GENERATOR SYSTEMS:** Not later than July 1, 2013, owners and operators of UST emergency generator systems installed prior to April 4, 2008, must have:

A. upgraded UST emergency generator systems to meet all performance standards for UST systems in this part and 20.5.106 NMAC; or

B. permanently closed any UST emergency generator system that does not meet the performance standards in this part and 20.5.106 NMAC in accordance with 20.5.115.1502 NMAC.

[20.5.113.1301 NMAC - N, 07/24/2018]

**20.5.113.1302 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED UNDERGROUND STORAGE TANK EMERGENCY GENERATOR**

**SYSTEMS:** Owners and operators of underground storage tank emergency generator systems shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.106 NMAC.

A. Owners and operators of USTs used for emergency power generation where the loss of electrical power will not result in the loss of human life or serious injury may install motor fuel dispensers only if the dispensers are connected to the UST by a separate pump and piping system other than that which supplies a regulated substance to the emergency generator;

B. Owners and operators who install a normally closed solenoid valve on the supply piping so that a leak will not drain the system by siphon shall meet one of the following:

(1) the solenoid valve shall operate from battery voltage and have manual (nonelectric) operation; or

(2) owners and operators shall install a manual bypass valve.

C. Owners and operators of underground storage tank emergency generator systems shall use national codes and standards as required in 20.5.106 NMAC. Owners and operators shall also use one or more of the following to comply with the requirements of this part:

(1) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(2) *Petroleum Equipment Institute publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

D. Owners and operators of UST emergency generator systems installed prior to April 4, 2008 must have either met the requirements for new UST systems in 20.5.106.606 NMAC or have upgraded the UST systems in accordance with the requirements in 20.5.106.607 NMAC.

E. Owners and operators of UST emergency generator systems installed on or after April 4, 2008 shall meet the secondary containment requirements in 20.5.106.606 NMAC at installation.

F. Owners and operators shall use one or more of the following to meet the requirements for this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Rating, Repair, and Alteration of Piping Systems";*

(4) *American Society of Mechanical Engineers Standard B31.3, “Process Piping”*;

(5) *National Fire Protection Association Standard 110, “Standard for Emergency and Standby Power Systems”*; and

(6) *Petroleum Equipment Institute Publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems”*.

[20.5.113.1302 NMAC - N, 07/24/2018]

**20.5.113.1303 RELEASE DETECTION REQUIREMENTS FOR UST EMERGENCY GENERATOR SYSTEMS INSTALLED PRIOR TO JULY 24, 2018:** Owners and operators of UST emergency generator systems installed prior to the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.108 NMAC.

**A.** Owners and operators of UST emergency generator systems shall implement a method, or combination of methods, no later than three years after the effective date of these regulations that monitors underground storage tanks every 30 days for releases.

**B.** Owners and operators of UST emergency generator systems shall provide a method, or combination of methods, of release detection for underground piping no later than three years after the effective date of these regulations. The method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall comply with the requirements for release detection for underground piping as follows:

(1) Owners and operators of UST emergency generator systems with piping that conveys a regulated substance under pressure shall use automatic line leak detectors for emergency generators that alert the operator to the presence of a leak by activating a visual and audible alarm when a leak is detected and that meet the requirements of 20.5.108.810 NMAC, except:

(a) Automatic line leak detectors for emergency generators shall not be required to restrict or shut off the flow of regulated substances.

(b) Sensors used to meet the interstitial monitoring requirements shall not be required to automatically shut off the submersible turbine pump when a liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected.

(2) Owners and operators of UST emergency generator systems with piping that conveys a regulated substance by suction shall comply with the requirements in 20.5.108.812 NMAC, except sensors used for interstitial monitoring shall not be required to restrict or shut off the flow of regulated substances. Sensors used for interstitial monitoring shall activate an audible and visual external alarm when liquid is detected.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”*;

(2) *American Petroleum Institute Publication RP 1615, “Installation of Underground Hazardous Substances or Petroleum Storage Systems”*;

(3) *American Petroleum Institute 570, “Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems”;*

(4) *American Society of Mechanical Engineers Standard B31.3, “Process Piping”;*

(5) *National Fire Protection Association Standard 110, “Standard for Emergency and Standby Power Systems”;* and

(6) *Petroleum Equipment Institute publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems”.*

[20.5.113.1303 NMAC - N, 07/24/2018]

#### **20.5.113.1304 RELEASE DETECTION REQUIREMENTS FOR UST EMERGENCY GENERATOR SYSTEMS INSTALLED OR MODIFIED ON, OR AFTER JULY 24, 2018:**

Owners and operators of UST emergency generator systems installed on or after the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.106 NMAC upon installation.

**A.** Owners and operators of UST emergency generator systems installed or modified on or after the effective date of these regulations shall use interstitial monitoring in accordance with 20.5.108.810 NMAC to meet the requirements for monthly monitoring.

**B.** Owners and operators of UST emergency generator systems where the piping is installed or replaced on or after the effective date of these regulations, and the piping conveys a regulated substance under pressure shall use interstitial monitoring and automatic line leak detectors that alert the operator to the presence of a leak by activating an external audible and visual alarm when liquid is detected. Owners and operators of UST emergency generator systems shall meet the requirements of 20.5.108.811 NMAC, except:

(1) Automatic line leak detectors for UST emergency generator systems shall not be required to restrict or shut off the flow of regulated substances; and

(2) Sensors used to meet the interstitial monitoring requirements for UST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate a secondary audible and visual alarm when liquid is detected.

**C.** Owners and operators of UST emergency generator systems where the piping is installed or replaced on or after the effective date of these regulations and the piping conveys a regulated substance by suction shall comply with the requirements in 20.5.108.813 NMAC, except that the sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected either in the interstice of the piping or in containment sumps. Sensors used to meet the interstitial monitoring requirements for UST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”;*

(2) *American Petroleum Institute Publication RP 1615, “Installation of Underground Hazardous Substances or Petroleum Storage Systems”;*

(3) *American Petroleum Institute 570, “Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems”;*

(4) *American Society of Mechanical Engineers Standard B31.3, “Process Piping”;*

(5) *National Fire Protection Association Standard 110, “Standard for Emergency and Standby Power Systems”;* and

(6) *Petroleum Equipment Institute publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems”.*

[20.5.113.1304 NMAC - N, 07/24/2018]

**20.5.113.1305 CERTIFIED INSTALLERS:** Owners and operators of underground storage tank emergency generator systems shall meet the requirements for certified installers in 20.5.105 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.113.1305 NMAC - N, 07/24/2018]

**20.5.113.1306 ALTERNATE METHODS:**

**A.** If owners and operators want to install UST emergency generator systems to meet requirements in this part or want to install release detection equipment for tanks or piping installed prior to the effective date of these regulations with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county) and telephone number;

(3) owner name, owner ID number, address and telephone number;

(4) citation to regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material;

(6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** Another type of release detection method, or combination of methods, may be used if approved pursuant to this section for tanks or piping installed prior to the effective date of the regulations, and if, for USTs, the method can detect a two-tenth gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another release detection method for tanks or piping installed prior to the effective date of the regulations if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.108 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the

method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.  
[20.5.113.1306 NMAC - N, 07/24/2018]

**20.5.113.1307 RECORDKEEPING:** Owners and operators of underground storage tank emergency generator systems shall meet the requirements for recordkeeping in this part in addition to all of the applicable requirements in 20.5.107 NMAC and 20.5.108 NMAC.  
[20.5.113.1307 NMAC - N, 07/24/2018]

**20.5.113.1308 REPORTING:** Owners and operators of underground storage tank emergency generator systems shall meet the requirements for reporting in this part in addition to all of the applicable requirements in 20.5.107.715 NMAC and 20.5.108.816 NMAC.  
[20.5.113.1308 NMAC - N, 07/24/2018]

**History of 20.5.113 NMAC: [RESERVED]**

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 114 AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS**  
**WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS**

**20.5.114.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.114.1 NMAC - N, 07/24/2018]

**20.5.114.2 SCOPE:** This part applies to owners and operators of airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems as provided in 20.5.101 NMAC. If the owner and operator of an airport hydrant fuel distribution system, UST system with field-constructed tanks, or hybrid storage tank system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.114.2 NMAC - N, 07/24/2018]

**20.5.114.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.114.3 NMAC - N, 07/24/2018]

**20.5.114.4 DURATION:** Permanent.  
[20.5.114.4 NMAC - N, 07/24/2018]

**20.5.114.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.114.5 NMAC - N, 07/24/2018]

**20.5.114.6 OBJECTIVE:** The purpose of 20.5.114 NMAC is to ensure that airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems are installed, modified, repaired, operated, and maintained to minimize releases from storage tank systems, to ensure that releases are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.114.6 NMAC - N, 07/24/2018]

**20.5.114.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.114.7 NMAC - N, 07/24/2018]

**20.5.114.8 to 20.5.114.1399 [RESERVED]**

**20.5.114.1400 GENERAL REQUIREMENTS FOR AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:**

A. Owners and operators of airport hydrant fuel distribution systems, field-

constructed tanks, and hybrid storage tank systems shall comply with the requirements of 20.5.114 NMAC in addition to all the applicable requirements in the rest of 20.5 NMAC.

**B.** Owners and operators of USTs that are part of an airport hydrant fuel distribution system shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

**C.** Owners and operators of USTs with field-constructed tanks shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

**D.** Owners and operators of ASTs and USTs that are part of hybrid storage tank systems shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

**E.** Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall comply with the following requirements on the effective date of the regulations:

- (1) release reporting requirements in 20.5.118 NMAC;
- (2) corrective action requirements in 20.5.119 through 20.5.123 NMAC;
- (3) closure requirements in 20.5.115 NMAC;
- (4) financial responsibility requirements in 20.5.117 NMAC; and
- (5) lender liability requirements in 20.5.124 NMAC.

**F.** Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall have new storage tank systems and upgrades to existing storage tank systems designed and the construction overseen by a professional engineer with training and experience in these types of storage tank systems. The professional engineer shall prepare, sign, and stamp as-built drawings, and the owner and operator shall maintain records documenting compliance with this requirement in accordance with 20.5.107 NMAC and 20.5.110 NMAC.

(1) Owners and operators shall submit a set of plans to the department at least 60 days in advance of the start of construction.

(2) Owners and operators who install new or upgrade existing airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall hire a contractor who employs a person with at least two years of experience in the installation of these types of systems.

(3) Owners and operators may use the *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* when designing, constructing and installing these types of systems.

**G.** Owners and operators of hybrid storage tank systems shall do one of the following:

(1) submit to the department no later than one year after the effective date of these regulations:

(a) an approval from the New Mexico state fire marshal's office for the hybrid storage tank system;

(b) an approval from the New Mexico state fire marshal's office for an AST at a retail fueling facility that exceeds the size limit on ASTs for these facilities, as set forth in the international fire code; and



(c) documentation that the UST can withstand the head pressure from the AST anytime a transfer of regulated substance is made. The documentation must include an evaluation by a New Mexico professional engineer who has education and experience in petroleum storage tank systems; or

(2) disconnect the piping feeding the UST system from the AST and permanently close the AST system in accordance with the requirements in 20.5.114.1410 NMAC and 20.5.115 NMAC.

[20.5.114.1400 NMAC - N, 07/24/2018]

**20.5.114.1401 UPGRADE REQUIREMENTS FOR EXISTING AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:** No later than three years after the effective date of the regulations, all airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems installed prior to the effective date of these regulations shall comply with the following requirements:

**A.** Above ground storage tank systems. Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes. AST systems or system components found to be structurally unsound or to have corrosion holes or damage shall be replaced in accordance with the requirements for a new AST system in 20.5.109 NMAC or permanently closed in accordance with 20.5.115 NMAC. AST systems shall be protected from corrosion in accordance with 20.5.109 NMAC and 20.5.110 NMAC and shall comply with spill and overfill prevention equipment requirements in accordance with 20.5.109 NMAC and 20.5.110 NMAC.

**B.** Underground storage tank systems. UST system components in contact with an electrolyte and that routinely contain regulated substances shall meet one of the following:

(1) be constructed of a non-corrodible material or steel clad with a non-corrodible material that meets the performance standards in 20.5.106.603 NMAC and 20.5.106.609 NMAC; or

(2) be constructed of metal and cathodically protected in accordance with the requirements in 20.5.106 NMAC, 20.5.107 NMAC, and in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and meet the following:

(a) Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes.

(b) Existing steel tanks shall comply with the upgrade requirements in 20.5.106.607 NMAC.

**C.** Piping.

(1) Metal piping on an airport hydrant system or field-constructed UST system that is in contact with an electrolyte must be cathodically protected in accordance with requirements of 20.5.106 NMAC, 20.5.107 NMAC, and in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.

(2) Metal underground piping or piping in contact with an electrolyte on a hybrid storage tank system shall be either secondarily contained or replaced with double walled non-corrodible piping with containment sumps at both ends.

**D.** Spill and overflow prevention equipment. Owners and operators shall comply with the spill and overflow prevention requirements as follows:

(1) AST systems with capacities of less than 55,000 gallons and greater than 1320 gallons and associated with airport hydrant systems or USTs with field-constructed tanks shall meet the requirements for spill and overflow prevention equipment in 20.5.109.910 NMAC;

(2) UST systems associated with airport hydrant systems or USTs with field-constructed tanks shall meet the requirements for spill and overflow prevention equipment in 20.5.106.613 NMAC.

**E.** Hybrid storage tank systems.

(1) Any UST receiving deliveries of regulated substance by a remote fill pipe connected to an above ground storage tank shall be equipped with a containment sump at the connection to the UST.

(2) Any remote fill piping shall be constructed of double walled piping and be interstitially monitored in accordance with 20.5.108.811 NMAC or 20.5.108.813 NMAC as applicable.

(3) Remote fill piping shall be equipped with a transition sump where the piping enters the ground from the AST.

(4) Any UST receiving deliveries of regulated substance by a remote fill pipe connected to an AST shall be equipped with redundant overflow prevention and pressure regulating devices to include the following:

(a) an overflow prevention device that shall activate an audible and visual alarm at eighty-five percent of the UST capacity;

(b) an overflow prevention device that shall automatically restrict fuel delivery without increasing pressure on the UST at ninety percent of the UST capacity;

(c) an overflow prevention device that shall automatically shut off the delivery at ninety-five percent of the UST capacity;

(d) devices that monitor and limit both the flow and pressure placed on the UST and the piping from the AST to the UST during the delivery of regulated substance such that the delivery pipe pressure shall not exceed normal operating pressure in accordance with the manufacturer's specification; and

(e) a tank venting system, which must be adequately sized to ensure that atmospheric pressure is continuously maintained, including during filling and emptying of tank.

**F.** Secondary containment. Owners and operators shall comply with the secondary containment requirements as follows:

(1) Tanks and piping for UST systems with field-constructed tanks replaced after the effective date of these regulations shall be secondarily contained upon installation for tanks with capacities of 50,000 gallons or less that are not part of an airport hydrant system.

(2) Secondary containment shall not be required for piping on UST systems with field-constructed tanks that are replaced after the effective date of these regulations where the tank capacity is greater than 50,000 gallons.

(3) Hydrant pits installed on existing airport hydrant systems after the effective date of these regulations shall be secondarily contained.

**G.** Owners and operators shall use one of the following codes of practice to comply with corrosion protection requirements in this section:

(1) *NACE International Standard Practice SP 0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”*;

(2) *NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”*;

(3) *National Leak Prevention Association Standard 631, Chapter C, “Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection”*; or

(4) *American Society for Testing and Materials Standard G158, “Standard Guide for Three Methods of Assessing Buried Steel Tanks”*.

**H.** In addition to the industry codes of practice and standards listed in 20.5.106 NMAC and 20.5.109 NMAC owners and operators may use *Unified Facilities Criteria (UFC) 3-460-01, “Design: Petroleum Fuel Facilities”* to comply with these requirements.  
[20.5.114.1401 NMAC - N, 07/24/2018]

#### **20.5.114.1402 ADDITIONAL REQUIREMENTS FOR HYBRID STORAGE TANK SYSTEMS.**

**A.** Owners and operators of hybrid storage tank systems shall, no later than one year after the effective date of these regulations, install redundant automatic shut off and manual override equipment on the piping transferring a regulated substance from the AST to the UST in order to prevent overfills.

**B.** Owners and operators of existing hybrid storage tank systems who replace the underground piping on or after the effective date of these regulations shall install double walled piping including but not limited to the underground remote fill piping. Containment sumps shall be installed at both ends of the underground piping. The new underground piping shall be interstitially monitored monthly in accordance with 20.5.108.811 NMAC or 20.5.108.813 NMAC as applicable upon installation.  
[20.5.114.1402 NMAC - N, 07/24/2018]

#### **20.5.114.1403 NEW AIRPORT HYDRANT SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS.**

**A.** Owners and operators of airport hydrant systems and field-constructed USTs installed after the effective date of the regulations shall comply with all applicable parts of 20.5 NMAC upon installation.

**B.** Airport hydrant systems shall not be required to meet secondary containment requirements for piping.

**C.** UST systems with field-constructed tanks with a tank capacity greater than 50,000 gallons shall not be required to meet secondary containment requirements for piping.

**D.** Owners and operators shall not install hybrid storage tank systems after the effective date of these regulations.

[20.5.114.1403 NMAC - N, 07/24/2018]

**20.5.114.1404 OPERATION AND MAINTENANCE OF AIRPORT HYDRANT SYSTEMS, USTs WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS.** Owners and operators shall comply with the requirements in 20.5.107 NMAC and 20.5.110 NMAC no later than three years after the effective date of these regulations

for existing systems and upon installation for new systems. In addition to the monthly inspection requirements in 20.5.107.707 NMAC, owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry per the occupational safety and health administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection per 20.5.107.714 NMAC.

**A.** Hydrant pits--visually check for any damage; remove any liquid or debris; and check for any leaks, and

**B.** Hydrant piping vaults--check for any hydrant piping leaks.  
[20.5.114.1404 NMAC - N, 07/24/2018]

**20.5.114.1405 OPERATOR TRAINING REQUIREMENTS FOR AIRPORT HYDRANT SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:** Owners and operators shall comply with the requirements in 20.5.104 NMAC no later than three years after the effective date of these regulations for existing systems and upon installation for new systems.

[20.5.114.1405 NMAC - N, 07/24/2018]

**20.5.114.1406 DEADLINE FOR IMPLEMENTATION OF RELEASE DETECTION:**

Owners and operators of existing airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems shall meet release detection requirements described in this part no later than three years after the effective date of these regulations.

[20.5.114.1406 NMAC - N, 07/24/2018]

**20.5.114.1407 METHODS OF RELEASE DETECTION FOR UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS.**

**A.** Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons shall meet the release detection requirements in 20.5.108 NMAC.

**B.** Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons shall meet either the requirements in 20.5.108 NMAC (except 20.5.108.806 NMAC and 20.5.108.807 NMAC shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(1) conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(2) use an automatic tank gauging system that can detect a leak rate less than or equal to one gallon per hour to perform release detection at least every 30 days. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate that is performed at least every three years;

(3) use an automatic tank gauging system that can detect a leak rate less than or equal to two gallons per hour to perform release detection at least every 30 days. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate that is performed at least every two years;

(4) perform vapor monitoring (conducted in accordance with 20.5.108.806 NMAC for a tracer compound placed in the storage tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(5) perform inventory control (conducted in accordance with department of defense *Directive 4140.25-M; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(a) perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(b) perform vapor monitoring or groundwater monitoring (conducted in accordance with 20.5.108.806 NMAC and 20.5.108.807 NMAC, respectively, for the stored regulated substance) at least every 30 days.

[20.5.114.1407 NMAC - N, 07/24/2018]

**20.5.114.1408 METHODS OF RELEASE DETECTION FOR PIPING.**

**A.** Owners and operators of underground piping associated with USTs with field-constructed tanks less than or equal to 50,000 gallons shall meet the release detection requirements in 20.5.108 NMAC.

**B.** Owners and operators of underground piping associated with airport hydrant systems and USTs with field-constructed tanks greater than 50,000 gallons shall follow either the requirements in 20.5.108 NMAC (except 20.5.108.806 NMAC and 20.5.108.807 NMAC shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(1) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

| <b>Maximum Leak Detection Rate Per Test Section Volume</b> |   |   |
|--|---|---|
| <b>Test Section Volume (Gallons)</b>                       | <b>Semiannual Test - Leak Detection Rate Not to Exceed (Gallons Per Hour)</b> | <b>Annual Test - Leak Detection Rate Not to Exceed (Gallons Per Hour)</b> |
| < 50,000   | 1.0   | 0.5   |
| ≥ 50,000 to < 75,000                                       | 1.5   | 0.75  |
| ≥ 75,000 to < 100,000                                      | 2.0   | 1.0   |
| ≥ 100,000  | 3.0   | 1.5   |

(2) Piping segment volumes greater than or equal to 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test shall test according to the following schedule:

(a) First test shall be conducted no later than three years after the effective date of these regulations and the leak rate the test shall be no greater than six gallons per hour.

(b) Second test shall be conducted no later than six years after the effective date of these regulations and the leak rate for the test shall be no greater than six gallons per hour.

(c) Third test shall be conducted no later than seven years after the effective date of these regulations and the leak rate for the test shall be three gallons per hour.

(d) Subsequent tests conducted after seven years from the effective date of these regulations shall be semiannual or annual and conducted in accordance with Subparagraph (1) of this section.

(3) Perform vapor monitoring (conducted in accordance with 20.5.108.806 NMAC for a tracer compound placed in the storage tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(4) Perform inventory control (conducted in accordance with department of defense *Directive 4140.25-M; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(a) perform a line tightness test (conducted in accordance with Paragraph (1) of this section using the leak rates for the semiannual test) at least every two years; or

(b) perform vapor monitoring or groundwater monitoring (conducted in accordance with 20.5.108.806 NMAC and 20.5.108.807 NMAC, respectively, for the stored regulated substance) at least every 30 days; or

(5) Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in Paragraphs (1) through (4) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect as well as the frequency and reliability of detection.

C. Owners and operators of hybrid storage tank systems shall meet release detection requirements for the piping between the above ground tank and the underground tank as follows:

(1) existing above ground piping may be monthly monitored by use of visual inspection if the requirements in 20.5.111.1102 NMAC are met; or

(2) existing underground piping shall meet the requirements for release detection in 20.5.108 NMAC.

[20.5.114.1408 NMAC - N, 07/24/2018]

**20.5.114.1409 RELEASE REPORTING:** Owners and operators shall report any suspected or confirmed releases to the department in accordance with the requirements in 20.5.118 NMAC.

[20.5.114.1409 NMAC - N, 07/24/2018]

**20.5.114.1410 CLOSURE REQUIREMENTS:** Owners and operators of airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems shall comply with closure requirements in 20.5.115 NMAC for temporary closure, return to service, and permanent closures.

A. Owners and operators of hybrid storage tank systems shall permanently close any above ground storage tanks in accordance with the requirements in 20.5.115.1502 NMAC within 12 months of placing them in temporary closure. Once owners and operators have placed the above ground storage tanks into temporary closure they can no longer return them to service.

B. Owners and operators shall use the *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* to comply with the requirements in this section.

[20.5.114.1410 NMAC - N, 07/24/2018]

**20.5.114.1411 APPLICABILITY OF CLOSURE REQUIREMENTS TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:** When directed by the department, the owner and operator of an UST system with field-constructed tanks, airport hydrant system, or hybrid storage tank system permanently closed before the effective date of these regulations must assess the

excavation zone and close the storage tank system in accordance with 20.5.115 NMAC if releases from the storage tank system may, in the judgment of the department, pose a current or potential threat to human health and the environment.

[20.5.114.1411 NMAC - N, 07/24/2018]

**20.5.114.1412 ALTERNATE METHOD REQUEST:** Owners and operators of airport hydrant fuel distribution systems and UST systems with field-constructed tanks shall comply with either 20.5.106.617 NMAC, 20.5.107.713 NMAC, 20.5.109.920 NMAC, and 20.5.110.1014 NMAC when submitting an alternate method request.

[20.5.114.1412 NMAC - N, 07/24/2018]

**20.5.114.1413 RECORDKEEPING:** Owners and operators shall maintain records, including release detection records, according to the recordkeeping requirements in 20.5.107.714 NMAC, 20.5.108.815 NMAC, 20.5.110.1015 NMAC and 20.5.111.1111 NMAC.

[20.5.114.1413 NMAC - N, 07/24/2018]

**20.5.114.1414 REPORTING:** Owners and operators shall meet the reporting requirements in 20.5.107.715 NMAC, 20.5.108.816 NMAC, 20.5.110.1016 and 20.5.111.1112 NMAC.

[20.5.114.1414 NMAC - N, 07/24/2018]

**History of 20.5.114 NMAC [RESERVED]**





**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 115 OUT-OF-SERVICE STORAGE TANK SYSTEMS AND CLOSURE**

**20.5.115.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.115.1 NMAC - N, 07/24/2018]

**20.5.115.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. Owners and operators of airport hydrant systems, field-constructed tanks, and hybrid storage tank systems shall follow the requirements for temporary closure and return to service requirements in 20.5.114 NMAC in addition to the requirements in this part.  
[20.5.115.2 NMAC - N, 07/24/2018]

**20.5.115.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-16 NMSA 1978.  
[20.5.115.3 NMAC - N, 07/24/2018]

**20.5.115.4 DURATION:** Permanent.  
[20.5.115.4 NMAC - N, 07/24/2018]

**20.5.115.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.115.5 NMAC - N, 07/24/2018]

**20.5.115.6 OBJECTIVE:** The purpose of 20.5.115 NMAC is to regulate storage tank systems to protect the public health, safety and welfare and the environment of the state, and to provide safe and effective closure requirements for out-of-service systems.  
[20.5.115.6 NMAC - N, 07/24/2018]

**20.5.115.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.115.7 NMAC - N, 07/24/2018]

**20.5.115.8 to 20.5.115.1499 [RESERVED]**

**20.5.115.1500 REQUIRED NOTIFICATION PRIOR TO TEMPORARY OR PERMANENT CLOSURE, RETURN TO SERVICE, REMOVAL, OR CHANGE IN SERVICE:**

- A. Notice required.
  - (1) At least 30 days before beginning either permanent closure, temporary closure, return to service, change in service, or removal of a tank pursuant to this part, or within another reasonable time period if approved in advance by the department, owners and operators

shall notify the department in writing of their intent to remove, close or make the return to or change in service, unless such action is in response to corrective action.

(2) If owners and operators do not notify the department that a tank is out of service, the tank shall be considered to be in service for the purpose of these regulations.

(3) Additionally, owners and operators shall notify the department in writing at least 30 days prior to placing any regulated substance into a tank that has been in temporary or permanent closure, or before a return to service.

**B.** Opportunity for inspector to be present. To ensure that a department inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the removal, change in service, return to service and closure of the storage tank system are to take place. This notice shall be given at least 24 hours before any critical juncture begins and shall be either oral or written. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**C.** Critical junctures. For removal, change in service, return to service, or storage tank system closure, the term “critical junctures” means:

- (1) completion of the excavation of a UST or piping;
- (2) cleaning and inerting of a tank;
- (3) the actual removal of a UST or its associated piping from the ground, or the filling of a UST in place;
- (4) actual permanent closure of an AST and its associated piping from any location where it has been in use; and
- (5) assessment of a tank site for releases.

**D.** At a minimum, the notice for removal, change in service, return to service or temporary or permanent closure of a storage tank system shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, and address, and telephone number;
- (4) description of type of change of status (change in service, return to service or closure);
- (5) expected date of change in service, return to service or closure; and
- (6) signature of owner, operator or an authorized representative.

**E.** In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection D of this section, such as different equipment or removal methods.

**F.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.115.1500 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used. The form is available on the petroleum storage tank bureau’s pages on the department website

([https://www.env.nm.gov/petroleum\\_storage\\_tank/inspection-forms-2/](https://www.env.nm.gov/petroleum_storage_tank/inspection-forms-2/)) or by contacting the

petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

**20.5.115.1501 TEMPORARY CLOSURE AND RETURN TO SERVICE:**

**A.** When a storage tank system is in temporary closure and the tank contains greater than one inch or 0.3 percent by weight of the total capacity of the storage tank system of a regulated substance, owners and operators shall:

- (1) continue to operate, maintain, and monitor corrosion protection systems in accordance with 20.5.107 NMAC and 20.5.110 NMAC;
- (2) continue to maintain financial responsibility in accordance with 20.5.117 NMAC;
- (3) continue to meet the requirements for operator training in 20.5.104 NMAC;
- (4) continue to meet operation and maintenance requirements for secondary containment, spill prevention equipment, overfill prevention equipment, and release detection, in accordance with 20.5.107 NMAC and 20.5.110 NMAC;
- (5) continue to meet release detection requirements in 20.5.108 NMAC and 20.5.111 NMAC;
- (6) continue to meet piping release detection requirements in 20.5.108 NMAC or 20.5.111 NMAC until the piping is purged of regulated substances and capped; and
- (7) continue to comply with 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC if a release is suspected or confirmed.

**B.** As long as a storage tank system is in temporary closure and the tank contains one inch or less or the storage tank system contains 0.3 percent by weight or less of the total capacity of the storage tank system of a regulated substance, owners and operators shall comply with Subsection A of this section except for the following:

- (1) release detection requirements in 20.5.108 NMAC and 20.5.111 NMAC;
- (2) periodic testing and inspection requirements for spill prevention, overfill prevention, release detection, and secondary containment in 20.5.107 NMAC and 20.5.110 NMAC;
- (3) periodic operation and maintenance walk-through inspections in 20.5.107.707 NMAC and 20.5.110.1008 NMAC; and
- (4) If the storage tank system does not have steel components that are in contact with soil, water, or concrete, owners and operators are exempt from operator re-training requirements in 20.5.104 NMAC.

**C.** When a storage tank system is temporarily closed for three months or more, owners and operators shall also comply with all of the following requirements:

- (1) leave vent lines open and functioning;
  - (2) cap and secure all other lines, pumps, manways, and ancillary equipment;
- and
- (3) for AST systems, disconnect and cap all associated piping from the AST as soon as the tank is emptied in accordance with Subsection B of this section.

**D.** When a UST system is temporarily closed for more than 12 months, owners and operators shall permanently close the UST system if it does not meet either performance standards for new UST systems or the UST system upgrade requirements in 20.5.106 NMAC, except that the spill and overfill equipment requirements do not have to be met. Owners and

operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.115 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.115 NMAC and shall be current with all tank fees before applying for such an extension.

**E.** When an AST system is temporarily closed for more than 12 months, owners and operators shall permanently close the AST system if it does not meet the performance standards for new AST systems in 20.5.109 NMAC except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.115 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.115 NMAC and shall be current with all tank fees before applying for such an extension.

**F.** When a storage tank system will be temporarily closed for more than 12 cumulative months, owners and operators must apply for an extension at least 30 days prior to the end of the twelfth cumulative month. In order to apply for an extension, owners and operators shall:

- (1) empty the tank and purge the piping of regulated substances so that the tank contains one inch or less or the system contains three-tenths percent by weight or less of the total capacity of the storage tank system of a regulated substance;
- (2) perform a site assessment in accordance with 20.5.115.1504 NMAC;
- (3) pay all annual tank fees and all accrued late fees for all tanks they own or operate in accordance with 20.5.103 NMAC;
- (4) meet financial responsibility requirements in 20.5.117 NMAC;
- (5) apply in writing to the department and include records demonstrating completion of Paragraphs (1) through (4) of Subsection F of this section and include all of the information in Subsection D of 20.5.115.1500 NMAC.

**G.** When a field-erected AST system or field constructed UST system has been temporarily closed for three months or more and meets the performance standards for new storage tank systems in 20.5.106 NMAC, 20.5.109 NMAC, or 20.5.114 NMAC, prior to placing any regulated substance in the system, owners and operators shall:

- (1) perform an internal inspection, integrity test, or tightness test on the tank in accordance with the requirements in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC;
- (2) perform a tightness test on all piping in accordance with the requirements in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC; and
- (3) perform functionality testing or inspections on leak detection equipment in accordance with the requirements for annual or periodic testing in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC.

**H.** After temporary or permanent closure and before returning any part of a storage tank system to service, owners and operators shall demonstrate the integrity of the entire storage tank system in a manner approved in advance by the department.

**I.** A delivery of a regulated substance into a tank in temporary closure shall be considered a return to service and all of the requirements for a tank in service shall be met.

**J.** Owners and operators of temporarily or permanently closed storage tank systems shall use one or more of the following as applicable to the type of storage tank system to meet the requirements in this section:

- (1) *American Petroleum Institute Publication RP 1615, “Installation of Underground Petroleum Storage Systems”;*
  - (2) *American Petroleum Institute Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction”;*
  - (3) *American Petroleum Institute Publication RP 1110, “Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquid, or Carbon Dioxide”;*
  - (4) *Petroleum Equipment Institute Recommended Practice RP 200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor-Vehicle Fueling”;*
  - (5) *Unified Facilities Criteria (UFC) 3-460-01, “Petroleum Fuel Facilities”;*
- or
- (6) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”.*

[20.5.115.1501 NMAC - N, 07/24/2018]

**20.5.115.1502 PERMANENT CLOSURE:**

**A.** To permanently close a tank, owners and operators shall empty and clean it by removing all liquids, accumulated sludges, and vapors. Owners and operators shall properly dispose of any liquids and sludge removed from a storage tank.

(1) Owners and operators shall either remove from the ground all USTs closed permanently, fill them with an inert solid material or close in place in a manner approved by the department.

(2) Owners and operators shall perform the following closure operations on AST systems:

(a) ASTs being closed in place shall be rendered vapor free; owners and operators shall make provisions for adequate ventilation to ensure that the AST remains vapor free;

(b) vent lines shall remain open and shall be maintained in accordance with the current edition of a standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer’s recommendations;

(c) all access openings shall be secured, normally with spacers, to assist ventilation;

(d) ASTs shall be secured against tampering and flooding;

(e) the name of the product last stored, the date of permanent closure and “PERMANENTLY CLOSED” shall be stenciled in a readily visible location on each AST;

(f) piping shall be removed or closed in place; if closed in place, piping shall be disconnected from ASTs, rendered vapor free, and filled with inert material, capped or blind flanged; owners and operators seeking to close piping in place shall propose a closure plan for the piping in writing to the department at least 30 days prior to closure; the department may approve the plan on a case-by-case basis, after considering the extent and depth of piping, the proximity of the piping to buildings, the extent of pavement at the facility, and other factors raised by owners and operators; if the department does not approve a closure plan, owners and operators shall remove the piping; and

(g) owners and operators shall dismantle or remove AST systems and secondary containment to the extent needed to conduct the site assessment required in 20.5.115.1504 NMAC.

(3) For mobile AST systems, owners and operators shall perform all of the closure requirements in Paragraph (2) of this subsection, except they need not perform the requirements of Subparagraph (e) of Paragraph (2) of this subsection. Owners and operators shall remove or cap piping when permanently closing a mobile AST. Owners and operators shall perform a site assessment that complies with the requirements of 20.5.115.1504 NMAC before permanent closure of any permanently installed mobile tank is completed.

**B.** The current edition of the following cleaning and closure procedures shall be used to comply with this section as applicable:

(1) *American Petroleum Institute Publication RP 1604, “Closure of Underground Petroleum Storage Tanks”*;

(2) *American Petroleum Institute Standard 2015, “Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks”*;

(3) *American Petroleum Institute Publication RP 2016, “Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks”*;

(4) *American Petroleum Institute Publication 2202, “Guidelines for Protecting Against Lead Hazards when Dismantling and Disposing of Steel from Tanks that have Contained Leaded Gasoline”*;

(5) *American Petroleum Institute Publication RP 1631, “Interior Lining and Periodic Inspections of Underground Storage Tanks”*; or

(6) *The National Institute for Occupational Safety and Health “Criteria for a Recommended Standard: Working in Confined Space”*.

**C.** Owners and operators shall perform an assessment meeting the requirements of 20.5.115.1504 NMAC after notifying the department but before completion of permanent closure.

**D.** Owners and operators that have installed any monitoring wells as release detection pursuant to 20.5.108 NMAC shall properly close the wells in a manner approved by the department as part of permanent closure activities.

[20.5.115.1502 NMAC - N, 07/24/2018]

### **20.5.115.1503 CHANGES IN SERVICE:**

**A.** Continued use of a storage tank system to store a non-regulated substance is a change in service.

**B.** Owners and operators shall notify the department in compliance with 20.5.115.1500 NMAC of any change in service, and any change in location of AST systems that are operational and registered pursuant to 20.5.102 NMAC.

**C.** Before a change in service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge and shall properly dispose of any liquids and sludge removed from a storage tank. Owners and operators shall also conduct a site assessment meeting the requirements of 20.5.115.1504 NMAC. The current edition of the following cleaning and closure procedures shall be used as applicable to comply with the requirements of this section:

(1) *American Petroleum Institute Publication RP 1604, “Closure of Underground Petroleum Storage Tanks”*;

- (2) *American Petroleum Institute Standard 2015, “Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks”;*
  - (3) *American Petroleum Institute Publication RP 2016, “Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks”;*
  - (4) *American Petroleum Institute Publication 2202, “Guidelines for Protecting Against Lead Hazards when Dismantling and Disposing of Steel from Tanks that have Contained Leaded Gasoline”;*
  - (5) *American Petroleum Institute Publication RP 1631, “Interior Lining and Periodic Inspections of Underground Storage Tanks”;* or
  - (6) *The National Institute for Occupational Safety and Health “Criteria for a Recommended Standard: Working in Confined Space”.*
- [20.5.115.1503 NMAC - N, 07/24/2018]

#### **20.5.115.1504 ASSESSING THE SITE AT CLOSURE OR CHANGE IN SERVICE:**

**A.** Before permanent closure or a change in service is completed, owners and operators shall measure for the presence of a release where contamination is most likely to be present at the storage tank site.

(1) In selecting sample types, sample locations, and measurement methods, the bureau shall consider the method of closure, the nature of the stored regulated substance, the type of backfill for any USTs, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Examples of sample locations may include but are not limited to piping junctions, under dispensers and under storage tanks.

(2) A bureau inspector may waive the requirement for soil sampling when an AST is closed or may require alternate tests for the presence of a release, based on site specific conditions that demonstrate equivalent environmental protection. For example, at a site where an AST has been operated for less than 10 years with impervious secondary containment, the inspector may waive soil sampling as the secondary containment would have effectively prevented any release outside the containment. The bureau may require soil sampling or a site assessment at a later date if site-specific circumstances indicate that a release may have occurred.

(3) The requirements of this section are satisfied if one of the external release detection methods allowed in 20.5.108.806 NMAC and 20.5.108.807 NMAC is operating in accordance with the requirements in 20.5.108 NMAC at the time of closure and indicates no release has occurred.

**B.** If contaminated soils, contaminated groundwater, non-aqueous phase liquid or vapor is discovered as a result of activities required by this section, or by any other manner, owners and operators shall notify the department in accordance with 20.5.118 NMAC and begin corrective action in accordance with 20.5.119 NMAC and 20.5.120 NMAC.

[20.5.115.1504 NMAC - N, 07/24/2018]

#### **20.5.115.1505 APPLICABILITY TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:**

**A.** When directed by the department, owners and operators of UST systems permanently closed before December 22, 1988, shall assess the excavation zone and close the UST systems in accordance with this part if releases from the UST system may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

**B.** When directed by the department, owners and operators of AST systems permanently closed before August 15, 2003, shall assess the entire AST system area and close the AST systems in accordance with this part if releases from the AST system may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

[20.5.115.1505 NMAC - N, 07/24/2018]

**20.5.115.1506 CLOSURE RECORDS:**

**A.** Owners and operators shall maintain records in accordance with 20.5.107 NMAC and 20.5.110 NMAC that demonstrate compliance with all closure requirements of this part.

**B.** Owners and operators shall ensure that the results of the assessment required in 20.5.115.1504 NMAC are maintained in accordance with 20.5.107.714 NMAC and 20.5.110.1015 NMAC after completion of permanent closure or change in service in one of the following ways:

- (1) by the owners and operators who took the storage tank system out of service;
- (2) by the current owners and operators of the storage tank system site; or
- (3) by mailing these records to the department if they cannot be maintained at the closed facility.

[20.5.115.1506 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.115 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure, filed 9/12/88.

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure, filed 8/4/89.

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure, filed 6/12/90.

**History of Repealed Material:** EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure (filed 2/27/97), repealed 8/15/03.

20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 7/16/03) repealed 4/4/08.

20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 4/4/08) repealed 7/24/18.

**Other History:**

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure (filed 6/12/90) renumbered, reformatted and replaced by 20 NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure, effective 11/5/95.

20 NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure (filed 10/6/95) was replaced by 20 NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure, effective 4/1/97.



20 NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure, effective 8/15/03.

20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 7/16/03) replaced by 20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure, effective 4/4/08.

20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 7/16/03) was renumbered reformatted, and replaced by 20.5.115 NMAC, Petroleum Storage Tanks - Out-Of-Service Storage Tank Systems And Closure, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 116 DELIVERY PROHIBITION**

**20.5.116.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.116.1 NMAC - N, 07/24/2018]

**20.5.116.2 SCOPE:** This part applies to owners and operators of storage tanks and facilities holding petroleum and to product deliverers, as defined in 20.5.101 NMAC, who deliver petroleum, and to any person subject to the provisions of 20.5 NMAC.  
[20.5.116.2 NMAC - N, 07/24/2018]

**20.5.116.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Groundwater Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.116.3 NMAC - N, 07/24/2018]

**20.5.116.4 DURATION:** Permanent.  
[20.5.116.4 NMAC - N, 07/24/2018]

**20.5.116.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.116.5 NMAC - N, 07/24/2018]

**20.5.116.6 OBJECTIVE:** The purpose of this part is to set forth the prohibitions for the delivery, deposit, or acceptance of product at or to a storage tank or a facility that has been determined by the department to be ineligible for such delivery, deposit or acceptance, in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.116.6 NMAC - N, 07/24/2018]

**20.5.116.7 DEFINITIONS:** The definitions in 20.5.101 NMAC shall apply to this part.  
[20.5.116.7 NMAC - N, 07/24/2018]

**20.5.116.8 to 20.5.116.1599 [RESERVED]**

**20.5.116.1600 GENERAL:** It shall be unlawful for any owner, operator or product deliverer to deliver to, deposit into or accept a regulated substance at or to a storage tank or a facility that has been identified by the department as ineligible for product delivery, deposit or acceptance. It shall also be unlawful for any person to remove, tamper with, destroy or damage a red tag or certificate posted pursuant to this part.  
[20.5.116.1600 NMAC - N, 07/24/2018]

### **20.5.116.1601 DELIVERY PROHIBITIONS:**

**A.** Mandatory ineligibility. The department shall classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or shall classify a facility as ineligible for delivery or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) required spill prevention equipment is not installed;
- (2) required overfill protection equipment is not installed;
- (3) required leak detection equipment is not installed; or
- (4) required corrosion protection equipment is not installed, including required corrosion protection equipment for a buried metal flexible connector.

**B.** Discretionary ineligibility. The department may, in its sole discretion, classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or may classify a facility as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) improper operation or maintenance of required equipment for:
  - (a) spill prevention;
  - (b) overfill prevention;
  - (c) leak detection;
  - (d) corrosion protection; or
- (2) operation of the storage tank or facility in a manner that creates an imminent threat to public health and the environment.

[20.5.116.1601 NMAC - N, 07/24/2018]

### **20.5.116.1602 PROCEDURES FOR CLASSIFYING A STORAGE TANK OR FACILITY AS INELIGIBLE:**

**A.** Mandatory ineligibility. Notice of intent to red tag: Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection A of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of intent to red tag stating the violations and providing the owner or operator 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to each storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC and shall grant a deferral as provided in 20.5.116.1608 NMAC.

**B.** Discretionary ineligibility.

(1) Notice of violation. Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection B of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of violation stating the violation and providing the owner or operator 30 days from the date of the notice to correct the violation. The notice of violation shall inform the owner and operator that the violation cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(2) Notice of deficiency. If the owner or operator fails to correct the violations within the timeframe provided in the notice of violation, the department shall issue the owner or operator a notice of deficiency re-stating the violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of

deficiency shall inform the owner and operator that the violations cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(3) Notice of intent to red tag. If the owner or operator fails to correct the violations within the timeframe provided in the notice of deficiency, the department shall issue the owner or operator a notice of intent to red tag re-stating the violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to the identified tanks at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC and shall grant a deferral as provided in 20.5.116.1608 NMAC.

C. Red tag placement and ineligibility for delivery. If the owner or operator fails to correct the violations within the timeframe provided in the notice of intent to red tag, the department shall affix a red tag to the fill pipe of every storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility pursuant to 20.5.116.1603 NMAC.

D. Notification of installation, replacement, repair or modification. Owners and operators shall give the department notice of any installation, replacement, repair or modification performed to correct the conditions listed in the notice of violation, notice of deficiency or notice of intent to red tag in accordance with 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, and 20.5.110 NMAC. The department may grant a waiver shortening the notification time periods required by those parts if warranted by the circumstances.  
[20.5.116.1602 NMAC - N, 07/24/2018]

#### **20.5.116.1603 IDENTIFICATION OF INELIGIBLE STORAGE TANKS OR FACILITIES:**

A. Red tag. In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been identified by the department as ineligible under 20.5.116.1601 NMAC and 20.5.116.1602 NMAC, the department shall affix a tamper-proof red tag to the fill pipe of every storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility 48 hours after posting the name and address of the facility on the department's website list of facilities that are ineligible for delivery ([https://www.env.nm.gov/petroleum\\_storage\\_tank/delivery-prohibition/](https://www.env.nm.gov/petroleum_storage_tank/delivery-prohibition/)). The department shall document the level of stored product in each storage tank with one or more conditions identified under 20.5.116.1601 NMAC prior to affixing a red tag to the fill pipe(s) of the storage tank.

B. Certificate. In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been classified by the department as ineligible under 20.5.116.1601 NMAC, the department shall post a certificate, conspicuously displayed at the facility, clearly prohibiting the delivery, deposit or acceptance of product at every storage tank at the facility to which the department has affixed a red tag.

C. Red tag tampering prohibited. It shall be unlawful for any person, other than an authorized representative of the department, to remove, tamper with, destroy or damage a red tag affixed to any storage tank or a certificate posted at a storage tank facility by department personnel.

D. Performance standards. Owners and operators shall continue to adhere to all performance standards of 20.5 NMAC after placement of one or more red tags and a certificate

at a facility, including but not limited to leak detection, corrosion protection and monthly inspections.

[20.5.116.1603 NMAC - N, 07/24/2018]

**20.5.116.1604 REGULATED SUBSTANCE REMOVAL:** Owners and operators shall empty all regulated substances from storage tanks that have been affixed with a red tag if the violations have not been corrected within 30 days of the placement of the red tag. This section shall not limit or supersede the application of 20.5.118 NMAC in the event of a suspected or confirmed release. If no suspected or confirmed release exists, owners and operators shall:

**A.** empty all regulated substances from each storage tank at the facility that has been affixed with a red tag in accordance with 20.5.115 NMAC, and shall provide written notice to the inspector who issued the red tag when each tank has been emptied, with the name, address, telephone number and email address of the person who removed the regulated substances from the tank; and

**B.** continue to meet all requirements for temporary closure in 20.5.115.1501 NMAC, including operation of cathodic protection and release detection equipment and payment of the annual fee, or shall permanently close the storage tank system in accordance with 20.5.115.1502 NMAC.

[20.5.116.1604 NMAC - N, 07/24/2018]

**20.5.116.1605 PERMANENT CLOSURE:** Owners and operators shall permanently close a storage tank system that has been affixed with a red tag if the violations associated with the red tag have not been corrected within 12 months of the placement of the red tag. Permanent closure must meet the requirements in 20.5.115.1502 NMAC, including notification requirements.

[20.5.116.1605 NMAC - N, 07/24/2018]

**20.5.116.1606 RED TAG PLACEMENT AND NOTIFICATION PROCESSES FOR STORAGE TANK OWNERS AND OPERATORS AND PRODUCT DELIVERERS:**

**A.** Owners and operators. Notification of red tag placement, including a tank's status as being ineligible for deliveries, shall be provided to an owner or operator in the following manner:

(1) Owner or operator present. If the owner or operator is present on the site, the department shall provide to the owner or operator the notice of red tag placement and ineligibility for delivery.

(2) Owner and operator not present. If neither the owner nor operator is present on the site, the department shall immediately notify an employee in charge of the facility, if such employee is present, of red tag placement and ineligibility for delivery and shall send a copy of the written notice to the owner and operator within 24 hours of notifying the employee in charge of the facility or of affixing a red tag and certificate.

**B.** Product deliverers. The department shall notify all product deliverers 48 hours before the department affixes a red tag to the fill pipes of each storage tank with one or more conditions identified under 20.5.116.1601 NMAC by posting the name and address of the facility on the department's website list of facilities that contain storage tanks which are ineligible for delivery. Product deliverers shall be responsible for checking the website or contacting the department prior to any product delivery.

[20.5.116.1606 NMAC - N, 07/24/2018]

[The department provides a list of storage tank facilities containing storage tanks with delivery prohibitions. The list is available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/delivery-prohibition/](https://www.env.nm.gov/petroleum_storage_tank/delivery-prohibition/)) or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.116.1607 RECLASSIFYING INELIGIBLE STORAGE TANKS OR FACILITIES AS ELIGIBLE TO RECEIVE PRODUCT:**

**A.** Statement of compliance from owner or operator. In order for an owner or operator of a storage tank or facility which has been determined by the department as ineligible under this rule to have the storage tank or facility reclassified by the department as eligible to receive delivery of product, the owner or operator shall provide a written statement of compliance to the department and the inspector listed in the notice that the conditions listed in the notice of intent to red tag have been corrected. The written statement shall contain the date, owner or operator's name, how the conditions have been corrected, by whom, and the date of correction.

**B.** Department confirmation. The department shall, in its sole discretion, determine whether the conditions listed in the notice of intent to red tag have been corrected as soon as practicable but within no more than three business days after receipt of the owner's written statement of compliance. If the conditions have not been corrected, the department shall notify the owner or operator in the manner prescribed by 20.5.116.1606 NMAC.

**C.** Removal of red tag and notice of ineligibility. Upon verification of compliance, department personnel shall:

- (1) immediately remove each red tag and certificate at the facility, and document the level of product in each tank; and
- (2) as soon as practicable, but in no event longer than three business days, remove the facility from the department's website list of facilities that contain storage tanks which are ineligible for delivery.

[20.5.116.1607 NMAC - N, 07/24/2018]

**20.5.116.1608 DELIVERY PROHIBITION DEFERRAL IN RURAL AND REMOTE AREA AND FOR MATTERS OF NATIONAL SECURITY:** The department shall defer classifying a storage tank or facility as ineligible for delivery, deposit or acceptance of product if such classification would jeopardize the availability of, or access to, motor fuel in a rural and remote area as defined in 20.5.101.7 NMAC, or where the United States department of defense operates a storage tank and notifies the department that continued operation of the tank is a matter of national security. The department may only defer application of delivery prohibition for up to 180 days from the date of the issuance of the notice of intent to red tag pursuant to Subsection A of 20.5.116.1602 NMAC or Paragraph (3) of Subsection B of 20.5.116.1602 NMAC.

[20.5.116.1608 NMAC - N, 07/24/2018]

**20.5.116.1609 DELIVERY AUTHORIZATION IN EMERGENCY SITUATIONS OR FOR TANK TESTING:**

**A.** Emergency situations. The department may authorize delivery or deposit of product to an emergency generator tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that:

- (1) a commercial power failure or other declared state of emergency exists;
- and
- (2) the emergency generator tank:
    - (a) provides power supply;
    - (b) stores petroleum; and
    - (c) is used solely in connection with an emergency system, legally required standby system or optional standby system.

**B.** Tank testing. The department may authorize delivery or deposit of product to a storage tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that delivery or deposit is necessary to test or calibrate a tank.

[20.5.116.1609 NMAC - N, 07/24/2018]

**20.5.116.1610 ADDITIONAL REQUIREMENTS:**

**A.** Storage tank equipment tampering prohibited. It shall be unlawful for any person, including product deliverers, to remove, tamper with, destroy, damage or disable storage tank equipment, including but not limited to release detection and other safety mechanisms, in the course of delivery of any product.

**B.** Compliance with rules. A product deliverer shall be responsible for ensuring that all deliveries are made in compliance with 20.5 NMAC.

[20.5.116.1610 NMAC - N, 07/24/2018]

**20.5.116.1611 ADMINISTRATIVE APPEALS:** Any owner or operator of a facility that contains storage tanks to which the department has affixed a red tag prohibiting delivery pursuant to this part may appeal to the secretary by submitting a written request for hearing.

**A.** Timelines. The request must be made in writing to the secretary by the owner or operator within five business days after the notice of red tag placement has been issued or the decision of the department shall be final. If an appeal is received within the five-business day time limit, the secretary shall hold a hearing within seven business days after receipt of the request, unless the parties agree to an alternate timeframe. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

**B.** Burden of proof. In the appeal hearing, the burden of proof is on the person who requested the hearing.

**C.** Procedures.

(1) Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

(2) The department shall make an audio recording of the hearing. If either party wants the hearing transcribed, that party shall bear the costs of transcription.



(3) In appeal hearings, the rules governing civil procedure and evidence in district court shall not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open, for how long, and for what reason it will be left open.

**D.** Secretary's decision. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within seven business days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

**E.** No stay of action. The filing of an administrative appeal shall not stay any action, compliance or corrective action required by the red tag issued by the department.

**F.** Judicial review. Judicial review of the secretary's final order shall be as provided by law. The filing of a judicial appeal shall not stay any action, compliance or corrective action required by the secretary's decision.

[20.5.116.1611 NMAC - N, 07/24/2018]

**HISTORY of 20.5.116 NMAC:**

Pre-NMAC History: none

**History of Repealed Material:**

20.5.19 NMAC, Petroleum Storage Tanks, Delivery Prohibition (filed 3/17/12), repealed 7/24/18.

**Other History:**

20.5.19 NMAC, Petroleum Storage Tanks, Delivery Prohibition (filed 3/17/12), was renumbered, reformatted, and replaced by 20.5.116 NMAC, Petroleum Storage Tanks, Delivery Prohibition, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 117 FINANCIAL RESPONSIBILITY**

**20.5.117.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.117.1 NMAC - N, 07/24/2018]

**20.5.117.2 SCOPE:** This part applies to owners and operators of petroleum storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.  
[20.5.117.2 NMAC - N, 07/24/2018]

**20.5.117.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-15 NMSA 1978.  
[20.5.117.3 NMAC - N, 07/24/2018]

**20.5.117.4 DURATION:** Permanent.  
[20.5.117.4 NMAC - N, 07/24/2018]

**20.5.117.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.117.5 NMAC - N, 07/24/2018]

**20.5.117.6 OBJECTIVE:** The purpose of this part is to require owners and operators of petroleum storage tanks systems to demonstrate financial responsibility for their systems and to protect the public health, safety and welfare and the environment of the state.  
[20.5.117.6 NMAC - N, 07/24/2018]

**20.5.117.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.117.7 NMAC - N, 07/24/2018]

**20.5.117.8 to 20.5.17.1699 [RESERVED]**

**20.5.117.1700 APPLICABILITY:**

**A.** This part applies to owners and operators of all petroleum storage tank systems except as otherwise provided in this section.

**B.** Owners and operators of petroleum above ground storage tank systems are subject to these requirements in accordance with 20.5.117.1701 NMAC.

**C.** State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this part.

**D.** The requirements of this part do not apply to owners and operators of storage tank systems described in Subsection B or D of 20.5.101.2 NMAC.

**E.** If the owner and operator of a petroleum storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[20.5.117.1700 NMAC - N, 07/24/2018]

**20.5.117.1701 PHASE-IN FOR ABOVE GROUND STORAGE TANKS:** Owners and operators of above ground storage tanks shall comply with the requirements of 20.5.117 NMAC by July 1, 2007.

[20.5.117.1701 NMAC - N, 07/24/2018]

**20.5.117.1702 [RESERVED]**

**20.5.117.1703 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY:**

**A.** Owners and operators of petroleum storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, \$1,000,000; and

(2) For all other owners or operators of petroleum storage tanks, \$500,000.

**B.** Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of one to 100 petroleum underground storage tanks, \$1,000,000; and

(2) for owners or operators of 101 or more petroleum underground storage tanks, \$2,000,000.

**C.** Owners and operators of petroleum above ground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum above ground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of one to 100 petroleum above ground storage tanks, \$1,000,000; and

(2) for owners or operators of 101 or more petroleum above ground storage tanks, \$2,000,000.

The annual aggregate on above ground storage tanks is separate from the annual aggregate on underground storage tanks, although an owner or operator of both above ground and underground storage tanks may include both types of tanks within the same annual aggregate if the aggregate is no less than the total of the annual aggregates required for each type of tank.

**D.** For the purposes of Subsections B, C and G of this section only, “a petroleum underground storage tank” or “a petroleum above ground storage tank” means a single containment unit and does not mean combinations of single containment units.

**E.** Except as provided in Subsection F of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

- (1) taking corrective action;
- (2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- (3) compensating third parties for bodily injury and property damage caused by non-sudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in Subsections A, B and C of this section.

**F.** If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanism.

**G.** Owners and operators shall review the amount of aggregate assurance provided whenever additional petroleum storage tanks are acquired or installed. If the number of either petroleum underground storage tanks or petroleum above ground storage tanks for which assurance shall be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance for that particular type of tank (UST or AST) by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, owner and operators shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

**H.** The amounts of assurance required under this section exclude legal defense costs.

**I.** The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

[20.5.117.1703 NMAC - N, 07/24/2018]

#### **20.5.117.1704 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS:**

**A.** Subject to the limitations of Subsections B and C and the requirements of Subsection D of this section:

(1) an owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1713 NMAC to demonstrate financial responsibility under this part for one or more storage tanks; and

(2) a local government owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1717 NMAC to demonstrate financial responsibility under this part for one or more storage tanks.

**B.** An owner or operator may use a guarantee or surety bond under 20.5.117.1708 NMAC to establish financial responsibility only if the attorney general of the state has submitted a written statement to the department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in this state. The department received this statement on July 24, 1988.

**C.** An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

**D.** An owner or operator who intend to use one mechanism or a combination of mechanisms for tanks in more than one state may use the federal forms found in 40 CFR Part 280. If an owner or operator uses the federal forms, the owner or operator shall attach the following addendum: It is hereby acknowledged and agreed that, with respect to the storage tanks located in New Mexico, any and all references to Subtitle I of the federal Resource Conservation and Recovery Act or to one or more of the regulations of the United States environmental protection agency promulgated under Subtitle I and included in 40 CFR Part 280 are deemed references to the New Mexico Hazardous Waste Act and the applicable provisions of 20.5 NMAC, the New Mexico petroleum storage tank regulations.  
[20.5.117.1704 NMAC - N, 07/24/2018]

#### **20.5.117.1705 FINANCIAL TEST OF SELF INSURANCE:**

**A.** An owner or operator, or guarantor, may satisfy the requirements of 20.5.117.1703 NMAC by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, shall meet the criteria of Subsection B or C of this section based on year-end financial statements for the latest completed fiscal year.

**B.** Criteria for option one.

**(1)** The owner or operator, or guarantor, shall have a tangible net worth of at least 10 times:

**(a)** the total of the applicable aggregate amounts required by 20.5.117.1703 NMAC based on the number of storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;

**(b)** the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, Sections 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

**(c)** The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Sections 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

**(2)** The owner or operator, or guarantor, shall have a tangible net worth of at least \$10,000,000.

**(3)** The owner or operator, or guarantor, shall have a letter signed by the chief financial officer worded as specified in 20.5.117.1755 NMAC.

**(4)** The owner or operator, or guarantor, shall either:

**(a)** file financial statements annually with the United States securities and exchange commission, the energy information administration, or the rural utilities service; or

**(b)** report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

**C.** Criteria for option two.

(1) The owner or operator, or guarantor, shall meet the financial test requirements of 40 CFR Section 264.147(f)(1), substituting the appropriate amounts specified in Paragraphs (1) and (2) of Subsection B of 20.5.117.1703 NMAC for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer, worded as specified in 20.5.117.1755 NMAC.

(5) If the financial statements of the owner or operator, or guarantor, are not submitted annually to the United States securities and exchange commission, the energy information administration or the rural utilities service, the owner or operator, or guarantor, shall obtain a special report by an independent certified public accountant stating that:

(a) the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor, with the amounts in such financial statements; and

(b) in connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

**D.** To demonstrate that it meets the financial test under Subsection B or C of this section, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as shown in 20.5.117.1755 NMAC.

**E.** If owners or operators using the test to provide financial assurance finds that they no longer meet the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

**F.** The secretary may require reports of financial condition at any time from the owner or operator, or guarantor. If the secretary finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of Subsections B or C and D of 20.5.117.1705 NMAC, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

**G.** If owners or operators fail to obtain alternate assurance within 150 days of finding that they no longer meet the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the secretary that they no longer meet the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.117.1705 NMAC - N, 07/24/2018]

**20.5.117.1706 GUARANTEE:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

(1) a firm that:

(a) possesses a controlling interest in the owner or operator;

(b) possesses a controlling interest in a firm described under

Subparagraph (a) of Paragraph (1) of Subsection A of this section; or

(c) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(2) a firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

**B.** Within 120 days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of 20.5.117.1705 NMAC based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in 20.5.117.1755 NMAC and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. If the secretary notifies the guarantor that he no longer meets the requirements of the financial test of Subsection B or C of 20.5.117.1705 NMAC and 20.5.117.1755 NMAC, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the secretary. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in Subsection E of 20.5.117.1724 NMAC.

**C.** The guarantee shall be worded as specified in 20.5.117.1756 NMAC.

**D.** An owner or operator who uses a guarantee to satisfy the requirements of 20.5.117.1703 NMAC shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

[20.5.117.1706 NMAC - N, 07/24/2018]

**20.5.117.1707 INSURANCE AND RISK RETENTION GROUP COVERAGE:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

**B.** Each insurance policy shall be amended by an endorsement worded as specified in Subsection A of 20.5.117.1757 NMAC or evidenced by a certificate of insurance worded as specified in Subsection B of 20.5.117.1757 NMAC, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.



C. Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[20.5.117.1707 NMAC - N, 07/24/2018]

**20.5.117.1708 SURETY BOND:**

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest *Circular 570* of the United States department of the treasury.

B. The surety bond shall be worded as specified in 20.5.117.1758 NMAC.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or operator who uses a surety bond to satisfy the requirements of 20.5.117.1703 NMAC shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

[20.5.117.1708 NMAC - N, 07/24/2018]

**20.5.117.1709 LETTER OF CREDIT:**

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

B. The letter of credit shall be worded as specified in 20.5.117.1759 NMAC.

C. An owner or operator who uses a letter of credit to satisfy the requirements of 20.5.117.1703 NMAC shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the secretary will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

[20.5.117.1709 NMAC - N, 07/24/2018]

**20.5.117.1710 USE OF STATE REQUIRED MECHANISM:**

**A.** An owner or operator may use a state-required financial mechanism to meet the requirements of 20.5.117.1703 NMAC if the secretary determines that the state mechanism is at least equivalent to the financial mechanisms specified in this part.

**B.** The secretary will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

**C.** The state, an owner or operator, or any other interested party may submit to the secretary a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of 20.5.117.1703 NMAC. The submission shall include copies of the appropriate state statutory and regulatory requirements and shall show the amount of funds for corrective action or for compensating third parties assured by the mechanism(s). The secretary may require the petitioner to submit additional information as is deemed necessary to make this determination.

**D.** Any petition under this section may be submitted on behalf of all of the state's petroleum underground storage tank owners and operators, petroleum above ground storage tank owners and operators, or both petroleum underground and above ground storage tank owners and operators.

**E.** The secretary will notify the petitioner of the determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this part. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

[20.5.117.1710 NMAC - N, 07/24/2018]

**20.5.117.1711 STATE FUND OR OTHER STATE ASSURANCE:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC for storage tanks located in New Mexico if the state assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in 20.5.117.1703 NMAC or otherwise assures that such costs will be paid if the secretary determines that the state's assurance is at least equivalent to the financial mechanisms specified in this part.

**B.** The secretary will evaluate the equivalency of a state fund or other state assurance principally in terms of: certainty of the availability of funds for taking corrective action; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

**C.** The secretary shall consider a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of storage tanks to which the funds may be applied. The secretary may also consider additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the secretary, the owner or operator of a covered class of storage tanks will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for the amounts and types of costs covered by the state fund or other state assurance.

**D.** Within 60 days after the secretary determines the state's fund or other assurance is acceptable in lieu of other financial mechanisms specified in 20.5.117 NMAC the secretary shall provide to each owner or operator for which it is assuming financial responsibility a letter or

certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the secretary shall include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action or for compensating third parties that is assured by the state. The owner or operator shall maintain this letter or certificate on file as proof of financial responsibility in accordance with Paragraph (8) of Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1711 NMAC - N, 07/24/2018]

#### **20.5.117.1712 TRUST FUND:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by establishing a trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

**B.** The wording of the trust agreement shall be identical to the wording specified in 20.5.117.1763 NMAC with the addition of the addendum required by Subsection D of 20.5.117.1704 NMAC and shall be accompanied by a formal certification of acknowledgment as specified in Subsection B of 20.5.117.1763 NMAC.

**C.** The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

**D.** If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the secretary for release of the excess.

**E.** If other financial assurance as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the secretary for release of the excess.

**F.** Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection D or E of this section, the secretary will instruct the trustee to release to the owner or operator such funds as the secretary specifies in writing.

[20.5.117.1712 NMAC - N, 07/24/2018]

#### **20.5.117.1713 STANDBY TRUST FUND:**

**A.** An owner or operator using any one of the mechanisms authorized by 20.5.117.1706, 1708, or 1709 NMAC shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

**B.** The standby trust agreement shall be worded as specified in 20.5.117.1763 NMAC.

**C.** The secretary will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the secretary determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

**D.** An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

[20.5.117.1713 NMAC - N, 07/24/2018]

### **20.5.117.1714 LOCAL GOVERNMENT BOND RATING TEST:**

**A.** A general purpose local government owner or operator or local government serving as a guarantor, or a local government owner or operator or guarantor which is not a general purpose local government but which has the legal authority to issue general obligation bonds, may satisfy the requirements of 20.5.117.1703 NMAC by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

**B.** A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and also does not have the legal authority to issue general obligation bonds may satisfy the requirements of 20.5.117.1703 NMAC by having both a currently outstanding issue or issues of revenue bonds of \$1,000,000 or more, excluding refunded issues, and a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard and Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

**C.** The local government owner or operator or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

**D.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection A of this section shall sign a letter worded exactly as specified in Subsection A of 20.5.117.1764 NMAC.

**E.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection B of this section shall sign a letter worded exactly as specified in Subsection B of 20.5.117.1764 NMAC.

**F.** The secretary may require reports of financial condition at any time from the local government owner or operator, or local government guarantor. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator, or guarantor, no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

**G.** If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

**H.** If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the director of the implementing agency that it no longer meets

the requirements of the bond rating test, the owner or operator must notify the director of such failure within 10 days.

[20.5.117.1714 NMAC - N, 07/24/2018]

**20.5.117.1715 LOCAL GOVERNMENT FINANCIAL TEST:**

**A.** A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator shall meet the criteria of Paragraphs (2) and (3) of Subsection B of this section based on year-end financial statements for the latest completed fiscal year.

**B.** The criteria for local government financial test.

**(1)** The local government owner or operator shall have the following information available, as shown in the year-end financial statements for the latest completed fiscal year.

**(a)** Total revenues. “Total revenues” is the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

**(b)** Total expenditures. “Total expenditures” is the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

**(c)** Local revenues. “Local revenues” is total revenues as defined in Subparagraph (a) of Paragraph (1) of Subsection B of this section minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.

**(d)** Debt service. “Debt service” is the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. It includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. It excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

**(e)** Total funds. “Total funds” is the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special

revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. It includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(f) Population is the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in Subsection C of this section and 20.5.117.1765 NMAC.

C. To demonstrate that it meets the financial test under Subsection B of this section, the chief financial officer of the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as specified in 20.5.117.1765 NMAC.

D. If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

E. The secretary may require reports of financial condition at any time from the local government owner or operator. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of Subsections B and C of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

F. If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the secretary that it no longer meets the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.117.1715 NMAC - N, 07/24/2018]

#### **20.5.117.1716 LOCAL GOVERNMENT GUARANTEE:**

A. A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either the state or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall do one of the following:

(1) demonstrate that it meets the bond rating test requirement of 20.5.117.1714 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1764 NMAC to the local government owner or operator;

(2) demonstrate that it meets the worksheet test requirements of 20.5.117.1715 and 20.5.117.1765 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1765 NMAC to the local government owner or operator; or

(3) demonstrate that it meets the local government fund requirements of Subsection A, B or C of 20.5.117.1717 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1767 NMAC to the local government owner or operator.

**B.** If the local government guarantor is unable to demonstrate financial assurance under any provision of 20.5.117.1714 or 20.5.117.1715 NMAC or Subsection A, B, or C of 20.5.117.1717 NMAC at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in Subsection E of 20.5.117.1724 NMAC.

**C.** The guarantee agreement shall be worded as specified in Subsection A or B of 20.5.117.1766 NMAC, depending on which of the following alternative guarantee arrangements is selected.

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the secretary, the guarantee shall be worded as specified in Subsection A of 20.5.117.1766 NMAC.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the secretary for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in Subsection B of 20.5.117.1766 NMAC.

**D.** If the guarantor is the state, the local government guarantee with standby trust shall be worded as specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee with standby trust shall be worded as specified in Paragraph (2) of Subsection A of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

**E.** If the guarantor is the state, the local government guarantee without standby trust shall be worded as specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.  
[20.5.117.1716 NMAC - N, 07/24/2018]

**20.5.117.1717 LOCAL GOVERNMENT FUND:** A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in Subsection B of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets the requirements in either Subsection A, B or C of this section.

**A.** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the

operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage.

**B.** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for five times the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under 20.5.117.1703 NMAC, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund.

**C.** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the “pay-in-period.” The amount of each payment shall be determined by this formula:  $(TF - CF)/Y$ , where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and

(1) the local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both; or

(2) the local government owner or operator has a letter signed by the state attorney general stating that the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws. The letter shall also state that prior voter approval is not necessary before use of the bonding authority.

**D.** To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor shall sign a letter worded exactly as specified in 20.5.117.1767 NMAC.

[20.5.117.1717 NMAC - N, 07/24/2018]

#### **20.5.117.1718 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR:**

**A.** Owners and operators may substitute any alternate financial assurance mechanisms as specified in this part, provided that at all times they maintain an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 20.5.117.1703 NMAC.



**B.** After obtaining alternate financial assurance as specified in this part, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

[20.5.117.1718 NMAC - N, 07/24/2018]

**20.5.117.1719 CANCELLATION OR NON-RENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE:**

**A.** Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

**B.** If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 20.5.117.1724 NMAC, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the secretary of such failure and submit:

(1) the name and address of the provider of financial assurance;

(2) the effective date of termination; and

(3) the evidence of the financial assurance mechanism subject to the termination maintained in accordance with Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1719 NMAC - N, 07/24/2018]

**20.5.117.1720 REPORTING BY OWNER OR OPERATOR:**

**A.** Owners and operators shall submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current evidence of financial responsibility to the secretary:

(1) within 30 days after the owner or operator identifies a release from a storage tank required to be reported under 20.5.102.204 NMAC or 20.5.118 NMAC;

(2) if the owner or operator fails to obtain alternate coverage as required by this part, within 30 days after the owner or operator receives notice of:

(a) commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a provider of financial assurance as a debtor,

(b) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(c) failure of a guarantor to meet the requirements of the financial test,

or  
(d) other incapacity of a provider of financial assurance, except as provided in Paragraph (3) of this subsection;

(3) if the owner or operator fails to obtain alternate coverage as required by this part, within 60 days after the owner or operator receives notice that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs; or

(4) as required by Subsection G of 20.5.117.1705 NMAC and Subsection B of 20.5.117.1719 NMAC.

**B.** Owners and operators shall certify compliance with the financial responsibility requirements of this part as specified in the new tank registration form when registering a new storage tank under 20.5.102.202 NMAC.

**C.** The secretary may require an owner or operator to submit evidence of financial assurance as described in Subsection B of 20.5.117.1721 NMAC or other information relevant to compliance with this part at any time.  
[20.5.117.1720 NMAC - N, 07/24/2018]

### **20.5.117.1721 RECORD KEEPING:**

**A.** Owners and operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this part for a storage tank until released from the requirements of this part under 20.5.117.1723 NMAC. An owner or operator shall maintain such evidence at the storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

**B.** Owners and operators shall maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in 20.5.117.1705 NMAC through 20.5.117.1710 NMAC or 20.5.117.1712 NMAC or 20.5.117.1714 through 20.5.117.1717 NMAC shall maintain a copy of the instrument worded as specified in this part.

(2) An owner or operator using a financial test or guarantee, a local government financial test a local government guarantee supported by the local government financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under Subsection D of 20.5.117.1716 NMAC shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under 20.5.117.1714 NMAC shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under 20.5.117.1716 NMAC, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 20.5.117.1714 NMAC shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by a state fund or other state assurance shall maintain on file a copy of any evidence of coverage supplied by or required by the state under Subsection D of 20.5.117.1711 NMAC.

(9) An owner or operator using a local government fund under 20.5.117.1717 NMAC shall maintain the following documents:

(a) a copy of the state constitutional provision or local government statute charter, ordinance, or order dedicating the fund, and

(b) year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance the amount of funding during the year, and the closing balance in the fund.

(c) If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum under Paragraph (1) of Subsection C of 20.5.117.1717 NMAC or attestation by the state attorney general as specified under Paragraph (2) of Subsection C of 20.5.117.1717 NMAC.

(10) A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11) Owners and operators using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as specified in 20.5.117.1771 NMAC. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

[20.5.117.1721 NMAC - N, 07/24/2018]

#### **20.5.117.1722 DRAWING ON FINANCIAL ASSURANCE MECHANISMS:**

**A.** The secretary shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the secretary, up to the limit of funds provided by the financial assurance mechanism, into the standby trust under certain conditions:

(1) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and the secretary determines or suspects that a release from a storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the secretary pursuant to 20.5.102 or 20.5.118 NMAC of a release from a storage tank covered by the mechanism; or

(2) The conditions of Paragraph (1) or Paragraph (2) of Subsection B of this section are satisfied.

**B.** The secretary may draw on a standby trust fund when:

(1) the secretary makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator,

after appropriate notice and opportunity to comply, has not conducted corrective action as required under 20.5.119 NMAC; or

(2) the secretary has received one of the following:

(a) certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid, worded as specified in 20.5.117.1772 NMAC; or

(b) a valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a storage tank covered by financial assurance under this part and the secretary determines that the owner or operator has not satisfied the judgment.

C. If the secretary determines that the amount of corrective action costs and third-party liability claims eligible for payment under Subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The secretary shall pay third-party liability claims in the order in which the secretary receives certifications under Subparagraph (a) of Paragraph (2) and valid court orders under Subparagraph (b) of Paragraph (2) of Subsection B of this section.

D. A governmental entity acting as guarantor under Subsection E of 20.5.117.1716 NMAC shall make payments as directed by the secretary under the circumstances described in Subsections A, B and C of this section.

[20.5.117.1722 NMAC - N, 07/24/2018]

**20.5.117.1723 RELEASE FROM THE REQUIREMENTS:** An owner or operator is no longer required to maintain financial responsibility under this part for a storage tank after the tank has been permanently closed or undergoes a change in service or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed or undergoes a change in service as required by 20.5.115 NMAC.

[20.5.117.1723 NMAC - N, 07/24/2018]

**20.5.117.1724 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE:**

A. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming an owner or operator as debtor, the owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.117.1706 NMAC.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a local government owner or operator as debtor, the local government owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

**D.** Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.117.1716 NMAC.

**E.** An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in this part within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall notify the secretary.

**F.** Within 60 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance. [20.5.117.1724 NMAC - N, 07/24/2018]

**20.5.117.1725 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS:**

**A.** If at any time after a standby trust is funded upon the instruction of the secretary with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) replenish the value of financial assurance to equal the full amount of coverage required; or

(2) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

**B.** For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 20.5.117.1703 NMAC. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

[20.5.117.1725 NMAC - N, 07/24/2018]

**20.5.117.1726 to 20.5.117.1754 [RESERVED]**

**20.5.117.1755 FORM DOCUMENTS FOR FINANCIAL TEST OF SELF INSURANCE:**

To demonstrate that it meets the financial test under Subsection B or C of 20.5.117.1705 NMAC, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: “the financial test of self-insurance,” or “guarantee”] to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test by this [insert: “owner or operator,” and/or “guarantor”]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or another financial test under 20.5.117 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If this financial test is used to assure both underground and above ground storage tanks, identify each tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC.]

A [insert: “financial test,” and/or “guarantee”] is also used by this [insert: “owner or operator,” or “guarantor”] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

| EPA Regulations                          | Amount   |
|--|----------|
| Closure (264.143 and 265.143)            | \$ _____ |
| Post-Closure Care (264.145 and 265.145)  | \$ _____ |
| Liability Coverage (264.147 and 265.147) | \$ _____ |
| Corrective Action (264.101(b))           | \$ _____ |
| Plugging and Abandonment (144.63)        | \$ _____ |
| Closure                                  | \$ _____ |
| Post-Closure Care                        | \$ _____ |
| Liability Coverage                       | \$ _____ |
| Corrective Action                        | \$ _____ |
| Plugging and Abandonment                 | \$ _____ |
| Total                                    | \$ _____ |

This [insert: “owner or operator,” or “guarantor”] has not received an adverse opinion, a disclaimer of opinion, or a “going concern” qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of Subsection B of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of Subsection C of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements.]

Alternative I

|   |         |     |
|---|---------|-----|
| 1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee  | \$_____ |     |
| 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee                           | \$_____ |     |
| 3. Sum of lines 1 and 2   | \$_____ |     |
| 4. Total tangible assets  | \$_____ |     |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]                            | \$_____ |     |
| 6. Tangible net worth [subtract line 5 from line 4]   | \$_____ |     |
|   | Yes     | No  |
| 7. Is line 6 at least \$10,000,000?   | ___     | ___ |
| 8. Is line 6 at least 10 times line 3?  | ___     | ___ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?   | ___     | ___ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?   | ___     | ___ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service?   | ___     | ___ |
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] | ___     | ___ |
| <b>Alternative II</b>   |         |     |
| 1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee  | \$_____ |     |
| 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee                           | \$_____ |     |
| 3. Sum of lines 1 and 2   | \$_____ |     |
| 4. Total tangible assets  | \$_____ |     |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]                            | \$_____ |     |
| 6. Tangible net worth [subtract line 5 from line 4]   | \$_____ |     |
| 7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]   | \$_____ |     |
|   | Yes     | No  |
| 8. Is line 6 at least \$10,000,000?   | ___     | ___ |
| 9. Is line 6 at least 6 times line 3?   | ___     | ___ |
| 10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]   | ___     | ___ |
| 11. Is line 7 at least 6 times line 3?  | ___     | ___ |

|   |       |          |     |
|---|-------|----------|-----|
| [Fill in either lines 12-15 or lines 16-18:]  |       |          |     |
| 12. Current assets  |       | \$ _____ |     |
| 13. Current liabilities   |       | \$ _____ |     |
| 14. Net working capital [subtract line 13 from line 12]   |       | \$ _____ |     |
|   |       | Yes      | No  |
| 15. Is line 14 at least 6 times line 3?   |       | ___      | ___ |
| 16. Current bond rating of most recent bond issue   |       | ___      | ___ |
| 17. Name of rating service  |       |          |     |
| _____   |       |          |     |
| 18. Date of maturity of bond  | _____ | Yes      | No  |
|   |       |          |     |
| 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Utilities Service?  |       | ___      | ___ |
| [If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.] |       |          |     |
| For both Alternative I and Alternative II complete the certification with this statement:   |       |          |     |
| I hereby certify that the wording of this letter is identical to the wording specified in 20.5.117.1755 NMAC as such regulations were constituted on the date shown immediately below.  |       |          |     |
| [Signature]   |       |          |     |
| [Name]  |       |          |     |
| [Title]   |       |          |     |
| [Date]  |       |          |     |

[20.5.117.1755 NMAC - N, 07/24/2018]

**20.5.117.1756 FORM DOCUMENT FOR GUARANTEE:** The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

|  |
|--|
| <b>GUARANTEE</b>   |
| Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the New Mexico Environment Department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].   |
| Recitals   |
| (1) Guarantor meets or exceeds the financial test criteria of Subsection B, C or D of 20.5.117.1705 New Mexico Administrative Code (NMAC) and agrees to comply with the requirements for guarantors as specified in Subsection B of 20.5.117.1706 NMAC.  |
| (2) [Owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies |



20.5.117.1703 NMAC requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases” [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating the above-identified above ground storage tank(s).

(3) [Insert appropriate phrase: “On behalf of our subsidiary” (if guarantor is corporate parent of the owner or operator); “On behalf of our affiliate” (if guarantor is a related firm of the owner or operator); or “Incident to our business relationship with” (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the secretary has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the guarantor, upon instructions from the secretary of the Environment Department, shall fund a standby trust fund in accordance with the provisions of 20.5.117.1713 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the secretary determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the guarantor upon written instructions from the secretary shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of Subsections B, C and D of 20.5.117.1705 NMAC, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding the Bankruptcy Code, 11 U.S.C., naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC, the New Mexico Petroleum Storage Tank Regulations.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.119 NMAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 20.5.117.1756 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[20.5.117.1756 NMAC - N, 07/24/2018]

### **20.5.117.1757 FORM DOCUMENTS FOR INSURANCE AND RISK RETENTION**

**GROUP COVERAGE:** To use insurance to satisfy requirements of 20.5.117.1703 NMAC, as described in 20.5.117.1707 NMAC, each insurance policy shall be amended by an endorsement worded as specified in Subsection A of this section or evidenced by a certificate of insurance worded as specified in Subsection B of this section, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

**A. Required wording for endorsement.**

**ENDORSEMENT**

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

For [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental release”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with Subsections a through e of this Paragraph 2 are hereby amended to conform with Subsections a through e:

a. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this endorsement is attached.

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, [“Insurer” or “Group”] agrees to furnish to the Secretary a signed duplicate original of the policy and endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or

misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Paragraph (1) of Subsection A of 20.5.117.1757 NMAC and that the [“Insurer” or “Group”] is [“licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states”].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

**B. Required wording for certificate of insurance.**

**CERTIFICATION**

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification

1. [Name of Insurer or Risk Retention Group], [the “Insurer” or “Group”], as identified above, hereby certifies that it has issued liability insurance covering the following storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as above ground or underground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

For [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden

accidental releases” or “accidental releases”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The [“Insurer” or “Group”] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this certificate applies.

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, the [“Insurer” or “Group”] agrees to furnish to the Secretary a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Subsection B of 20.5.117.1757 NMAC and that the [“Insurer” or “Group”] is [“licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states”].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Type name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]  
[Address of Representative]

[20.5.117.1757 NMAC - N, 07/24/2018]

**20.5.117.1758 FORM DOCUMENT FOR SURETY BOND:** To satisfy the requirements of 20.5.117.1708 NMAC, the surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

**PERFORMANCE BOND**

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert “individual,” “joint venture,” “partnership,” or “corporation”]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC, and the name and address of the facility. List the coverage guaranteed by the bond: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases” “arising from operating the storage tank”].

Penal sums of bond:

Per occurrence \$ \_\_\_\_\_

Annual aggregate \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the New Mexico Environment Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, as amended, to provide financial assurance for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”]; if coverage is different for

different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully [“take corrective action, in accordance with 20.5.119 NMAC and the instructions of the Secretary of the New Mexico Environment Department for,” and/or “compensate injured third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 20.5.117 NMAC, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Secretary that the Principal has failed to [“take corrective action, in accordance with 20.5.119 NMAC and the Secretary's instructions,” and/or “compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform [“corrective action in accordance with 20.5.119 NMAC and the Secretary's instructions,” and/or “third-party liability compensation”] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.117.1713 NMAC.

Upon notification by the Secretary that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Secretary has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.117.1713 NMAC.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the

annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 20.5.117.1758 NMAC, as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of Incorporation:

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

[20.5.117.1758 NMAC - N, 07/24/2018]

**20.5.117.1759 FORM DOCUMENT FOR LETTER OF CREDIT:** To satisfy the requirements of 20.5.117.1709 NMAC, the letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name and address of issuing institution]

[Name and address of the Secretary of the New Mexico Environment Department]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of:

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, as amended."



This letter of credit may be drawn on to cover [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate and the above ground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground and above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 20.5.117.1759 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

[20.5.117.1759 NMAC - N, 07/24/2018]

**20.5.117.1760 to 20.5.117.1762 [RESERVED]**

**20.5.117.1763 FORM DOCUMENTS FOR STANDBY TRUST FUND:**

A. To satisfy the requirements of 20.5.117.1712 NMAC, the standby trust agreement shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**TRUST AGREEMENT**

Trust agreement, the “Agreement,” entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert “corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and [name of corporate trustee], [insert “Incorporated in the state of \_\_\_\_” or “a national bank”], the “Trustee.”

Whereas, the New Mexico Environmental Improvement Board, “EIB,” has established certain regulations applicable to the Grantor, requiring that an owner or operator of a storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of the storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either “a guarantee,” “surety bond,” or “letter of credit”] to provide all or part of such financial assurance for the storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

**Section 1. Definitions**

As used in this Agreement:

(a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

**Section 2. Identification of the Financial Assurance Mechanism**

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

**Section 3. Establishment of Fund**

The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to

receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Secretary of the New Mexico Environment Department's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Environment Department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]

The Trustee shall make payments from the Fund as the Secretary shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 New Mexico Administrative Code (NMAC).

The Trustee shall reimburse the Grantor, or other persons as specified by the Secretary, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then

prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in 20.5.117 NMAC.

#### Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Secretary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Secretary, except as provided for herein.

#### Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Secretary if the Grantor ceases to exist.

#### Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**Section 16. Immunity and Indemnification**

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 17. Choice of Law**

This Agreement shall be administered, construed, and enforced according to the laws of the state of New Mexico, or the Comptroller of the Currency in the case of National Association banks.

**Section 18. Interpretation**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 20.5.117.1763 NMAC and Paragraph (1) of Subsection B of 20.5.117.1713 NMAC as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

**B.** The standby trust agreement, or trust agreement, shall be accompanied by a formal certification of acknowledgment similar to the following:

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument;

that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

[20.5.117.1763 NMAC - N, 07/24/2018]

**20.5.117.1764 FORM DOCUMENTS FOR LOCAL GOVERNMENT BOND RATING TEST:**

**A.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection A of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

| Issue Date | Maturity Date | Outstanding Amount | Bond Rating | Rating Agency |
|------------|---------------|--------------------|-------------|---------------|
|------------|---------------|--------------------|-------------|---------------|

[Moody’s or Standard & Poor’s]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody’s or Standard & Poor’s are rated as at least investment grade (Moody’s Baa or Standard & Poor’s BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection A of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]

Name]

[Title]

[Date]

**B.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection B of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows:

[complete table]

| Issue Date                     | Maturity Date | Outstanding Amount | Bond Rating | Rating Agency |
|--------------------------------|---------------|--------------------|-------------|---------------|
| [Moody’s or Standard & Poor’s] |               |                    |             |               |

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody’s or Standard & Poor’s are rated as at least investment grade (Moody’s Baa or Standard & Poor’s BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection B of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]  
 [Name]  
 [Title]  
 [Date]

[20.5.117.1764 NMAC - N, 07/24/2018]

**20.5.117.1765 FORM DOCUMENT FOR LOCAL GOVERNMENT FINANCIAL TEST:**  
 To demonstrate that it meets the financial test under Subsection B of 20.5.117.1714 NMAC, the



chief financial officer of the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody’s rating of Aaa, Aa, A, or Baa or a Standard and Poor’s rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody’s rating of Aaa, Aa, A, or Baa and a Standard and Poor’s rating of AAA, AA, A, or BBB.

**WORKSHEET FOR MUNICIPAL FINANCIAL TEST  
PART I: BASIC INFORMATION**

1. Total Revenues

a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)

c. Total Revenues (dollars)

2. Total Expenditures

a. Expenditures (dollars)

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal,

and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)

c. Total Expenditures (dollars)

3. Local Revenues

a. Total Revenues (from 1c) (dollars)

b. Subtract total intergovernmental transfers (dollars)

c. Local Revenues (dollars)

4. Debt Service

a. Interest and fiscal charges (dollars)

b. Add debt retirement (dollars)

c. Total Debt Service (dollars)

5. Total Funds (dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (persons)

**PART II: APPLICATION OF TEST**

7. Total Revenues to Population

a. Total Revenues (from 1c)

b. Population (from 6)

c. Divide 7a by 7b

d. Subtract 417

e. Divide by 5,212

f. Multiply by 4.095

8. Total Expenses to Population

a. Total Expenses (from 2c)

b. Population (from 6)

c. Divide 8a by 8b

d. Subtract 524

e. Divide by 5,401

f. Multiply by 4.095

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c)

b. Total Revenues (from 1c)

c. Divide 9a by 9b

d. Subtract .695

e. Divide by .205

f. Multiply by 2.840

10. Debt Service to Population

a. Debt Service (from 4c)

b. Population (from 6)

c. Divide 10a by 10b

d. Subtract 51

e. Divide by 1,038

f. Multiply by -1.866

11. Debt Service to Total Revenues

- a. Debt Service (from 4c)
  - b. Total Revenues (from 1c)
  - c. Divide 11a by 11b
  - d. Subtract .068
  - e. Divide by .259
  - f. Multiply by -3.533
12. Total Revenues to Total Expenses
- a. Total Revenues (from 1c)
  - b. Total Expenses (from 2c)
  - c. Divide 12a by 12b
  - d. Subtract .910
  - e. Divide by .899
  - f. Multiply by 3.458
13. Funds Balance to Total Revenues
- a. Total Funds (from 5)
  - b. Total Revenues (from 1c)
  - c. Divide 13a by 13b
  - d. Subtract .891
  - e. Divide by 9.156
  - f. Multiply by 3.270
14. Funds Balance to Total Expenses
- a. Total Funds (from 5)
  - b. Total Expenses (from 2c)
  - c. Divide 14a by 14b
  - d. Subtract .866
  - e. Divide by 6.409
  - f. Multiply by 3.270
15. Total Funds to Population
- a. Total Funds (from 5)
  - b. Population (from 6)
  - c. Divide 15a by 15b
  - d. Subtract 270
  - e. Divide by 4,548
  - f. Multiply by 1.866
16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 20.5.117.1765 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.117.1765 NMAC - N, 07/24/2018]

**20.5.117.1766 FORM DOCUMENTS FOR LOCAL GOVERNMENT GUARANTEE:**

**A.** Required form documents for guarantees with standby trusts.

**(1)** Local government guarantee with standby trust made by the state. The guarantee agreement shall be worded as follows:

**GUARANTEE**

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies the requirements of 20.5.117 NMAC for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC; in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified

tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee with standby trust made by a local government. The guarantee agreement shall be worded as follows:

## **GUARANTEE**

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

### Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715 NMAC, or the local government fund under Subsection A, B or C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or

“non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to the New Mexico Petroleum Storage Tank Regulations (20.5 NMAC).

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The Guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection A of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

**B.** Required form documents for guarantees without standby trusts.

**(1)** Local government guarantee without standby trust made by the state. The guarantee agreement shall be worded as follows:

**GUARANTEE**

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.



If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The Guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers’ compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee without standby trust made by a local government. The guarantee agreement shall be worded as follows:

**GUARANTEE**

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715 NMAC, the local government fund under of Subsections A, B and C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon

written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5.117 NMAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The Guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers’ compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[20.5.117.1766 NMAC - N, 07/24/2018]

**20.5.117.1767 FORM DOCUMENT FOR LOCAL GOVERNMENT FUND:** To demonstrate that it meets the requirements of the local government fund, as specified in 20.5.117.1717 NMAC, the chief financial officer of the local government owner or operator and/or guarantor shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating an underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: “The local government fund is funded for the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage.” or “The local government fund is funded for five times the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage,” or “A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund” or “A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority”].

The details of the local government fund are as follows:  
 Amount in Fund (market value of fund of close of last fiscal year): \_\_\_\_\_  
 [If fund balance is incrementally funded as specified in Subsection C of  
 20.5.117.1717 NMAC, insert:  
 Amount added to fund in the most recently completed fiscal year:  
 Number of years remaining in the pay-in period:  
 A copy of the state constitutional provision, or local government statute, charter,  
 ordinance or order dedicating the fund is attached.  
 I hereby certify that the wording of this letter is identical to the wording specified in  
 20.5.117.1767 NMAC, as such regulations were constituted on the date shown immediately  
 below.  
 [Signature]  
 [Name]  
 [Title]  
 [Date]

[20.5.117.1767 NMAC - N, 07/24/2018]

**20.5.117.1768 to 20.5.117.1770 [RESERVED]**

**20.5.117.1771 FORM DOCUMENT FOR RECORD KEEPING:**

**A.** An owner or operator using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF FINANCIAL RESPONSIBILITY**

[Owner or operator] hereby certifies that it is in compliance with the requirements of 20.5.117 New Mexico Administrative Code (NMAC).  
 The financial assurance mechanism[s] used to demonstrate financial responsibility under 20.5.117 NMAC is [are] as follows:  
 [For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases.”]  
 [Signature of owner or operator]  
 [Name of owner or operator]  
 [Title]  
 [Date]  
 [Signature of witness or notary]  
 [Name of witness or notary]  
 [Date]

**B.** The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

[20.5.117.1771 NMAC - N, 07/24/2018]

**20.5.117.1772 FORM DOCUMENT FOR DRAWING ON FINANCIAL ASSURANCE**

**MECHANISMS:** The certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

| <b>CERTIFICATION OF VALID CLAIM</b>  |                 |
|--|-----------------|
| <p>The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] storage tank should be paid in the amount of \$[insert: dollar amount].</p> |                 |
| [Signatures]   | [Signatures]    |
| Owner or Operator  | Claimant(s)     |
| Attorney for   | Attorney(s) for |
| Owner or Operator  | Claimant(s)     |
| (Notary) Date  | (Notary) Date]  |

[20.5.117.1772 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.117 NMAC:**

**Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 9/12/88.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 8/4/89.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 6/12/90.

**History of Repealed Material:** 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility (filed 2/27/97) repealed 8/15/03.

20.5.9 NMAC, Underground Storage Tanks, Financial Responsibility (filed 8/15/03) repealed 7/24/18.

**Other History:**

EIB/USTR - 9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 6/12/90, renumbered, reformatted and replaced by 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, effective 11/5/95;

20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, filed 10/06/95 replaced by 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, effective 4/1/97;

20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, filed 2/27/97, was renumbered reformatted and replaced by 20.5.9 NMAC, Petroleum Storage Tanks, Financial Responsibility, effective 8/15/03.

20.5.9, Underground Storage Tanks, Financial Responsibility, filed 8/15/03, was renumbered, reformatted, and replaced by 20.5.117 NMAC, Petroleum Storage Tanks, Financial Responsibility, effective 7/24/18.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 118 REPORTING AND INVESTIGATION OF SUSPECTED AND**  
**CONFIRMED RELEASES**

**20.5.118.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.118.1 NMAC - N, 07/24/2018]

**20.5.118.2 SCOPE:** This part applies to owners and operators of storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.118.2 NMAC - N, 07/24/2018]

**20.5.118.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17, NMSA 1978.  
[20.5.118.3 NMAC - N, 07/24/2018]

**20.5.118.4 DURATION:** Permanent.  
[20.5.118.4 NMAC - N, 07/24/2018]

**20.5.118.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.118.5 NMAC - N, 07/24/2018]

**20.5.118.6 OBJECTIVE:** The purpose of 20.5.118 NMAC is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to ensure that suspected and confirmed releases from storage tank systems are promptly reported and investigated and that corrective action is promptly initiated.  
[20.5.118.6 NMAC - N, 07/24/2018]

**20.5.118.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.118.7 NMAC - N, 07/24/2018]

**20.5.118.8 to 20.5.118.1799 [RESERVED]**

**20.5.118.1800 REPORTING OF SPILL OR RELEASE:**

**A.** Owners, operators, certified installers, certified junior installers, and testers shall give notice of any suspected or confirmed release from a storage tank system pursuant to 20.5.118.1801 or 20.5.118.1802 NMAC, or any spill or any other relevant emergency situation to

the department by telephone within 24 hours. The owner, operator, certified installer, certified junior installer, or tester giving the notice shall provide the following items of information to the best of the owner's, operator's, certified installer's, certified junior installer's, or tester's knowledge:

- (1) the name, address, and telephone number of the agent in charge of the site at which the storage tank system is located, as well as the name, address and telephone number of the owner and the operator of the storage tank system;
- (2) the name, address, facility ID number, and owner ID number of the site at which the storage tank system is located, as listed on the tank registration certificate, and the location of the storage tank system on that site;
- (3) the date, time, location and duration of the spill, release or suspected release;
- (4) the source and cause of the spill, release or suspected release;
- (5) the storage tank system description;
- (6) a description of the spill, release or suspected release, including its chemical composition;
- (7) the estimated volume of the spill, release or suspected release; and
- (8) any actions taken to mitigate immediate damage from the spill, release or suspected release.

**B.** Owners and operators shall provide a seven-day report describing the spill, release or suspected release and any investigation or follow-up action to the department within seven days of the incident. The written report shall verify the prior oral notification as to each of the items of information listed in Subsection A of this section and provide any appropriate amendments to the information contained in the prior oral notification.

**C.** The department shall determine whether a release is a confirmed release based on the 24-hour and seven-day reports prepared in accordance with this section, 20.5.118.1801 NMAC and 20.5.18.1802 NMAC, monitoring results, system checks, the investigation performed in accordance with 20.5.18.1801 NMAC, and any other information available to the department. The department shall provide a written determination that a release is a confirmed release to all affected owners and operators and shall state the basis for the determination. [20.5.118.1800 NMAC - N, 07/24/2018]

[To provide notice to the department under Subsection A of this section, telephone the department staff person currently on duty. The petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/leaks-spills-and-incident-reports/](https://www.env.nm.gov/petroleum_storage_tank/leaks-spills-and-incident-reports/)) provide the phone number and an optional incident reporting form.]

#### **20.5.118.1801 SUSPECTED RELEASES:**

**A.** Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions, which are considered suspected releases, to the department within 24 hours, in accordance with 20.5.118.1800 NMAC, and follow the procedures in Subsection B of this section:

- (1) evidence of released regulated substances in the vicinity of the storage tank site, including but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water;
- (2) unusual operating conditions such as, but not limited to, no flow of product, slow flow of product, the erratic function of product dispensing equipment, the sudden



loss of a regulated substance from the storage tank system, an unexplained presence of water in the storage tank system, the presence of a regulated substance in containment sumps or in the annular or interstitial space of secondarily contained tanks or piping, or interstitial sensor alarm conditions, unless after an investigation:

(a) the storage tank system equipment or component is determined not to have released regulated substances into the environment;

(b) all defective storage tank system equipment or components are immediately repaired or replaced; and

(c) for secondarily contained storage tank systems, except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(3) monitoring or test results, including investigation of an alarm, that are anything other than a “pass” or “normal” result from any release detection method in 20.5.108 NMAC and 20.5.111 NMAC, or that indicate a release may have occurred unless:

(a) the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring is performed which does not indicate that a release has occurred;

(b) the leak is contained in the secondary containment; and  
(i) except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(ii) all defective storage tank system equipment or components are immediately repaired or replaced.

(c) the investigation determines no release has occurred;

(d) in the case of statistical inventory reconciliation, described in 20.5.108 NMAC, inconclusive or failed monthly results are overturned by the third-party vendor within 24 hours of the receipt of the report from the vendor; or

(e) the alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling or dispensing from the tank during release detection testing).

(4) failing results from continuous monitoring or periodic testing of spill prevention equipment and containment sumps; or

(5) other evidence of failure or deterioration such as but not limited to holes, cracks, or corrosion in the storage tank system.

**B.** Owners and operators shall investigate all suspected releases of regulated substances within seven days of discovery of the suspected release. Owners and operators shall conduct appropriate storage tank system testing, site check or another procedure, with prior approval by the department of the procedure.

(1) System test. Owners and operators shall conduct appropriate system tests approved by the department according to the requirements for tightness testing for USTs in 20.5.108.804 NMAC and in Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC, and for ASTs in 20.5.111.1101 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC, or as appropriate, secondary containment testing described in 20.5.107 NMAC or 20.5.110 NMAC.

(a) The test must determine whether:

- (i) a leak exists in any portion of the tank or piping that has the potential to contain a regulated substance;
- (ii) a breach of the inner or outer wall of the secondary containment has occurred; or
- (iii) the integrity of the tank system is compromised such that a release has occurred.

(b) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade or close the storage tank system. In addition, owners and operators must begin corrective action in accordance with 20.5.119 NMAC if test results for the storage tank system indicate that a release has occurred.

(c) Further investigation is not required if test results for the storage tank system do not show a leak exists and if environmental contamination is not the basis for suspecting a release.

(2) Site check. When there is evidence of a release of a regulated substance in the vicinity of a storage tank system, owners and operators shall conduct a site check as directed by the department.

(a) Owners and operators shall investigate a release in the locations where contamination is most likely to be present at the storage tank site.

(b) In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored regulated substance, the basis for the suspected release report, the type of backfill, depth to groundwater, and other appropriate site-specific conditions.

(c) The department shall approve sample types, locations and methods of measurement.

(3) In the case of a suspected release indicated by statistical inventory reconciliation, after following the process outlined in 20.5.108.809.C NMAC, owners and operators shall conduct appropriate system tests or site checks approved by the department.

**C.** In the event of a suspected release, the secretary may take any action necessary, including suspension of the use of a storage tank system and requiring additional testing or other actions to investigate whether a release has occurred.

**D.** Owners and operators who do not demonstrate that a release has not occurred within 30 days of the reporting of a suspected release, or another timeframe approved by the department, shall be subject to the requirements of 20.5.118.1802 NMAC and the requirements of 20.5.119 NMAC or 20.5.120 NMAC for confirmed releases.

**E.** Owners and operators shall report to the department in writing all results of the storage tank system test, site check or other procedure approved by the department in accordance with this part. Any report submitted in accordance with this section shall contain, at a minimum, the information required in Subsection A of 20.5.118.1800 NMAC.

[20.5.118.1801 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/leaks-spills-and-incident-reports/](https://www.env.nm.gov/petroleum_storage_tank/leaks-spills-and-incident-reports/)).]

### **20.5.118.1802 CONFIRMED RELEASES:**

**A.** Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions to the department within 24 hours, in accordance with 20.5.118.1800 NMAC:

- (1) visible leaks or seeps from any part of a storage tank system;
- (2) evidence of released regulated substances at the storage tank site including, but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water; and
- (3) evidence of released regulated substances in soils, including, but not limited to:

- (a) any soil analytical results that indicate the presence of total petroleum hydrocarbons at concentrations equal to or exceeding 100 parts per million;
- (b) any petroleum hydrocarbon vapor field screening results that exceed 100 whole instrument units; or
- (c) significant visible staining or obvious petroleum odors.

**B.** If a release is confirmed, the secretary may take any action necessary, including suspension of the use of a storage tank system, until the owner or operator identifies and stops the release.

**C.** Owners and operators of storage tank systems shall address confirmed releases in accordance with 20.5.119 and 20.5.120 NMAC and shall empty the storage tank and close the storage tank system in accordance with 20.5.115 NMAC until the storage tank system is repaired or replaced so that the release will not recur.

[20.5.118.1802 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/leaks-spills-and-incident-reports/](https://www.env.nm.gov/petroleum_storage_tank/leaks-spills-and-incident-reports/)).]

### **20.5.118.1803 SPILLS AND OVERFILLS:**

**A.** Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow, and report the spill or overflow to the department within 24 hours in accordance with 20.5.118.1800 NMAC except as provided in Subsection C of this section, and begin corrective action in accordance with 20.5.119 and 20.5.120 NMAC in the following cases:

- (1) any spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons, that causes a sheen on nearby surface water, or that creates a vapor hazard pursuant to 20.5.119.1902 NMAC; and
- (2) any spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and 40 CFR part 302.

**B.** Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons, and a spill or overflow of a hazardous substance that is less than the reportable quantity. Owners and operators shall notify the department if cleanup cannot be accomplished within 24 hours, or within another reasonable time period which has been established by the department.

C. Pursuant to 40 CFR parts 302.7 and 355.40, owners and operators shall also immediately report a release of a hazardous substance equal to or in excess of its reportable quantity to the national response center under sections 102 and 103 of CERCLA and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

[20.5.118.1803 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/leaks-spills-and-incident-reports/](https://www.env.nm.gov/petroleum_storage_tank/leaks-spills-and-incident-reports/)).]

#### **HISTORY OF 20.5.118 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting and Investigation, filed 9/12/88.

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting, Investigation and Confirmation, filed 6/12/90.

**History of Repealed Material:** 20 NMAC 5.7, Underground Storage Tank Regulations - Release Reporting, Investigations, and Confirmation (filed 10/6/95), repealed 8/15/03.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 7/16/03), repealed 6/15/09.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 6/15/09), repealed 7/24/18.

#### **Other History:**

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting, Investigation and Confirmation (filed 6/12/90) was renumbered, reformatted and replaced by 20 NMAC 5.7, Underground Storage Tanks - Release Reporting, Investigations and Confirmation, effective 11/5/95.

20 NMAC 5.7, Underground Storage Tanks - Release Reporting, Investigations and Confirmation (filed 10/6/95) was renumbered, reformatted and replaced by 20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 8/15/03.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 7/16/03) was replaced by 20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 6/15/09.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 6/15/09) was reformatted, renumbered, and replaced by 20.5.118 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 07/24/18.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 119 CORRECTIVE ACTION FOR STORAGE TANK SYSTEMS**  
**CONTAINING PETROLEUM PRODUCTS**

**20.5.119.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.119.1 NMAC - N, 07/24/2018]

**20.5.119.2 SCOPE:** This part applies to owners and operators of petroleum storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of non-compliance.  
[20.5.119.2 NMAC - N, 07/24/2018]

**20.5.119.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14, NMSA 1978; the Water Quality Act, Sections 74-6-1 through 74-6-17, NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17, NMSA 1978.  
[20.5.119.3 NMAC - N, 07/24/2018]

**20.5.119.4 DURATION:** Permanent.  
[20.5.119.4 NMAC - N, 07/24/2018]

**20.5.119.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.119.5 NMAC - N, 07/24/2018]

**20.5.119.6 OBJECTIVE:** The purpose of this part is to provide for corrective action at sites contaminated by releases from petroleum storage tank systems and to protect the public health, safety and welfare and the environment of the state.  
[20.5.119.6 NMAC - N, 07/24/2018]

**20.5.119.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.119.7 NMAC - N, 07/24/2018]

**20.5.119.8 to 20.5.119.1899 [RESERVED]**

**20.5.119.1900 GENERAL:**

**A.** Owners and operators of petroleum storage tank systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other

appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

**B.** Upon confirmation of a release pursuant to 20.5.118 NMAC or identification and reporting of a release in any other manner, owners and operators of petroleum storage tank systems shall comply with the requirements of this part if the release:

(1) is of unknown volume or is greater in volume than 25 gallons; or

(2) is of any size and the owner or operator is directed by the department to comply with this part.

**C.** Owners and operators shall maintain and provide to the department all reports required in 20.5.119.1932 and 20.5.119.1933 NMAC.

**D.** Owners and operators shall mail or deliver and provide paper and electronic copies of all written notices and reports required under this part to be submitted to the department to the owner or operator’s assigned project manager from the petroleum storage tank bureau, New Mexico environment department.

**E.** Owners and operators shall comply with any site-specific timeline or deadline that is approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been approved, the following timeline shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.118.1800 NMAC unless another event is specified in these.

Default Corrective Action Timeline

| <b>Deadline, in days from report:</b>              | <b>Action or deliverable due date, as defined above:</b> |
|--|--|
| 0  | report discovery or confirmation of a release            |
| 3  | 72-hour report   |
| 14   | 14-day report  |
| 60   | submit NAPL assessment                                   |
| 60   | initiate interim removal of contaminated soil            |
| 60   | preliminary investigation report                         |
| 120  | secondary investigation report                           |
| <b>When monitored natural attenuation is used:</b> |  |
| 510  | monitored natural attenuation (MNA) plan                 |
| 570  | implementation of MNA                                    |
| 935  | first annual MNA monitoring report                       |
| 935  | annual evaluation of MNA report                          |
| <b>When other remediation is used:</b>             |  |
| 510  | conceptual remediation plan                              |
| 540  | final remediation plan                                   |
| 600  | implementation of remediation                            |
| 690  | first quarterly monitoring report                        |
| 965  | annual evaluation of remediation system report           |

**F.** All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance with this part. The designation of such a representative shall not affect the department's right to seek

compliance at any time from any owner or operator and shall not relieve owners or operators of any legal liabilities or responsibilities they may have under this part or otherwise under the law.

**G.** Except for 20.5.119.1901, 20.5.119.1902 and 20.5.119.1903 NMAC, owners and operators shall submit to the department written workplans for all corrective action, including voluntary corrective action, as required under this part. Owners and operators may submit workplans in stages to reflect the sequence or types of corrective action described in 20.5.119 NMAC at the site, but the owners and operators shall submit all workplans to and obtain approval by the department in writing for technical adequacy before the corrective action is commenced.

**H.** Unless otherwise approved, a qualified firm as specified in 20.5.122 NMAC shall perform all corrective action and, when required by the rules in Title 20, Chapter 5 NMAC, a professional engineer as defined in 20.5.101.7 NMAC.

**(1)** All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to the rules in Title 16, Chapter 39 NMAC governing engineers, 14.6.3 NMAC governing contractors and 29 CFR part 1910 governing worker health and safety.

**(2)** Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

**I.** Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

**J.** All monitoring wells shall be permitted in conformance with applicable federal, state and local laws and regulations in effect at the time of installation.

**K.** Owners and operators shall clearly mark and secure monitoring wells and major remediation equipment to prevent unauthorized access, tampering and damage. Owners and operators shall close or abandon all wells in accordance with the requirements of applicable federal, state and local laws and regulations.

**L.** The department shall notify owners and operators taking corrective action and contractors of state-lead sites in writing when it has determined that a deliverable completed under an approved workplan is satisfactory. The written notice shall also inform the owner, operator or contractor that any application for payment from the fund of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received written notice of approval and that the department shall not grant extensions of the deadline except for good cause as shown pursuant to 20.5.123.2318 NMAC.

[20.5.119.1900 NMAC - N, 07/24/2018]

[The address of the petroleum storage tank bureau, remedial action program, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.119.1901 MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:**

**A.** Upon discovery or confirmation of a release, owners and operators of the storage tank system shall immediately prevent any further release from the storage tank system by whatever means necessary, including removing product from the storage tank system or any part of the storage tank system that is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the storage tank system from service in accordance with 20.5.115 NMAC.

**B.** Owners and operators shall inform the department in accordance with 20.5.118.1800 NMAC of any release and action taken to mitigate immediate damage from the release.

[20.5.119.1901 NMAC - N, 07/24/2018]

**20.5.119.1902 MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:**

**A.** Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of discovery or confirmation of a release pursuant to 20.5.118 NMAC, using the default timeline as set forth in Subsection E of 20.5.119.1900 NMAC or as otherwise approved by the department.

**B.** Owners and operators shall identify the location and details of construction of all private water supply wells, using readily accessible public records, within a 1,000-foot radius, and all public water supply wells within a one mile radius of the storage tank system, and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to protect these water supplies from contamination.

**C.** Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all drinking water supplies likely to be affected by the release.

**D.** If the release has contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

**E.** Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether petroleum products or vapors are present.

**F.** Owners and operators shall complete an investigation to determine whether potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

**(1)** The investigation shall include testing for vapors using the following:

**(a)** a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of petroleum hydrocarbon vapors; and

**(b)** a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful petroleum hydrocarbon vapors.



(2) In the event owners and operators discover potentially explosive levels of petroleum hydrocarbon vapors or potentially harmful petroleum hydrocarbon vapors in any structure in the vicinity of the release site, owners and operators shall take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing petroleum hydrocarbon vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

(a) Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of petroleum hydrocarbon vapors in the affected structures weekly for the first month and monthly thereafter unless a different monitoring schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(b) After the vapor mitigation system has been in operation for three months, owners and operators shall have 30 days to submit to the department a written summary report containing the monitoring results. The department may direct the owner and operator to modify the vapor mitigation system as necessary to reduce petroleum hydrocarbon vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

(3) Owners and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

(a) levels of petroleum hydrocarbon vapors are less than ten percent LEL; and

(b) levels of petroleum hydrocarbon vapors are less than or equal to five whole instrument units above ambient levels in any structure in the vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this Subsection.

(4) When operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed, or as otherwise approved by the department. If during this period the levels exceed those set forth in Subparagraphs (a) and (b) of Paragraph (3) of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

G. Owners and operators shall remove any exposed petroleum products related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case no later than 72 hours after the confirmation or other identification of the release.

[20.5.119.1902 NMAC - N, 07/24/2018]

#### **20.5.119.1903 MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:**

A. Owners and operators shall make an oral report to the department summarizing the abatement procedures undertaken and the results of action taken under 20.5.119.1901 and 20.5.119.1902 NMAC within 72 hours of the discovery or confirmation of a release pursuant to 20.5.118 NMAC.

B. Owners and operators shall submit a paper and electronic copy of a written report to the department within 14 days of the discovery or confirmation of a release pursuant to

20.5.118 NMAC, in addition to the written notice required under 20.5.118 NMAC. This report shall summarize all the work performed pursuant to 20.5.119.1901 and 20.5.119.1902 NMAC and shall include the following information, as appropriate:

- (1) a map based on a United States geologic survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to 20.5.119.1902 NMAC; owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;
- (2) information about any water supplies known or suspected to have been contaminated by the release;
- (3) most likely direction of groundwater flow;
- (4) a site plan map showing locations of utilities, surface structures and storage tank systems;
- (5) information about underground utilities gathered in accordance with Subsection E of 20.5.119.1902 NMAC;
- (6) soil borings, logs, and details of construction of all wells, if available;
- (7) description of any actions taken to abate adverse effects;
- (8) data from vapor monitoring performed in the vicinity of the site;
- (9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;
- (10) description of fire and safety hazards resulting from the release and actions taken to abate such hazards;
- (11) description of current and past ownership of the property, storage tank systems, the substance stored in the system, age of tank and history of any tank removals;
- (12) present land use, within 1,000 feet of the site; and
- (13) records of tightness tests, repairs to the storage tank system, release detection and monitoring results.

[20.5.119.1903 NMAC - N, 07/24/2018]

#### **20.5.119.1904 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:**

**A.** Except for the 72-hour vapor check, owners and operators shall notify the department at least four days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

**B.** Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or abandonment of any wells.

**C.** Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the nature of the known or suspected contaminants and in conformance with applicable federal, state and local laws and regulations.

[20.5.119.1904 NMAC - N, 07/24/2018]

#### **20.5.119.1905 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:**

**A.** Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL on surface water, in any excavation pit, or in any well. Owners and operators shall submit the

assessment to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**B.** The department may approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**C.** Owners and operators shall remove NAPL in a manner that minimizes the spread of contamination into uncontaminated media.

**D.** Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state fire marshal or other local authority, state hazardous waste regulations (20.4.1 NMAC), and any other applicable laws or regulations.

**E.** Owners and operators shall report recovery and disposal of NAPL to the department.

[20.5.119.1905 NMAC - N, 07/24/2018]

#### **20.5.119.1906 INTERIM REMOVAL OF CONTAMINATED SOIL:**

**A.** Owners and operators shall remediate contaminated soil in accordance with 20.5.119.1912, 20.5.119.1914, and 20.5.119.1922 NMAC, unless approved by the department to remove and treat contaminated soil in accordance with this section.

(1) The department may approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

(2) Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

(3) The department shall approve the vertical and horizontal extent of soil to be excavated.

**B.** When treating or temporarily storing soil on site, owners and operators shall:

(1) for treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) for temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or the environment.

**C.** When contaminated soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

D. Remediation shall be considered complete when the requirements in 20.5.119.1929 NMAC are met.

E. In accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil.

(1) The report shall describe the soil removal action and its effectiveness, including volumes and weight removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action.

[20.5.119.1906 NMAC - N, 07/24/2018]

#### **20.5.119.1907 MINIMUM SITE ASSESSMENT, PRELIMINARY AND OTHER REQUIRED INVESTIGATIONS:**

A. A preliminary investigation is not required when owners and operators can demonstrate that the contamination has not reached groundwater and one of the following two conditions apply:

1) the release is remediated in accordance with this part within 72 hours of discovery or confirmation; or

2) the release is permanently contained within the UST excavation area or the AST containment system.

B. If the contamination extends beyond the boundaries of the property where the release originated, owners and operators shall conduct a secondary investigation in accordance with 20.5.119.1910 NMAC.

C. When the horizontal and vertical extent and magnitude of contamination from the release have been characterized, and it has been demonstrated that contamination has not reached groundwater, owners and operators, if required by the department, shall perform a soil-only contamination assessment and related corrective action in accordance with 20.5.119.1912 NMAC.

D. When a potential or actual threat from vapor intrusion is identified, owners and operators, if required by the department, shall perform a petroleum vapor intrusion assessment and related corrective action in accordance with 20.5.119.1913 NMAC.

[20.5.119.1907 NMAC - N, 07/24/2018]

#### **20.5.119.1908 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REQUIREMENTS:**

Owners and operators shall conduct a preliminary investigation in accordance with this subsection and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The preliminary investigation shall determine the following, unless otherwise approved by the department.

A. If not previously identified and reported under 20.5.119.1903 NMAC, the preliminary investigation shall determine the source of contamination, the regulated substance released or suspected of being released at the site, the media of concern, current and potential

receptors, current and anticipated use of property, complete and incomplete exposure pathways, and routes of exposure.

**B.** The preliminary investigation shall also determine the horizontal and vertical extent and magnitude of soil contamination.

(1) Owners and operators shall conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings into the groundwater saturated zone or, with approval from the department, to a depth at which measured levels of contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units.

(2) Owners and operators shall advance at least four additional soil borings to characterize the release within property boundaries. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the storage tank system is located, owners and operators shall advance soil borings sufficient to characterize the extent and magnitude of contamination within site boundaries.

(3) Owners and operators shall assess at five-foot intervals, field estimates of concentrations of petroleum hydrocarbons in the soil borings and select and prepare samples for laboratory analysis.

(4) Owners and operators shall gather field data for soil classification, determining and recording color, grain size, texture, description of lithification, plasticity and clay content.

(5) The preliminary investigation shall include determinations of derived values for soil bulk density (g/cc), soil moisture content (percent by mass), and effective porosity, and fraction organic carbon content (percent by mass) using samples taken from an uncontaminated area of the vadose zone.

(6) Owners and operators shall delimit the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.101.7 NMAC.

**C.** Owners and operators shall determine whether groundwater or surface water has been contaminated above applicable standards or whether a potential for groundwater or surface water contamination is present by performing the following:

(1) install at least three groundwater monitoring wells at locations where the results of the soil boring survey conducted pursuant to this section indicate that groundwater may be contaminated; owners and operators shall:

(a) locate monitoring wells so that groundwater gradient can be determined;

(b) install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in conformance with the initial incident report and other relevant information;

(c) install one of the monitoring wells in the estimated down-gradient direction from the area of highest contamination;

(d) construct wells in accordance with all applicable federal, state and local laws and regulations; and

(e) survey the wells using a New Mexico licensed professional surveyor, in decimal degrees of latitude and longitude in accordance with NAD 83;

(2) calculate the direction and gradient of groundwater flow;

(3) inspect all monitoring wells for the presence of NAPL using a method approved by the department; if NAPL is present in any well, measure the apparent thickness, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.119.1905 NMAC; and

(4) sample each monitoring well that does not contain NAPL and analyze the sample for contaminants of concern to determine whether:

(a) immediate mitigation procedures are warranted; and

(b) other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.119.1902 NMAC by:

(i) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.119.1902 NMAC;

(ii) checking for the presence of vapors in accordance with 20.5.119.1902 and 20.5.119.1907 NMAC; and

**D.** Owners and operators shall identify all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release to determine if:

(1) immediate mitigation procedures are warranted; and

(2) other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.119.1903 NMAC by:

(a) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.119.1902 NMAC;

(b) checking for the presence of vapors in accordance with 20.5.119.1902 and 20.5.119.1907 NMAC.

[20.5.119.1908 NMAC - N, 07/24/2018]

#### **20.5.119.1909 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.101.7 NMAC in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The report shall include the information gathered under 20.5.119.1901, 20.5.119.1902, 20.5.119.1903 and 20.5.119.1907 NMAC and shall conform to the requirements of this section and 20.5.119.1908 NMAC.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The minimum site assessment report shall, at a minimum, include all pertinent data collected during the minimum site assessment investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media,

identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report as soon as feasible. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the minimum site assessment, preliminary investigation requirements in this section and 20.5.119.1908 NMAC, the department shall reject the report and the owner and operator shall be determined not to have conducted a minimum site assessment for the purposes of Subparagraph (c) of Paragraph (1) of Subsection B of Section 74-6B-8 NMSA 1978. The department's failure to review or to comment on this report shall not relieve the owner and operator of their responsibilities under this part or the law.

**E.** Owners and operators shall comply with the requirements of any local government which has designated a wellhead/source water protection area that includes the area of the release.

**F.** Owners and operators shall provide notice that includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination.

[20.5.119.1909 NMAC - N, 07/24/2018]

#### **20.5.119.1910 SECONDARY INVESTIGATION:**

**A.** Owners and operators shall perform a secondary investigation in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC when the department makes at least one of the following determinations about the site:

- (1) the extent and magnitude of contamination in all media has not been delimited by the preliminary investigation; or
- (2) the release threatens public health, safety and welfare or the environment.

**B.** The secondary investigation shall determine the following:

- (1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;
- (2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;
- (3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;
- (4) characteristics, aerial extent, estimated volume and apparent thickness of NAPL in wells;
- (5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;
- (6) the rate and direction of contaminant migration;
- (7) the hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity; the department may require field verification of estimates made from literature;
- (8) whether the aquifer is perched;
- (9) whether the aquifer is confined or unconfined; and

(10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.  
[20.5.119.1910 NMAC - N, 07/24/2018]

**20.5.119.1911 SECONDARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the secondary investigation to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The report shall include all information gathered under 20.5.119.1910 NMAC and shall conform to the requirements of this part.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The secondary investigation report shall, at a minimum, include all pertinent data collected during the secondary investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not meet the requirements of 20.5.119.1910 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve the owner and operator of their responsibilities under this part or the law.

**E.** Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination who were not previously notified in accordance with 20.5.119.1909 NMAC.

[20.5.119.1911 NMAC - N, 07/24/2018]

**20.5.119.1912 SOIL-ONLY CONTAMINATION ASSESSMENT:** The soil-only contamination assessment is intended to determine whether soil contamination poses a threat to human health or the environment including groundwater or may pose a threat in the future such that corrective action is required. Owners and operators shall comply with this section as required by the department. Owners and operators shall obtain written approval from the department before initiating the evaluation.

**A.** After the horizontal and vertical extent and magnitude of the soil contamination from the release has been fully characterized and where groundwater has not been impacted, the department may require owners and operators to demonstrate the extent to which a release may pose a threat to human health and the environment.

**B.** Owners and operators shall use the department approved risk assessment guidance for site investigations and remediation; or equivalent assessment tool as required and approved by the department to comply with the requirements of this section.



C. When representative concentrations of any contaminant of concern equal or exceed any soil screening levels (SSLs) as discussed in Subsection B of 20.5.119.1912 NMAC for any exposure pathway, owners and operators shall perform a site-specific risk assessment if directed by the department.

D. Soil-only contamination assessment reports shall be submitted in accordance with 20.5.119.1933 NMAC and shall be maintained in accordance with 20.5.119.1932 NMAC. [20.5.119.1912 NMAC - N, 07/24/2018]

**20.5.119.1913 PETROLEUM VAPOR INTRUSION ASSESSMENT:** A vapor intrusion assessment is intended to determine if vapor intrusion poses a threat to human health and the environment specifically within an overlying building or structure such that corrective action is required. Owners and operators shall comply with this section as required by the department if vapor intrusion poses or may pose a threat to human health or the environment. Owners and operators shall obtain written approval from the department before initiating the evaluation.

A. After the horizontal and vertical extent and magnitude of the soil contamination from the release has been fully characterized, and a threat or potential threat from petroleum vapors intrusion has been identified, owners and operators shall be required to perform a petroleum vapor intrusion assessment.

B. Owners and operators shall use the environmental protection agency (EPA) technical guide for addressing petroleum vapor intrusion at leaking underground storage tank sites or an equivalent assessment tool as approved by the department to comply with the requirements of this section:

C. If petroleum vapor intrusion has been demonstrated to be present, then the owner and operator shall perform vapor mitigation and corrective action if directed by the department.

D. Petroleum vapor intrusion assessment reports shall be submitted in accordance with 20.5.119.1933 NMAC and shall be maintained in accordance with 20.5.119.1932 NMAC. [20.5.119.1913 NMAC - N, 07/24/2018]

**20.5.119.1914 CORRECTIVE ACTION REQUIREMENTS FOR TOTAL PETROLEUM HYDROCARBONS (TPH):** In addition to comparing representative soil concentrations for all contaminants of concern to risk-based screening levels (RBSLs) and site-specific target levels (SSTLs) and concentrations in groundwater and surface water to applicable WQCC and EIB standards, in accordance with, 20.5.119.1912 NMAC, owners and operators shall mitigate, remediate, or remove TPH contamination in soil and groundwater, when directed by the department based upon a determination by the department that the TPH contamination adversely affects public health, safety and welfare or the environment.

[20.5.119.1914 NMAC - N, 07/24/2018]

**20.5.119.1915 MONITORED NATURAL ATTENUATION:**

A. If approved by the department, owners and operators shall submit a plan for monitored natural attenuation to the department if any of the following conditions have been identified at the site:

(1) concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water; or

(2) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** Owners and operators shall submit the monitored natural attenuation plan in accordance with this section and 20.5.119.1920 NMAC and in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**C.** The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) cross sections showing the source contaminant mass in relation to the groundwater contamination;

(3) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(5) a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;

(6) the justification for selecting the designated monitoring wells;

(7) the recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;

(8) an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(9) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(10) public notice in conformance with the following requirements:

(a) owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department; the second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted;

(b) the notice shall contain the information specified in this section including the following:

(i) a statement that a monitored natural attenuation plan has been submitted to the department proposing actions to monitor natural attenuation of a release of petroleum products;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of

contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners; and

(d) owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan; the notice shall contain the information specified in this subsection and shall be at least eight and one-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the monitored natural attenuation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice; and

(11) other requirements as directed by the department.

[20.5.119.1915 NMAC - N, 07/24/2018]

[The address of the department's petroleum storage tank bureau, remediation section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.119.1916 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** After the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department shall notify the owner and operator within 30 days of such a postponement and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection E of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a monitored natural attenuation plan and impose reasonable conditions.

**C.** If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

**D.** The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event that an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the monitored natural

attenuation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.119.1916 NMAC - N, 07/24/2018]

**20.5.119.1917 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:**

**A.** Owners and operators shall implement the monitored natural attenuation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**B.** Owners and operators shall monitor the contamination until the department determines that the natural attenuation is complete pursuant to this part, or unless otherwise approved by the department.

[20.5.119.1917 NMAC - N, 07/24/2018]

**20.5.119.1918 REPORTS ON THE MONITORED NATURAL ATTENUATION:**

**A.** Owners and operators shall submit paper and electronic copies of written reports to the department on the progress of the monitored natural attenuation. Owners and operators shall submit the reports annually unless a different reporting period is approved by the department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(3) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(4) tabulation of the current and historical results of all water quality analyses and water elevation data;

(5) graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;

(6) data evaluation and interpretation, and recommendations; and

(7) other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.119.1918 NMAC - N, 07/24/2018]

**20.5.119.1919 EVALUATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators shall evaluate the effectiveness of the monitored natural attenuation plan at the end of each year of monitoring and submit the evaluation to the department for review unless otherwise approved by the department.

**B.** When the department determines that the plan is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing monitored natural attenuation plan within 30 days of the department's determination of

ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section.  
[20.5.119.1919 NMAC - N, 07/24/2018]

**20.5.119.1920 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the monitored natural attenuation plan for good cause.

**B.** The department may approve a modification of the monitored natural attenuation plan only if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public notice requirements of 20.5.119.1915 NMAC.  
[20.5.119.1920 NMAC - N, 07/24/2018]

**20.5.119.1921 COMPLETION OF MONITORED NATURAL ATTENUATION:**

**A.** Natural attenuation shall be considered complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) the EIB standard of 0.1 mg/L for methyl tertiary butyl ether (MTBE) has been met in groundwater and surface water;

(3) all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards in groundwater have been achieved:

(a) the applicable standards shall be achieved concurrently at all compliance wells as approved by the department;

(b) for verification that soil has reached target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, unless otherwise approved by the department;

(4) corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.119.1914 NMAC have been met; and

(5) any other conditions which threatened public health, safety and welfare or the environment have been abated.

**B.** If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

**C.** Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

**D.** Following department approval, and with 30 days' notice unless otherwise approved by the department, owners and operators shall properly abandon wells that are no longer needed for monitoring, in accordance with federal, state and local laws and regulations.  
[20.5.119.1921 NMAC - N, 07/24/2018]

**20.5.119.1922 CONCEPTUAL REMEDIATION PLAN:**

**A.** If approved by the department, owners and operators shall submit a conceptual remediation plan to the department if any of the following conditions have been identified at the site:

- (1) a thickness of greater than one-eighth inch of NAPL is present on the surface of the water, including in any excavation pit, or in any well;
- (2) contaminant saturated soil is present;
- (3) concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water;
- (4) total petroleum hydrocarbons in soil meet the criteria outlined 20.5.119.1914 NMAC; or

(5) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** All remediation plans shall include but are not limited to methods to mitigate, remove or otherwise remediate the contaminant source areas.

**C.** Owners and operators shall submit the conceptual remediation plan in accordance with this section and a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

(1) The conceptual remediation plan shall provide a written description of all of the methodologies proposed and discuss how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

(2) The conceptual remediation plan, at a minimum and as appropriate, shall include:

- (a) a concise description of site conditions, including hydrogeology, contaminant characteristics and plume dynamics;
- (b) the recommended approach to remediation and justification for the recommendation;
- (c) a clear description of the goals of remediation and the target concentrations to be met in each medium;
- (d) a narrative description of the proposed methodologies including a preliminary cost comparison and time lines for achieving goals of remediation;
- (e) a cost estimate of implementation including installation, operation and maintenance, and monitoring;
- (f) a schematic diagram of the proposed remediation system or treatment area and a narrative description of its operation;
- (g) a plan view, to scale, of the site showing locations of the proposed equipment or excavation boundaries in relation to the site's physical features and contaminant plumes;
- (h) a description of how the approach will achieve target concentrations and other goals of remediation; and
- (i) a description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected.

[20.5.119.1922 NMAC - N, 07/24/2018]

**20.5.119.1923 FINAL REMEDIATION PLAN:**

**A.** Following department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and shall submit three copies of the final remediation plan to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**B.** The design and engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall be the responsibility of a professional engineer as defined in 20.5.101.7 NMAC. A professional engineer shall sign and seal all plans and drawings required pursuant to this section, unless otherwise approved by the department.

**C.** In order to eliminate the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shutdown of the entire system. Integral components include but are not limited to pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

**D.** All final remediation plans shall, at a minimum, include all of the following:

- (1) goals of remediation and target concentrations to be achieved in each medium;
- (2) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;
- (3) a hydrogeologic cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;
- (4) an implementation schedule;
- (5) engineered plans and specifications in accordance with Subsection E of this section;
- (6) a schedule for remediation of the source areas for protection of receptors and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;
- (7) a design and schedule for a system optimization that meets the requirements of 20.5.119.1928 NMAC;
- (8) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;
- (9) copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water national pollution discharge elimination system (NPDES) permit;
- (10) public notice in conformance with the following requirements:
  - (a) owners and operators shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department; the second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to the department, and owners and

operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted;

(b) the notice shall contain the information specified in this section including the following:

(i) a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of petroleum products;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered, within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners; and

(d) owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan; the notice shall contain the information specified in this subsection and shall be at least eight and one-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice;

(11) for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

(12) other requirements as directed by the department.

**E.** In addition to the requirements of Subsection D of this section, all final remediation plans shall include:

(1) for engineered systems:

(a) unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

(b) process and instrumentation diagrams;

(c) mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

(d) details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;



- (e) equipment and parts list and specifications including a spare parts list, performance requirements, maintenance requirements and schedule;
  - (f) electric power requirements including a one-line diagram and schematics;
  - (g) operation and maintenance commitments and schedules for all facets of the remediation system; and
  - (h) all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:
    - (i) trenching and protection from traffic;
    - (ii) concrete repair and replacement;
    - (iii) restoration of property; and
    - (iv) location and protection of underground utilities;
- (2) for excavation and disposal plans:
- (a) plan view of proposed excavation relative to contaminant plume;
  - (b) cross-sections of proposed excavation depicting overburden, contaminated material to be removed and backfill;
  - (c) volume calculations and slope stability analysis;
  - (d) description of excavation and backfill procedure to be performed in conformance with OSHA and ASTM standards and regulations;
  - (e) traffic control plan;
  - (f) description of post-excavation confirmation sampling;
  - (g) proposed final grade plan;
  - (h) post-excavation grade survey; and
  - (i) all other plans, diagrams and specifications that are necessary including but not limited to requirements for:
    - (i) trenching and protection from traffic;
    - (ii) concrete repair and replacement;
    - (iii) restoration of property; and
    - (iv) location and protection of underground utilities.

[20.5.119.1923 NMAC - N, 07/24/2018]

[The address of the petroleum storage tank bureau, remediation section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.119.1924 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:**

**A.** Within 30 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the remediation plan must be postponed due to significant comments from the public, the department must notify the owner and operator within 30 days of such a postponement and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a final remediation plan and impose reasonable conditions.

C. If the department determines that the final remediation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event that an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.119.1924 NMAC - N, 07/24/2018]

#### **20.5.119.1925 IMPLEMENTATION OF FINAL REMEDIATION PLAN:**

A. Owners and operators shall implement the final remediation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. Owners and operators shall employ a professional engineer to ensure conformance with the final remediation plan including excavation and installation, commissioning and operation of the system.

B. When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

(1) a professional engineer shall supervise conformance with the final remediation plan including installation, commissioning and operation of the system;

(2) owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part unless otherwise approved by the department; and

(3) owners and operators shall report to the department all interruptions of the operation of the remediation system greater than 72 hours.

C. Owners and operators shall obtain written approval from the department prior to implementing any change to the department-approved engineering design.

D. Following implementation of the final remediation plan, owners and operators shall submit an “as-built” report signed and sealed by the project professional engineer including:

(1) any deviations from the drawings and specifications included in the final remediation plan;

(2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, and contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams; and

(3) information and documentation of purchased major remediation equipment including, but not limited to serial number, model and manufacturer, description, warranty information, operating manuals, maintenance requirements and purchase price.

[20.5.119.1925 NMAC - N, 07/24/2018]

#### **20.5.119.1926 QUARTERLY REPORTS ON THE REMEDIATION:**

A. Owners and operators shall submit paper and electronic copies of written reports to the department on the operation of the remediation system. Owners and operators shall submit

the reports quarterly unless a different reporting period is approved by the department, shall document all work performed during the preceding interval, and shall include the following information, as appropriate:

- (1) tabulation of the current and historical results of all water quality analyses and water elevation data;
- (2) evaluation of the performance and efficiency of each aspect of the remediation:
  - (a) the evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified firm and a professional engineer; and
  - (b) owners and operators shall submit evidence that the performance of the remediation system meets the operating standards outlined in the final remediation plan;
- (3) verification based on calculations that the schedule is being met for source removal, protection of actual and potential receptors, achievement of target concentrations, quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants;
- (4) records of system operation, including but not limited to, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next quarter;
- (5) NAPL recovery, both cumulative and quarterly, and details of its disposal;
- (6) effluent vapor concentrations over time;
- (7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and
- (8) other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.119.1926 NMAC - N, 07/24/2018]

#### **20.5.119.1927 ANNUAL EVALUATION OF REMEDIATION:**

**A.** Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

**B.** When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare and the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.119.1929 NMAC commences.

[20.5.119.1927 NMAC - N, 07/24/2018]

**20.5.119.1928 MODIFICATION OF FINAL REMEDIATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

**B.** The department may modify a final remediation plan only if it complies with applicable regulations, provides adequate protection of public health, safety and welfare and the environment, and the owner and operator comply with the public notice requirements of 20.5.119.1923 NMAC.

[20.5.119.1928 NMAC - N, 07/24/2018]

**20.5.119.1929 COMPLETION OF REMEDIATION:**

**A.** The department shall consider remediation complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) the EIB standard of 0.1 mg/L for methyl tertiary butyl ether (MTBE) has been met in groundwater and surface water;

(3) all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards in groundwater have been achieved;

(a) all electrical and mechanical components of the remediation system shall remain shut down during the monitoring period described in this subsection;

(b) the department shall approve the designation of certain monitoring wells as compliance wells; the applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise as approved by the department; and

(c) for verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, as approved by the department;

(4) corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.119.1914 NMAC have been met; and

(5) any other conditions which threatened public health, safety and welfare or the environment have been abated or remediated.

**B.** If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

**C.** Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

**D.** Termination of remediation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

**E.** Following department approval, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon wells that

are no longer needed for remediation or monitoring, in accordance with federal, state and local laws and regulations.

[20.5.119.1929 NMAC - N, 07/24/2018]

**20.5.119.1930 NO FURTHER ACTION DETERMINATION:**

**A.** A no further action determination is a technical determination issued by the department that documents that the owner or operator of a site has met all applicable WQCC and EIB remediation standards and that no contaminant will present a significant risk of harm to public health, safety and welfare and the environment.

**B.** Any owner or operator may request that the department evaluate a site for a no further action determination by submitting a written request to the department. The request shall include the following, if requested by the department:

(1) description of the site including a historical overview and generalized description of businesses, structures, vegetation, other prominent features, and location of the site;

(2) surveyed plat of the site, site map with legal description, or both;

(3) completed current environmental conditions table listing all areas of environmental concern on the site subject to remediation; the table shall include the following information about each area of environmental concern:

(a) remedial action taken, date, regulatory agency;

(b) residual contaminants of concern;

(c) clean-up status; and

(d) clean-up standards for contaminants of concern;

(4) chronology of events for each area investigated or remediated; and

(5) other relevant documents, as requested by the department.

**C.** Owners and operators shall receive approval of a request for a no further action determination for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is less than or equal to WQCC and EIB standards, and where there had been groundwater contamination related to the release, the applicable standards have been achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to applicable RBSLs or SSTLs, unless otherwise approved by the department under Subparagraph (c) of Paragraph (3) of Subsection A of 20.5.119.1929 NMAC; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

**D.** Owners and operators shall receive approval of a request for no further action determination for the release when subsurface water does not meet the definition of “subsurface water” in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

**E.** Upon completion of an assessment by the department that a site qualifies for a no further action determination, the department shall issue a no further action determination letter.

**F.** Any of the following may result in a reversal of a no further action determination:

(1) new information becomes available or circumstances arise indicating that an unacceptable risk to public health, safety and welfare or the environment exists; or

(2) a change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.119.1930 NMAC - N, 07/24/2018]

**20.5.119.1931 REQUEST FOR EXTENSION OF TIME:**

A. For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The request shall specify the reason for the request, all actions taken to comply with the deadline and the period of time for which the extension is requested.

B. The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

C. Lack of diligence or failure of owners and operators to comply with these regulations shall be grounds for denying a request for an extension of time.

[20.5.119.1931 NMAC - N, 07/24/2018]

**20.5.119.1932 RECORDKEEPING AND RETENTION:**

A. Owners and operators of petroleum storage tanks where a release has occurred shall retain records documenting compliance with all applicable requirements of 20.5.119 NMAC. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to maintain the records required by this section however both parties are liable in the event of non-compliance.

B. Records to be maintained shall include, but not be limited to:

- (1) 72-hour report;
- (2) 14-day report;
- (3) NAPL Assessment report;
- (4) interim removal of contaminated soil report;
- (5) minimum site assessment, preliminary investigation report;
- (6) secondary investigation report;
- (7) soil-only contamination assessment report;
- (8) petroleum vapor intrusion assessment report;
- (9) final remediation plan;
- (10) groundwater monitoring reports;
- (11) operation and maintenance reports.

C. Records shall be maintained for a minimum period of 10 years following a no further action determination as set forth in 20.5.119.1930 NMAC.

[20.5.119.1932 NMAC - N, 07/24/2018]

**20.5.119.1933 REPORTING:**

A. Owners and operators shall provide to the department all reports as required in 20.5.119 NMAC in accordance with the timeline or deadlines set forth as stated in 20.5.119.1900 NMAC.

**B.** Owners and operators shall ensure all reports, plans and requests required in 20.5.119 NMAC contain at a minimum, in addition to the requirements set forth in 20.5.119.1902, 20.5.119.1903, 20.5.119.1905, 20.5.119.1906, 20.5.119.1909, 20.5.119.1911, 20.5.119.1912, 20.5.119.1913, 20.5.119.1915, 20.5.119.1918, 20.5.119.1922, 20.5.119.1923, 20.5.119.1926, 20.5.119.1927, 20.5.119.1930 and 20.5.119.1931 NMAC:

- (1) release name and address;
- (2) facility identification and release identification numbers;
- (3) workplan and deliverable identification numbers as applicable;
- (4) owner and operator name and address, and
- (5) date report was completed.

[20.5.119.1933 NMAC - N, 07/24/2018]

### **HISTORY OF 20.5.119 NMAC:**

#### **Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR 12, Underground Storage Tank Regulations - Part XII - Corrective Action for Petroleum UST Systems, filed 6/13/90.

#### **History of Repealed Materials:**

20 NMAC 5.12, Environmental Protection, Underground Storage Tanks, Corrective Action for UST Systems Containing Petroleum Products (filed 10/6/95), repealed 2/2/00.

20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products (filed 12/30/99), repealed 8/15/03.

20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 7/16/03), repealed 6/15/09.

20.5.12 NMAC, Petroleum Storage Tanks, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 6/15/09), repealed 7/24/18.

#### **Other History:**

EIB/USTR 12, Underground Storage Tank Regulations - Part XII - Corrective Action for Petroleum UST Systems, (filed 6/13/90) was renumbered, reformatted and replaced by 20 NMAC 5.12, Underground Storage Tanks, Corrective Action for UST Systems Containing Petroleum, effective 11/05/95.

20 NMAC 5.12, Underground Storage Tanks, Corrective Action for UST Systems Containing Petroleum, (filed 10/06/95) was replaced by 20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products, effective 2/2/00.

20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products, (filed 12/30/99) was renumbered, reformatted and replaced by 20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products, effective 8/15/03.

20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 7/16/03) was replaced by 20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products, effective 6/15/09.

20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 6/15/09) was reformatted, renumbered, and replaced by 20.5.119 NMAC, Petroleum

Storage Tanks, Corrective Action for Storage Tank Systems Containing Petroleum Products, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 PETROLEUM STORAGE TANKS  
PART 120 CORRECTIVE ACTION FOR UST SYSTEMS CONTAINING OTHER  
REGULATED SUBSTANCES**

**20.5.120.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.120.1 NMAC - N, 07/24/2018]

**20.5.120.2 SCOPE:** This part applies to owners and operators of hazardous substance UST systems as defined in 20.5.101 NMAC. If the owner and operator of an UST system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.120.2 NMAC - N, 07/24/2018]

**20.5.120.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.120.3 NMAC - N, 07/24/2018]

**20.5.120.4 DURATION:** Permanent.  
[20.5.120.4 NMAC - N, 07/24/2018]

**20.5.120.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.120.5 NMAC - N, 07/24/2018]

**20.5.120.6 OBJECTIVE:** The purpose of this part is to provide for corrective action at sites contaminated by releases from hazardous substance UST systems and to protect the public health, safety and welfare and the environment of the state.  
[20.5.120.6 NMAC - N, 07/24/2018]

**20.5.120.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part.  
[20.5.120.7 NMAC - N, 07/24/2018]

**20.5.120.8 to 20.5.120.1999 [RESERVED]**

**20.5.120.2000 GENERAL:**

**A.** Owners and operators of hazardous substance UST systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

**B.** Upon confirmation of a release pursuant to 20.5.118.1802 NMAC or identification and reporting of a release in any other manner, owners and operators of hazardous substance UST systems shall comply with the requirements of this part if the release:

(1) is of unknown volume or is greater in volume than the reportable quantity under 40 C.F.R. Part 302; or

(2) is of any size and the owner or operator is directed by the department to comply with this part.

**C.** Owners and operators shall maintain and provide to the department all reports required in 20.5.120.2029 and 20.5.120.2030 NMAC.

**D.** Owners and operators shall mail or deliver and provide paper and electronic copies of all written notices and reports required under this part to be submitted to the department to the owner or operator’s assigned project manager from the petroleum storage tank bureau, New Mexico environment department.

**E.** Owners and operators shall comply with any site-specific timeline or deadline that is approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been approved, the following timeline shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.118.1800 NMAC unless another event is specified in these rules.

**Default Corrective Action Timeline**

| <b>Deadline, in days from report:</b>              | <b>Action or deliverable due date, as defined above:</b> |
|--|--|
| 0  | report discovery or confirmation of a release            |
| 3  | 72-hour report   |
| 14   | 14-day report  |
| 60   | submit NAPL assessment                                   |
| 60   | initiate interim removal of contaminated soil            |
| 60   | preliminary investigation report                         |
| 120  | secondary investigation report                           |
| <b>When monitored natural attenuation is used:</b> |  |
| 510  | monitored natural attenuation (MNA) plan                 |
| 570  | implementation of MNA                                    |
| 935  | first annual MNA monitoring report                       |
| 935  | annual evaluation of MNA report                          |
| <b>When other remediation is used:</b>             |  |
| 510  | conceptual remediation plan                              |
| 540  | final remediation plan                                   |
| 600  | implementation of remediation                            |
| 690  | first quarterly monitoring report                        |
| 965  | annual evaluation of remediation system report           |

**F.** All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance with this part. The designation of such a representative shall not affect the department’s right to seek

compliance at any time from the owner or the operator or both. The designation of a representative is intended to facilitate compliance with this part and shall not relieve the owner and operator of their legal liabilities or responsibilities under this part.

**G.** Except for 20.5.120.2001, 20.5.120.2002 and 20.5.120.2003 NMAC, owners and operators shall submit to the department written workplans for all corrective action under this part. Owners and operators may submit workplans in stages to reflect the sequence or types of corrective action described in 20.5.120 NMAC at the site, but the owners and operators shall submit all workplans to and obtain approval by the department in writing for technical adequacy before the corrective action is commenced.

**H.** Unless otherwise approved, a qualified firm as specified in 20.5.122 NMAC shall perform all corrective action and, when required by the rules in Title 20, Chapter 5 NMAC, a professional engineer as defined in 20.5.101.7 NMAC.

**(1)** All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to the rules in Title 16, Chapter 39 NMAC governing engineers, 14.6.3 NMAC governing contractors and, 29 CFR part 1910 governing worker health and safety.

**(2)** Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

**I.** Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

**J.** All monitoring wells shall be permitted in conformance with all applicable federal, state and local laws, regulations and ordinances in effect at the time of installation.

**K.** Owners and operators shall clearly mark and secure monitoring wells and major remediation equipment to prevent unauthorized access, tampering. Owners and operators shall close or abandon all wells in accordance with the requirements of applicable federal, state and local laws and regulations in effect at the time the workplan was approved.

**L.** If a release constitutes a hazardous substance incident under the provisions of the Hazardous Waste Act relating to hazardous substance incidents, those provisions may apply in addition to this part.

**M.** The department shall notify owners and operators taking corrective action and contractors of state-lead sites in writing when it has determined that a deliverable completed under an approved workplan is satisfactory. The written notice shall also inform the owner, operator or contractor that any application for payment from the fund of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received written notice of approval and that the department shall not grant extensions of the deadline except for good cause as shown pursuant to 20.5.123.2318 NMAC.

[20.5.120.2000 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remedial Action Program, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.120.2001 MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:**

**A.** Upon discovery or confirmation of a release, owners and operators of the UST system shall immediately prevent any further release from the UST system by whatever means necessary, including removing product from the UST system or any part of the UST system that

is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the UST system from service in accordance with 20.5.115 NMAC.

**B.** Owners and operators shall inform the department in accordance with 20.5.118.1800 NMAC of any release and action taken to mitigate immediate damage from the release.

[20.5.120.2001 NMAC - N, 07/24/2018]

**20.5.120.2002 MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:**

**A.** Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of discovery or confirmation of a release pursuant to 20.5.118 NMAC, using the default timeline as set forth in Subsection E of 20.5.120.2000 NMAC or as otherwise approved by the department.

**B.** Owners and operators shall identify the location and details of construction of all private water supply wells, using readily accessible public records, within a 1,000-foot radius, and all public water supply wells within a one mile radius of the UST system, and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to protect these water supplies from contamination.

**C.** Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all drinking water supplies likely to be affected by the release.

**D.** If the release has contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of discovery or confirmation of a release pursuant to 20.5.118 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

**E.** Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether NAPL or vapors are present.

**F.** Owners and operators shall complete an investigation to determine whether potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

**(1)** The investigation shall include testing for vapors using the following:  
**(a)** a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of vapors; and  
**(b)** a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful vapors.

(2) In the event owners and operators discover potentially explosive levels of vapors greater than 10 percent of the lower explosive limit (LEL) or potentially harmful vapors reading greater than five whole units above ambient concentrations in any structure in the vicinity of the release site, owners and operators shall take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

(a) Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of vapors in the affected structures weekly for the first month and monthly thereafter unless a different monitoring schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(b) After the vapor mitigation system has been in operation for three months, owners and operators shall have 30 days to submit to the department a written summary report containing the monitoring results. The department may direct owners and operators to modify the vapor mitigation system as necessary to reduce vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

(3) Owners and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

(a) levels of vapors are less than ten percent LEL; and

(b) levels of vapors are less than or equal to five whole instrument units above ambient levels in any structure in the vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(4) When operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed, or as otherwise approved by the department. If during this period the levels exceed those set forth in Subparagraphs (a) and (b) of Paragraph (3) of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

G. Owners and operators shall remove any exposed hazardous substances related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case no later than 72 hours after the confirmation or other identification of the release.

[20.5.120.2002 NMAC - N, 07/24/2018]

#### **20.5.120.2003 MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:**

A. Owners and operators shall make an oral report summarizing the abatement procedures undertaken and the results of action taken under 20.5.120.2001 and 20.5.120.2002 NMAC within 72 hours of the discovery or confirmation of a release pursuant to 20.5.118 NMAC.

B. Owners and operators shall submit a paper and electronic copy of a written report to the department within 14 days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC in addition to the written notice required under 20.5.118 NMAC. This report

shall summarize all the work performed pursuant to 20.5.120.2001 and 20.5.120.2002 NMAC and shall include the following information, as appropriate:

- (1) a map based on a United States geologic survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to Subsection B of 20.5.120.2002 NMAC; owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;
- (2) information about any water supplies known or suspected to have been contaminated by the release;
- (3) most likely direction of groundwater flow;
- (4) a site plan map showing locations of utilities, surface structures and storage tank systems;
- (5) information about underground utilities gathered in accordance with Subsection E of 20.5.120.2002 NMAC;
- (6) soil borings, logs, and details of construction of all wells, if available;
- (7) description of any actions taken to abate adverse effects;
- (8) data from vapor monitoring performed in the vicinity of the site;
- (9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;
- (10) description of fire and safety hazards resulting from the release and actions taken to abate such hazards;
- (11) description of current and past ownership of the property, UST systems, the substance stored in the system, age of tank and history of any tank removals;
- (12) present land use, within 1,000 feet of the site; and
- (13) records of tightness tests, repairs to the UST system, release detection and monitoring results.

[20.5.120.2003 NMAC - N, 07/24/2018]

#### **20.5.120.2004 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:**

**A.** Except for the 72-hour vapor check, owners and operators shall notify the department at least four days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

**B.** Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or abandonment of any wells.

**C.** Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the nature of the known or suspected and in conformance with applicable federal, state and local laws and regulations.

[20.5.120.2004 NMAC - N, 07/24/2018]

#### **20.5.120.2005 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:**

**A.** Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL in surface water, in any excavation pit, or in any well. Owners and operators shall submit the

assessment to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** The department may approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**C.** Owners and operators shall remove NAPL in a manner that minimizes the spread of contamination into uncontaminated media.

**D.** Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state fire marshal or other local authority, state hazardous waste regulations 20.4.1 NMAC, and any other applicable laws or regulations.

**E.** Owners and operators shall report recovery and disposal of NAPL to the department.

[20.5.120.2005 NMAC - N, 07/24/2018]

#### **20.5.120.2006 INTERIM REMOVAL OF CONTAMINATED SOIL:**

**A.** Owners and operators shall remediate contaminated soil in accordance with 20.5.120.2018 and 20.5.120.2026 NMAC, unless approved by the department to remove and treat contaminated soil in accordance with this section.

(1) The department may approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

(2) Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline approved by the department or the timeline in Subsection E of 20.5.120.2000 NMAC.

(3) The department shall approve the vertical and horizontal extent of soil to be excavated.

**B.** When treating or temporarily storing soil on site, owners and operators shall:

(1) for treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) for temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or the environment.

**C.** When contaminated soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid or hazardous waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

**D.** Remediation shall be considered complete when the requirements in 20.5.120.2026 NMAC are met.

**E.** In accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil.

(1) The report shall describe the soil removal action and its effectiveness, including volumes and weight removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action.

[20.5.120.2006 NMAC - N, 07/24/2018]

#### **20.5.120.2007 MINIMUM SITE ASSESSMENT, PRELIMINARY AND OTHER REQUIRED INVESTIGATIONS:**

**A.** A preliminary investigation is not required when owners and operators can demonstrate that the contamination has not reached groundwater and one of the following two conditions apply:

(1) the release is remediated in accordance with this part within 72 hours of discovery or confirmation; or

(2) the release is permanently contained within the excavation area.

**B.** If the contamination extends beyond the boundaries of the property where the release originated, owners and operators shall conduct a secondary investigation in accordance with 20.5.120.2010 NMAC.

[20.5.120.2007 NMAC - N, 07/24/2018]

**20.5.120.2008 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION - REQUIREMENTS:** Owners and operators shall conduct a preliminary investigation in accordance with this Subsection and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. The preliminary investigation shall determine the following, unless otherwise approved by the department.

**A.** If not previously identified and reported under 20.5.120.2003 NMAC, the preliminary investigation shall determine the regulated substance released or suspected of being released at the site, the media of concern, current and potential receptors, current and anticipated use of property, complete and incomplete exposure pathways, and routes of exposure.

**B.** The preliminary investigation shall also determine the horizontal and vertical extent and magnitude of soil contamination.

(1) Owners and operators shall conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings into the groundwater saturated zone or, with approval from the department, to a depth at which measured levels of contaminants in soil are no longer detectable by laboratory



analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units.

(2) Owners and operators shall advance at least four additional soil borings to characterize the release within property boundaries. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the storage tank system is located, owners and operators shall advance soil borings sufficient to characterize the extent and magnitude of contamination within site boundaries.

(3) The preliminary investigation shall assess, at five-foot intervals, field estimates of concentrations of contaminants of concern in the soil borings and select and prepare samples for laboratory analysis.

(4) Owners and operators shall gather field data for soil classification, determining and recording color, grain size, texture, description of lithification, plasticity and clay content.

(5) The preliminary investigation shall include derived values for soil bulk density (g/cc), soil moisture content (percent by mass), and effective porosity, and fraction organic carbon content (percent by mass) using samples taken from an uncontaminated area of the vadose zone.

(6) The preliminary investigation shall delimit the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.101.7 NMAC.

C. The preliminary investigation shall determine whether groundwater or surface water has been contaminated above applicable standards or whether a potential for groundwater or surface water contamination is present by performing the following:

(1) install at least three groundwater monitoring wells at locations where the results of the soil boring survey conducted pursuant to this section indicate that groundwater may be contaminated; owners and operators shall:

(a) locate monitoring wells so that groundwater gradient can be determined;

(b) install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in conformance with the initial incident report and other relevant information;

(c) install one of the monitoring wells in the estimated down-gradient direction from the area of highest contamination;

(d) construct wells in accordance with all applicable federal, state and local laws and regulations; and

(e) survey the wells using a New Mexico licensed professional surveyor, in decimal degrees of latitude and longitude in accordance with NAD 83;

(2) calculate the direction and gradient of groundwater flow;

(3) inspect all monitoring wells for the presence of NAPL using a method approved by the department; if NAPL is present in any well, measure the apparent thickness, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.120.2005 NMAC; and

(4) sample each monitoring well that does not contain NAPL and analyze the sample for contaminants of concern to determine whether:

(a) immediate mitigation procedures are warranted; and

(b) other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.120.2002 NMAC by:

(i) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.120.2002 NMAC;

(ii) checking for the presence of vapors in accordance with 20.5.120.2002 and 20.5.120.2008 NMAC; and

**D.** Owners and operators shall identify all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release to determine if:

(1) immediate mitigation procedures are warranted; and

(2) other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.120.2003 NMAC by;

(a) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.120.2002 NMAC.

(b) checking for the presence of vapors in accordance with 20.5.120.2002 and 20.5.120.2008 NMAC.

[20.5.120.2008 NMAC - N, 07/24/2018]

#### **20.5.120.2009 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.101.7 NMAC in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. The report shall include the information gathered under 20.5.120.2001, 20.5.120.2002, 20.5.120.2003 and 20.5.120.2007 NMAC and shall conform to the requirements of this section and 20.5.120.2008 NMAC.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The minimum site assessment report shall at a minimum, include all pertinent data collected during the minimum site assessment investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the minimum site assessment, preliminary investigation requirements in this section and 20.5.120.2008 NMAC, the department shall reject the report and owners and operators shall be determined not to have conducted a minimum site assessment for the purposes of Subparagraph (c) of Paragraph (1) of Subsection B of Section 74-6B-8 NMSA 1978. The department's failure to review or to comment on this report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

**E.** Owners and operators shall comply with the requirements of any local government which has designated a wellhead/source water protection area that includes the area of the release.

**F.** Owners and operators shall provide notice that includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination.

[20.5.120.2009 NMAC - N, 07/24/2018]

**20.5.120.2010 SECONDARY INVESTIGATION:**

**A.** Owners and operators shall perform a secondary investigation in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC when the department makes at least one of the following determinations about the site:

- (1) the extent and magnitude of contamination in all media has not been delimited by the preliminary investigation; or
- (2) the release threatens public health, safety and welfare or the environment.

**B.** The secondary investigation shall determine the following:

- (1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;
- (2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;
- (3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;
- (4) characteristics, aerial extent, estimated volume and apparent thickness of NAPL in wells;
- (5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;
- (6) the rate and direction of contaminant migration;
- (7) the hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity; the department may require field verification of estimates made from literature;
- (8) whether the aquifer is perched;
- (9) whether the aquifer is confined or unconfined; and
- (10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.

[20.5.120.2010 NMAC - N, 07/24/2018]

**20.5.120.2011 SECONDARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the secondary investigation to the department in accordance with a timeline approved by the department or the timeline in Subsection E of 20.5.120.2000 NMAC. The report shall include all information gathered under 20.5.120.2010 NMAC and shall conform to the requirements of this part.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The secondary investigation report shall, at a minimum, include all pertinent data collected during the secondary investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not meet the requirements of 20.5.120.2010 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

**E.** Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination who were not previously notified in accordance with 20.5.120.2009 NMAC.

[20.5.120.2011 NMAC - N, 07/24/2018]

#### **20.5.120.2012 MONITORED NATURAL ATTENUATION:**

**A.** If approved by the department, owners and operators shall submit a plan for remediation by monitored natural attenuation to the department if any of the following conditions have been identified at the site:

(1) concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; and

(2) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** Owners and operators shall submit the monitored natural attenuation plan in accordance with this section and 20.5.120.2013 NMAC and in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**C.** The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) cross sections showing the source contaminant mass in relation to the groundwater contamination;

(3) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

- (5) a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;
- (6) justification for selecting the designated monitoring wells;
- (7) recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;
- (8) an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;
- (9) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;
- (10) public notice in conformance with the following requirements:
  - (a) owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department; the second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted;
    - (b) the notice shall contain the information specified in this section including the following:
      - (i) a statement that a monitored natural attenuation plan has been submitted to the department proposing actions to monitor natural attenuation of a release of hazardous substances;
      - (ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;
      - (iii) a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and
      - (iv) a statement that public comments on the plan must be delivered within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;
    - (c) within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners;
    - (d) owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan; the notice shall contain the information specified in this Subsection and shall be at least eight and on-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous

period until the monitored natural attenuation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice; and

(11) other requirements as directed by the department.

[20.5.120.2012 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remediation Section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.120.2013 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** After the public comment period has ended, the department shall review the plan and shall approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department must notify owners and operators of such a postponement and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a monitored natural attenuation plan and impose reasonable conditions.

**C.** If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

**D.** The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the monitored natural attenuation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining there is significant public interest.

[20.5.120.2013 NMAC - N, 07/24/2018]

#### **20.5.120.2014 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:**

**A.** Owners and operators shall implement the monitored natural attenuation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** Owners and operators shall monitor the contamination until the department determines that the natural attenuation is complete pursuant to this part, or unless otherwise approved by the department.

[20.5.120.2014 NMAC - N, 07/24/2018]

#### **20.5.120.2015 REPORTS ON THE MONITORED NATURAL ATTENUATION:**

**A.** Owners and operators shall submit paper and electronic copies of written reports to the department on the progress of the monitored natural attenuation. Owners and operators shall submit the reports annually unless a different reporting period is approved by the

department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

- (1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;
- (2) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;
- (3) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;
- (4) tabulation of the current and historical results of all water quality analyses and water elevation data;
- (5) graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;
- (6) data evaluation and interpretation, and recommendations; and
- (7) other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.120.2015 NMAC - N, 07/24/2018]

**20.5.120.2016 EVALUATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators shall evaluate the effectiveness of the monitored natural attenuation plan at the end of each year of monitoring and submit the evaluation to the department for review unless otherwise approved by the department.

**B.** When the department determines that the plan is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, the owner or operator shall propose a change in the existing monitored natural attenuation plan within 30 days of the department's determination of ineffectiveness or propose an alternative approach to remediation under 20.5.120.2019 NMAC. Within 30 days of the department's approval, the owner or operator shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section.

[20.5.120.2016 NMAC - N, 07/24/2018]

**20.5.120.2017 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the monitored natural attenuation plan for good cause.

**B.** The department may approve a modification of the monitored natural attenuation plan only if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public notice requirements of 20.5.120.2012 NMAC.

[20.5.120.2017 NMAC - N, 07/24/2018]

**20.5.120.2018 COMPLETION OF MONITORED NATURAL ATTENUATION:**

**A.** Natural attenuation shall be considered complete when all of the following criteria are met:

- (1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;
- (2) all applicable standards for soil and in groundwater and surface water have been achieved; the applicable standards shall be achieved concurrently at all compliance wells as approved by the department; and
- (3) any other conditions which threatened public health, safety and welfare or the environment have been abated.

**B.** If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

**C.** Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

**D.** Following department approval, and with 30 days' notice unless otherwise approved by the department, owners and operators shall properly abandon wells that are no longer needed for monitoring, in accordance with federal, state and local laws and regulations. [20.5.120.2018 NMAC - N, 07/24/2018]

#### **20.5.120.2019 CONCEPTUAL REMEDIATION PLAN:**

**A.** If approved by the department, owners and operators shall submit a conceptual remediation plan to the department if any of the following conditions have been identified at the site:

- (1) a thickness of greater than one-eighth inch of NAPL is present in the water, including in any excavation pit, or in any well;
- (2) contaminant saturated soil is present;
- (3) concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; or
- (4) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** All remediation plans shall include but are not limited to methods to mitigate, remove or otherwise remediate the contaminant source areas.

**C.** Owners and operators shall submit the conceptual remediation plan in accordance with this section and with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

(1) The conceptual remediation plan shall provide a written description of all of the methodologies proposed and discuss how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

(2) The conceptual remediation plan, at a minimum and as appropriate, shall include:

- (a) a concise description of site conditions, including hydrogeology, contaminant characteristics and plume dynamics;
- (b) the recommended approach to remediation and justification for the recommendation;



- (c) a clear description of the goals of remediation and the target concentrations to be met in each medium;
  - (d) a narrative description of the proposed methodologies including a preliminary cost comparison and time lines for achieving goals of remediation;
  - (e) a cost estimate of implementation including installation, operation and maintenance, and monitoring;
  - (f) a schematic diagram of the proposed remediation system or treatment area and a narrative description of its operation;
  - (g) a plan view, to scale, of the site showing locations of the proposed equipment or excavation boundaries in relation to the site's physical features and contaminant plumes;
  - (h) a description of how the approach will achieve target concentrations and other goals of remediation; and
  - (i) a description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected.
- [20.5.120.2019 NMAC - N, 07/24/2018]

**20.5.120.2020 FINAL REMEDIATION PLAN:**

**A.** Following department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and shall submit three copies of the final remediation plan to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** The design and engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall be the responsibility of a professional engineer as defined in 20.5.101.7 NMAC. A professional engineer shall sign and seal all plans and drawings required pursuant to this section, unless otherwise approved by the department.

**C.** In order to eliminate the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shutdown of the entire system. Integral components include but are not limited to pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

- D.** All final remediation plans shall, at a minimum, include all of the following:
- (1) goals of remediation and target concentrations to be achieved in each medium;
  - (2) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing USTs, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;
  - (3) a hydrogeologic cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;
  - (4) an implementation schedule;
  - (5) engineered plans and specifications in accordance with Subsection E of this section;

(6) a schedule for remediation of the source areas, for protection of receptors, and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(7) a design and schedule for system optimization that meets the requirements of 20.5.120.2024 NMAC;

(8) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(9) copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water national pollution discharge elimination system (NPDES) permit;

(10) public notice in conformance with the following requirements:

(a) the owner or operator shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department; the second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted;

(b) the notice shall contain the information specified in this section including the following:

(i) a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of hazardous substances;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered, within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners;

(d) owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan; the notice shall contain the information specified in this Subsection and shall be at least eight and one-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice;

(11) for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

(12) other requirements as directed by the department.

**E.** In addition to the requirements of Subsection D of this section, all final remediation plans shall include:

(1) for engineered systems:

(a) unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

(b) process and instrumentation diagrams;

(c) mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

(d) details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;

(e) equipment and parts list and specifications including a spare parts list, performance requirements, maintenance requirements and schedule;

(f) electric power requirements including a one-line diagram and schematics;

(g) operation and maintenance commitments and schedules for all facets of the remediation system; and

(h) all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:

(i) trenching and protection from traffic;

(ii) concrete repair and replacement;

(iii) restoration of property; and

(iv) location and protection of underground utilities.

(2) for excavation and disposal plans:

(a) plan view of proposed excavation relative to contaminant plume;

(b) cross-sections of proposed excavation depicting overburden, contaminated material to be removed and backfill;

(c) volume calculations and slope stability analysis;

(d) description of excavation and backfill procedure to be performed in conformance with OSHA and ASTM standards and regulations;

(e) traffic control plan;

(f) description of post-excavation confirmation sampling;

(g) proposed final grade plan;

(h) post-excavation grade survey; and

(i) all other plans, diagrams and specifications that are necessary including but not limited to requirements for:

(i) trenching and protection from traffic;

(ii) concrete repair and replacement;

- (iii) restoration of property; and
- (iv) location and protection of underground utilities.

[20.5.120.2020 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remediation Section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.120.2021 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:**

**A.** Within 30 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the remediation plan must be postponed due to significant comments from the public, the department must notify the owner and operator of such a postponement within 30 days and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a final remediation plan and impose reasonable conditions.

**C.** If the department determines that the final remediation plan is inadequate, the owner or operator shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

**D.** The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan until after a public hearing or meeting is held. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest. [20.5.120.2021 NMAC - N, 07/24/2018]

**20.5.120.2022 IMPLEMENTATION OF FINAL REMEDIATION PLAN:**

**A.** Owners and operators shall implement the final remediation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. Owners and operators shall employ a professional engineer to ensure conformance with the final remediation plan, including excavation, installation, commissioning and operation of the system.

**B.** When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

(1) a professional engineer shall supervise conformance with the final remediation plan including installation, commissioning and operation of the system;

(2) owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part, unless otherwise approved by the department; and

(3) owners and operators shall report to the department all interruptions of the operation of the remediation system greater than 72 hours.

**C.** Owners and operators shall obtain written approval from the department prior to implementing any change to the department-approved engineering design.

**D.** Following implementation of the final remediation plan, the owner or operator shall submit an “as-built” report signed and sealed by the project professional engineer including:

- (1) any deviations from the drawings and specifications included in the final remediation plan;
- (2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams; and
- (3) information and documentation purchased major remediation equipment including, but not limited to, serial number, model and manufacturer, description, warranty information, operating manuals, maintenance requirements and purchase price.

[20.5.120.2022 NMAC - N, 07/24/2018]

#### **20.5.120.2023 QUARTERLY REPORTS ON THE REMEDIATION:**

**A.** Owners and operators shall submit written reports to the department on the operation of the remediation system. Owners and operators shall submit the reports quarterly unless a different reporting period is approved by the department, shall document all work performed during the preceding interval, and shall include the following information, as appropriate:

- (1) tabulation of the current and historical results of all water quality analyses and water elevation data;
- (2) evaluation of the performance and efficiency of each aspect of the remediation:
  - (a) the evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified and a professional engineer; and
  - (b) owners and operators shall submit evidence that the performance of the remediation system meets the operating standards outlined in the final remediation plan;
- (3) verification based on calculations that the schedule is being met for source removal, protection of actual and potential receptors, achievement of target concentrations, quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants;
- (4) records of system operation, including but not limited to, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next quarter;
- (5) NAPL recovery, both cumulative and quarterly, and details of its disposal;
- (6) effluent vapor concentrations over time;
- (7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and
- (8) other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.120.2023 NMAC - N, 07/24/2018]

**20.5.120.2024 ANNUAL EVALUATION OF REMEDIATION:**

**A.** Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

**B.** When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.120.2026 NMAC commences.  
[20.5.120.2024 NMAC - N, 07/24/2018]

**20.5.120.2025 MODIFICATION OF FINAL REMEDIATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

**B.** The department may modify a final remediation plan only if it complies with applicable regulations, provides adequate protection of public health, safety and welfare and the environment, and the owners and operators comply with the public notice requirements of 20.5.120.2020 NMAC.

[20.5.120.2025 NMAC - N, 07/24/2018]

**20.5.120.2026 COMPLETION OF REMEDIATION:**

**A.** The department shall consider remediation complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) all applicable standards for soil, groundwater and surface water have been achieved;

(a) all electrical and mechanical components of the remediation system shall remain shut down during the monitoring period described in this subsection;

(b) the department shall approve the designation of certain monitoring wells as compliance wells; the applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise as approved by the department; and

(c) for verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, as approved by the department; and

(3) any other conditions which threatened public health, safety and welfare or the environment have been remediated.

**B.** If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

C. Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

D. Termination of remediation in accordance with this section does not relieve owners and operators of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

E. Following department approval, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon wells that are no longer needed for remediation or monitoring, in accordance with federal, state and local laws and regulations.

[20.5.120.2026 NMAC - N, 07/24/2018]

**20.5.120.2027 NO FURTHER ACTION DETERMINATION:**

A. A no further action determination is a technical determination issued by the department that documents that the owner or operator of a site has met all applicable remediation standards and that no contaminant will present a significant risk of harm to public health, safety and welfare and the environment.

B. Any owner or operator may request that the department evaluate a site for a no further action determination by submitting a written request to the department. The request shall include the following, if requested by the department:

(1) description of the site including a historical overview and generalized description of businesses, structures, vegetation, other prominent features, and location of the site;

(2) surveyed plat of the site, site map with legal description, or both;

(3) completed current environmental conditions table listing all areas of environmental concern on the site subject to remediation; the table shall include the following information about each area of environmental concern:

(a) remedial action taken, date, regulatory agency;

(b) residual contaminants of concern;

(c) clean-up status; and

(d) clean-up standards for contaminants of concern;

(4) chronology of events for each area investigated or remediated; and

(5) other relevant documents, as requested by the department.

C. Owners and operators shall receive approval of a determination for no further action status for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is less than or equal to WQCC and EIB standards, and where there had been groundwater contamination related to the release, the applicable standards have been achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to applicable standards; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

D. Owners and operators shall receive approval of a request for no further action determination for the release when subsurface water does not meet the definition of “subsurface

water” in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

**E.** Upon completion of an assessment by the department that a site qualifies for a no further action determination, the department shall issue a no further action determination letter.

**F.** Any of the following may result in a reversal of a no further action determination:

(1) new information becomes available or circumstances arise indicating that an unacceptable risk to public health, safety and welfare or the environment exists; or

(2) change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.120.2027 NMAC - N, 07/24/2018]

#### **20.5.120.2028 REQUEST FOR EXTENSION OF TIME:**

**A.** For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The request for an extension of time shall specify the reason for the request, the actions taken to comply with the deadline and the period of time for which the extension is requested.

**B.** The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

**C.** Lack of diligence or failure of owners and operators to comply with this part shall be grounds for denying a request for an extension of time.

[20.5.120.2028 NMAC - N, 07/24/2018]

#### **20.5.120.2029 RECORDKEEPING AND RETENTION:**

**A.** Owners and operators of a hazardous waste UST system where a release has occurred shall retain records documenting compliance with all applicable requirements of 20.5.120 NMAC. If the owner and operator are separate persons, only one person is required to maintain the records required by the section, however both parties are liable in the event of non-compliance.

**B.** Records to be maintained shall include, but not be limited to:

(1) 72-hour report;

(2) 14-day report;

(3) NAPL Assessment report;

(4) interim removal of contaminated soil report;

(5) minimum site assessment, preliminary investigation report;

(6) secondary investigation report;

(7) final remediation plan;

(8) groundwater monitoring reports;

(9) operation and Maintenance reports.

**C.** Records shall be maintained for a minimum period of 10 years following a no further action determination as set forth in 20.5.120.2027 NMAC.

[20.5.120.2029 NMAC - N, 07/24/2018]



**20.5.120.2030 REPORTING:**

**A.** Owners and operators shall provide to the department all reports as required in 20.5.120 NMAC in accordance with the timeline or deadlines as set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** Owners and operators shall ensure all reports, plans and requests required in 20.5.120 NMAC contain at a minimum, in addition to the requirements set forth in 20.5.120.2002, 20.5.120.2003, 20.5.120.2005, 20.5.120.2006, 20.5.120.2009, 20.5.120.2011, 20.5.120.2012, 20.5.120.2015, 20.5.120.2019, 20.5.120.2020, 20.5.120.2023, 20.5.120.2024, 20.5.120.2029 and 20.5.120.2030 NMAC.

- (1) release name and address;
- (2) facility identification and release identification numbers;
- (3) workplan and deliverable identification numbers as applicable;
- (4) owner and operator name and address, and
- (5) date report was completed.

[20.5.120.2030 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.120 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives. EIB/USTR-13, Underground Storage Tank Regulations - Part XIII - Corrective Action For Hazardous Substance UST Systems, filed 6/13/90.

**History of Repealed Material:** 20 NMAC 5.13, Environmental Protection, Underground Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances (filed 12/30/99), repealed 8/15/03.

20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances (filed 7/16/03), repealed 6/15/09.

20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances (filed 6/15/09), repealed 7/24/18.

**Other History:**

EIB/USTR-13, Underground Storage Tank Regulations - Part XIII - Corrective Action For Hazardous Substance UST Systems, (filed 6/13/90) reformatted, renumbered and replaced by 20 NMAC 5.13, Underground Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 11/05/95.

20 NMAC 5.13, Underground Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, (filed 12/30/99) replaced by 20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 8/15/03.

20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, (filed 7/16/03) was replaced by 20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 6/15/09.

20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, (filed 7/16/03) was reformatted, renumbered, and replaced by 20.5.120

NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 7/24/18.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 121 CORRECTIVE ACTION FUND USE AND EXPENDITURES**

**20.5.121.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.121.1 NMAC - N, 07/24/2018]

**20.5.121.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC and to the use of the corrective action fund. If the owner and the operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part; however, both parties are liable in the event of noncompliance.  
[20.5.121.2 NMAC - N, 07/24/2018]

**20.5.121.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Ground Water Protection Act, sections 74-6B-1 through 74-6B-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, sections 74-1-1 through 74-1-16 NMSA 1978.  
[20.5.121.3 NMAC - N, 07/24/2018]

**20.5.121.4 DURATION:** Permanent.  
[20.5.121.4 NMAC - N, 07/24/2018]

**20.5.121.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.121.5 NMAC - N, 07/24/2018]

**20.5.121.6 OBJECTIVE:** The purposes of this part are (1) to establish priorities for the use of the corrective action fund at sites contaminated by releases of regulated substances from storage tanks and (2) to specify procedures for administering the fund in conjunction with the procedures set forth in 20.5.123 NMAC, adopted by the New Mexico environment department.  
[20.5.121.6 NMAC - N, 07/24/2018]

**20.5.121.7 DEFINITIONS:** The definitions in 20.5.101 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act shall apply to this part.  
[20.5.121.7 NMAC - N, 07/24/2018]

**20.5.121.8 to 20.5.121.2099 [RESERVED]**

**20.5.121.2100 PERMISSIBLE FUND EXPENDITURES:** The department shall make expenditures from the fund that are necessary to take emergency corrective action, to investigate releases and undertake other corrective action in accordance with the priorities established in this part, to make payments to or on behalf of owners and operators as provided in 20.5.123 NMAC, to pay for the department's reasonable costs of administering the fund, to pay for the department's costs associated with the recovery of expenditures from the fund pursuant to section 74-6B-8 NMSA 1978, including related legal costs, and to pay the state's share of federal

leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act. The department shall keep records of the expenditures made from the fund and shall make those records available to the interim legislative finance committee upon request.

[20.5.121.2100 NMAC - N, 07/24/2018]

**20.5.121.2101 CORRECTIVE ACTION BY OWNERS AND OPERATORS:** Owners and operators shall take corrective action in accordance with 20.5.118 NMAC and 20.5.119 or 20.5.120 NMAC, and the department shall make payments to or on behalf of owners and operators in accordance with section 74-6B-13 NMSA 1978 and the provisions of 20.5.123 NMAC. The department shall designate a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs as a responsible party-lead site.

[20.5.121.2101 NMAC - N, 07/24/2018]

**20.5.121.2102 CORRECTIVE ACTION BY THE DEPARTMENT - INFORMATION REQUIRED:**

**A.** When the department determines that the owners and operators are unknown, unable or unwilling to take corrective action as described in 20.5.121.2101 NMAC, or when the department determines that a single entity is necessary to lead the corrective action, the department may designate the site as a state-lead site and take corrective action using the fund.

**B.** To make a determination that the owner and operator are unknown, the department shall, as appropriate:

- (1) investigate site specifics;
- (2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks; and
- (3) review and document search results of all additional reasonably available records.

**C.** To make a determination that the owner and operator are unable to take corrective action, the department shall, as appropriate:

- (1) investigate site specifics;
- (2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks;
- (3) request and review the owner's and operator's documentation of mental or physical inability, including but not limited to physician statements and court orders;
- (4) request and review the owner's and operator's financial records for the past two years, including but not limited to federal tax returns, and evaluate the owner's and operator's ability to pay, based on anticipated costs of remediation; and
- (5) review and document search results of all additional reasonably available records.

**D.** To make a determination that the owner and operator are unwilling to take corrective action, the department shall, as appropriate:

- (1) investigate site specifics;
- (2) ascertain the liable owner and operator and identify any other owner and operator that may be liable;

(3) review and document search results of all additional reasonably available records; and

(4) send a notice of violation, return receipt requested, to the appropriate owner and operator.

**E.** To make a determination that a single entity is necessary to lead the corrective action, or in the case of danger to human health and the environment, the department shall, as appropriate:

(1) investigate site specifics;

(2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks; and

(3) review and document search results of all additional reasonably available records.

[20.5.121.2102 NMAC - N, 07/24/2018]

### **20.5.121.2103 CORRECTIVE ACTION BY THE DEPARTMENT - OWNER AND OPERATOR NOTIFICATION:**

**A.** Upon a determination that a site be designated a state-lead site, the department shall send a notice to the owner and operator, if known, with the division director's signature notifying the owner and operator that the site is being designated a state-lead site and that the department may initiate an action for recovery of its costs of corrective action from the owner and operator pursuant to Subsection C of this section.

**B.** When the department takes corrective action at sites as described in 20.5.121.2102 NMAC, it shall do so in accordance with the provisions of 20.5.121.2104 NMAC.

**C.** The department may recover the costs of corrective action taken under 20.5.121.2102 NMAC from the owner or operator, unless the owner or operator demonstrates compliance as required by section 74-6B-8 NMSA 1978 and the provisions of 20.5.123 NMAC.

**D.** Owners and operators at sites where the department has taken corrective action under this section shall assume responsibility for and control of the corrective action when required or permitted by the department. Any request by the owner and operator to change the designation of a site from a state-lead site to a responsible party-lead site shall be in writing, shall state the reasons why corrective action by the department is no longer necessary, and shall include appropriate documentation to support the request. The department may request additional documentation from the owner and operator, shall respond to the request in writing and shall state the reasons for its decision.

[20.5.121.2103 NMAC - N, 07/24/2018]

### **20.5.121.2104 SITE PRIORITIZATION:**

**A.** The department shall assign a rank to all sites contaminated by releases from storage tanks using the leaking storage tank (LST) ranking system, as defined in 20.5.101.7 NMAC, and shall classify sites as being first, second or third priority sites. A site's priority shall be based on a minimum site assessment, as defined in 20.5.101.7 NMAC, or other available information that documents an effect or potential effect of the release on public health, safety and welfare or the environment. The department may re-rank and reclassify as warranted, based on facts affecting public health, safety and welfare and the environment.

(1) A first priority site is a site where the release of a regulated substance from a storage tank system has created an actual or imminent hazard to public health, safety and welfare or the environment such that the following corrective action is required:

(a) water supply protection or replacement pursuant to Subsection C or D of 20.5.119.1902 and 20.5.120.2002 NMAC;

(b) mitigation of toxic or explosive or potentially toxic or explosive vapors pursuant to Subsection F of 20.5.119.1902 and 20.5.120.2002 NMAC; or

(c) other corrective action as required to protect public health, safety and welfare or the environment from hazards caused by the release pursuant to Subsection G of 20.5.119.1902 and 20.5.120.2002 NMAC.

(2) A second priority site is a site where the release of a regulated substance from a storage tank system has created a source of environmental contamination such that the following corrective action is required:

(a) containment and removal of non-aqueous phase liquid pursuant to 20.5.119.1905 and 20.5.120.2005 NMAC; or

(b) treatment of contaminant saturated soils pursuant to 20.5.119.1906 and 20.5.120.2006 NMAC.

(3) A third priority site is a site which is not first or second priority, containing contaminants that were released from the storage tank system and where corrective action is required by 20.5.119 or 20.5.120 NMAC.

**B.** When the department approves corrective action other than minimum site assessments, it shall approve corrective action at sites in order of rank and shall approve priority one sites first, priority two sites after priority one sites, and priority three sites after priority one and priority two sites, except that the department may approve emergency corrective action at any time.

[20.5.121.2104 NMAC - N, 07/24/2018]

#### **20.5.121.2105 ORDER OF PAYMENTS IN CASE OF INSUFFICIENT FUNDS:**

**A.** If, after the department has determined that the owner or operator is in substantial compliance, the department determines that the fund budget or the fund balance is insufficient to cover the amount requested for payment, the department shall promptly notify the owner or operator. Payment for eligible costs shall occur when sufficient amounts are available in the fund budget or the fund, subject to the provisions of this section.

**B.** If the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.123.2318 NMAC but the fund remains an approved financial responsibility mechanism under 20.5.117.1711 NMAC, the department shall pay applications for payment for approved corrective action in order of priority as established in accordance with this part from the funds available, so long as funds are available.

**C.** Applications for sites of equal score based on the priorities established in this part shall be paid in order of date of receipt of complete applications for payment. For applications for sites of equal score with the same date of receipt, the earliest date on which a corrective action was taken as evidenced by the date of the earliest invoice included in the application shall determine the order of payment.

**D.** When the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.123.2318 NMAC and the fund is no longer an approved financial

responsibility mechanism, the department shall make payments according to priority rank as established in this part and in the following percentages, so long as funds are available:

(1) one hundred percent of all reasonable and necessary eligible costs incurred to complete a minimum site assessment in excess of the deductible;

(2) one hundred percent of all reasonable and necessary eligible costs incurred to conduct a secondary investigation in accordance with 20.5.119.1910 or 20.5.120.2010 NMAC;

(3) in the case of reasonable and necessary costs incurred to complete corrective action other than the minimum site assessment and secondary investigation, according to the following formulae:

(a) for owners or operators of two or fewer facilities used for retail gasoline sales and whose facilities have less than 40,000 gallons combined total of product dispensed monthly, averaged over the last two years of operation: first priority LST ranked sites: one hundred percent; second priority LST ranked sites: ninety-five percent; third priority LST ranked sites: ninety percent; or

(b) for sites owned or operated by other owners or operators: one hundred percent for first priority LST ranked sites. The percentage of payment for second and third priority LST ranked sites shall be based on the ending quarterly unobligated balance of the fund proportional to the amount of each application for payment received in that quarter for these sites. The quarters end on June 30, September 30, December 31 and March 31. The percentage of payment equals the unobligated fund balance on the last day of the quarter divided by the dollar amount of reasonable and necessary eligible costs of applications for payment received in the quarter, not to exceed one hundred percent. For purposes of this subparagraph, "unobligated balance" or "unobligated fund balance" means corrective action fund equity less all known or anticipated liabilities against the fund; and

(4) payment for remaining eligible costs shall be made pursuant to Subsection E of this section.

**E.** When the fund is reestablished as an approved financial responsibility mechanism, payment shall be made for the balance of the eligible costs previously submitted but not paid under provisions of this section. These payments shall be made in the order in which sites were ranked by the department, in accordance with this part, as funds become available.

**F.** The department's determinations under this section concerning the availability of funds shall be final and not subject to appeal.  
[20.5.121.2105 NMAC - N, 07/24/2018]

#### **20.5.121.2106 RESERVED MONEY:**

**A.** The department shall establish a reserve of one-million dollars (\$1,000,000) in the fund for the costs of taking emergency corrective action. The department may make expenditures from this reserve during the fiscal year and replenish the reserve at the beginning of the next fiscal year.

**B.** Money that is reserved pursuant to Subsection A of this section may be expended by the department only for corrective action necessary when an emergency threat to public health, safety and welfare or the environment is determined by the department to exist.  
[20.5.121.2106 NMAC - N, 07/24/2018]

## **HISTORY OF 20.5.121 NMAC:**

### **Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-15, Underground Storage Tank Regulations - Part XV - Ground Water Protection Act Regulations, filed 6/18/91.

### **History of Repealed Material:**

20 NMAC 5.15 Underground Storage Tanks, Corrective Action Fund Allocation for State-Lead Sites (filed 10/6/95), repealed 2/2/00.

20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures (filed 12/30/99), repealed 8/15/03.

20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 7/16/03), repealed 6/15/09.

20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 6/15/09), repealed 7/24/18.

### **Other History:**

EIB/USTR-15, Underground Storage Tank Regulations - Part XV - Ground Water Protection Act Regulations (filed 6/18/91), renumbered, reformatted and replaced by 20 NMAC 5.15, effective 11/5/95.

20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures (filed 10/6/95), was replaced by 20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures, effective 2/2/00.

20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures (filed 12/30/99), renumbered, reformatted and replaced by 20.5.15, NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures, effective 8/15/03.

20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 7/16/03), was replaced by 20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures, effective 6/15/09.

20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 6/15/09), was replaced by 20.5.121 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 122 QUALIFICATION OF PERSONS PERFORMING CORRECTIVE ACTION**

**20.5.122.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.122.1 NMAC - N, 07/24/2018]

**20.5.122.2 SCOPE:** This part applies to all persons performing corrective action on behalf of storage tank owners, operators or the state under 20.5 NMAC.  
[20.5.122.2 NMAC - N, 07/24/2018]

**20.5.122.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.122.3 NMAC - N, 07/24/2018]

**20.5.122.4 DURATION:** Permanent.  
[20.5.122.4 NMAC - N, 07/24/2018]

**20.5.122.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.122.5 NMAC - N, 07/24/2018]

**20.5.122.6 OBJECTIVE:** The objective of this part is to establish rules for the qualification of firms for and disqualification of firms from conducting corrective action on sites where releases from storage tanks have caused contamination.  
[20.5.122.6 NMAC - N, 07/24/2018]

**20.5.122.7 DEFINITIONS:**

**A.** The definitions in 20.5.101 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act control.

**B.** For purposes of this part, the term “firm” shall be synonymous with the term “person,” as defined in 20.5.101 NMAC.

**C.** For purposes of this part, the term “proposal” means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site or for a state-lead site.

[20.5.122.7 NMAC - N, 07/24/2018]

**20.5.122.8 to 20.5.122.2199 [RESERVED]**

**20.5.122.2200 PAYMENTS:** Payments from the corrective action fund may be made only for corrective action conducted by firms qualified by the department to perform such work pursuant to this part.

[20.5.122.2200 NMAC - N, 07/24/2018]

**20.5.122.2201 QUALIFICATION OF FIRMS:**

**A.** Except as provided in Subsections C and D of this section, firms shall be evaluated for qualification by the department to conduct corrective action for each workplan submitted. Except as provided in Subsection B of this section, firms shall be qualified upon approval of the following:

- (1) the subject workplan;
- (2) a current statement of qualifications of the firm's authorized representative, the individual with direct, responsible, supervisory control of the approved workplan unless previously submitted under the current active phase of corrective action; and
- (3) if the involvement of a professional engineer is required for the work to be undertaken under the workplan, a current statement of qualifications of the professional engineer that complies with 20.5.122.2203 NMAC.

**B.** In addition to the requirements of Subsection A of this section, if the department reasonably believes that a firm already qualified to perform corrective action under an approved workplan is not timely paying its subcontractors, suppliers, laboratories, and other entities included in any invoice connected with an approved workplan, the firm shall not be qualified unless it provides proof to satisfy the department that within the preceding two years it has paid those entities according to the firm's contractual agreements.

**C.** When initial response or initial abatement is required at a site, firms may be qualified prior to commencement of work by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer. Written statements of qualifications shall be submitted to the department with the report on initial abatement required by Subsection B of 20.5.119.1903 or 20.5.120.2002 NMAC.

**D.** When remediation is required at a site, selection of a remediation proposal in accordance with the competitive selection process described in 20.5.123.2306 NMAC and 20.5.123.2308 NMAC qualifies the successful firm to conduct corrective action within the scope of work defined by the proposal, except as provided in 20.5.122.2204 NMAC. A firm may be tentatively qualified prior to submitting a proposal under 20.5.123.2306 NMAC or 20.5.123.2308 NMAC by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer.

**E.** Statements of qualifications shall include:

- (1) the authorized representative's name and status as sole proprietor, officer, partner, employee or subcontractor of the firm;
- (2) education relevant to the nature of the work to be performed;
- (3) experience relevant to the nature of the work to be performed; and
- (4) licenses and certifications required for the work to be performed.

**F.** While the required education and experience for the authorized representative may vary with the work to be performed, the following shall be considered minimums: a baccalaureate degree in science or engineering and at least two years of applicable experience in

the investigation and remediation of unsaturated and saturated zone contamination, or five years supervised experience in investigation or remediation of unsaturated and saturated zone contamination.

**G.** Firms performing corrective action must maintain their qualification at all stages of work in order for the costs of that work to be eligible for payment.

**H.** This part is in addition to and not in lieu of any other licensing and registration requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**I.** This part does not relieve contractors or owners or operators of their obligations and liabilities under applicable local, state, and federal laws and regulations.  
[20.5.122.2201 NMAC - N, 07/24/2018]

#### **20.5.122.2202 DISQUALIFICATION OF FIRMS:**

**A.** The department may disqualify a qualified firm if the department determines that the firm has:

- (1) knowingly misrepresented a material fact in its request to become qualified or in any subsequent report or communication with the department;
- (2) failed to comply with any of the requirements of 20.5.119 NMAC, 20.5.120 NMAC, 20.5.122 NMAC or 20.5.123 NMAC;
- (3) failed to complete to the department's satisfaction the work described in one or more approved workplans; or
- (4) when required to do so by 20.5.122.2201 NMAC, failed to prove to the department's satisfaction that it has timely paid its subcontractors, suppliers, laboratories and other entities.

**B.** A firm that has been disqualified under this section may become eligible to perform corrective action upon satisfactory proof that the firm has remedied, to the department's satisfaction, the problem that lead to disqualification. For purposes of Paragraph (4) of Subsection A of this section, a firm that has timely paid its subcontractors, suppliers, laboratories and other entities for at least six months, and which meets all applicable requirements of 20.5.122.2201 NMAC, shall become eligible to perform corrective action.  
[20.5.122.2202 NMAC - N, 07/24/2018]

**20.5.122.2203 REQUIREMENTS FOR PROFESSIONAL ENGINEERS:** If the involvement of a professional engineer is required for the corrective action being conducted, the firm's qualification requirements shall include licensure by the New Mexico state board of licensure for professional engineers and surveyors in the discipline of engineering appropriate to the corrective action. This requirement may be met by demonstrating that the firm has on staff or available by contract a professional engineer licensed in the appropriate discipline.  
[20.5.122.2203 NMAC - N, 07/24/2018]

#### **20.5.122.2204 ADVERSE DETERMINATIONS ON REQUESTS TO QUALIFY FIRMS:**

**A.** In reviewing a firm's qualifications to perform corrective action, the department shall consider the nature of the work to be performed under the submitted workplan. Except as provided in Subsections B and C of this section, the department's determination on a request to qualify a firm for a workplan involving remediation shall be consistent with the department's selection of the firm's proposal for remediation under 20.5.123 NMAC, if applicable.

**B.** Failure of a qualified firm to complete work described in one or more approved workplans to the satisfaction of the department may be taken into consideration when the firm's qualifications are reviewed by the department for purposes of future workplans.

**C.** The failure of a qualified firm to complete work described in an approved workplan to the satisfaction of the department may result in a determination by the department that further work by the firm is not eligible for payment or that a new remediation proposal or workplan, or both, is required.

**D.** Nothing in this part is intended to affect the rights or obligations of the department or its contractors in any suspension or debarment proceedings undertaken by the department under the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978. Suspension or debarment under the Procurement Code will be considered, however, in the department's determination on a firm's qualifications under this part.  
[20.5.122.2204 NMAC - N, 07/24/2018]

**20.5.122.2205 APPEALING ADVERSE DETERMINATIONS:** A firm that has been denied qualification or that has been disqualified under this part may obtain review of the decision by using the procedures set forth in 20.5.125 NMAC.  
[20.5.122.2205 NMAC - N, 07/24/2018]

#### **HISTORY OF 20.5.122 NMAC:**

**Pre-NMAC History:** None.

#### **History of Repealed Material:**

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors (filed 2/27/97), repealed 2/2/00.

20 NMAC 5.16, Underground Storage Tanks, Qualification of Contractors (filed 12/30/99), repealed 8/15/03.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 7/16/03), repealed 6/15/09.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 6/15/09), repealed 7/24/18.

#### **Other History:**

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors, (filed 10/06/95) replaced by 20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors, effective 4/1/97.

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors, (filed 02/27/97) replaced by 20 NMAC 5.16, Underground Storage Tanks, Qualification of Contractors, effective 2/2/00.

20 NMAC 5.16, Underground Storage Tanks, Qualification of Contractors, (filed 12/30/99) replaced by 20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action, effective 8/15/03.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 7/16/03) replaced by 20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action, effective 6/15/09.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 6/15/09) was renumbered, reformatted, and replaced by 20.5.122 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 123 CORRECTIVE ACTION FUND ADMINISTRATION**

**20.5.123.1 ISSUING AGENCY:** New Mexico Environment Department.  
[20.5.123.1 NMAC – Rp. 20.5.123.1 NMAC, 12/27/2018]

**20.5.123.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5 NMAC and as provided in 20.5.101 NMAC to contractors, offerors, and designated representatives, and to all payments made by the department to or on behalf of storage tank owners and operators under the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978. If the owner and operator are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.123.2 NMAC – Rp. 20.5.123.2 NMAC, 12/27/2018]

**20.5.123.3 STATUTORY AUTHORITY:** 20.5.123 NMAC is adopted by the Secretary of Environment pursuant to the provisions of the Department of Environment Act, Sections 9-7A-1 through 9-7A-15 NMSA 1978 and the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978.  
[20.5.123.3 NMAC – Rp. 20.5.123.3 NMAC, 12/27/2018]

**20.5.123.4 DURATION:** Permanent.  
[20.5.123.4 NMAC – Rp. 20.5.123.4 NMAC, 12/27/2018]

**20.5.123.5 EFFECTIVE DATE:** December 27, 2018, unless a later date is indicated in the rule history note at the end of a section.  
[20.5.123.5 NMAC – Rp. 20.5.123.5 NMAC, 12/27/2018]

**20.5.123.6 OBJECTIVE:** The purpose of 20.5.123 NMAC is to establish the procedures for administering and making payments from the corrective action fund (“fund”) created by the Ground Water Protection Act (“act”), Sections 74-6B-1 through 74-6B-14 NMSA 1978, including procedures for:

- A.** payment of the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000), or in excess of lesser amounts as permitted by the act;
- B.** payment of the costs of corrective action other than the minimum site assessment;
- C.** determinations of compliance with the act;
- D.** determinations of eligibility of costs for payment;
- E.** competitive bidding for corrective action work; and
- F.** disposition of remediation equipment acquired through the fund.

[20.5.123.6 NMAC – Rp. 20.5.123.6 NMAC, 12/27/2018]

**20.5.123.7 DEFINITIONS:**

- A.** Terms used in this part shall have the meanings given to them in the Ground Water Protection Act and 20.5.101 NMAC except as provided in Subsection B of this section.
- B.** As used in 20.5.123 NMAC:

- (1) “cost-effectiveness” means completing tasks in a manner that is economical in terms of goods or services received for the money spent;
- (2) “major remediation equipment” means any transportable unit or system which has been acquired specifically for remediation using the corrective action fund and which the department inventories pursuant to Section 12-6-10 NMSA 1978;
- (3) “pay for performance” means payment of a previously approved amount based on completion or achievement of previously determined criteria including, but not limited to, a given task or set of tasks, specified reductions in contaminant levels, or achievement of other measurable milestones, as approved by the department;
- (4) “payment” means payment from the fund to a person that the owner or operator has assigned the right of reimbursement, or reimbursement from the fund to an owner or operator for the costs of corrective action;
- (5) “phase of corrective action” means any one of the following activities, required by 20.5.119 or 20.5.120 NMAC:
- (a) minimum site assessment (“MSA”), as defined in 20.5.101.7 NMAC;
  - (b) phase 1, which includes secondary investigation and report, soil-only contamination assessment, and petroleum vapor intrusion assessment;
  - (c) phase 2, which includes interim removal of non-aqueous phase liquid or contaminated soil;
  - (d) phase 3, which includes development of a conceptual and final remediation plan or a monitored natural attenuation plan;
  - (e) phase 4, which includes implementation of the remediation plan; or
  - (f) phase 5, which includes operating, monitoring, maintaining and reporting under the implemented remediation plan or monitoring and reporting under the approved monitored natural attenuation plan;
- (6) “proposal” means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site, or for a state-lead site;
- (7) “resident business” means:
- (a) a business enterprise which is authorized to do and is doing business under the laws of New Mexico and maintains its principal place of business in New Mexico, or has staffed an office and has paid applicable New Mexico taxes for two years prior to the awarding of the proposal and has five or more employees who are residents of New Mexico, or is an affiliate of a business which meets either of these two requirements; as used in this paragraph, “affiliate” means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity; or
  - (b) a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods, commodities or services that are substantially manufactured, produced or assembled in New York state, or, in the case of construction services, has its principal place of business in New York state;
- (8) “responsible party” means any owner or operator of a storage tank system from which a release has occurred;



(9) “responsible party-lead site” means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes corrective action;

(10) “specifications” means a detailed written statement of particulars prescribing corrective action to be taken, conditions to be met, materials to be used, or standards of workmanship to which something is to be built, installed, or operated, which is provided to prospective contractors on responsible party-lead sites and state-lead sites;

(11) “state-lead site” means a site where the department takes corrective action using the fund because the owner and operator are unknown, unable or unwilling to take corrective action as described in 20.5.121.2102 NMAC or because the department determines that a single entity is necessary to lead the corrective action;

(12) “technical merit” means those characteristics of a proposal including but not limited to strategies, expertise, methods, materials and procedures meeting the specifications included in a request for proposals.

[20.5.123.7 NMAC – Rp. 20.5.123.7 NMAC, 12/27/2018]

### **20.5.123.8 to 20.5.123.2299 [RESERVED]**

**20.5.123.2300 CONSTRUCTION:** This part shall be liberally construed to effectuate the purposes of the Ground Water Protection Act and shall be construed, to the extent possible, so as not to conflict with the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, or 20.5.101 through 20.5.125 NMAC.

[20.5.123.2300 NMAC – Rp. 20.5.123.2300 NMAC, 12/27/2018]

**20.5.123.2301 SEVERABILITY:** If any section or application of this part (20.5.123 NMAC) is held invalid, the remainder of this part (20.5.123 NMAC) or its application to other persons or situations shall not be affected.

[20.5.123.2301 NMAC – Rp. 20.5.123.2301 NMAC, 12/27/2018]

**20.5.123.2302 EFFECT ON OTHER REGULATIONS:** This part does not relieve any owner or operator of the obligation to comply with any federal or state laws or regulations, including 20.5 NMAC.

[20.5.123.2302 NMAC – Rp. 20.5.123.2302, 12/27/2018]

### **20.5.123.2303 COMPLIANCE DETERMINATIONS:**

A. The department shall make compliance determinations in the following circumstances:

(1) Corrective action by owner or operator. Pursuant to Section 74-6B-13 NMSA 1978, in order to be eligible for payment of corrective action costs other than those costs associated with a minimum site assessment, the owner or operator shall be in compliance with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, as outlined in 20.5.123.2304 NMAC, during the owner or operator's term of ownership or operation for all storage tanks owned or operated at the site where the corrective action was or is being taken. Compliance for underground storage tanks (“USTs”) shall be determined for the period from March 7, 1990 to the date the department determines that corrective action is complete. Compliance for above-

ground storage tanks (“ASTs”) shall be determined for the period from July 1, 2001 to the date the department determines that corrective action is complete.

(2) Corrective action by the department. Before bringing an action in district court against an owner or operator to recover expenditures from the fund incurred by the department to take corrective action at a site, the department shall determine, in accordance with 20.5.123.2304 NMAC, whether the owner or operator has complied with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, during their term of ownership or operation for all storage tanks owned or operated at the site. Compliance for USTs shall be determined for the period from March 7, 1990 to the date the department determines that corrective action is complete. Compliance for ASTs shall be determined for the period from July 1, 2001 to the date the department determines that corrective action is complete.

**B.** The owner or operator shall request a compliance determination before submitting the initial request for payment of the costs of corrective action, other than the costs of an MSA. Once the department has completed an initial compliance determination at the owner or operator’s request, the department may initiate and make separate compliance determinations at one or more phases of corrective action, other than an MSA, for which payment is requested. If the department determines that a tank owner or operator is not in compliance with 20.5.123.2304 NMAC, the tank owner or operator will be ineligible for payment of corrective action costs, other than an MSA.

**C.** No compliance determination is necessary when, pursuant to Section 74-6B-13 NMSA 1978, an owner or operator applies to the department for payment of MSA costs exceeding the deductible. However, prior to payment, the department shall determine that the work performed meets the definition of an MSA provided in 20.5.101.7 NMAC.  
[20.5.123.2303 NMAC – Rp. 20.5.123.2303 NMAC, 12/27/2018]

#### **20.5.123.2304 DETERMINATION OF COMPLIANCE UNDER SECTION 74-6B-8 NMSA 1978:**

**A.** For sites where all USTs were removed or properly abandoned prior to March 7, 1990, and for sites where all ASTs were removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.123.2303 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by Section 74-4-4.4 NMSA 1978, and, for all USTs removed or properly abandoned prior to March 7, 1990, and for all ASTs removed or properly abandoned prior to July 1, 2001, a two hundred (\$200) fee for each site;

(2) conducted a minimum site assessment as defined in 20.5.101.7 NMAC;  
and

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring.

**B.** For sites where USTs were not removed or properly abandoned prior to March 7, 1990, or where ASTs were not removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.123.2303 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;

(2) conducted a minimum site assessment as defined in 20.5.101.7 NMAC and, if contamination is found, taken action to prevent continuing contamination;

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring; and

(4) substantially complied with all requirements and provisions of regulations adopted by the environment improvement board pursuant to Subsection C of Section 74-4-4 NMSA 1978 for storage tanks at the site for which payment is sought (including installation, upgrade, operation and maintenance of storage tanks in accordance with 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, and 20.5.110 NMAC; release detection in accordance with 20.5.108 NMAC and 20.5.111 NMAC; for any storage tanks which have been abandoned or closed at the site, proper closure in accordance with 20.5.115 NMAC; reporting, investigating, confirming and remediating the release in accordance with 20.5.118 NMAC, 20.5.119 NMAC and 20.5.120 NMAC; proof of financial responsibility in accordance with 20.5.117 NMAC; and record keeping in accordance with the record keeping provisions of 20.5.101 through 20.5.103 NMAC, 20.5.106 through 20.5.115 NMAC, 20.5.117 through 20.5.120 NMAC, 20.5.124 NMAC and 20.5.125 NMAC).

C. In determining whether the owner or operator has substantially complied with the regulations referenced in Paragraph (4) of Subsection B of this section, the department may consider, among other things, the severity of the non-compliance, the period of non-compliance, the actions taken by the owner or operator to come into compliance, and the timeliness of the owner or operator's actions in coming into compliance.

[20.5.123.2304 NMAC – Rp. 20.5.123.2304 NMAC, 12/27/2018]

#### **20.5.123.2305 PROCEDURES FOR DETERMINING COMPLIANCE:**

A. When the owner or operator submits a written request for a compliance determination to the department, the request shall provide the following information for all storage tanks located at the site where the owner or operator is performing corrective action:

- (1) the applicant's name, address, telephone number, and email address;
- (2) a description of the applicant's interest in the site (for example, landowner, tank owner, lending institution, operator);
- (3) the name, address, email address, and telephone number of the tank facility at the release site;
- (4) the facility ID, owner ID, and release ID numbers for the tank facility at the release site;
- (5) information on all systems that exist or that have existed at the release site during the owner or operator's term of ownership or operation, including:
  - (a) tank type (UST or AST), tank number, installation dates, tank capacity, product contained and removal date, if applicable;
  - (b) information on installation, upgrade, operation and maintenance standards, including type of tank construction, piping system, corrosion protection, spill and overfill protection, release detection for tanks and piping, operation and maintenance plans, compatibility, and secondary containment, if applicable;
  - (c) type of regulated substance(s) in each tank; and
  - (d) date(s) of permanent closure, if applicable;
- (6) proof of financial responsibility that includes:
  - (a) name and address of the facility that is the subject of the compliance determination;
  - (b) type of financial responsibility;

- (c) name of insurance provider, policy number, and period of coverage; and
- (d) information about insurance coverage, including: type or types of coverage for corrective action or third-party liability, amount of coverage per occurrence, and amount of annual aggregate coverage for sudden accidental releases, non-sudden accidental releases, and accidental releases;
- (7) corrective action information for each release that includes:
  - (a) date(s) the release was reported to the department;
  - (b) methods of preventing further release; and
  - (c) completion of the MSA report;
- (8) certification on oath or affirmation of the truthfulness of all matters and facts contained in the request.

**B.** When the department initiates a compliance determination pursuant to Subsection B of 20.5.123.2303 NMAC:

(1) the department shall, in writing, notify the owner or operator of the reason(s) for the compliance determination and explain that if the department determines that the owner or operator is not in compliance with 20.5.123.2304 NMAC, the owner or operator will be ineligible for payment of corrective action costs other than for an MSA; and

(2) the owner or operator shall submit in writing all information requested by the department by a date specified by the department; the department may request any of the information required for an MSA pursuant to subsection A of this section and shall establish a deadline for submission of this information that is reasonable under the circumstances.

**C.** The department shall review all written submissions in the order received and shall, within 30 days of receipt, notify the owner or operator in writing of any inadequacies in the submittal. The owner or operator may then correct any inadequacies and resubmit the application. Submissions shall be determined “complete” by the department when the submissions are adequately documented, or inadequacies identified by the department have been corrected.

**D.** The owner or operator has the burden of establishing each point of fact relevant to such a determination. For such purpose, the submissions shall state specific facts which demonstrate compliance with Subsection B of 20.5.123.2304 NMAC.

**E.** The department shall make a compliance determination within 45 days following the department's determination that a submission is complete and shall promptly notify the owner or operator of its determination. For good cause, the director may permit additional time in which to make a compliance determination. If the department finds an owner or operator to be out of compliance, the department shall also notify the owner or operator in writing of the manner in which the owner or operator has failed to comply with 20.5.123.2304 NMAC and inform the owner or operator that he or she is ineligible for payment of corrective action costs, other than the costs of an MSA.

[20.5.123.2305 NMAC – Rp. 20.5.123.2305 NMAC, 12/27/2018]

[The department provides a form that may be used to request a compliance determination. The form is available on the petroleum storage tank bureau’s pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/reimbursement-corrective-action-fund-information/](https://www.env.nm.gov/petroleum_storage_tank/reimbursement-corrective-action-fund-information/)) or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.123.2306 COMPETITIVE CONTRACTOR SELECTION FOR REMEDIATION AT RESPONSIBLE PARTY-LEAD SITES:**

**A.** Payments made from the fund shall be made in accordance with 20.5.123.2309 NMAC and only for work performed by contractors that were selected using a competitive procedure based upon technical merit and cost-effectiveness, as defined in this part except as provided in Subsections C and D of this section. The solicitation and evaluation of proposals are required prior to workplan approval.

**B.** At a minimum, the department and the owner or operator shall obtain proposals and select contractors competitively for remediation activities under 20.5.119.1922 through 20.5.119.1928 NMAC and under 20.5.120.2019 through 20.5.120.2025 NMAC, including conceptual and final remediation plans, design, construction, installation, operation and maintenance, and monitoring.

**C.** Competitive contractor selection is not required for the following activities:

(1) initial abatement or emergency response under 20.5.119.1902 NMAC or 20.5.120.2002 NMAC;

(2) 72 hour and 14 day reports under 20.5.119.1903 NMAC or 20.5.120.2003 NMAC;

(3) interim removal of non-aqueous phase liquid (“NAPL”), directed or approved by the department under 20.5.119.1905 or 12.5.120.2005 NMAC;

(4) interim removal of contaminated soil, directed or approved by the department under 20.5.119.1906 NMAC or 12.5.120.2006 NMAC;

(5) investigation activities under 20.5.118.1801 NMAC and 20.5.119.1907 through 20.5.119.1913 NMAC or 20.5.120.2007 through 20.5.120.2011 NMAC;

(6) development of and monitoring and reporting under a monitored natural attenuation plan under 20.5.119.1915 through 20.5.119.1921 NMAC or 20.5.120.2012 through 20.5.120.2018 NMAC;

(7) work at sites for which the owner or operator is not seeking payment, including but not limited to federal facilities and sites determined to be out of compliance pursuant to 20.5.123.2304 NMAC; or

(8) work at sites under contract as described in subsection D of this section.

**D.** Work at sites with releases from USTs where the owner or operator and a contractor entered into a contract approved by the department and initiated remediation prior to October 1, 1995, shall be exempt from competitive contractor selection requirements. Work at sites with releases from ASTs at which the owner or operator and a contractor entered into a contract for and initiated remediation prior to June 14, 2002, shall be exempt from competitive contractor selection requirements. The owner or operator shall obtain a contractor for any subsequent site through the competitive contractor selection process in accordance with the requirements of 20.5.123.2306 through 20.5.123.2307 NMAC.

[20.5.123.2306 NMAC – Rp. 20.5.123.2306 NMAC, 12/27/2018]

**20.5.123.2307 PROCEDURES AND REQUIREMENTS FOR SELECTION OF REMEDIATION CONTRACTORS AT RESPONSIBLE PARTY-LEAD SITES:**

**A.** Within 15 days of written notification from the department that remediation is required, the owner or operator shall provide to the department either a written list with a minimum of five names of consultants from which the department and the owner or operator shall solicit proposals for remediation or a written request that the department solicit proposals

for remediation on its website. The department and the owner or operator shall follow the procedures outlined in subsections B through E of this section where site evaluation, remediation selection and justification, and design may be required. The department and the owner or operator shall follow the procedures outlined in subsection F for bids at sites where limited remediation is such that no additional infrastructure is needed, plans and specifications that require a professional engineer signature and stamp are not required, the cost is less than \$80,000 (not including NM gross receipt tax), and the proposed activities can be accomplished within two years. Limited remediation includes but is not limited to the injection of contaminant-reducing agents and the use of portable units for soil vapor extraction (“SVE”). The department shall follow the procedures outlined in subsection G for proposals at sites where the owner or operator is the state of New Mexico or a subdivision thereof.

**B. Specifications.**

(1) The department and the owner or operator shall develop specifications for remediation, which shall state which sections of 20.5.119 NMAC or 20.5.120 NMAC the work is intended to fulfill.

(2) The department and the owner or operator may require that specifications including primary responsibility for operation or maintenance of remediation systems with electrical or mechanical components contain the requirement that winning proposals shall include pay-for-performance criteria as defined in this part.

(3) Proposals shall meet all requirements outlined in the specifications.

(4) Costs for all tasks outlined in the specifications shall be submitted by short-listed firms only and shall be submitted under separate, sealed cover from the technical portion of the proposal.

**C. Solicitation of proposals.**

(1) If the owner or operator provides a list of contractors, the department shall mail the specifications to those contractors. However, if the owner or operator, within 15 days of receiving written notification from the department that remediation is required, fails to provide the department with the names of five contractors, fails to respond to the department’s notice that remediation is required, or chooses to allow the department to solicit proposals on behalf of the owner or operator, the department may solicit proposals from and make specifications available to any interested contractor using the department’s webpage.

(2) Any questions concerning the solicitation, including any requests for clarification of the specifications, shall be submitted in writing to the department and the owner or operator, within two weeks prior to the deadline for submission of proposals. Any response from the department and the owner or operator shall be provided promptly to all contractors through a posting on the department’s webpage.

(3) Each proposal shall contain a notarized affidavit signed by the contractor certifying under oath that the contractor has participated and will continue to participate in the competitive contractor selection process as described in this section and Section 74-6B-7C NMSA 1978 without misrepresentation and without collusion with other contractors during the entire solicitation, evaluation and selection process.

**D. Evaluation of proposals and contractor selection.**

(1) Once the department and the owner or operator have received a proposal, they shall not discuss the solicitation or any proposal received in response to the solicitation with anyone other than department staff or the owner or operator.

(2) If fewer than three responsive proposals are obtained by the deadline in the solicitation, the department shall consult with the owner or operator and solicit additional proposals pursuant to subsection A of this section or paragraph (1) of subsection C of this section.

(3) If fewer than three responsive proposals are obtained after two attempts, the department and the owner or operator may select a proposal following the procedures in this section, provided the technical merit is acceptable for the proposed work.

(4) The department shall, and the owner or operator may, evaluate proposals based on technical merit as defined in this part. The technical merit score shall be based on an understanding of site-specific conditions and the appropriateness of proposed remediation technology.

(a) A team approved by the department shall evaluate the proposals in a timely manner. The owner or operator or their representative is encouraged to participate as a part of the evaluation team. Each team member shall independently evaluate each proposal for technical merit. After discussion, the team shall determine the preliminary technical merit score for each proposal.

(b) The team shall prepare a short list of proposals for further consideration. The short list shall consist of the names of the firms that have submitted proposals with the highest preliminary technical merit scores.

(c) The team shall present the short list of firms to a department task force for a discussion of proposals to ensure consistency among team evaluation and scoring. The department task force shall consist of senior department technical staff. After discussion with the department task force, the team shall assign the technical merit scores.

(5) The department and the owner or operator may request all firms selected for the short list to conduct an oral presentation outlining their proposals for the department task force, the team and the owner or operator. The owner or operator's attendance during the oral presentations is encouraged, but not required. During the oral presentations, members of the department task force, the team and the owner or operator may ask questions. Only the team shall assign the scores to each proposal on the short list.

(a) Any firm that is requested by the department and the owner or operator to conduct an oral presentation and chooses not to do so, shall be eliminated from the short list.

(b) All short-listed firms shall submit a sealed cost proposal to the department and the owner or operator no later than two days prior to the oral presentations. The team shall open and review the sealed cost information submitted for each proposal on the short list.

(c) Prior to or during the oral presentations, contractors on the short list may withdraw the original cost submission and substitute a best and final offer for the cost portion of the proposal.

(6) Following the oral presentations, the team may adjust the technical merit score, based on demonstrated general expertise, site-specific knowledge and application, or information clarified or provided.

(7) At any point in the evaluation process, when, in the team's opinion, a proposal does not substantially meet the technical merit or cost effectiveness standards set forth in the solicitation, the team may reject the proposal.

**(8)** The team shall assign a final score for each proposal on the short list, which shall be the cost effectiveness score plus the technical merit score.

**(a)** The technical merit score, with a maximum of 700 points, shall be assigned pursuant to the procedure described in this subsection.

**(b)** The cost effectiveness score is the technical weight factor times the cost weight factor times 300, where the technical weight factor is the proposal's technical merit score divided by the highest technical merit score of proposals on the short list; the cost weight factor is the lowest cost of proposals on the short list divided by the proposal's cost; 300 is the maximum cost effectiveness score.

**(9)** The department shall notify the owner or operator and all submitting firms of the highest scoring proposal. The owner or operator shall enter into a contract with the selected firm not less than 10 days or more than 30 days after the notification. If, for any reason, the selected firm cannot complete the project, the department and the owner or operator shall either select the firm with the second highest scoring proposal, provided the technical merit is acceptable for the proposed work, or repeat the contractor selection process in accordance with this section. In order for the work to qualify for payment from the fund, the owner or operator shall use the firm selected in accordance with this part.

**(10)** After the department has notified the owner or operator of the highest scoring proposal, the department and the owner or operator shall make available to the contractors and the public all proposals submitted and the evaluation team's scores.

**(11)** An owner or operator aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 15 days of the post mark on the notification.

**(12)** An offeror aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 10 days of the post mark date on the notification.

**(13)** For purposes of owner and operator participation in the process set forth in this subsection, the owner or operator may appoint a representative who is not affiliated with any individual who submitted a proposal. Any owner or operator representative may not later work for the contractor, the owner, or the operator on any work generated by the proposal.

**E.** When proposals are received from nonresident businesses and resident businesses, and the proposal with the highest evaluation is from a nonresident business, the contract shall be awarded to the resident business whose technical merit is comparable and whose cost is nearest to the cost of the high-scoring nonresident business proposal if the cost of the resident proposal is made lower than the cost of the nonresident business when multiplied by a factor of 0.95.

**F.** The department and the owner or operator shall follow the procedures outlined in this section at sites where limited remediation is such that no additional infrastructure is needed, plans and specifications that require a professional engineer signature and stamp are not required, the cost is less than \$80,000 (not including NM gross receipt tax), and the proposed activities can be accomplished within two years.

**(1)** Specifications.

**(a)** The department and the owner or operator shall develop specifications for limited remediation, which shall state which sections of 20.5.119 NMAC or 20.5.120 NMAC the work is intended to fulfill.

**(b)** Bids shall meet all requirements and include costs for all tasks outlined in the specifications.



**(2) Request for bids.**

**(a)** The owner or operator shall provide to the department either a written list with a minimum of three names of consultants from which the department shall request bids for the limited remediation or a written request that the department request bids on its website.

**(b)** Any questions concerning the request for bids, including any requests for clarification of the specifications, shall be submitted in writing to the department and the owner or operator within one week prior to the deadline for submission of bids. Any response from the department and the owner or operator shall be provided promptly to all contractors identified by the owner or operator or by posting the responses on the department's webpage consistent with the method that the bids were requested.

**(3) Bid content and specifications.** The request for bids shall include but not be limited to:

**(a)** the scope of work including a list of tasks,

**(b)** a request for costs associated with each task and a total project cost;

**(c)** a request for a description of the technical approach; and

**(d)** the schedule for implementing the limited remedial strategy.

**(4) Evaluation of the bids and contractor selection.**

**(a)** Once the department and the owner or operator have received a bid, they shall not discuss the request for bids or any responses to the request for bids received with anyone other than department staff and the owner or operator.

**(b)** Only one responsive bid is required for evaluation, provided the technical merit is acceptable for the proposed work.

**(c)** The department shall, and the owner or operator may, evaluate the bids based on technical responsiveness to the limited remediation strategy and cost. The responsive bids shall be evaluated by a team approved by the department, and owner or operator if requested. The team shall make a recommendation to a department task force for approval.

**(d)** The department shall notify the owner or operator and all submitting firms of the selected bid. The owner or operator shall enter into a contract with the selected firm not less than 10 days or more than 30 days after the notification.

**(e)** After the department has notified the owner or operator of the selected bid, the department and the owner or operator shall make available to the contractors and the public all bids submitted and the evaluation team's scores.

**(f)** An owner or operator aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 15 days of the post mark on the notification.

**(g)** An offeror aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 10 days of the post mark date on the notification.

**(h)** For purposes of owner and operator participation in the process set forth in this subsection, the owner or operator may appoint a representative who is not affiliated with any individual who submitted a bid. Any owner or operator representative may not later work for the contractor, the owner, or the operator on any work generated by the bid.

**G.** For responsible party-lead sites where the owner or operator is the state of New Mexico or any subdivision thereof, including but not limited to municipalities, counties, school

districts, or other political subdivisions and their agencies, the department shall accept the use of the state procurement code, provided the department is involved in the development of the specifications and the evaluation of the submitted proposals.

[20.5.123.2307 NMAC – Rp. 20.5.123.2307 NMAC, 12/27/2018]

**20.5.123.2308 PROCEDURES AND REQUIREMENTS FOR SELECTION OF REMEDIATION CONTRACTORS AT STATE-LEAD SITES:** When selecting remediation contractors for state-lead sites, the department shall comply with the Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, 1.4.1 NMAC and the request for proposals procurement guide, which is incorporated by reference.

[20.5.123.2308 NMAC – Rp. 20.5.123.2308 NMAC, 12/27/2018]

**20.5.123.2309 WORKPLAN APPROVAL, CHANGE ORDERS FOR CORRECTIVE ACTION AND APPROVAL OF DELIVERABLES:**

**A.** Except as provided in Subsection C of 20.5.123.2310 NMAC, a written workplan and budget to complete any phase of corrective action shall be approved in writing by the department prior to any corrective action work being done in order for that work to be eligible for payment under this part.

**B.** For responsible party-lead sites, the owner or operator shall submit the corrective action workplan and cost in a fixed-fee format unless the department determines that a time-and-materials format is appropriate. Any fixed-fee approvals which require reallocation of approved amounts from one deliverable to another deliverable shall be approved in advance by the department in writing. If the department approves a time-and-materials format, any increase in approved amounts for specific tasks, categories or subcategories or any reallocation of an amount from one task to another task, one category to another category or within categories shall be approved in advance by the department in writing.

**C.** If required by Paragraph (2) of Subsection B of 20.5.123.2307 NMAC, a workplan including the operation and maintenance of a remediation system that includes mechanical or electrical installations shall list the performance criteria required for payment and amount of payment.

**D.** If a workplan is rejected after two attempts to receive approval by the department, the department may select the contractor who received the second highest evaluation, repeat the contractor selection process in accordance with subsection B of 20.5.123.2307 NMAC, or, in the case of activities which do not require competitive contractor selection under Subsection D of 20.5.123.2306 NMAC, require the owner or operator to submit a workplan from a different contractor.

**E.** Changes to the technical approach or increases in costs beyond the approved workplan shall not be eligible for payment unless approved in writing by the department prior to implementation.

**F.** The department may increase or reduce payments for work based on pay-for-performance criteria because of *force majeure* or unforeseen changes in site conditions.

**G.** After receiving a deliverable, the department shall assess whether the deliverable is satisfactory. If the department finds that the deliverable is satisfactory, it shall issue a written notice of approval to the owner, operator or contractor. The notice of approval shall explain that any application for payment of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received the

certification of approval and that no extensions of this deadline shall be granted except extensions for good cause pursuant to 20.5.123.2318 NMAC. If the department finds the deliverable to be unsatisfactory, it shall, within 30 days of receiving a deliverable, provide to the owner, operator or contractor a written notice of exception explaining the defect in the deliverable and any steps the owner, operator or contractor may take to remedy the defect. [20.5.123.2309 NMAC – Rp. 20.5.123.2309 NMAC, 12/27/2018]

**20.5.123.2310 CORRECTIVE ACTION ELIGIBLE AND INELIGIBLE COSTS AND EXPENDITURES FOR STATE-LEAD AND RESPONSIBLE PARTY-LEAD SITES:**

**A.** Payments shall be made only for corrective action conducted by firms qualified under 20.5.122 NMAC or in accordance with Subsection H of 20.5.119.1900 NMAC.

**B.** No expenditures from the fund shall be paid to or on behalf of owners or operators for corrective action, other than the minimum site assessment or any sampling done for purposes of Paragraph (3) of Subsection A of 20.5.119.1921 or 20.5.119.1929 NMAC or Paragraph (2) of Subsection A of 20.5.120.2018 or 20.5.120.2026 NMAC, where the corrective action was conducted by firms or entities that are subsidiaries, parents or otherwise affiliate firms or entities of the owner or operator.

**C.** Payments shall be made for only those deliverables that the department has approved as satisfactory in writing, as required by 20.5.123.2309 NMAC.

**D.** For USTs, payment shall not be made for corrective action performed on or after September 22, 1992, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.119.1901 or 20.5.119.1902 NMAC or 20.5.120.2001 or 20.5.120.2002 NMAC. For ASTs, payment shall not be made for corrective action performed on or after June 14, 2002, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.119.1901 or 20.5.119.1902 NMAC.

**E.** Costs eligible for payment from the fund are all costs, except those excluded by Subsections H and I of this section, that are reasonable and necessary to confirm releases in accordance with 20.5.118 NMAC, to complete the minimum site assessment in excess of the deductible, and to complete corrective action beyond the minimum site assessment, in accordance with 20.5.119 NMAC or 20.5.120 NMAC, the department's fee schedule, and any workplan required by 20.5.123.2309 NMAC and approved by the department.

**F.** Before making payments, the department shall determine that the owner or operator has reimbursed the department for all federal leaking underground storage tank (LUST) trust funds expended for contractual services at the site.

**G.** Unpaid invoices are eligible for payment on an assignment basis from the applicant to the party who rendered the invoiced services or goods, or the party who made payment. Invoices resulting from assignments as described in this subsection are not contractual between the department and the party who rendered the service or the party who made payment. Payments of such invoices are made pursuant to provisions of Section 74-6B-13 NMSA 1978, including being subject to the availability of funds in the corrective action fund.

**H.** For USTs, costs ineligible for payment include, but are not limited to, the following:

- (1) costs incurred prior to March 7, 1990;

- (2) costs incurred on or after September 22, 1992, that exceed those in the department fee schedule in effect at the time the work was performed;
- (3) costs paid or reimbursed by insurance companies or any other third party as described in 20.5.123.2319 NMAC;
- (4) unpaid invoices, unless allowed under Subsection F of this section;
- (5) costs of removing, repairing, retrofitting or replacing any USTs;
- (6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;
- (7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;
- (8) costs of repairing or replacing any remediation equipment or groundwater monitoring wells negligently or intentionally damaged or destroyed by the owner or operator;
- (9) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;
- (10) attorneys' fees or other legal costs;
- (11) costs of monitoring a contractor and the owner's, operator's and designated representative's participation in the contractor selection process;
- (12) costs associated with real estate transactions;
- (13) rush charges for laboratory or other services, unless required by the department;
- (14) payment made to property owners for property access to install or place monitoring wells or other investigation-related or remediation-related equipment;
- (15) economic losses and liability to third parties;
- (16) any markup on costs, to include subcontractor costs;
- (17) costs associated with corrective action that fails to conform with the preapproved workplan or with the requirements of 20.5.119 NMAC or 20.5.120 NMAC;
- (18) costs associated with releases from ASTs with capacities 55,000 gallons and greater that are part of airport hydrant fuel distribution systems, USTs with field constructed tanks, or hybrid storage tank systems;
- (19) costs associated with releases from piping attached to an AST with a capacity of 55,000 gallons or greater;
- (20) costs associated with releases from piping attached to a hybrid storage tank system; and
- (21) costs associated with releases from piping attached to unregulated storage tank systems.

**I.** For ASTs, costs ineligible for payment include but are not limited to the following:

- (1) costs incurred prior to July 1, 2001;
- (2) costs incurred that exceed those in the department fee schedule in effect at the time the work was performed;
- (3) costs paid or reimbursed by insurance companies or any other third party described in 20.5.123.2319 NMAC;
- (4) unpaid invoices, unless allowed under subsection F of this section;
- (5) costs of removing, repairing, retrofitting or replacing any ASTs;

- (6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;
- (7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;
- (8) costs of repairing or replacing any remediation equipment or groundwater monitoring wells negligently or intentionally damaged or destroyed by the owner or operator;
- (9) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;
- (10) attorneys' fees or other legal costs;
- (11) costs of monitoring a contractor and the owner's, operator's and designated representative's participation in the contractor selection process;
- (12) costs associated with real estate transactions;
- (13) rush charges for laboratory or other services, unless required by the department;
- (14) payment made to property owners for property access to install or place monitoring wells or other investigation-related or remediation-related equipment;
- (15) economic losses and liability to third parties;
- (16) any markup on costs, to include subcontractor costs;
- (17) costs associated with corrective action that fails to conform with the preapproved workplan or with the requirements of 20.5.119 NMAC or 20.5.120 NMAC;
- (18) costs associated with releases from ASTs with capacities 55,000 gallons and greater that are part of airport hydrant fuel distribution systems, USTs with field constructed tanks, or hybrid storage tank systems;
- (19) costs associated with releases from piping attached to an AST with a capacity of 55,000 gallons or greater;
- (20) costs associated with releases from piping attached to a hybrid storage tank system; and
- (21) costs associated with releases from piping attached to unregulated storage tank systems.

[20.5.123.2310 NMAC – Rp. 20.5.123.2310 NMAC, 12/27/2018]

**20.5.123.2311 DESIGNATED REPRESENTATIVES:**

**A.** Subject to approval by the department, an owner or operator may designate a representative to facilitate compliance with 20.5.118 NMAC, 20.5.119 NMAC, 20.5.120 NMAC, 20.5.121 NMAC, 20.5.122 NMAC, and 20.5.123 NMAC. Designation of a representative shall include assignment to the designated representative of any rights the owner or operator may have to payment from the corrective action fund.

**B.** In the event an owner or operator is incapable of both directing required corrective action and assigning rights to a designated representative, a person may request in writing to be designated as a representative by the department and to be assigned any rights the owner or operator may have had to payment from the corrective action fund.

**C.** Anyone requesting to designate or be designated as a representative pursuant to this section shall submit a written request to the department that includes the:

- (1) owner ID number;

- (2) facility ID number;
- (3) release ID;
- (4) reason for the requested designation (for example: sale of property or change of ownership, out-of-state move, operator illness, age, or death); and
- (5) proposed representative's name, mailing address, email address, and telephone number.

**D.** When determining whether to approve or designate a person as a representative pursuant to subsection A or B of this section, the department shall consider: the reason or reasons a designated representative may be necessary; the nature of the proposed representative's relationship to the owner or operator, if any; the proposed representative's interest in the facility or real property where corrective action is being or shall be performed; and the proposed representative's ability to direct corrective action activities. The department shall approve or deny the request for designation of a representative in writing, which explains the department's decision, to the requesting party and the owner or operator.

**E.** Requests for payment from the fund resulting from assignments described in subsection A or B of this section are not contractual between the department and the designated representative. Payments of such requests are made pursuant to the provisions of Section 74-6B-13 NMSA 1978 and are subject to the availability of funds in the corrective action fund.

**F.** Designation of a representative does not waive owner or operator responsibility or liability. Regardless of appointment of a designated representative, or assignment to the designated representative of rights to the corrective action fund, owners and operators remain responsible for compliance with the provisions of this chapter. The designation of a representative shall not affect the department's right to seek compliance at any time from the owner or operator or both. The designation of a representative is intended to facilitate compliance with corrective action requirements only and shall not relieve the owner and operator of their legal responsibilities or liabilities under this chapter.

[20.5.123.2311 NMAC – Rp. 20.5.123.2311 NMAC, 12/27/2018]

#### **20.5.123.2312 MEANS TEST TO DETERMINE DEDUCTIBLE:**

**A.** An owner or operator otherwise responsible for paying the first ten thousand dollars (\$10,000) of minimum site assessment costs under Section 74-6B-13 NMSA 1978 may request that the first ten thousand dollars (\$10,000) be paid from the Fund (a "zero deductible") if the owner or operator proves to the department an inability to pay the deductible.

**B.** An owner or operator otherwise responsible for a ten thousand dollar (\$10,000) deductible is allowed a five thousand dollar (\$5,000) deductible if the owner or operator proves to the department an inability to pay the full deductible.

**C.** The owner or operator shall submit an application for a zero or reduced deductible before or with submission of the MSA workplan, pursuant to 20.5.119 NMAC or 20.5.120 NMAC. The application shall include the following:

- (1) a letter explaining why the owner or operator is unable to afford to pay all or a portion of the initial ten thousand dollar (\$10,000) cost of an MSA;
- (2) copies of the owner's or operator's federal tax returns for the immediately preceding two years; and
- (3) any additional financial documentation (for example, copies of bankruptcy filings or medical bills) that will assist the department in determining the owner or operator's inability to pay.

**D.** The department shall determine inability or reduced ability to pay by using one of the environmental protection agency's published computer analysis programs, and by considering the owner's or operator's ability to maintain basic business operations if required to pay the full or reduced deductible, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

**E.** Notwithstanding the provisions of subsections A and B of this section, an owner or operator otherwise responsible for paying a deductible shall be allowed a zero deductible if the owner or operator has proven to the department that the owner or operator is a municipality or county.

[20.5.123.2312 NMAC – Rp. 20.5.123.2312 NMAC, 12/27/2018]

### **20.5.123.2313 OWNERSHIP AND DISPOSITION OF MAJOR REMEDIATION EQUIPMENT:**

**A.** The department shall be the owner of all major remediation equipment paid for by the fund, unless the equipment is leased as a more cost-effective approach, and shall be responsible for disposition of all major remediation equipment. No owner or operator shall dispose of any major remediation equipment without the written permission of the department. Disposition by the department shall be in accordance with all applicable laws and regulations, and by any of the following means:

(1) relocation to another fund remediation site, as provided in subsections C through E of this section;

(2) interim rental to a non-fund remediation site, subject to subsection F of this section;

(3) sale or salvage, subject to subsection G of this section; or

(4) when options in paragraphs (1) through (3) of this subsection are not available, any other form of disposal consistent with federal and state law.

**B.** Any major remediation equipment shall be installed, maintained and disposed of in accordance with subsections A through G of this section.

**C.** An owner or operator requiring the use of major remediation equipment for corrective action paid for with fund money shall use equipment on the department's reuse list, if available, and provided such equipment can be refurbished to the manufacturer's operating specifications for a cost not to exceed one-half of the replacement cost of the equipment.

**D.** For all major remediation equipment, new or used, the owner or operator shall enter into a written installation and maintenance agreement with a company qualified to install and maintain the equipment, and shall furnish a copy of the agreement, executed by the company, to the department. Installation and maintenance shall be performed by factory-authorized personnel or a contractor specified by the manufacturer, or as otherwise approved by the department. Complete and proper installation shall be verified by both the manufacturer or its designated representative, and the installation personnel or company. Installation and maintenance contract costs shall be stated together with the purchase price of the equipment quoted to the department in proposals, workplans and applications for payment from the fund.

**E.** For all new major remediation equipment and for all used major remediation equipment under warranty when acquired, the owner or operator shall also furnish a copy of the manufacturer's warranty to the department.

**F.** If major remediation equipment is rented to a non-fund remediation site, a reasonable rental fee shall be paid into the fund. The department shall determine the reasonable rental fee based on the lowest price quote from three equipment renters.

**G.** Major remediation equipment shall be depreciated over its useful life and have a salvage value, method and schedule as approved by the department. If the equipment is sold or salvaged, the proceeds from the sale or salvage value shall be paid into the fund. Gain or loss shall be calculated based on the net book value or salvage value in accordance with generally accepted accounting principles.

**H.** The department shall remove all major remediation equipment from a site within 90 days after issuing a “no further action” letter for that site.

[20.5.123.2313 NMAC – Rp. 20.5.123.2313 NMAC, 12/27/2018]

**20.5.123.2314 FUND APPLICATION, PAYMENT AND SUBROGATION:**

**A.** Nothing in 20.5.123 NMAC establishes or creates any liability or responsibility on the part of the department or the state to pay corrective action costs from any source other than the fund, nor shall the department or the state have any liability or responsibility to make any payments of corrective action costs if the balance in the fund is insufficient to cover those costs.

**B.** Payment shall be made only for work that has been performed in accordance with 20.5.118 NMAC, 20.5.119 NMAC or 20.5.120 NMAC and 20.5.123 NMAC, subject to the provisions of 20.5.121.2105 NMAC.

[20.5.123.2314 NMAC – Rp. 20.5.123.2314 NMAC, 12/27/2018]

**20.5.123.2315 OBTAINING FACILITY AND OWNER ID NUMBERS FOR PURPOSES OF CORRECTIVE ACTION:**

**A.** An owner or operator who is exempt from registration and tank fee requirements pursuant to 20.5.101.7 NMAC (because the owner had a UST taken out of operation on or before January 1, 1974, had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984, or had an AST taken out of operation on or before July 1, 2001) remains responsible for all corrective action requirements otherwise imposed on all owners and operators.

**B.** To access the fund, an owner or operator shall apply for and receive from the department a facility ID number and owner ID number upon submitting the following information:

(1) the owner’s or operator’s name, mailing address, email address, and telephone number; and

(2) the physical address of the UST, AST or site that requires corrective action but that is exempt from registration and tank fee requirements pursuant to 20.5.101.7 NMAC.

[20.5.123.2315 NMAC – Rp. 20.5.123.2315 NMAC, 12/27/2018]

**20.5.123.2316 CONTENTS OF APPLICATION FOR PAYMENT AT RESPONSIBLE PARTY-LEAD SITES:**

**A.** When a deliverable is completed and the department has determined in writing that the work for which payment is sought is satisfactory, the owner or operator shall submit one



original and one copy of the application for payment to the department. The application shall include:

- (1) information about the applicant, including: the owner's or operator's name, mailing address, email address, telephone number, owner ID number and the name of an individual to contact regarding the claim;
- (2) the name of the owner at the time of the release;
- (3) the name of the operator at the time of the release;
- (4) the name of the responsible party at the time of the release;
- (5) information about the facility, including: the name, address, release ID, and facility ID number for which payment is sought; the phase of corrective action being claimed; the type of tank (UST or AST); the workplan approval date and workplan identification number; the amount approved for the deliverable and the amount of the claim; the invoice number; the deliverable identification; and the exact name and date of the deliverable;
- (6) references to all work products or deliverables for which payment is sought;
- (7) the date or dates of the department's compliance determination or determinations under 20.5.123.2303 NMAC;
- (8) information about the payee if the owner or operator has assigned payment to another person, including: name, mailing address, telephone number, email address, and the nature of the payee's interest in the site;
- (9) a copy of any claim or claims the owner or operator has filed against any third party who caused or contributed to the release;
- (10) copies of invoices showing the work performed for the minimum site assessment or other required corrective action for which payment is sought;
- (11) a copy of the letter from the department determining the owner's or operator's eligibility for a zero or reduced deductible, if applicable, as determined in accordance with 20.5.123.2312 NMAC;
- (12) a statement that requirements to use a qualified firm in accordance with 20.5.122 NMAC have been met;
- (13) a signed and notarized statement of an officer or agent of the qualified firm performing the corrective action:
  - (a) consenting to an audit of time sheets, payroll and bank records, tax records, purchase orders, manifests and bills of lading, internal expense records and any other documents required to verify the costs claimed in the application; and
  - (b) agreeing to return to the department, upon demand, any and all amounts paid from the fund if the department determines that the owner or operator misrepresented or omitted any relevant facts;
- (14) copies of the workplan approval letter and any subsequent amendments to the workplan covering work for which payment is requested;
- (15) a copy of any and all notices from the department approving as satisfactory the deliverable for which payment is requested;
- (16) information about the contractor, including: the contractor's name, address and telephone number; and the name of the contractor's project manager for the site; and
- (17) if payment has been assigned by the owner or operator to a contractor, proof that the contractor has paid all subcontractor invoices.

**B.** When work is performed on a fixed fee basis, the owner or operator shall also submit the following as part of the application:

- (1) a description of the deliverable and the date delivered;
- (2) verification that any performance criteria required for payment were achieved; and
- (3) any other requirements of the workplan approval.

**C.** When work is performed on a time-and-materials basis, the owner or operator shall also submit the following as part of the application:

- (1) detailed billings of labor and equipment for each task performed; contractor staff shall be identified by name and hourly rate; equipment shall be identified as owned or rented, with the hourly or daily rate; laboratory and subcontractor charges shall be clearly explained;
- (2) timesheets, invoices, or statements with staff name, labor category, and description and date of work performed;
- (3) copies of receipts for all equipment and supplies;
- (4) travel and expense logs;
- (5) if work is billed on an hourly basis, timesheets, invoices or statements which include the hourly rate and number of hours billed to the nearest one-quarter hour; and
- (6) any other requirements of the workplan approval.

**D.** Upon the department's request, the owner or operator shall submit copies of all subcontractor invoices and an accounting of the amount paid and any remaining balance on each invoice.

**E.** In the first application for payment of corrective action costs for each workplan, the owner or operator shall submit one original and one copy of:

- (1) an original, signed oath or affirmation in accordance with Sections 14-13-1 and 14-13-2 NMSA 1978:
  - (a) certifying that the owner or operator has read the approved workplan and understands that the corrective action described in the workplan shall be completed at the identified facility;
  - (b) certifying that all matters and facts contained in that application, and in any subsequent applications for payment for the same workplan, are and will be truthful and that all invoices reflect actual costs paid or otherwise incurred;
  - (c) consenting to an audit of financial records pertaining to the current and any future claims for the same workplan; and
  - (d) agreeing to return to the department, upon demand, any and all amounts paid from the fund if the department determines that the owner or operator misrepresented or omitted any relevant facts in this or any future application for payment for the same workplan;
- (2) a signed, dated, and notarized disclosure statement indicating the site name and number where the release occurred; the type of tank (UST or AST); the facility ID number; the name, address, and telephone number of the entity that performed the work for which payment is claimed; the full name of all owners and operators of the tank for which payment is claimed; the name of each individual and business entity that owns or controls the entity that performed the work for which payment is claimed; and the name of every business concern that is a partner or subsidiary of the entity that performed the work for which payment is claimed;

(3) a completed internal revenue service W-9 form (request for taxpayer identification number and certification form);

(4) information about insurance coverage, including: whether the owner or operator has insurance for releases of regulated substances at the site of the release for which a claim is being made; the name, address, and telephone number of the insurance company; the name, address, and telephone number of a contact person within the insurance company; the amount of coverage; whether the applicant has filed an insurance claim for this release, and if so, the amount sought; and the amount the insurance company has paid; and

(5) copies of any insurance policies in effect on the date of the report or at the time of the release that may insure the owner or operator against all or part of the costs of corrective action.

**F.** After the first application for payment of corrective action costs for each workplan, an owner or operator who has properly submitted the documents required by subsection E of this section and received a payment need not submit these documents with future applications for payment unless any information provided in the first application has changed or the department has modified the scope of the work or the budget of the workplan.

**G.** The owner or operator shall not submit costs of any portion of a minimum site assessment in the same application for payment of costs of other required corrective action.

**H.** Documents submitted as part of an application for payment of corrective action costs shall not contain alterations, corrections, or erasures.

[20.5.123.2316 NMAC – Rp. 20.5.123.2316 NMAC, 12/27/2018]

[The department provides forms that may be used to comply with this section. The forms are available on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/reimbursement-corrective-action-fund-information/](https://www.env.nm.gov/petroleum_storage_tank/reimbursement-corrective-action-fund-information/)) or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

### **20.5.123.2317 CONTENTS OF APPLICATION FOR PAYMENT AT STATE-LEAD**

**SITES:** When a deliverable is completed and the department has determined in writing that the work for which payment is sought is satisfactory, the contractor shall submit one original and one copy of the application for payment to the department. All applications shall include:

**A.** the payee's name, mailing address, email address and telephone number;

**B.** the contractor's name, mailing address, email address and telephone number;

**C.** information about the workplan, including: the date the workplan was approved, the workplan identification number, the deliverable identification numbers and the date or dates each deliverable was delivered;

**D.** information about the facility, including: the name, physical address, release ID, and facility ID number of the facility for which payment is sought; the phase of corrective action being claimed; the contract number; and the expiration date of the contract;

**E.** the invoice number or numbers and the amount of each invoice for which payment is sought;

**F.** copies of each invoice for which payment is sought; and

**G.** copies of the workplan approval letter and any subsequent amendments to the workplan.

[20.5.123.2317 NMAC – Rp. 20.5.123.2317 NMAC, 12/27/2018]

[The department provides a form on the petroleum storage tank bureau's pages on the department website ([https://www.env.nm.gov/petroleum\\_storage\\_tank/reimbursement-corrective-action-fund-information/](https://www.env.nm.gov/petroleum_storage_tank/reimbursement-corrective-action-fund-information/)) that may be used to comply with this section. The form may also be obtained by contacting the bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.123.2318 APPLICATION AND PAYMENT PROCESS:**

**A.** All applications for payment shall be received by the department within 90 days of the date upon which the owner, operator or contractor received a notice of approval of the deliverable from the department, pursuant to 20.5.123.2309 NMAC. The department shall not grant extensions of the deadline for applications for payment except for good cause shown, in which case the department shall grant a 30-day extension. For purposes of this section, "good cause" means unavoidable circumstances beyond the owner's, operator's, or contractor's control. All requests for an extension shall describe the reason or reasons an extension is necessary and shall be submitted to the department in writing within the 90-day period for submitting an application for payment.

**B.** Applications for payment shall be sent to the New Mexico environment department, petroleum storage tank bureau, reimbursement section.

**C.** The department shall review all applications for payment in the order received and shall, within 60 days of receipt, either:

(1) pay the owner, operator or contractor for all eligible costs or as required by 20.5.121.2105 NMAC; or

(2) reject the application and notify the owner, operator or contractor in writing of the inadequacies in the application that caused the rejection.

**D.** The department may reject an application for payment:

(1) of the cost of any deliverable if:

(a) the application is received after the deadlines imposed by this section;

(b) the application does not contain all of the information or documents required by 20.5.123.2316 or 20.5.123.2317 NMAC (including but not limited to, all required disclosures, affirmations, timesheets, receipts, logs, and invoices);

(c) the application itself or the attached documents are incomplete, inaccurate or unclear;

(d) the application contains information that is intentionally misleading or false;

(e) the application seeks payment for work that was not pre-approved by the department;

(f) the application seeks payment for work that was not approved by the department as satisfactory; or

(g) the application seeks payment of costs that exceed the amount approved in the workplan; and

(2) of the cost of any deliverable other than an MSA if:

(a) the department has not made a compliance determination; or

(b) tank fees are past due.

**E.** The owner, operator or contractor may correct any inadequacies in the application and resubmit one completed original application and one copy within 30 days of the date of the notice of inadequacies.

**F.** Upon receiving a resubmitted application, the department shall follow the procedures in subsections C, D and H of this section for reviewing and accepting or rejecting applications for payment.

**G.** The owner, operator or contractor may submit a total of three applications (an initial application and two resubmitted applications) for any deliverable. After the owner, operator or contractor submits a total of three inadequate applications, the department may decline to review additional applications for the same deliverable.

**H.** Payment for eligible costs shall occur no later than 60 days, or in accordance with 20.5.121.2105 NMAC, after the department determines the application is complete and approves the technical adequacy of the application. The department shall mail the check for payment to the person designated as payee in the application.

**I.** Payment under this section shall not foreclose the department's right to recover excessive or illegal payments.

[20.5.123.2318 NMAC – Rp. 20.5.123.2318 NMAC, 12/27/2018]

[The address of the department's petroleum storage tank bureau, reimbursement section, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.123.2319 SUBROGATION:**

**A.** The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy, pursuant to Subsection D of Section 74-6B-8 NMSA 1978. The department's subrogation rights are limited to the extent of the department's expenditures from the corrective action fund or other sources. The owner or operator shall include in the first application for payment a copy of any insurance policies which were in effect on the date of the report, as well as any policies which were in existence at the time the release may have occurred, and which may insure the owner or operator against all or part of the costs of taking corrective action. The owner or operator shall also report to the department any claims filed against any policy identified in accordance with this section or Subsection G of 20.5.123.2310 NMAC.

**B.** The department has a right of subrogation against any third party who caused or also contributed to the release, pursuant to Subsection D of Section 74-6B-8 NMSA 1978. This right of subrogation shall apply regardless of any applications for payment the owner or operator may have made or intends to make for payment from the fund. The owner or operator shall report to the department the identity of any third party against whom a claim is filed and provide a copy of any claim filed against that party.

[20.5.123.2319 NMAC – Rp. 20.5.123.2319 NMAC, 12/27/2018]

#### **20.5.123.2320 ADMINISTRATIVE REVIEW:**

**A.** With the exception of compliance determinations under 20.5.123.2303 through 20.5.123.2305 NMAC, an owner, operator or contractor aggrieved by a decision made by the department under 20.5 NMAC may obtain review of the decision using the procedures and subject to the limitations set forth in 20.5.125 NMAC.

**B.** An offeror aggrieved by a selection decision made by the department and the owner or operator pursuant to 20.5.123.2306 through 20.5.123.2307 NMAC may obtain review of the decision from the secretary by submitting a written request for hearing.

(1) Timelines. The request must be made in writing to the secretary by the offeror within 10 days after the department has notified the owner or operator and all submitting firms of the highest scoring proposal. If an appeal is received within the 10-day time limit, the secretary shall hold a hearing within 15 days after receipt of the request, unless the parties agree to an alternate timeframe. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

(2) Burden of proof. In the appeal hearing, the burden of proof is on the person who requested the hearing.

(3) Procedures.

(a) Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

(b) The department shall make an audio recording of the hearing. If either party wants the hearing transcribed, that party shall bear the costs of transcription.

(c) In appeal hearings, the rules governing civil procedure and evidence in district court shall not apply. Hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits, and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open, for how long, and for what reason(s) it will be left open.

(4) Secretary's decision. Based upon the evidence presented at the hearing, the secretary or designee shall sustain, modify, or reverse the action of the department. The secretary or designee's decision shall be by written final order within five business days following the close of the hearing record. The order shall include the reason(s) on which the decision is based and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

(5) Stay of action. The filing of an administrative appeal shall stay execution of the contract by the owner or operator until the secretary or designee issues a final order on the appeal.

(6) Judicial review. Judicial review of the secretary or designee's final order shall be as provided by law. The filing of a judicial appeal shall not stay the execution of the contract, corrective action, compliance with the regulations, or any other action required by the secretary.

**C.** An individual denied designation by the department as a representative pursuant to 20.5.123.2311 NMAC may obtain review of the department's decision using the procedures and subject to the limitations set forth in 20.5.125 NMAC.

**D.** Compliance determinations shall be appealed as provided in 20.5.123.2321 and 20.5.123.2322 NMAC.

[20.5.123.2320 NMAC – Rp. 20.5.123.2320 NMAC, 12/27/2018]

**20.5.123.2321 REVIEW OF DETERMINATIONS OF COMPLIANCE:**

**A.** Any owner or operator aggrieved by a decision made by the department regarding determinations of compliance in accordance with 20.5.123.2303 through 20.5.123.2305 NMAC may appeal the decision by submitting a request for reconsideration of the decision to the director. Any owner or operator aggrieved by a decision made under these regulations by the director may appeal the decision by submitting a request for reconsideration to the director. The reconsideration will be based on written submittals. Any such request for reconsideration shall be in writing and shall specify the grounds upon which the petitioner objects to the decision. The request shall be accompanied by any and all written material and argument which the owner or operator wishes the director to consider upon reconsideration. The request for reconsideration shall be postmarked within 15 days of the date of the determination.

**B.** Department staff shall respond to the request for reconsideration within 15 days of receipt of the complete submittal of the owner or operator's request for reconsideration. The response of the department staff shall be sent to both the director and the owner or operator and shall be accompanied by any and all written materials and argument in support of the position of the staff on the issues raised by the owner or operator.

**C.** For good cause shown, the director may permit either party additional time in which to submit the supporting written materials or argument pursuant to subsections A and B of this section. Any request for additional time and all evidence for good cause shall be submitted in writing prior to the end of the 15-day period described in subsection A of this section. The department shall act on the request for additional time within a reasonable period of time.

**D.** The director's action on the request for reconsideration shall be based on the written materials and argument submitted pursuant to this section unless the director, in the director's discretion, schedules a conference on the request for reconsideration.

**E.** The director's action on the request for reconsideration shall be by written decision and shall state the reason therefor. The director shall send a copy of the decision to the owner or operator and furnish a copy to department staff promptly after the decision is rendered.

**F.** The owner or operator may appeal the decision of the director made under subsection E of this section by requesting a hearing in accordance with 20.5.123.2322 NMAC. [20.5.123.2321 NMAC – Rp. 20.5.123.2321 NMAC, 12/27/2018]

**20.5.123.2322 REQUEST FOR HEARING ON DETERMINATIONS OF COMPLIANCE:**

**A.** An owner or operator may obtain review by the secretary of a decision by the director made pursuant to subsection E of 20.5.123.2321 NMAC by filing a written request for a hearing as provided in the environment department adjudicatory procedures, 20.1.5 NMAC, within 30 days after the date the owner or operator receives the director's decision pursuant to Subsection E of 20.5.123.2321 NMAC. The procedures set forth in the environment department adjudicatory procedures, 20.1.5 NMAC, shall govern the proceeding.

**B.** The complainant shall attach to the request for hearing a copy of the determination for which review is sought.

**C.** With the request for hearing, the complainant shall file a reply to the determination. The reply shall address each of the findings in the determination, including any facts which support the complainant's position that the complainant has complied with the requirements of subsection B of Section 74-6B-8 NMSA 1978.

**D.** The secretary shall schedule the hearing for no later than 90 days after service of the notice of docketing.

[20.5.123.2322 NMAC – Rp. 20.5.123.2322 NMAC, 12/27/2018]

**20.5.123.2323 EFFECT OF APPEAL ON PAYMENT, ENFORCEMENT:** A request for hearing or other administrative review shall not delay payment for any phase of corrective action, other than that which is being contested. A request for hearing shall not affect the secretary's authority to issue compliance orders or otherwise seek enforcement of 20.5 NMAC under the provisions of the Hazardous Waste Act or relieve an owner or operator of any responsibility under 20.5 NMAC.

[20.5.123.2323 NMAC – Rp. 20.5.123.2323 NMAC, 12/27/2018]

**20.5.123.2324 CONTRACTOR FEE SCHEDULE:**

**A.** Hourly billing rates listed in subsection C below shall conform to the Professional Services categories defined in subsection B of this section. Payment will be based on task(s) performed. Professional services not explicitly listed in this fee schedule may not be billed without prior negotiation and pre-approval by the department. The department may require justification.

**B.** The professional services categories are defined as follows:

**(1)** Principal scientist – Administrative or professional head of organization. Directs professional staff. Charges a very limited number of hours per site, as in review of project documents.

**(2)** Senior scientist – Senior technical leader. Develops technical and budgetary approach to work orders. Duties include aquifer characterization, review of technical reports and remedial action plans. Supervises work activities of lower level professional staff. Coordinates and communicates with agency personnel and client regarding contracts, general direction and problems at work site. Generally, performs limited field work. Performs design and investigation work in technically complex situations often requiring innovative applications.

**(3)** Project scientist/engineer-manager – Identifies problems and develops investigative and remedial solutions to work site situations. Consults with higher-level professional staff. Prepares workplans, cost estimates and reports. Performs modeling. Analyzes and interprets field data. Supervises lower level technical personnel during on-site drilling, sampling, or remediation activities. Frequently communicates with agency personnel and client.

**(4)** Staff scientist/engineer – Implements field work for on-site investigation and remediation activities including site characterization, drilling supervision, and monitoring well installation and sampling activities. Assists in modeling, hydrogeologic data analysis, and report preparation. Consults with higher level professional staff.

**(5)** Field technician – Supervises installation, maintenance, and repair of investigative and remediation machinery and equipment. Conducts sampling and monitoring. Maintains machinery and equipment. Assists with field supervision of subcontractors.

**(6)** Draftsperson – Technically familiar with basic engineering principles and construction methodologies. Works independently; work product reviewed by Professional Engineer. Proficient with computer aided design drafting.



(7) Administrator – Tracks workplan costs, prepares and processes invoices, administers leasing and ordering of equipment, and performs general administrative work for report and workplan preparation.

(8) Secretary – Performs word processing and spreadsheet entry. Assists technical and senior personnel with report production, correspondence preparation and data entry.

(9) Clerk – Performs general office work, typing, filing, and document reproduction.

**C. Professional Service Rates:**

| <b>Professional services</b>       | <b>Hourly rate</b> |
|------------------------------------|--------------------|
| Principal scientist                | \$175.00           |
| Senior scientist                   | \$145.00           |
| Project scientist/engineer-manager | \$115.00           |
| Staff scientist/engineer           | \$95.00            |
| Field technician                   | \$85.00            |
| Draftsperson                       | \$85.00            |
| Administrator                      | \$80.00            |
| Secretary                          | \$50.00            |
| Clerk                              | \$45.00            |

**D. Field Equipment Costs:**

| <b>Field equipment</b>  | <b>Cost per day</b> |
|---|---------------------|
| Carbon monoxide, sulphur dioxide oxide and oxygen meters  | \$50.00             |
| Water quality meter   | \$50.00             |
| Dissolved oxygen meter (water)  | \$37.50             |
| Electroconductivity meter   | \$47.50             |
| Explosimeter  | \$42.50             |
| Fluid field detector  | \$30.00             |
| Interface probe   | \$65.00             |
| Organic vapor meter   | \$70.00             |
| Photoionization detector  | \$70.00             |
| Flame ionization detector   | \$75.00             |
| pH Meter  | \$22.50             |
| Other. Costs shall be pre-approved by the department. The department may require justification. |                     |

**E.** Per diem and mileage will be paid in accordance with 2.42.2 NMAC, Regulations Governing the Per Diem and Mileage Act. The department shall only approve mileage reimbursement for travel within New Mexico.

**F.** Earth-moving equipment. Costs shall be pre-approved by the department. The department may require justification:

- (1) backhoe, light duty (12 feet-19 feet);
- (2) backhoe, medium duty (14 feet-19 feet);
- (3) trackhoe, light duty;
- (4) trackhoe, medium duty;
- (5) trackhoe, heavy duty; and

(6) Other. Costs shall be pre-approved by the department. The department may require justification.

**G.** Well Supplies. Costs shall be pre-approved by the department. The department may require justification:

- (1) two-inch blank;
- (2) four-inch blank;
- (3) two- inch screen PVC 10 feet;
- (4) four-inch screen PVC 10 feet;
- (5) filter pack, per 100 pounds;
- (6) bentonite pellets, per 50 pounds;
- (7) bentonite chips, per 50 pounds;
- (8) bentonite gel, per 100 pounds;
- (9) grout, per 50 pounds.;
- (10) eight-inch manhole;
- (11) 12-inch manhole; and
- (12) Other. Costs shall be pre-approved by the department. The department

may require justification.

**H.** Drilling. Costs shall be pre-approved by the department. The department may require justification:

- (1) mobilization/demobilization;
- (2) hollow stem auger;
- (3) air rotary;
- (4) Sonic drilling;
- (5) other drilling methods;
- (6) plug and abandon; and
- (7) Other. Costs shall be pre-approved by the department. The department

may require justification.

**I.** Lab services. Costs shall be pre-approved by the department. The department may require justification:

- (1) EPA methods.
  - (a) 8310;
  - (b) 601/8010, 602/8020;
  - (c) Modified 8015;
  - (d) 418.1;
  - (e) 610/8100;
  - (f) 624/8240;
  - (g) 625/8270;
  - (h) 8260; and
  - (i) RCRA 8 metals.
- (2) benzene, toluene, ethyl benzene, and xylenes; methyl tertiary-butyl ether;
- (3) pH;
- (4) total organic carbon;
- (5) Geotechnical soil analyses:
  - (a) sieve analysis;
  - (b) soil moisture;
  - (c) density;

- (d) porosity;
- (e) fraction organic carbon; and

(6) Other. Costs shall be pre-approved by the department. The department may require justification.

**J.** The contractor shall provide justification or documentation upon request of the department for proposed costs subject to this part.

**K.** Subcontractor costs shall be billed at cost. The department may require three bids for subcontracted services.

[20.5.123.2324 NMAC – Rp. 20.5.123.2324 NMAC, 12/27/2018]

### **HISTORY OF 20.5.123 NMAC:**

#### **History of Repealed Material:**

20.5.123 NMAC, Corrective Action Fund Administration (filed 7/31/2018) emergency rule, effective 12/27/18.

#### **Other History:**

20.5.17 NMAC, Corrective Action Fund Administration was renumbered, reformatted, and replaced by 20.5.123 NMAC, Corrective Action Fund Administration (filed 7/31/2018) emergency rule, effective 7/24/18.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 124 LENDER LIABILITY**

**20.5.124.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.124.1 NMAC - N, 07/24/2018]

**20.5.124.2 SCOPE:** This part applies to all storage tank systems in this state except as provided in Subsections B and D of 20.5.101.2 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC.  
[20.5.124.2 NMAC - N, 07/24/2018]

**20.5.124.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-1-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-15 NMSA 1978.  
[20.5.124.3 NMAC - N, 07/24/2018]

**20.5.124.4 DURATION:** Permanent.  
[20.5.124.1 NMAC - N, 07/24/2018]

**20.5.124.5 EFFECTIVE DATE:** July 24, 2018, unless later date is indicated in the bracketed note at the end of a section.  
[20.5.124.1 NMAC - N, 07/24/2018]

**20.5.124.6 OBJECTIVE:** This part is adopted to limit the regulatory obligations of lending institutions and other persons who hold a security interest in a storage tank system, or in real estate containing a storage tank, or that acquire a title or deed to a storage tank or a facility or property on which a storage tank is located.  
[20.5.124.1 NMAC - N, 07/24/2018]

**20.5.124.7 DEFINITIONS:** The definitions in 20.5.101 NMAC apply to this part. In addition, when used in this part, the following terms shall have the meanings given below:

- A.** “Storage tank technical standards,” as used in this part, refers to the requirements of 20.5.102, 20.5.104, 20.5.106 through 20.5.111 NMAC, 20.5.114 and 20.5.115 NMAC, and 20.5.118.1800 NMAC through Subsection A of 20.5.118.1801 NMAC.
- B.** Petroleum production, refining, and marketing.
  - (1)** “Petroleum production” means the production of crude oil or other forms of petroleum (as defined in 20.5.101.7 NMAC) as well as the production of petroleum products from purchased materials.
  - (2)** “Petroleum refining” means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

**(3)** “Petroleum marketing” means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

**C.** “Indicia of ownership” means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter “lease financing transaction”), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

**D.** A “holder” is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

**E.** A “borrower,” “debtor,” or “obligor” is a person whose petroleum storage tank or storage tank system or facility or property on which the petroleum storage tank or storage tank system is located is encumbered by a security interest. These terms may be used interchangeably.

**F.** “Primarily to protect a security interest” means that the holder’s indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

**(1)** “Security interest” means an interest in a petroleum storage tank or storage tank system or in the facility or property on which a petroleum storage tank or storage tank system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a storage tank or storage tank system or in the facility or property on which the storage tank or storage tank system is located, for the purpose of securing a loan or other obligation.

**(2)** “Primarily to protect a security interest,” as used in this part, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

**G.** “Operation” means, for purposes of this part, the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system.

**H.** “Participating in the management of a storage tank or storage tank system” means that the holder is engaging in decision-making control of, or activities related to, operation of the storage tank or storage tank system, as defined herein. Participation in management does not

include the mere capacity or ability to influence or the unexercised right to control storage tank or storage tank system operations.

**I.** “Foreclosure” means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located.

**J.** “Loan work out” means those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

**K.** “Written, bona fide, firm offer” means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform.

[20.5.124.7 NMAC - N, 07/24/2018]

#### **20.5.124.8 to 20.5.124.2399 [RESERVED]**

#### **20.5.124.2400 ACTIONS THAT ARE PARTICIPATION IN MANAGEMENT:**

**A.** Participation in the management of a storage tank or storage tank system means, for purposes of this part, actual participation by the holder in the management or control of decision-making related to the operation of a storage tank or storage tank system. A holder is participating in the management of the storage tank or storage tank system only if the holder either:

(1) Exercises decision-making control over the operational (as opposed to financial or administrative) aspects of the storage tank or storage tank system, such that the holder has undertaken responsibility for all or substantially all of the management of the storage tank or storage tank system; or

(2) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision-making of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

**B.** Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

**C.** Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions.

**D.** Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in 20.5 NMAC.

[20.5.124.2400 NMAC - N, 07/24/2018]

**20.5.124.2401 ACTIONS THAT ARE NOT PARTICIPATION IN MANAGEMENT PRE-FORECLOSURE:**

**A.** Actions at the inception of the loan or other transaction.

(1) No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart.

(2) A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the storage tank or storage tank system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

**B.** Loan policing and work out.

(1) Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this part.

(2) The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower.

(3) Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(4) Policing activities.

(a) Policing the security interest or loan. A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section. Such policing actions include, but are not limited to, the following activities:

(i) requiring the borrower to clean up contamination from the storage tank or storage tank system during the term of the security interest;

(ii) requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest;

(iii) securing or exercising authority to monitor or inspect the storage tank or storage tank system or facility or property on which the storage tank or storage



tank system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or

(iv) taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(b) Environmental policing activities. Policing activities also include undertaking by the holder of storage tank environmental compliance actions and voluntary environmental actions taken in compliance with 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section, 20.5.124.2404 and 20.5.124.2405 NMAC. A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system. Such allowable actions include, but are not limited to:

- (i) release detection and release reporting;
- (ii) release response and corrective action;
- (iii) temporary or permanent closure of a storage tank or storage tank system;
- (iv) storage tank upgrading or replacement; and
- (v) maintenance of corrosion protection.

(5) Loan work out. A holder who engages in loan work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section.

[20.5.124.2401 NMAC - N, 07/24/2018]

**20.5.124.2402 FORECLOSURE ON A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED, AND PARTICIPATION IN MANAGEMENT ACTIVITIES POST-FORECLOSURE:**

**A. Foreclosure.**

(1) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in 20.5.124.7 NMAC) prior to or after foreclosure.

(2) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner a storage tank or storage tank system or facility or property on which the storage or storage tank system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or may employ the means specified in Subsection B of this section.

(3) A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as provided in Subsection B of this section, is not considered to hold indicia of ownership primarily to protect a security interest.

**B. Holding foreclosed property for disposition and liquidation.**

(1) A holder may conduct the following activities without voiding the security interest exemption, subject to the requirements of this part:

(a) A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

(b) A holder may arrange for an existing or new operator to continue or initiate operation of the storage tank or storage tank system.

(2) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

(a) For purposes of this provision, the 12-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located.

(b) If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the 12-month period begins to

run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located.

**(3)** A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

**(a)** Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, is the value of the security interest as defined in this section.

**(i)** The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure).

**(ii)** The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or other disposition.

**(iii)** The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located), and corrective action costs incurred under 20.5.118, 20.5.119, or 20.5.120 NMAC or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure.

**(iv)** In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

**(b)** Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located received at any time after six months following foreclosure, as defined in 20.5.124.7 NMAC.

(i) For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the storage tank or storage tank system, storage tank facility and property on which the storage tank or storage tank system is located.

(ii) If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located.

C. Actions that are not participation in management post-foreclosure.

(1) A holder is not considered to be participating in the management of a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located when undertaking actions under 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section and in 20.5.124.2400 NMAC. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of a storage tank system, storage tank upgrading or replacement, and maintenance of corrosion protection.

(2) A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC.

(3) A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system.

[20.5.124.2402 NMAC - N, 07/24/2018]

**20.5.124.2403 OWNERSHIP OF A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED:**

A holder is not an “owner” of a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the financial responsibility requirements under 20.5.117 NMAC, provided the person:

A. does not participate in the management of the storage tank or storage tank system as defined in 20.5.124.2400 NMAC, 20.5.124.2401 NMAC, and 20.5.124.2402 NMAC; and

B. does not engage in petroleum production, refining, and marketing, as defined in 20.5.124.7 NMAC.

[20.5.124.2403 NMAC - N, 07/24/2018]

**20.5.124.2404 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM**

**PRIOR TO FORECLOSURE:** A holder, prior to foreclosure, as defined in 20.5.124.7 NMAC, is not an “operator” of a petroleum storage tank or storage tank system for purposes of

compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the financial responsibility requirements under 20.5.117 NMAC, provided that the holder is not in control of or does not have responsibility for the daily operation of the storage tank or storage tank system.

[20.5.124.2404 NMAC - N, 07/24/2018]

#### **20.5.124.2405 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM**

**AFTER FORECLOSURE:** The following provisions apply to a holder who, through foreclosure, as defined in 20.5.124.7 NMAC, acquires a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located.

**A.** A holder is not an “operator” of a petroleum storage tank or storage tank system for purposes of compliance with 20.5 NMAC if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the storage tank or storage tank system, and who can be held responsible for compliance with applicable requirements of 20.5 NMAC.

**B.** If another operator does not exist, as provided for under Subsection A of this section, a holder is not an “operator” of the storage tank or storage tank system, for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the storage tank financial responsibility requirements under 20.5.117 NMAC, provided that the holder:

(1) empties all of its known storage tanks and storage tank systems within 60-calendar days after foreclosure or another reasonable time period specified by the department, so that, in the case of both USTs and ASTs, no more than two and one-half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST; and

(2) empties those storage tanks and storage tank systems that are discovered after foreclosure within 60-calendar days after discovery or another reasonable time period specified by the department, so that, in the case of both ASTs and USTs, no more than two and one-half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST.

**C.** For purposes of this subsection, the 12-month period begins to run from the date on which the storage tank system is emptied and secured under Subsection B of this section. If another operator does not exist, as provided for under Subsections A and B of this section, in addition to satisfying the conditions under Subsection B of this section, the holder shall either:

(1) permanently close the storage tank or storage tank system in accordance with 20.5.115 NMAC, except 20.5.115.1501 NMAC and Subsection B of 20.5.115.1504 NMAC; however, the holder is required to notify the department of a release or a suspected release in accordance with 20.5.118 NMAC; or

(2) temporarily close the storage tank or storage tank system in accordance with the following:

(a) continue operation and maintenance of corrosion protection in accordance with 20.5.107.705 NMAC;

(b) report suspected releases to the department in accordance with 20.5.118 NMAC; and

(c) conduct a site assessment in accordance with Subsection A of 20.5.115.1504 NMAC if the storage tank system is temporarily closed for more than 12 months and the storage tank system does not meet either the performance standards in 20.5.106 NMAC for new underground storage tank systems or, for AST systems, the upgrading requirements in 20.5.109 NMAC, except that the spill and overfill equipment requirements do not have to be met.

**D.** The storage tank system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. Once a subsequent purchaser acquires marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, the purchaser shall decide whether to operate or close the storage tank or storage tank system in accordance with applicable requirements in 20.5 NMAC.

[20.5.124.2405 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.124 NMAC:**

**Pre-NMAC History:** None

**History of Repealed Material:** 20 NMAC 5.11, Underground Storage Tanks, Lender Liability (filed 2/27/97), repealed 8/15/03.

20.5.11 NMAC, Underground Storage Tanks, Lender Liability (filed 8/15/03), repealed 7/24/18.

**Other History:**

20 NMAC 5.11, Underground Storage Tanks, Lender Liability, filed 6/6/96 was replaced by 20 NMAC 5.8, Underground Storage Tanks, Lender Liability, effective 4/1/97;

20 NMAC 5.11, Underground Storage Tanks, Lender Liability, filed 2/27/97, was renumbered, reformatted and replaced by 20.5.11 NMAC, Petroleum Storage Tanks, Lender Liability, effective 8/15/03.

20.5.11 NMAC, Underground Storage Tanks, Lender Liability, filed 8/15/03, was renumbered, reformatted and replaced by 20.5.124 NMAC, Petroleum Storage Tanks, Lender Liability, effective 7/24/18.

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 PETROLEUM STORAGE TANKS  
PART 125 ADMINISTRATIVE REVIEW**

**20.5.125.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.125.1 NMAC - N, 07/24/2018]

**20.5.125.2 SCOPE:** This part applies to aggrieved parties as defined in this part.  
[20.5.125.2 NMAC - N, 07/24/2018]

**20.5.125.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.  
[20.5.125.3 NMAC - N, 07/24/2018]

**20.5.125.4 DURATION:** Permanent.  
[20.5.125.4 NMAC - N, 07/24/2018]

**20.5.125.5 EFFECTIVE DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.  
[20.5.125.5 NMAC - N, 07/24/2018]

**20.5.125.6 OBJECTIVE:** The purpose of this part is to provide aggrieved parties a means of seeking expedited review or reconsideration of decisions made by the department under 20.5 NMAC in regulating storage tank systems in order to protect the public health, safety and welfare and the environment of the state.  
[20.5.125.6 NMAC - N, 07/24/2018]

**20.5.125.7 DEFINITIONS:**

- A.** The definitions in 20.5.101 NMAC apply to this part.
  - B.** As used in this part, the term “aggrieved party” means:
    - (1)** an owner, operator, person designated as a representative under 20.5.123.2311 NMAC or product deliverer aggrieved by a decision by the department pursuant to 20.5 NMAC;
    - (2)** a contractor aggrieved by a decision by the department under 20.5.123 NMAC;
    - (3)** a person that has been denied designation as a representative under 20.5.123.2311 NMAC; or
    - (4)** a person that has been denied qualification or disqualified under 20.5.122 NMAC.
- [20.5.125.7 NMAC - N, 07/24/2018]

**20.5.125.8 - 20.5.125.2499 [RESERVED]**

**20.5.125.2500 INITIATION OF ADMINISTRATIVE REVIEW:**

**A.** Except for appeals as provided for in 20.5.123 NMAC for compliance determinations, any aggrieved party may obtain review of the decision by either:

(1) submitting to the department a written request for informal review pursuant to 20.5.125.2501 NMAC; or

(2) submitting to the secretary or the secretary's designee a written request for review on written submittals pursuant to 20.5.125.2502 NMAC.

**B.** Any request for administrative review initiated pursuant to Subsection A of this section must be postmarked within 15 days of the date of the decision.

**C.** An aggrieved party may request review on written submittals under 20.5.125.2502 NMAC without first requesting informal review under 20.5.125.2501 NMAC. If, however, an aggrieved party first requests informal review under 20.5.125.2501 NMAC, the aggrieved party thereafter may request review on written submittals under 20.5.125.2502 NMAC of the determination made by the department pursuant to Subsection D of 20.5.125.2501 NMAC, provided that the request for review on written submittals under 20.5.125.2502 NMAC is postmarked within 15 days of the date of the determination made by the department pursuant to Subsection D of 20.5.125.2501 NMAC.

**D.** Review under this part does not stay the decision being reviewed, unless otherwise ordered by the secretary or secretary's designee, nor does it apply to or affect the secretary's authority to issue compliance orders or otherwise seek enforcement of these regulations, 20.5 NMAC, under the provisions of the Hazardous Waste Act or the Ground Water Protection Act.

[20.5.125.2500 NMAC - N, 07/24/2018]

**20.5.125.2501 INFORMAL REVIEW:**

**A.** A request for informal review by an aggrieved party shall be in writing and shall specify the grounds upon which the aggrieved party objects to the decision. Every request for informal review shall be submitted to the department by the deadline set out in Subsection B of 20.5.125.2500 NMAC.

**B.** The department shall afford prompt opportunity for an informal conference at which the aggrieved party may present the aggrieved party's views on the issues raised in the request for review and offer any supporting documentation or testimony. The department shall notify the aggrieved party of the time, date and place of the informal conference.

**C.** If the decision to be reviewed was based on an inspection or field test performed or witnessed by an employee of the department, the member of department staff conducting the review must be someone other than the employee who conducted or witnessed the inspection or test.

**D.** After considering all written and oral views presented, the department shall affirm, modify or reverse the original decision and shall furnish the aggrieved party with a written notification of its determination.

[20.5.125.2501 NMAC - N, 07/24/2018]

**20.5.125.2502 REVIEW BY THE SECRETARY OR THE SECRETARY'S DESIGNEE ON WRITTEN SUBMITTALS:**

**A.** Every request for review by the secretary or the secretary's designee on written submittals shall be in writing and shall specify the grounds upon which the aggrieved party



objects to the decision. The request shall be accompanied by any and all written materials and argument which the aggrieved party wishes the secretary or the secretary's designee to consider upon review. The request and all written materials and argument shall be submitted to the secretary or the secretary's designee by the deadline set out in Subsections B and C of 20.5.125.2500 NMAC.

**B.** Within 15 days after the filing of the aggrieved party's request for review and submittal of all the aggrieved party's supporting material, department staff shall provide to the secretary or the secretary's designee any and all written materials and argument in support of the position of department staff on the issues raised by the aggrieved party.

**C.** For good cause shown, the secretary or the secretary's designee may permit either party (that is, either department staff or the aggrieved party) additional time in which to submit the supporting written materials and argument allowed by Subsections A and B of this section. Any extension of time to submit written submittals shall not include the authority to extend the time to file a request for review under this part.

**D.** The action of the secretary or the secretary's designee on the request for review shall be based on the written materials and argument submitted pursuant to this section unless the secretary or the secretary's designee schedules a hearing on the request for review as set forth below.

**E.** The secretary or the secretary's designee may exercise discretion in determining if there is significant public interest for a public hearing and, if so, may provide notice of the time and place of the hearing to the aggrieved party, and may provide notice to interested persons other than the aggrieved party and provide for public participation in the review process described in this section, as the secretary or the secretary's designee deems appropriate.

**F.** If the secretary chooses to hold a hearing as described in Subsection E of this section, the secretary shall hold the hearing within 60 days after receiving the written materials and argument described in Subsection A or after receiving the request for a hearing, whichever occurs last. In the event the department holds a hearing, the cost of the court reporter and transcript shall be paid by the party that requested the hearing. The hearing shall be conducted in accordance with 20.1.5 NMAC.

**G.** The action of the secretary or the secretary's designee on the request for review shall be by written order and shall state the decision and the reason therefore. The secretary or the secretary's designee shall send a copy of the order to the aggrieved party and furnish a copy to department staff promptly after the order is entered. This written order shall be the department's final action on the request for review. Any judicial review of this final order shall be as provided by applicable law.

[20.5.125.2502 NMAC - N, 07/24/2018]

#### **History of 20.5.125 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-10, Underground Storage Tank Regulations - Part X - Administrative Review, filed 9/12/88.

EIB/USTR-10, Underground Storage Tank Regulations - Part X - Administrative Review, filed 8/4/89.

**History of Repealed Material:**

20 NMAC 5.10, Underground Storage Tanks, Administrative Review (filed 2/27/97), repealed 8/15/03.

20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review (filed 7/16/03), repealed 6/15/09.

20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review (filed 6/15/09), repealed 7/24/18.

**Other History:**

EIB/USTR-10, Underground Storage Tank Regulations - Part X - Administrative Review, (filed 8/4/89) renumbered, reformatted and replaced by 20 NMAC 5.10, effective 11/5/95.

20 NMAC 5.10, Underground Storage Tanks, Administrative Review, (filed 10/6/95) was replaced by 20 NMAC 5.10, Underground Storage Tanks, Administrative Review, effective 4/1/97.

20 NMAC 5.10, Underground Storage Tanks, Administrative Review, (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.10, NMAC, Petroleum Storage Tanks, Administrative Review, effective 8/15/03.

20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review, (filed 7/16/03) was replaced by 20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review, effective 6/15/09.

20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review (filed 6/15/09), was renumbered, reformatted, and replaced by 20.5.125 NMAC, Petroleum Storage Tanks, Administrative Review, effective 7/24/18.

New Mexico Statutes Applicable to Petroleum Storage Tanks

1. NMSA 1978 7-13A-1 to -7, Petroleum Products Loading Fee Act .....395
2. NMSA 1978 74-4-1 to -14, Hazardous Waste Act ..... 401
3. NMSA 1978 74-6B-1 to -14, Ground Water Protection Act .....429



N. M. S. A. 1978, § 7-13A-1  
§ 7-13A-1. Short title

Chapter 7, Article 13A NMSA 1978 may be cited as the “Petroleum Products Loading Fee Act”.

**Credits**

L. 1990, Ch. 124, § 14.

N. M. S. A. 1978, § 7-13A-2  
§ 7-13A-2. Definitions

As used in the Petroleum Products Loading Fee Act:

A. “department” means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. “distributor” means any person registered or required to be registered as a rack operator or distributor for purposes of the Gasoline Tax Act<sup>1</sup> and any person registered or required to be registered as a rack operator or special fuel supplier for purposes of the Special Fuels Supplier Tax Act;<sup>2</sup>

C. “gallon” means the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters, or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

D. “load” means eight thousand gallons of petroleum product;

E. “loading” means the act of placing or causing to be placed any petroleum product that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state into tank cars, tank trucks, tank wagons or other types of transportation equipment or into any tank or other container from which sales or deliveries not involving transportation are made;

F. “person” means an individual or any other legal entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state. “Person” also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

G. “petroleum product” means gasoline as defined in the Gasoline Tax Act and special fuel as defined in the Special Fuels Supplier Tax Act; and

H. “secretary” means, unless the context indicates another meaning, the secretary of taxation and revenue or the secretary’s delegate; and

I. “unobligated balance of the corrective action fund” means corrective action fund equity less all known or anticipated liabilities against the fund.

## Credits

L. 1990, Ch. 124, § 15; L. 1995, Ch. 16, § 13, eff. Jan. 1, 1996; L. 1997, Ch. 192, § 4, eff. June 1, 1997.

### N. M. S. A. 1978, § 7-13A-3

#### § 7-13A-3. Imposition and rate of fee; denomination as “petroleum products loading fee”

A. For the privilege of loading gasoline or special fuel from a rack at a refinery or pipeline terminal in this state into a cargo tank, there is imposed a fee on the distributor at a rate provided in Subsection C of this section on each gallon of gasoline or special fuel loaded in New Mexico on which the petroleum products loading fee has not been previously paid.

B. For the privilege of importing gasoline or special fuel into this state for resale or consumption in this state there is imposed a fee determined as provided in Subsection C of this section on each load of gasoline or special fuel imported into New Mexico for resale or consumption on which the petroleum products loading fee has not been previously paid. For the purposes of this section, “load” means eight thousand gallons of gasoline or special fuel. To determine how many loads a person is to report under the provisions of this section, the person shall divide by eight thousand the total gallons of gasoline reported for the purposes of Section 7-13-3 NMSA 1978 as adjusted under the provisions of Section 7-13-4 NMSA 1978 and the total gallons of special fuels received in New Mexico less any gallons exempted under Section 7-13A-4 NMSA 1978. Loads shall be calculated to the nearest one-hundredth of a load.

C. The fee imposed by this section is and may be referred to as the “petroleum products loading fee” and shall be one hundred fifty dollars (\$150) per load or whichever of the following applies:

- (1) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year equals or exceeds eighteen million dollars (\$18,000,000) the fee shall be set at forty dollars (\$40.00) per load;
- (2) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds twelve million dollars (\$12,000,000) but is less than eighteen million dollars (\$18,000,000) the fee shall be set at eighty dollars (\$80.00) per load;
- (3) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds six million dollars (\$6,000,000) but is less than twelve million dollars (\$12,000,000) the fee shall be set at one hundred twenty dollars (\$120) per load; and
- (4) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year is less than six million dollars (\$6,000,000) the fee shall be set at one hundred fifty dollars (\$150) per load.

D. The amount of the petroleum products loading fee set pursuant to Paragraph (1), (2), (3) or (4) of Subsection C of this section shall be imposed on the first day of the month following expiration of ninety days after the end of the fiscal year for which the certification was made.

E. As used in this section, “unobligated balance of the corrective action fund” means corrective action fund equity less all known or anticipated liabilities against the fund.”

#### **Credits**

L. 1990, Ch. 124, § 16; L. 1996, Ch. 82, § 2, eff. July 1, 1996.

### **N. M. S. A. 1978, § 7-13A-4 § 7-13A-4. Exemptions**

A. Petroleum products that are either loaded into cargo tanks in New Mexico and exported for resale and consumption outside of New Mexico or are imported into New Mexico and subsequently exported for resale and consumption outside of New Mexico are exempt from the imposition of the petroleum products loading fee.

B. Petroleum products sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof are exempt from the imposition of the petroleum products loading fee.

#### **Credits**

L. 1991, Ch. 9, § 34.

### **N. M. S. A. 1978, § 7-13A-5 § 7-13A-5. Deduction; gasoline or special fuels returned; biodiesel for subsequent blending or resale by a rack operator Effective: May 21, 2014**

A. Refunds and allowances made to buyers for gasoline or special fuels returned to the refiner, pipeline terminal operator or distributor or amounts of gasoline or special fuels, the payment for which has not been collected and has been determined to be uncollectible pursuant to provisions of regulations issued by the secretary may be deducted from gallons used to determine loads for the purposes of calculating the petroleum products loading fee. If such a payment is subsequently collected, the gallons represented shall be included in determining loads. The deduction under the provisions of this section shall not be allowed if the petroleum products loading fee has not been paid previously on the petroleum products that were returned to the seller or the sale of which created an uncollectible debt.

B. Biodiesel, as defined in the Special Fuels Supplier Tax Act, loaded in or imported into New Mexico and delivered to a rack operator for subsequent blending or resale by a rack operator may be deducted from gallons used to determine loads for the purposes of calculating the petroleum products loading fee.

C. A taxpayer that deducts an amount of biodiesel pursuant to Subsection B of this section shall report the deducted amount separately with the taxpayer's return in a manner prescribed by the department.

D. The department shall calculate the aggregate amount, in dollars, of the difference between the amount of the petroleum products loading fee that would have been collected in a fiscal year if not for the deduction allowed pursuant to Subsection B of this section and the amount of the petroleum products loading fee actually collected. The department shall compile an annual report that includes the aggregate amount, the number of taxpayers that deducted an amount of biodiesel pursuant to Subsection B of this section and any other information necessary to evaluate the deduction. Beginning in 2019 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the costs and benefits to the state of the deduction.

E. For purposes of this section, "rack operator" means the operator of a refinery in this state or the owner of special fuel stored at a pipeline terminal in this state.

#### **Credits**

L. 1990, Ch. 124, § 18; L. 2014, Ch. 18, § 1, eff. May 21, 2014.

### **N. M. S. A. 1978, § 7-13A-6** **§ 7-13A-6. Fee returns; payment of fee**

Any person who either loads gasoline or special fuel in New Mexico and any person who imports gasoline or special fuel into New Mexico for resale or consumption in New Mexico shall file petroleum products loading fee returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which petroleum products are either loaded in New Mexico or imported into New Mexico. Such returns shall be accompanied by payment of the amount of the petroleum products loading fee due.

#### **Credits**

L. 1990, Ch. 124, § 19.

### **N. M. S. A. 1978, § 7-13A-7** **§ 7-13A-7. Claim for refund of petroleum products loading fee on products previously loaded from a source other than a refiner or pipeline terminal** **Effective: January 1, 2016**

A. Upon the submission of proof satisfactory to the department, a distributor may claim, and the department may allow, a claim for refund of the petroleum products loading fee paid on petroleum products previously loaded in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

B. No person may submit claims for refund pursuant to this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.



C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

**Credits**

Added by L. 2015, 1st Sp. Sess., Ch. 2, § 20, eff. Jan. 1, 2016.



**N. M. S. A. 1978, Ch. 74, Art. 4, Refs & Annos**  
Current through the end of the Second Regular Session of the 53rd Legislature (2018).

**N. M. S. A. 1978, § 74-4-1**  
**§ 74-4-1. Short title**

Chapter 74, Article 4 NMSA 1978 may be cited as the “Hazardous Waste Act”.

**Credits**

L. 1977, Ch. 313, § 1; L. 1983, Ch. 302, § 1.

**N. M. S. A. 1978, § 74-4-2**  
**§ 74-4-2. Purpose**

The purpose of the Hazardous Waste Act is to help ensure the maintenance of the quality of the state’s environment; to confer optimum health, safety, comfort and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands.

**Credits**

L. 1977, Ch. 313, § 2.

**N. M. S. A. 1978, § 74-4-3**  
**§ 74-4-3. Definitions**  
**Effective: May 16, 2018**

As used in the Hazardous Waste Act:

A. “above ground storage tank” means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. “Above ground storage tank” does not include any:

- (1) farm, ranch or residential tank used for storing motor fuel for noncommercial purposes;
- (2) pipeline facility, including gathering lines, that is regulated under Chapter 601 of Title 49 of the United States Code or that is an intrastate pipeline facility regulated under state laws as provided in Chapter 601 of Title 49 of the United States Code and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
- (3) surface impoundment, pit, pond or lagoon;
- (4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or to oil field service industry operations;

(7) tank used for storing heating oil for consumptive use on the premises where stored;

(8) pipes connected to any tank that is described in Paragraphs (1) through (7) of this subsection; or

(9) tanks or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of its refining, processing or pipeline business;

B. “board” means the environmental improvement board;

C. “corrective action” means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

D. “director” or “secretary” means the secretary of environment;

E. “disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

F. “division” or “department” means the department of environment;

G. “federal agency” means any department, agency or other instrumentality of the federal government and any independent agency or establishment of that government, including any government corporation and the government publishing office;

H. “generator” means any person producing hazardous waste;

I. “hazardous agricultural waste” means hazardous waste generated as part of the licensed activity by any person licensed pursuant to the Pesticide Control Act<sup>1</sup> or hazardous waste designated as hazardous agricultural waste by the board, but does not include animal excrement in connection with farm, ranch or feedlot operations;

J. “hazardous substance incident” means any emergency incident involving a chemical or chemicals, including transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

K. “hazardous waste” means any solid waste or combination of solid wastes that because of their quantity, concentration or physical, chemical or infectious characteristics may:

(1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. “Hazardous waste” does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.:

(a) drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy;

(b) fly ash waste;

(c) bottom ash waste;

(d) slag waste;

(e) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(f) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or

(g) cement kiln dust waste;

L. “manifest” means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during transportation from point of generation to point of disposal, treatment or storage;

M. “person” means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

N. “regulated substance” means:

(1) a substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980,<sup>2</sup> but not including a substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976,<sup>3</sup> as amended; and

(2) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

O. “solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act,<sup>4</sup> as amended, 86 Stat. 880, or source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954,<sup>5</sup> as amended, 68 Stat. 923;

P. “storage” means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

Q. “storage tank” means an above ground storage tank or an underground storage tank;

R. “tank installer” means any individual who installs or repairs a storage tank;

S. “tank tester” means any individual who tests storage tanks;

T. “transporter” means a person engaged in the movement of hazardous waste, not including movement at the site of generation, disposal, treatment or storage;

U. “treatment” means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous waste so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. “Treatment” includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

V. “underground storage tank” means a single tank or a combination of tanks, including underground pipes connected thereto, that is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. “Underground storage tank” does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines, that is regulated under Chapter 601 of Title 49 of the United States Code or that is an intrastate pipeline facility regulated under state laws as provided in Chapter 601 of Title 49 of the United States Code and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank used for storing heating oil for consumptive use on the premises where stored;

(10) tank exempted by rule of the board after finding that the type of tank is adequately regulated under another federal or state law; or

(11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection; and

W. “used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

### **Credits**

L. 1977, Ch. 313, § 3; L. 1981, 1st Sp. Sess., Ch. 8, § 2; L. 1987, Ch. 179, § 1; L. 1989, Ch. 322, § 1; L. 1991, Ch. 25, § 33; L. 1992, Ch. 43, § 1; L. 2001, Ch. 323, § 1; L. 2001, Ch. 325, § 2, eff. July 1, 2001; L. 2002, Ch. 47, § 1; L. 2010, Ch. 27, § 1, eff. May 19, 2010; L. 2018, Ch. 11, § 1, eff. May 16, 2018.

### **Footnotes**

- <sup>1</sup> NMSA 1978, § 76-6-1 et seq.
- <sup>2</sup> 42 U.S.C.A. § 9601(14).
- <sup>3</sup> P.L. 94-580.
- <sup>4</sup> 33 U.S.C.A. § 1342.
- <sup>5</sup> 42 U.S.C.A. § 2011 et seq.

### **N. M. S. A. 1978, § 74-4-3.1** **§ 74-4-3.1. Application of act**

Nothing in the Hazardous Waste Act shall be construed to apply to any activity or substance which is subject to the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act, as amended, (42 U.S.C. 300f et seq.) or the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 et seq.) except to the extent that such application or regulation is not inconsistent with the requirements of such acts; nor shall the Hazardous Waste Act apply to the treatment, storage or disposal of wastes under a permit issued pursuant to the Surface Mining Act or the federal Surface Mining Control and Reclamation Act of 1977,<sup>1</sup> as amended, or to any farmer disposing of waste pesticides from his own use, provided he triple rinses each emptied pesticide container and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

### **Credits**

L. 1981, 1st Sp. Sess., Ch. 8, § 3.

### **Footnotes**

- <sup>1</sup> 30 U.S.C.A. § 1201 et seq.

**N. M. S. A. 1978, § 74-4-3.2**  
**§ 74-4-3.2. Repealed by L. 1989, Ch. 4, § 1, eff. Feb. 23, 1989**  
Current through the end of the Second Regular Session of the 53rd Legislature (2018).

**N. M. S. A. 1978, § 74-4-3.3**  
**§ 74-4-3.3. Hazardous wastes of other states**

In addition to the meaning of hazardous waste as defined in Section 74-4-3 NMSA 1978, the term “hazardous waste” as used in the Hazardous Waste Act may include any material imported into the state of New Mexico for the purpose of disposal which is defined or classified as hazardous waste in the state of origin.

**Credits**

L. 1989, Ch. 255, § 1.

**N. M. S. A. 1978, § 74-4-4**  
**§ 74-4-4. Duties and powers of the board**  
**Effective: May 19, 2010**

A. The board shall adopt rules for the management of hazardous waste, as may be necessary to protect public health and the environment, that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976,<sup>1</sup> as amended:

(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of solid wastes as a hazardous waste that has not been listed and designated as a hazardous waste by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(2) establishing standards applicable to generators identified or listed under this subsection, including requirements for:

(a) furnishing information on the location and description of the generator’s facility and on the production or energy recovery activity occurring at that facility;

(b) recordkeeping practices that accurately identify the quantities of hazardous waste generated, the constituents of the waste that are significant in quantity or in potential harm to human health or the environment and the disposition of the waste;

(c) labeling practices for any containers used for the storage, transport or disposal of the hazardous waste that will identify accurately the waste;

(d) use of safe containers tested for safe storage and transportation of the hazardous waste;

(e) furnishing the information on the general chemical composition of the hazardous waste to persons transporting, treating, storing or disposing of the waste;

(f) implementation of programs to reduce the volume or quantity and toxicity of the hazardous waste generated;



(g) submission of reports to the secretary at such times as the secretary deems necessary, setting out the quantities of hazardous waste identified or listed pursuant to the Hazardous Waste Act that the generator has generated during a particular time period and the disposition of all hazardous waste reported, the efforts undertaken during a particular time period to reduce the volume and toxicity of waste generated and the changes in volume and toxicity of waste actually achieved during a particular time period in comparison with previous time periods; and

(h) the use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage or disposal in, and arrives at, treatment, storage or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued pursuant to the Hazardous Waste Act; that the generator of hazardous waste has a program in place to reduce the volume or quality and toxicity of waste to the degree determined by the generator to be economically practicable and that the proposed method of treatment, storage or disposal is that practicable method currently available to the generator that minimizes the present and future threat to human health and the environment;

(3) establishing standards applicable to transporters of hazardous waste identified or listed under this subsection or of fuel produced from any such hazardous waste or of fuel from such waste and any other material, as may be necessary to protect human health and the environment, including but not limited to requirements for:

(a) recordkeeping concerning the hazardous waste transported and its source and delivery points;

(b) transportation of the hazardous waste only if properly labeled;

(c) compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection; and

(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal facility that the shipper designates on the manifest form to be a facility holding a permit issued pursuant to the Hazardous Waste Act or the federal Resource Conservation and Recovery Act of 1976, as amended;

(4) establishing standards applicable to distributors or marketers of any fuel produced from hazardous waste, or any fuel that contains hazardous waste, for:

(a) furnishing the information stating the location and general description of the facility; and

(b) furnishing the information describing the production or energy recovery activity carried out at the facility;

(5) establishing performance standards as may be necessary to protect human health and the environment applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this section, distinguishing, where appropriate, between new facilities and facilities in existence on the date of promulgation, including requirements for:

(a) maintaining the records of all hazardous waste identified or listed under this subsection that is treated, stored or disposed of, as the case may be, and the manner in which the waste was treated, stored or disposed of;

(b) satisfactory reporting, monitoring, inspection and compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection;

(c) treatment, storage or disposal of all such waste and any liquid that is not a hazardous waste, except with respect to underground injection control into deep injection wells, received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the secretary;

(d) location, design and construction of hazardous waste treatment, disposal or storage facilities;

(e) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any hazardous waste;

(f) maintenance and operation of the facilities and requiring any additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility, including financial responsibility for corrective action, as may be necessary or desirable;

(g) compliance with the requirements of Paragraph (6) of this subsection respecting permits for treatment, storage or disposal;

(h) the taking of corrective action for all releases of hazardous waste or constituents from a solid waste management unit at a treatment, storage or disposal facility, regardless of the time at which waste was placed in the unit; and

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of that facility demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Rules adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under Paragraph (6) of this subsection and to all landfills, surface impoundments and waste pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;

(6) requiring each person owning or operating, or both, an existing facility or planning to construct a new facility for the treatment, storage or disposal of hazardous waste identified or listed under this subsection to have a permit issued pursuant to requirements established by the board;

(7) establishing procedures for the issuance, suspension, revocation and modification of permits issued under Paragraph (6) of this subsection, which rules shall provide for public notice, public comment and an opportunity for a hearing prior to the issuance, suspension, revocation or major modification of any permit unless otherwise provided in the Hazardous Waste Act;

(8) defining major and minor modifications; and

(9) establishing procedures for the inspection of facilities for the treatment, storage and disposal of hazardous waste that govern the minimum frequency and manner of the inspections, the manner in which records of the inspections shall be maintained and the manner in which reports of the inspections shall be filed; provided, however, that inspections of permitted facilities shall occur no less often than every two years.

B. The board shall adopt rules:

(1) concerning hazardous substance incidents; and

(2) requiring notification to the department of any hazardous substance incidents.

C. The board shall adopt rules concerning storage tanks as may be necessary to protect public health and the environment and that, in the case of underground storage tanks, are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

D. The board shall adopt rules concerning storage tanks that implement the federal Energy Policy Act of 2005, Pub. L. 109-58,<sup>2</sup> as amended, and that are equivalent to and no more stringent than the Energy Policy Act and its grant guidelines and regulations.

E. Rules adopted pursuant to this section shall include:

(1) standards for the installation, operation, maintenance, repair and replacement of storage tanks;

(2) requirements for financial responsibility;

(3) standards for inventory control;

(4) standards for the detection of leaks from and the integrity-testing and monitoring of storage tanks;

(5) standards for the closure and dismantling of storage tanks;

(6) requirements for recordkeeping;

(7) requirements for the reporting, containment and remediation of all leaks from any storage tanks; and

(8) criteria and procedures for classifying a storage tank facility as ineligible, and reclassifying a storage tank facility as eligible, for the delivery, deposit, acceptance or sale of petroleum products.

F. The criteria and procedures adopted by the board pursuant to this section shall require the department to classify a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products if the storage tank facility has not installed required equipment for spill prevention, overfill protection, leak detection or corrosion protection, including required corrosion protection equipment for a buried metal flexible connector.

G. The criteria and procedures adopted by the board pursuant to this section may allow the department to classify a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products when the owner or operator has failed to comply with a written warning within a reasonable period of time and the warning concerns:

- (1) improper operation or maintenance of required equipment for spill prevention, overfill protection, leak detection or corrosion protection;
- (2) failure to maintain required financial responsibility for corrective action; or
- (3) operation of the storage tank facility in a manner that creates an imminent threat to the public health and the environment.

H. Rules adopted by the board pursuant to this section shall defer classifying a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products if the ineligible classification would jeopardize the availability of, or access to, motor fuel in any rural and remote areas.

I. Rules adopted by the board pursuant to this section shall allow the department to authorize delivery or deposit of petroleum products to:

- (1) an emergency generator tank that is otherwise ineligible for delivery or deposit if a commercial power failure or other declared state of emergency exists and the emergency generator tank provides power supply, stores petroleum and is used solely in connection with an emergency system, legally required standby system or optional standby system; or
- (2) a storage tank facility that is otherwise ineligible for delivery or deposit if the delivery or deposit is necessary to test or calibrate a tank.

J. Notwithstanding the provisions of Subsection A of this section, the board may adopt rules for the management of hazardous waste and hazardous waste transformation that are more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, if the board determines, after notice and public hearing, that such federal regulations are not sufficient to protect public health and the environment. As used in this subsection, “transformation” means incineration, pyrolysis, distillation, gasification or biological conversion other than composting.

K. The board shall adopt rules concerning the management of used oil that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

L. In the event the board wishes to adopt rules that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such rules by reference to the federal regulations without setting forth the provisions of the federal regulations.

**Credits**

L. 1977, Ch. 313, § 4; L. 1981, 1st Sp. Sess., Ch. 8, § 4; L. 1987, Ch. 179, § 3; L. 1989, Ch. 322, § 2; L. 1992, Ch. 43, § 2; L. 1993, Ch. 127, § 1; L. 2001, Ch. 323, § 2; L. 2001, Ch. 325, § 3, eff. July 1, 2001; L. 2002, Ch. 47, § 2; L. 2010, Ch. 27, § 2, eff. May 19, 2010.

**Footnotes**

- <sup>1</sup> 42 U.S.C.A. § 6901 et seq.
- <sup>2</sup> See 42 U.S.C.A. § 15801 et seq.

**N. M. S. A. 1978, § 74-4-4.1**

**§ 74-4-4.1. Hazardous agricultural waste; duties and responsibilities of the department of agriculture**

A. The department of agriculture shall be responsible for the enforcement of all board regulations adopted pursuant to the Hazardous Waste Act regarding generators of hazardous agricultural waste. The division shall enforce those board regulations pertaining to transporters, treaters, storers and disposers of hazardous agricultural waste.

B. In the exercise of the responsibility prescribed in Subsection A of this section, the department of agriculture shall have the same authority as that delegated to the division, including the director.

C. In the adoption of regulations pertaining to hazardous agricultural waste, the board shall make a reasonable effort to consult with the department of agriculture prior to the adoption of the regulations. The department of agriculture shall serve as the technical consultant to the board on matters concerning hazardous agricultural waste.

**Credits**

L. 1981, 1st Sp. Sess., Ch. 8, § 5; L. 1989, Ch. 322, § 3.

**N. M. S. A. 1978, § 74-4-4.2**

**§ 74-4-4.2. Permits; issuance; denial; modification; suspension; revocation**

A. An application for a permit pursuant to the Hazardous Waste Act shall contain information required pursuant to Section 74-4-4.7 NMSA 1978 or to regulations promulgated by the board and shall include:

- (1) estimates of the composition, quantity and concentration of any hazardous waste identified or listed under Subsection A of Section 74-4-4 NMSA 1978 or combinations of any hazardous waste and other solid waste proposed to be disposed of, treated, transported or stored and the time, frequency or rate at which the waste is proposed to be disposed of, treated, transported or stored; and

(2) an identification and description of, and other pertinent information about, the site where hazardous waste or the products of treatment of hazardous waste will be disposed of, treated, transported to or stored.

B. Hazardous waste permits shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this section.

C. The department shall provide timely review on all permit applications. Upon a determination by the secretary that the applicant has met the requirements adopted pursuant to Section 74-4-4 NMSA 1978, the secretary may issue a permit or a permit subject to any conditions necessary to protect human health and the environment for the facility.

D. The secretary may deny any permit application or modify, suspend or revoke any permit issued pursuant to the Hazardous Waste Act if the applicant or permittee has:

- (1) knowingly and willfully misrepresented a material fact in the application for a permit;
- (2) refused to disclose the information required under the provisions of Section 74-4-4.7 NMSA 1978;
- (3) been convicted in any court, within ten years immediately preceding the date of submission of the permit application, of:
  - (a) a felony or other crime involving moral turpitude; or
  - (b) a crime defined by state or federal statutes as involving or being in restraint of trade, price-fixing, bribery or fraud;
- (4) exhibited a history of willful disregard for environmental laws of any state or the United States;
- (5) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or
- (6) violated any provision of the Hazardous Waste Act, any regulation adopted and promulgated pursuant to that act or any condition of a permit issued under that act.

E. In making a finding under Subsection D of this section, the secretary may consider aggravating and mitigating factors.

F. If an applicant or permittee whose permit is being considered for denial or revocation, respectively, on any basis provided by Subsection D of this section has submitted an action plan that has been approved in writing by the secretary, and plan approval includes a period of operation under a conditional permit that will allow the applicant or permittee a reasonable opportunity to demonstrate its rehabilitation, the secretary may issue a conditional permit for a reasonable period of time. In approving an action plan intended to demonstrate rehabilitation, the secretary may consider:

- (1) implementation by the applicant or permittee of formal policies;

- (2) training programs and management control to minimize and prevent the occurrence of future violations;
- (3) installation by the applicant or permittee of internal environmental auditing programs;
- (4) the applicant's release or the permittee's release subsequent to serving a period of incarceration or paying a fine, or both, after conviction of any crime listed in Subsection D of this section; and
- (5) any other factors the secretary deems relevant.

G. Notwithstanding the provisions of Subsection D of this section:

- (1) a research, development and demonstration permit may be terminated upon the determination by the secretary that termination is necessary to protect human health or the environment; and
- (2) a permit may be modified at the request of the permittee for just cause as demonstrated by the permittee.

H. No ruling shall be made on permit issuance, major modification, suspension or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing; provided, however, that the secretary may, pursuant to Section 74-4-10 NMSA 1978, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.

I. The secretary shall hold a public hearing on a minor permit modification if the secretary determines that there is significant public interest in the minor modification.

J. The board shall provide a schedule of fees for businesses generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste, including but not limited to:

- (1) a hazardous waste business fee applicable to any business engaged in a regulated hazardous waste activity, which shall be an annual flat fee based on the type of activity;
- (2) a hazardous waste generation fee applicable to any business generating hazardous waste, which shall be based on the quantity of hazardous waste generated annually; however, when any material listed in Paragraph (2) of Subsection K of Section 74-4-3 NMSA 1978 is determined by the board to be subject to regulation under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, the board may set a generation fee under this paragraph for that waste based on its volume, toxicity, mobility and economic impact on the regulated entity;
- (3) a hazardous waste permit application fee, not exceeding the estimated cost of investigating the application and issuing the permit, to be paid at the time the secretary notifies the applicant by certified mail that the application has been deemed administratively complete and a technical review is scheduled; and

(4) an annual hazardous waste permit management fee based on and not exceeding the estimated cost of conducting regulatory oversight of permitted activities.

K. The department and a business generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste may enter into a voluntary fee agreement in addition to and that includes all of the fees required by Subsection J of this section.

### **Credits**

L. 1981, 1st Sp. Sess., Ch. 8, § 6; L. 1987, Ch. 179, § 4; L. 1989, Ch. 322, § 4; L. 1992, Ch. 43, § 3; L. 2003, Ch. 41, § 1; L. 2006, Ch. 100, § 1, eff. May 17, 2006.

### **N. M. S. A. 1978, § 74-4-4.3** **§ 74-4-4.3. Entry; availability of records**

A. For purposes of developing or assisting in the development of any rules, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act, upon request of the secretary or his authorized representative:

(1) any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes and permit the secretary or his authorized representatives:

(a) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are or have been generated, stored, treated, disposed of or transported from or where a storage tank is located; and

(b) to inspect and obtain samples from any person of any hazardous wastes and samples of any containers or labeling for the wastes; and

(2) any person who owns or operates a storage tank, or any tank subject to study under Section 9009 of the federal Resource Conservation and Recovery Act of 1976<sup>1</sup> that is used for storing regulated substances, shall furnish information relating to such tanks, including their associated equipment and their contents, conduct monitoring or testing, permit the secretary or his authorized representative at all reasonable times to have access to and to copy all records relating to such tanks and permit the secretary or his authorized representative to have access for corrective action. For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing the provisions of the Hazardous Waste Act, the secretary or his authorized representative is authorized to:

(a) enter at reasonable times any establishment or other place where a storage tank is located;

(b) inspect or obtain samples from any person of any regulated substance in such tank;

(c) conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water or ground water; and

(d) take corrective action.



B. Any person owning property to which access is necessary in order to investigate or clean up a facility where hazardous waste is generated, stored, treated or disposed of, or where storage tanks are located, shall:

(1) permit the secretary or his authorized representative to obtain samples of soil or ground water, or both, at reasonable times; and

(2) provide access to such property for structures or equipment necessary to monitoring or cleanup of hazardous wastes or leaking from storage tanks; provided that:

(a) such structures or equipment do not unreasonably interfere with the owner's use of the property; or

(b) the owner is adequately compensated for activities that unreasonably interfere with his use or enjoyment of such property.

C. Each inspection shall be commenced and completed with reasonable promptness. If the secretary or his representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

D. Any records, reports or information obtained by the department under this section shall be available to the public, except that upon a showing satisfactory to the department that records, reports or information, or a particular part thereof, to which the secretary or his authorized representatives have access under this section, if made public, would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code, such information or particular portion thereof shall be considered confidential, except that such record, report, document or information may be disclosed to officers, employees or authorized representatives of the United States concerned with carrying out the Resource Conservation and Recovery Act of 1976, or when relevant in any proceedings under the Hazardous Waste Act.

E. Any person not subject to the provisions of Section 1905 of Title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one year or both.

F. In submitting data under the Hazardous Waste Act, a person required to provide such data may:

(1) designate the data the person believes is entitled to protection under this subsection; and

(2) submit such designated data separately from other data submitted under the Hazardous Waste Act. A designation under this paragraph shall be made in writing and in such manner as the secretary may prescribe.

#### **Credits**

L. 1981, 1st Sp. Sess., Ch. 8, § 7; L. 1987, Ch. 179, § 5; L. 1989, Ch. 322, § 5; L. 2001, Ch. 325, § 4, eff. July 1, 2001.

Footnotes

<sup>1</sup> P.L. 94-580.

**N. M. S. A. 1978, § 74-4-4.4**

**§ 74-4-4.4. Storage tanks; registration; installer certification; tester certification; fees  
Effective: May 16, 2018**

A. By rule, the board shall require an owner of a storage tank to register the tank with the department and impose reasonable conditions for registration, including the submission of plans, specifications and other relevant information relating to the tank. For purposes of this subsection only, the term “owner” means: in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns the storage tank; and in the case of a storage tank in use before November 8, 1984 but no longer in use on that date, any person who owned the tank immediately before the discontinuation of its use. The owner of a tank taken out of operation on or before January 1, 1974 shall not be required to notify under this subsection. The owner of a tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984 shall not be required to notify under this subsection. Evidence of current registration pursuant to this subsection shall be available for inspection at the site of the storage tank.

B. By rule, the board shall require any person who, beginning thirty days after the United States environmental protection agency administrator prescribes the form of notice pursuant to Section 9002(a)(5) of the federal Resource Conservation and Recovery Act of 1976<sup>1</sup> and for eighteen months thereafter, deposits a regulated substance into a storage tank to give notice of the registration requirements of Subsection A of this section to the owner and operator of the tank.

C. By rule, the board may require tank installers and tank testers to obtain certification from the department and develop procedures for certification that will ensure that storage tanks are installed, repaired and tested in a manner that will not encourage or facilitate leaking. If the board requires certification, it is unlawful for a person to install, repair or test a storage tank unless the person is a certified tank installer or certified tank tester. In accordance with the Uniform Licensing Act, the department may suspend or revoke the certification for a tank installer or tank tester upon grounds that the person:

- (1) exercised fraud, misrepresentation or deception in obtaining certification;
- (2) exhibited gross incompetence in the installation, repair or testing of a storage tank; or
- (3) was derelict in the performance of a duty as a certified tank installer or certified tank tester.

D. By rule, the board shall provide a schedule of fees sufficient to defray the reasonable and necessary costs of:

- (1) reviewing and acting upon applications for the registration of storage tanks;
- (2) reviewing and acting upon applications for the certification of tank installers and certification of tank testers; and

(3) implementing and enforcing any provision of the Hazardous Waste Act applicable to storage tanks, tank installers and tank testers, including standards for the installation, operation and maintenance of storage tanks and for the certification of tank installers and tank testers.

**Credits**

L. 1987, Ch. 179, § 6; L. 1989, Ch. 322, § 6; L. 2001, Ch. 325, § 5, eff. July 1, 2001; by L. 2018, Ch. 11, § 2, eff. May 16, 2018.

Footnotes

<sup>1</sup> P.L. 94-580.

**N. M. S. A. 1978, § 74-4-4.5**

**§ 74-4-4.5. Hazardous waste fund created; appropriation**

A. There is created in the state treasury the “hazardous waste fund”, which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

B. All fees collected pursuant to Section 74-4-4.2 NMSA 1978 shall be transmitted to the state treasurer for credit to the hazardous waste fund.

**Credits**

L. 1987, Ch. 179, § 7; L. 1989, Ch. 322, § 7; L. 1989, Ch. 324, § 36; L. 1990, Ch. 124, § 20; L. 2006, Ch. 100, § 2, eff. May 17, 2006.

**N. M. S. A. 1978, § 74-4-4.6**

**§ 74-4-4.6. Repealed by L. 1989, Ch. 322, § 17, eff. July 1, 1992**

**N. M. S. A. 1978, § 74-4-4.7**

**§ 74-4-4.7. Permit applicant disclosure**

A. Every applicant for a permit pursuant to the Hazardous Waste Act shall file a disclosure statement with the department with the information required by, and on a form developed by, the department in cooperation with the department of public safety, at the same time the applicant files the application for a permit with the secretary.

B. Upon the request of the secretary, the department of public safety shall prepare and transmit to the secretary an investigative report on the applicant based in part upon the disclosure statement. The report shall be prepared and transmitted within ninety days after the receipt of a copy of an applicant’s disclosure statement from the department. Upon good cause, the ninety days may be extended for a reasonable period of time by the secretary.

C. In preparing the investigative report, the department of public safety may request and receive criminal history information on the applicant from the federal bureau of investigation or any other law enforcement agency or organization. While the investigative report is being prepared by the department of public safety, the secretary may also request information regarding any person who will be or could reasonably be expected to be involved in management activities of the hazardous waste facility or any person who has a controlling interest in any permittee. The department of public safety shall maintain confidentiality regarding the information received from a law enforcement agency as may be imposed by that agency as a condition for providing that information to the department of public safety.

D. All persons required to file a disclosure shall provide any assistance or information requested by the department of public safety or the secretary and shall cooperate in any inquiry or investigation conducted by the department of public safety or any inquiry, investigation or hearing conducted by the secretary. Nothing in this section shall be construed to waive a person's constitutional right against self-incrimination.

E. If any of the information required to be included in the disclosure statement changes, or if any information is added after filing the statement, the person required to file it shall provide that information in writing to the secretary within thirty days after the change or addition. Failure to provide the information within thirty days may constitute the basis for the revocation of, or denial of an application for, any permit issued or applied for in accordance with Section 74-4-4.2 NMSA 1978, but only if, prior to any denial or revocation, the secretary notifies the applicant or permittee of the secretary's intention to do so and gives the applicant or permittee fourteen days from the date of the notice to explain why the information was not provided within the required thirty-day period. The secretary shall consider this information when determining whether to revoke or deny the permit.

F. No person shall be required to submit the disclosure statement required by this section if the person is:

- (1) the United States or any agency or instrumentality of the United States;
- (2) a state or any agency or political subdivision of a state; or
- (3) a corporation or an officer, director or shareholder of that corporation and that corporation:
  - (a) has on file and in effect with the federal securities and exchange commission a registration statement required under Section 5, Chapter 38, Title 1 of the federal Securities Act of 1933,<sup>1</sup> as amended;
  - (b) submits to the secretary with the application for a permit evidence of the registration described in Subparagraph (a) of this paragraph and a copy of the corporation's most recent annual form 10-K or an equivalent report; and
  - (c) submits to the secretary on the annual anniversary of the date of the issuance of any permit it holds pursuant to the Hazardous Waste Act evidence of registration described in Subparagraph (a) of this paragraph and a copy of the corporation's most recent annual form 10-K or an equivalent report.

### **Credits**

L. 1992, Ch. 43, § 4.

### Footnotes

<sup>1</sup> 15 U.S.C.A. § 77(e).

### **N. M. S. A. 1978, § 74-4-4.8**

#### **§ 74-4-4.8. Storage tank fund created; appropriation**

A. There is created in the state treasury the “storage tank fund”, which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the storage tank program.

B. All fees collected pursuant to Subsection D of Section 74-4-4.4 NMSA 1978 shall be transmitted to the state treasurer for credit to the storage tank fund.

C. Balances remaining in the storage tank fund at the end of a fiscal year shall not revert to the general fund.

### **Credits**

L. 1993, Ch. 298, § 2; L. 2001, Ch. 325, § 6, eff. July 1, 2001.

### **N. M. S. A. 1978, § 74-4-5**

#### **§ 74-4-5. Adoption of regulations; notice and hearing**

A. No regulation shall be adopted, amended or repealed until after a public hearing by the board. Hearings on regulations shall be held in Santa Fe or in an area of the state substantially affected by the regulations. In making its regulations, the board shall give the weight it deems appropriate to all relevant facts and circumstances presented at the public hearing, including but not limited to:

(1) the character and degree of injury to or interference with the environment or public health; and

(2) the technical practicability and economic reasonableness of the regulation.

B. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation. The notice shall be published in a newspaper of general circulation in the area affected. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of hearings.

C. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the board.

D. The board may designate a hearing officer to take evidence in the hearing. A transcript shall be made of the entire hearing proceedings.

E. No regulation or amendment or repeal of a regulation adopted by the board shall become effective until thirty days after its filing under the State Rules Act.<sup>1</sup>

### **Credits**

L. 1977, Ch. 313, § 5; L. 1992, Ch. 43, § 5.

### Footnotes

<sup>1</sup> NMSA 1978, § 14-4-1 et seq.

### **N. M. S. A. 1978, § 74-4-6**

§ 74-4-6. Repealed by L. 1981, 1st Sp. Sess., Ch. 8, § 12, eff. April 14, 1981  
Current through the end of the Second Regular Session of the 53rd Legislature (2018).

### **N. M. S. A. 1978, § 74-4-7**

§ 74-4-7. Containment and cleanup of hazardous substance incidents; division powers

The division may:

A. take any action necessary or appropriate to protect persons from injury or other harm which might arise from hazardous substance incidents, including but not limited to providing for cleanup and disposal, coordinating the activities of other public officials and any other action the division deems necessary or appropriate;

B. notify any person who may have incurred or may incur physical injury from a hazardous substance incident that he should undergo medical examination; and

C. assess charges against persons responsible for hazardous substance incidents for costs the division incurs in cleanup of hazardous substance incidents, disposal of hazardous substances and for damage to state property. Amounts received in payment of such assessments shall be deposited in the hazardous waste emergency fund. Any person who is assessed charges pursuant to this subsection may appeal the assessment to the district court within thirty days of receipt of notice of the assessment.

### **Credits**

L. 1977, Ch. 313, § 7; L. 1989, Ch. 322, § 9.

### **N. M. S. A. 1978, § 74-4-8**

§ 74-4-8. Emergency fund

The “hazardous waste emergency fund” is created in the state treasury. This fund shall be used for cleanup of hazardous substance incidents, disposal of hazardous substances and necessary repairs to or replacement of state property and may be used for the state’s share of any response action

taken under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. The administrative and technical expenses of maintaining an emergency response program within the division shall be reimbursable on a quarterly basis from this fund. Any penalties collected by the division shall be credited to this fund. Amounts in the fund shall be deposited with the state treasurer and then disbursed pursuant to vouchers signed by the director or his authorized representative upon warrants drawn by the secretary of finance and administration.

**Credits**

L. 1977, Ch. 313, § 8; L. 1983, Ch. 301, § 81; L. 1983, Ch. 302, § 2; L. 1989, Ch. 322, § 10. Current through the end of the Second Regular Session of the 53rd Legislature (2018).

**N. M. S. A. 1978, § 74-4-9**

**§ 74-4-9. Existing hazardous waste facilities; interim status**

Any person owning or operating a hazardous waste facility who has met the requirements for interim status under 42 U.S.C. 6925 shall be deemed to have interim status under the Hazardous Waste Act.

**Credits**

L. 1989, Ch. 322, § 11.

**N. M. S. A. 1978, § 74-4-10**

**§ 74-4-10. Enforcement; compliance orders; civil penalties**

A. Whenever on the basis of any information the secretary determines that any person has violated, is violating or threatens to violate any requirement of the Hazardous Waste Act, any rule adopted and promulgated pursuant to that act or any condition of a permit issued pursuant to that act, the secretary may:

- (1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or
- (2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. Any order issued pursuant to Subsection A of this section may include a suspension or revocation of any permit issued by the secretary. Any penalty assessed in the order shall not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements. For violations related to storage tanks, “per violation” means per tank.

C. If a violator fails to take corrective actions within the time specified in a compliance order, the secretary may:

(1) assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to the Hazardous Waste Act.

D. Whenever on the basis of any information the secretary determines that the immediate termination of a research, development and demonstration permit is necessary to protect human health or the environment, the secretary may order an immediate termination of all research, development and demonstration operations permitted pursuant to the Hazardous Waste Act at the facility.

E. Whenever on the basis of any information the secretary determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 74-4-9 NMSA 1978, the secretary may issue an order requiring corrective action, including corrective action beyond a facility's boundaries or other response measure as he deems necessary to protect human health or the environment or may commence an action in district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

F. Any order issued under Subsection E of this section may include a suspension or revocation of authorization to operate under Section 74-4-9 NMSA 1978 and shall state with reasonable specificity the nature of the required corrective action or other response measure and shall specify a time for compliance. If any person named in an order fails to comply with the order, the secretary may assess, and the person shall be liable to the state for, a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each day of noncompliance with the order.

G. Any order issued pursuant to this section, any other enforcement proceeding initiated pursuant to this section or any claim for personal or property injury arising from any conduct for which evidence of financial responsibility must be provided may be issued to or taken against the insurer or guarantor of an owner or operator of a treatment, storage or disposal facility or storage tank if:

(1) the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the federal Bankruptcy Code; or

(2) jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment.

H. Any order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a public hearing. Upon such request, the secretary shall promptly conduct a public hearing. The secretary shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

I. In connection with any proceeding under this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may promulgate rules for discovery procedures.



J. Penalties collected pursuant to an administrative order shall be deposited in the state treasury to be credited to the hazardous waste emergency fund.

#### **Credits**

L. 1977, Ch. 313, § 10; L. 1981, 1st Sp. Sess., Ch. 8, § 9; L. 1987, Ch. 179, § 8; L. 1989, Ch. 322, § 12; L. 1992, Ch. 43, § 7; L. 2001, Ch. 325, § 7, eff. July 1, 2001.

### **N. M. S. A. 1978, § 74-4-10.1**

#### **§ 74-4-10.1. Hazardous waste monitoring, analysis and testing**

A. If the director determines, upon receipt of any information, that:

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is or has been stored, treated or disposed of; or

(2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the director deems reasonable to ascertain the nature and extent of such hazard.

B. In the case of any facility or site not in operation at the time a determination is made under Subsection A of this section with respect to the facility or site, if the director finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, the director may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have actual knowledge to carry out the provisions referred to in Subsection A of this section.

C. Any order under Subsection A or B of this section shall require the person to whom such order is issued to submit to the director, within thirty days from the issuance of such order, a proposal for carrying out the required monitoring, testing, analysis and reporting. The director may, after providing such person with an opportunity to confer with the director respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal and such modifications in such proposal as the director deems reasonable to ascertain the nature and extent of the hazard.

D. (1) If the director determines that no owner or operator referred to in Subsection A or B of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the director, if the director deems any such action carried out by an owner or operator to be unsatisfactory or if the director cannot initially determine that there is an owner or operator referred to in Subsection A or B of this section who is able to conduct such monitoring, testing, analysis or reporting, the division may:

(a) conduct monitoring, testing or analysis, or any combination thereof, which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned;  
or

(b) authorize a local authority or other person to carry out any such action; and

(c) in either event the director may require, by order, the owner or operator referred to in Subsection A or B of this section to reimburse the division or other authority or person for the costs of such activity. Any reimbursement to the division pursuant to this subparagraph shall be deposited to the credit of the hazardous waste fund.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the division which confirms the results of an order issued under Subsection A or B of this section.

(3) For purposes of carrying out this subsection, the director or any authority or other person authorized under Paragraph (1) of this subsection may exercise the authorities set forth in Section 74-4-4.3 NMSA 1978.

E. The director may commence a civil action against any person who fails or refuses to comply with an order issued under this section. Such action shall be brought in the district court of the county in which the defendant is located, resides or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty not to exceed five thousand dollars (\$5,000) for each day during which such failure or refusal occurs.

#### **Credits**

L. 1989, Ch. 322, § 13.

**N. M. S. A. 1978, § 74-4-11  
§ 74-4-11. Penalty; criminal  
Effective: July 1, 2007**

A. No person:

(1) shall knowingly transport or cause to be transported any hazardous waste identified or listed pursuant to the Hazardous Waste Act to a facility that does not have a permit under that act or the federal Resource Conservation and Recovery Act of 1976<sup>1</sup>;

(2) shall knowingly treat, store or dispose of any hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without having obtained a hazardous waste permit pursuant to that act or the federal Resource Conservation and Recovery Act of 1976;

(b) in knowing violation of any material condition or requirement of a hazardous waste permit;  
or

(c) in knowing violation of any material condition or requirement of any applicable interim status rules or standards;

(3) shall knowingly omit material information or make any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the Hazardous Waste Act;

(4) who knowingly generates, stores, treats, transports, disposes of, exports or otherwise handles any hazardous waste or used oil shall knowingly destroy, alter, conceal or fail to file any record, application, manifest, report or other document required to be maintained or filed for purposes of compliance with rules adopted and promulgated pursuant to the Hazardous Waste Act;

(5) shall knowingly transport without a manifest or cause to be transported without a manifest any hazardous waste required by rules adopted and promulgated pursuant to the Hazardous Waste Act to be accompanied by a manifest;

(6) shall knowingly export hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without the consent of the receiving country; or

(b) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export and enforcement procedures for the transportation, treatment, storage and disposal of hazardous wastes, in a manner that is not in conformance with such agreement; or

(7) shall knowingly store, treat, dispose of, transport, cause to be transported, market or otherwise handle any used oil in knowing violation of any material condition or requirement of any applicable rule adopted and promulgated pursuant to the Hazardous Waste Act.

B. Any person who violates any of the provisions of Paragraphs (1) through (7) of Subsection A of this section is guilty of a fourth degree felony and upon conviction shall be punished by a fine of not more than ten thousand dollars (\$10,000) per violation per day or by imprisonment for a definite term of not more than eighteen months or both. For a second or subsequent violation of the provisions of Paragraphs (1) through (7) of Subsection A of this section, the person is guilty of a third degree felony and shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) per violation per day or by imprisonment for not more than three years or both.

C. Any person who knowingly violates any rule adopted and promulgated pursuant to Subsection C of Section 74-4-4 or 74-4-4.4 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) per violation per day or by imprisonment for a definite term of one year or both. For violations related to storage tanks, “per violation” means per tank.

D. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste or used oil in violation of Subsection A of this section and who knows at the time of the violation that the person creates a substantial danger of a substantial adverse environmental impact is guilty of a third degree felony if the violation causes a substantial adverse environmental impact.

E. As used in this section, a “substantial adverse environmental impact” exists when an act or omission of a person causes harm or damage:

(1) to human beings; or

(2) to flora, wildlife, fish or other aquatic life or water fowl; to the habitats of wildlife, fish, other aquatic life, water fowl or livestock; to agricultural crops; to any ground water or surface water;

or to the lands or waters of this state where such harm or damage amounts to more than ten thousand dollars (\$10,000).

F. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste or used oil in violation of Subsection A of this section and who knows at the time of the violation that the person creates a substantial danger of death or serious bodily injury to another person is guilty of a second degree felony and shall be sentenced to a term of imprisonment not to exceed nine years or a fine not to exceed one hundred thousand dollars (\$100,000), or both. Any person, other than an individual, that knowingly transports, treats, stores, disposes of or exports any hazardous waste or used oil in violation of Subsection A of this section and knows at that time that it places an individual in imminent danger of death or serious bodily injury is guilty of a second degree felony and shall be fined in an amount not to exceed two hundred fifty thousand dollars (\$250,000).

#### **Credits**

L. 1977, Ch. 313, § 11; L. 1981, 1st Sp. Sess., Ch. 8, § 10; L. 1987, Ch. 179, § 9; L. 1989, Ch. 322, § 14; L. 1992, Ch. 43, § 8; L. 2001, Ch. 325, § 8, eff. July 1, 2001; L. 2007, Ch. 267, § 1, eff. July 1, 2007.

#### **Footnotes**

<sup>1</sup> P.L. 94-580.

### **N. M. S. A. 1978, § 74-4-12 § 74-4-12. Penalty; civil**

Any person who violates any provision of the Hazardous Waste Act, any rule made pursuant to that act or any compliance order issued by the director pursuant to Section 74-4-10 NMSA 1978 may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs. For violations related to storage tanks, “per violation” means per tank.

#### **Credits**

L. 1977, Ch. 313, § 12; L. 1981, 1st Sp. Sess., Ch. 8, § 11; L. 1987, Ch. 179, § 10; L. 1989, Ch. 322, § 15; L. 2001, Ch. 325, § 9, eff. July 1, 2001.

### **N. M. S. A. 1978, § 74-4-13 § 74-4-13. Imminent hazards; authority of director; penalties**

A. Notwithstanding any other provision of the Hazardous Waste Act, whenever the secretary is in receipt of evidence that the past or current handling, storage, treatment, transportation or disposal of solid waste or hazardous waste or the condition or maintenance of a storage tank may present an imminent and substantial endangerment to health or the environment, he may bring suit in the appropriate district court to immediately restrain any person, including any past or present generator, past or present transporter or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or is contributing to such activity, to take such other action as may be necessary or both. A transporter shall not be deemed to have contributed or to be

contributing to such handling, storage, treatment or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The secretary may also take other action, including but not limited to issuing such orders as may be necessary to protect health and the environment.

B. Any person who willfully violates or fails or refuses to comply with any order of the secretary under Subsection A of this section may in an action brought in the appropriate district court to enforce such order be fined not more than five thousand dollars (\$5,000) for each day in which the violation occurs or the failure to comply continues.

C. Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the secretary shall provide immediate notice to the appropriate local government agencies. In addition, the director shall require notice of such endangerment to be promptly posted at the site where the waste is located.

#### **Credits**

L. 1983, Ch. 302, § 3; L. 1987, Ch. 179, § 11; L. 1989, Ch. 322, § 16; L. 2001, Ch. 325, § 10, eff. July 1, 2001.

#### **N. M. S. A. 1978, § 74-4-14 § 74-4-14. Administrative actions; judicial review**

A. Any person who is or may be affected by any final administrative action of the board or the secretary may appeal to the court of appeals for further relief within thirty days after the action. All appeals shall be upon the record before the board or the secretary.

B. For appeals of regulations, the date of the action shall be the date of filing of the regulation under the State Rules Act.<sup>1</sup>

C. Upon appeal, the court of appeals shall set aside the action only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

D. A stay of enforcement of the action being appealed may be granted after hearing and upon good cause shown:

- (1) by the board or the secretary, whichever took the action being appealed; or
- (2) by the court of appeals if the board or the secretary denies a stay or fails to act upon an application for a stay within sixty days after receipt.

**Credits**

L. 1992, Ch. 43, § 6.

**Footnotes**

<sup>1</sup> NMSA 1978, § 14-4-1 et seq.

**N. M. S. A. 1978, Ch. 74, Art. 6B, Refs & Annos**

Current through the end of the Second Regular Session of the 53rd Legislature (2018).

**N. M. S. A. 1978, § 74-6B-1  
§ 74-6B-1. Short title**

Chapter 74, Article 6B NMSA 1978 may be cited as the “Ground Water Protection Act”.

**Credits**

L. 1990, Ch. 124, § 1; L. 1992, Ch. 64, § 1.

**N. M. S. A. 1978, § 74-6B-2  
§ 74-6B-2. Findings; purpose of act**

A. The legislature recognizes the threat to the public health and safety and the environment resulting from pollution of ground water resources as a result of leaking storage tanks. The legislature also recognizes that some owners and operators of facilities containing storage tanks cannot take corrective action without placing their businesses in serious financial jeopardy.

B. The legislature finds that, because New Mexico is large in area and sparsely populated in some regions, it is in the public interest to take corrective action at contaminated sites so that fuel will continue to be readily available.

C. The purpose of the Ground Water Protection Act is to provide substantive provisions and funding mechanisms to the extent that funds are available to enable the state to take corrective action at sites contaminated by leakage from storage tanks.

**Credits**

L. 1990, Ch. 124, § 2; L. 1995, Ch. 6, § 15, eff. June 16, 1995; L. 2001, Ch. 325, § 12, eff. July 1, 2001.

**N. M. S. A. 1978, § 74-6B-3  
§ 74-6B-3. Definitions  
Effective: May 16, 2018**

As used in the Ground Water Protection Act:

A. “above ground storage tank” means a single tank or a combination of tanks, including underground pipes connected thereto, that is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank used for storing motor fuel for noncommercial purposes;

(2) pipeline facility, including gathering lines, that is regulated under Chapter 601 of Title 49 of the United States Code or that is an intrastate pipeline facility regulated under state laws as provided in Chapter 601 of Title 49 of the United States Code and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(3) surface impoundment, pit, pond or lagoon;

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or oil field service industry operations;

(7) tank used for storing heating oil for consumptive use on the premises where stored;

(8) pipes connected to any tank that is described in Paragraphs (1) through (7) of this subsection; or

(9) tanks or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of its refining, processing or pipeline business;

B. “board” means the environmental improvement board;

C. “corrective action” means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

D. “department” means the department of environment;

E. “operator” means any person in control of or having responsibility for the daily operation of a storage tank;

F. “owner”:

(1) means:

(a) in the case of a storage tank in use or brought into use on or after November 8, 1984, a person who owns a storage tank used for storage, use or dispensing of regulated substances; and

(b) in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, a person who owned the tank immediately before the discontinuation of its use; and

(2) excludes, for purposes of tank registration requirements only, a person who:

(a) had an underground storage tank taken out of operation on or before January 1, 1974;



(b) had an underground storage tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984; or

(c) had an above ground storage tank taken out of operation on or before July 1, 2001;

G. “person” means an individual or any legal entity, including all governmental entities;

H. “regulated substance” means:

(1) a substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980,<sup>1</sup> but not including a substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976;<sup>2</sup> and

(2) petroleum, including crude oil or a fraction thereof, that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

I. “release” means a spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into ground water, surface water or subsurface soils in amounts exceeding twenty-five gallons;

J. “secretary” means the secretary of environment;

K. “site” means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks;

L. “storage tank” means an above ground storage tank or an underground storage tank; and

M. “underground storage tank” means a single tank or a combination of tanks, including underground pipes connected thereto, that is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines, that is regulated under Chapter 601 of Title 49 of the United States Code or that is an intrastate pipeline facility regulated under state laws as provided in Chapter 601 of Title 49 of the United States Code and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

- (7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering operations;
- (8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;
- (9) tank used for storing heating oil for consumptive use on the premises where stored;
- (10) tank exempted by rule of the board after finding that the type of tank is adequately regulated under another federal or state law; or
- (11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection.

**Credits**

L. 1990, Ch. 124, § 3; L. 1992, Ch. 64, § 2; L. 1993, Ch. 298, § 3; L. 2001, Ch. 325, § 13, eff. July 1, 2001; L. 2010, Ch. 27, § 3, eff. May 19, 2010; L. 2018, Ch. 11, § 3, eff. May 16, 2018.

**Footnotes**

- <sup>1</sup> 42 U.S.C.A. § 9601(14).
- <sup>2</sup> P.L. 94-580.

**N. M. S. A. 1978, § 74-6B-4**

**§ 74-6B-4. Storage tank committee; creation; terms; powers and duties**

A. An advisory committee to be known as the “storage tank committee” is created. It shall consist of seven members:

- (1) the secretary or his designee; and
- (2) six members to be appointed by and to serve at the pleasure of the governor and to be chosen from the following groups, with no more than one member from each group:
  - (a) fire protection districts;
  - (b) elected local government officials;
  - (c) wholesalers of motor fuels;
  - (d) independent retailers of motor fuels;
  - (e) individuals knowledgeable about corrective actions in connection with leaking storage tanks; and
  - (f) private citizens or interest groups.

B. Except for the initial terms of the members, the term of the appointed members shall be three years. For the purpose of staggering subsequent appointments, the initial terms of the six appointed members shall be: two for one year; two for two years; and two for three years. Members shall

serve until their successors are appointed. Vacancies occurring in the membership of an appointed member shall be filled by the governor for the remainder of the unexpired term.

C. The committee may:

- (1) recommend proposed rules to the board or the secretary;
- (2) establish procedures, practices and policies governing the committee's activities;
- (3) review corrective actions of the department and submit comments to the secretary; and
- (4) review payments from the corrective action fund and submit its comments on the payments to the secretary, except payments made pursuant to Section 74-6B-13 NMSA 1978.

D. Members of the committee shall receive reimbursement for expenses incurred in the performance of their duties pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. Expenditures for this purpose shall be made from the storage tank fund.

**Credits**

L. 1990, Ch. 124, § 4; L. 1992, Ch. 64, § 3; L. 2001, Ch. 325, § 14, eff. July 1, 2001.

**N. M. S. A. 1978, § 74-6B-5**  
**§ 74-6B-5. Department's right of entry and inspection**

The department has all rights of entry and inspection necessary to administer and enforce the Ground Water Protection Act as it has under Section 74-4-4.3 NMSA 1978.

**Credits**

L. 1990, Ch. 124, § 5; L. 1992, Ch. 64, § 4.

**N. M. S. A. 1978, § 74-6B-6**  
**§ 74-6B-6. Civil liability for damage to property from leaking storage tank**

Nothing in the Ground Water Protection Act prohibits any existing or future claim for relief a person may have as a result of damages sustained because of a release from a storage tank.

**Credits**

L. 1990, Ch. 124, § 6; L. 2001, Ch. 325, § 15, eff. July 1, 2001.

**N. M. S. A. 1978, § 74-6B-7**  
**§ 74-6B-7. Corrective action fund created; authorization for expenditures**

A. There is created the "corrective action fund". The fund is intended to provide for financial assurance coverage and shall be used by the department to the extent that revenues are available to take corrective action in response to a release, to pay for the costs of a minimum site assessment

in excess of ten thousand dollars (\$10,000), to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act<sup>1</sup> and to make payments to or on behalf of owners and operators for corrective action taken in accordance with Section 74-6B-13 NMSA 1978. The legislature may appropriate up to thirty percent of the annual distribution to the fund pursuant to Section 7-1-6.25 NMSA 1978 to the department to match federal funds, for underground contamination cleanup, and to address water needs. The owner or operator of a site shall not use the corrective action fund as evidence of financial assurance to satisfy claims of third parties.

B. The board, after recommendations from the storage tank committee, shall adopt rules for establishing priorities for corrective action at sites contaminated by storage tanks. The priorities for corrective action shall be based on public health, safety and welfare and environmental concerns. In adopting rules pursuant to this subsection, the board shall follow the procedures of Section 74-4-5 NMSA 1978. The provisions of that section relating to all other matters in connection with the adoption of rules shall apply. The department shall establish priority lists of sites in accordance with the rules adopted by the board.

C. The department shall make expenditures from the corrective action fund in accordance with rules adopted by the board or the secretary for corrective action taken by the state, owners or operators at sites contaminated by storage tanks; provided that:

- (1) payments may be made only for corrective action taken by persons qualified by the department to perform the work pursuant to rules adopted by the board;
- (2) no expenditures from the fund shall be paid to or on behalf of an owner or operator for corrective action, other than a minimum site assessment or sampling, if the corrective action is conducted by a person that is a subsidiary or parent of or that is otherwise affiliated with the owner or operator;
- (3) expenditures shall be made by the department to perform corrective action, to pay for the costs of minimum site assessment in excess of ten thousand dollars (\$10,000) or to make payments to or on behalf of an owner or operator in accordance with Section 74-6B-13 NMSA 1978;
- (4) any corrective action taken shall be taken at sites in the order of priority appearing on the priority lists, unless an emergency threat to public health, safety and welfare or to the environment exists;
- (5) when available revenues are limited and the fund can no longer be approved as a financial responsibility mechanism, priorities for expenditures from the fund shall also be based on financial need as determined by rules adopted by the board; and
- (6) corrective action involving remediation shall follow a competitive bidding procedure based on technical merit and cost effectiveness.

D. No expenditure from the corrective action fund shall be authorized for corrective action at sites owned or operated by the United States or any agency or instrumentality thereof.

E. Nothing in this section authorizes payments for the repair or replacement of a storage tank or equipment.

F. Nothing in this section authorizes payments or commitments for payments in excess of the funds available.

G. The board, by rule, may provide for a specific amount to be reserved in the fund for emergencies. The amount reserved may be expended by the department only for corrective action necessary when an emergency threat to public health, safety and welfare or to the environment exists.

H. Within sixty days after receipt of notification that the corrective action fund has become incapable of paying for assured corrective actions, the owner or operator shall obtain alternative financial assurance acceptable to the department.

### **Credits**

L. 1990, Ch. 124, § 7; L. 1992, Ch. 64, § 5; L. 1993, Ch. 298, § 4; L. 1995, Ch. 6, § 16, eff. June 16, 1995; L. 2001, Ch. 325, § 16, eff. July 1, 2001; L. 2004, Ch. 88, § 1.

### Footnotes

<sup>1</sup> P.L. 94-580.

## **N. M. S. A. 1978, § 74-6B-8** **§ 74-6B-8. Liability; cost recovery**

A. An owner or operator of a storage tank from which a release has occurred shall be strictly liable for the owner's, operator's and department's cost of taking corrective action at the site.

B. An owner or operator otherwise liable under Subsection A of this section shall not be liable for expenditures from the state corrective action fund associated with corrective action at the site if he has proved to the department that he has complied with the following:

(1) the owner or operator:

(a) is in substantial compliance with all of the requirements and provisions of rules adopted by the board to fulfill the requirements of Paragraphs (1) through (7) of Subsection C of Section 74-4-4 NMSA 1978;

(b) has paid all storage tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;

(c) has conducted a minimum site assessment in accordance with rules of the board and, if contamination is found, has taken action to prevent continuing contamination; and

(d) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring; and

(2) for sites where storage tanks were removed or properly abandoned prior to March 7, 1990, the owner or the operator:

(a) has paid all storage tank fees required by Section 74-4-4.4 NMSA 1978 and a two hundred dollar (\$200) fee per site;

(b) has conducted a minimum site assessment in accordance with rules of the board; and

(c) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring.

C. In the event that the department determines that an owner or operator has not complied with the requirements of Subsection B of this section, the department may bring an action in district court against the owner or operator to recover expenditures from the corrective action fund incurred by the department in taking corrective action at the site. In addition, the department may bring an action in district court to recover any expenditures made of federal funds from the leaking underground storage tank trust fund in taking corrective action. These expenditures made from the corrective action fund and from federal funds include but are not limited to costs of investigating a release and undertaking corrective action, administrative costs and reasonable attorney fees. Expenditures recovered under this section, except for any recovered federal funds, shall be deposited into the corrective action fund.

D. The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy and has a right of subrogation against any third party who caused or contributed to the release. The right of subrogation shall apply regardless of any defenses available to the owner or operator under Subsection B of this section. The right of subrogation shall apply to sites where corrective action is taken by owners or operators under Section 74-6B-13 NMSA 1978 as well as to sites where corrective action is taken by the state.

#### **Credits**

L. 1990, Ch. 124, § 8; L. 1991, Ch. 47, § 1; L. 1992, Ch. 64, § 6; L. 2001, Ch. 325, § 17, eff. July 1, 2001.

#### **N. M. S. A. 1978, § 74-6B-9**

##### **§ 74-6B-9. Storage tank fee; deposit in storage tank fund**

On July 1 of each year, there is due from and shall be paid by either the owner or the operator a fee of one hundred dollars (\$100) for each storage tank owned or operated. The fees shall be paid to the department and deposited in the storage tank fund created in Section 74-4-4.8 NMSA 1978.

#### **Credits**

L. 1990, Ch. 124, § 9; L. 1992, Ch. 64, § 7; L. 2001, Ch. 325, § 18, eff. July 1, 2001.

#### **N. M. S. A. 1978, § 74-6B-10**

##### **§ 74-6B-10. Act does not create insurance company or fund**

Nothing in the Ground Water Protection Act creates an insurance company or an insurance fund. The corrective action fund is not subject to the provisions of the Insurance Code.

## **Credits**

L. 1990, Ch. 124, § 10.

### **N. M. S. A. 1978, § 74-6B-11**

§ 74-6B-11. Repealed by L. 1993, Ch. 298, § 5, eff. April 7, 1993

### **N. M. S. A. 1978, § 74-6B-12**

§ 74-6B-12. Repealed by L. 2001, Ch. 325, § 20, eff. July 1, 2001

### **N. M. S. A. 1978, § 74-6B-13**

§ 74-6B-13. Payment program

A. Unless provided otherwise in this section, all costs in excess of ten thousand dollars (\$10,000) that are necessary to perform a minimum site assessment in accordance with the rules of the board shall be paid from the corrective action fund.

B. Payment of the cost of corrective action, including the cost of a minimum site assessment, shall be made by the department following application and proper documentation of the costs and in accordance with rules adopted by the secretary establishing eligible and ineligible costs. Ineligible costs include attorney fees, repair or upgrade of tanks, loss of revenue and costs of monitoring a contractor.

C. The department shall adopt rules to provide for payments from the corrective action fund, to the extent that money is available in the fund, to persons who cannot afford to pay all or a portion of the initial ten thousand dollar (\$10,000) cost of a minimum site assessment otherwise required in this section. The department shall develop a financial assistance means test, including a sliding scale of financial relief as the department deems appropriate, that allows some or all of the minimum site assessment costs to be paid from the corrective action fund.

D. All department determinations concerning the manner of payment, compliance and cost eligibility shall be made in accordance with department rules.

E. If the owner or operator is in compliance with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, payment of costs from the corrective action fund shall occur not later than sixty days after the submission of the application and proper documentation of costs by the owner or operator, except as provided in Section 74-6B-14 NMSA 1978.

F. Before any payment is made for a corrective action pursuant to this section to or on behalf of an owner or operator, payment shall first be made to reimburse the federal leaking underground storage tank trust fund for any costs incurred for that corrective action.

G. Counties and municipalities are exempt from the requirements to pay any portion of the initial ten thousand dollars (\$10,000) of a minimum site assessment.

## **Credits**

L. 1992, Ch. 64, § 10; L. 1993, Ch. 327, § 1; L. 1995, Ch. 6, § 17, eff. June 16, 1995; L. 1997, Ch. 104, § 3; L. 1997, Ch. 222, § 3; L. 2001, Ch. 325, § 19, eff. July 1, 2001.

**N. M. S. A. 1978, § 74-6B-13.1**

**§ 74-6B-13.1. Repealed by L. 2001, Ch. 325, § 20, eff. July 1, 2001**

**N. M. S. A. 1978, § 74-6B-14**

**§ 74-6B-14. State liability; insufficient balance in the fund**

Nothing in the Ground Water Protection Act establishes or creates any liability or responsibility on the part of the department or the state to pay corrective action costs from any source other than the corrective action fund, in the manner described, nor shall the department or the state have any liability or responsibility to make any payments for corrective action costs if the balance in the fund is insufficient to cover those costs.

**Credits**

L. 1992, Ch. 64, § 11.