

Proposed Revisions to Petroleum Storage Tank Regulations

20.5 NMAC

July 12, 2007
Stakeholders Meeting

How to Reach Us

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Proposed Statutory Changes

- 4 changes to the Hazardous Waste Act (Section 74-4-1 et seq NMSA 1978) and the Ground Water Protection Act (Section 74-6B-1 et seq NMSA 1978)
- Why?
 - To meet new requirements in the federal Energy Policy Act of 2005
 - To streamline administration of the Corrective Action Fund
 - To maintain equivalency with federal UST regulations

Proposed Statutory Changes (continued)

- Extend NMED's authority in the Hazardous Waste Act (Section 74-4-1 et seq NMSA 1978) to include product deliverers, people who deliver regulated substances to regulated storage tanks.
 - Required by the federal Energy Policy Act of 2005
 - With this authority, PSTB will develop rules implementing a clear and consistent enforcement policy
 - Could result in stopping delivery of fuel to a facility that does not comply with applicable tank rules.

Proposed Statutory Changes (3)

- Delete exemptions from definitions of aboveground storage tanks and underground storage tanks in the Hazardous Waste Act and the Groundwater Protection Act for “tanks associated with an emergency generator system”
 - Federal regulations include emergency generator USTs
 - We must be equivalent to this to maintain primacy and state delegation

Proposed Statutory Changes (4)

- Revise the defined exemptions from definitions of aboveground storage tanks and underground storage tanks
 - Federal regulations exempts ALL heating oil tanks for consumptive use on the premises where stored
 - Currently, the New Mexico statute only exempts farm, ranch and residential tanks that store heating oil (with no consumptive use on premises requirement)
 - In order to be equivalent to the federal program for primacy and state delegation, we must change our statute.

Proposed Statutory Changes (5)

- Amend Ground Water Protection Act to allow regulations to limit time for submission of claims to the Corrective Action Fund
 - Currently, applicable rules (20.5.17.501 NMAC) allow claims to be made up to 2 years after costs are incurred
 - This has made tracking encumbrances extremely difficult
 - To effectively manage the Fund, PSTB would like to shorten the time period for submission of claims

Schedule for Statutory Changes

- Working with Interim Committee on Radioactive and Hazardous Materials
- PSTB scheduled to make presentation on proposed statutory changes to Committee at its September meeting in Carlsbad
- With input from Committee and Stakeholders, PSTB hopes to succeed with these changes in 2008 Legislative Session

Proposed Statutory Changes

Questions and Comments From Stakeholders

Revisions to Parts 6, 8 and 14

- Revisions to these parts were posted on the Bureau webpage last week
- Review of each part and proposed changes
- Photos will illustrate many of the issues the PSTB is addressing in these revisions
- Minor changes and corrections of typographical errors that do not change the meaning of rules not discussed today
- Please bring typos to our attention later by phone or email, so as not to delay progress at this meeting

Revisions to Part 6: Release Detection

Changes throughout:

- Broken down and re-numbered for easier reference and for clarity
- Separated AST and UST requirements
- Separated each method of release detection
- Conformed language to comparable federal regulations
- Clarified that all methods of release detection must comply with an industry code or standard (20.5.6.9.A for USTs and 20.5.6.10.A for ASTs)

Revisions to Part 6: Release Detection (continued)

20.5.6.10.D. Owners and operators of AST systems shall provide the department with a report on all tank tightness testing conducted on their petroleum storage tanks systems that includes the following:

- (1) name of the technician who performed the test;
- (2) training and equivalent experience of the technician in the type of testing performed, including certification numbers and national association where certification was obtained or a detailed description of where and when the technician gained experience;
- (3) brand name and model number of the testing equipment used during the test, date the testing equipment was last calibrated and by whom;
- (4) date of the test;
- (5) duration of the test; and
- (6) results of the test.

New requirement for report on all tightness testing.

Revisions to Part 6: Release Detection (3)

- *Also required for piping in 20.5.6.11.D and for USTs in 20.5.6.15.D*
- *Important to ensure that appropriately trained and experienced personnel are performing these tests*
- *Allows Bureau to make sure the test is appropriate for the type of tank and is properly performed.*
- *Required information is readily available and in most reports prepared by tightness testers*
- *Will not cost owners a significant amount*
- *Will provide the Bureau with helpful information with which to evaluate whether the test yielded valid results.*

Revisions to Part 6: Release Detection (4)

20.5.6.11.C Owners and operators of aboveground storage tank systems with underground piping that conveys regulated substances under suction shall either have a line tightness test conducted every 12 months and in accordance with Subsection B of 20.5.6.23 NMAC or conduct monthly monitoring in accordance with Subsection D of 20.5.6.23 NMAC.

Since by nature ASTs are above grade and associated underground piping will have a constant gravity head, there will always be pressure on the piping. This makes the requirements for this type of piping equivalent to those for pressure piping in 20.5.6.11.A.



COUNTRY STORE

Marathon
399



11/30/2004

Revisions to Part 6: Release Detection (5)

Clarified that UST inventory control, UST tank tightness testing, and UST manual tank gauging must be used in combination

20.5.6.13 INVENTORY CONTROL WITH TANK TIGHTNESS TESTING REQUIREMENTS FOR USTS:

I. Owners and operators shall meet all the requirements for tank tightness testing in 20.5.6.15 NMAC.

Revisions to Part 6: Release Detection (6)

20.5.6.14 MANUAL TANK GAUGING REQUIREMENTS FOR USTS:

E. Owners and operators may only use this method of release detection in the following circumstances:

(1) Only regulated underground tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection, and need not use tank tightness testing as part of release detection.

(2) Tanks of 551 to 2,000 gallons may use this method in place of manual inventory control with tank tightness testing in compliance with 20.5.6.14 13 and 20.5.6.15 NMAC.

(3) Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this part.

These requirements were formerly found in 20.5.6.603.B, but have been revised to clarify when tank tightness testing must be used with manual tank gauging as release detection.

Revisions to Part 6: Release Detection (7)

20.5.6.15 TANK TIGHTNESS TESTING FOR USTS:

A. Tank tightness testing (or another test of equivalent performance) must shall be capable of detecting a 0.1 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.

The last sentence was added to clarify that this method may not be used alone as release detection.

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TANK	RELEASE	WATER	UP
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ACK	TEST	CHECK	ENTER
SHIFT	0	.	

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03/28/2006

Revisions to Part 6: Release Detection (8)

20.5.6.16 AUTOMATIC TANK GAUGING
REQUIREMENTS FOR USTS: Owners and operators of
underground storage tanks may use automatic tank
gauging as a method of release detection for as long as
the equipment used meets all of the following
requirements:

B. The automatic tank gauging system conducts
inventory control in accordance with 20.5.6.13 NMAC or
another test of equivalent performance.



Revisions to Part 6: Release Detection (9)

20.5.6.23 **METHODS OF RELEASE DETECTION FOR PIPING:**
Each method of release detection for piping used to meet the requirements of 20.5.6.601 NMAC shall comply with the equipment manufacturer's recommendations, shall be appropriate for the type and length of piping, and 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. Owners and operators shall be conducted release detection in accordance with the following requirements:

Inspectors have found that owners and operators use line leak detectors and line tightness tests for long lengths of piping, where the detectors and tests cannot accurately determine if a release is occurring. Use of this method and equipment in this situation is not recommended by the manufacturer, and does not meet any industry code or standard.



08/30/2005

Revisions to Part 6: Release Detection (10)

20.5.6.23.A. Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at 10 pounds per square inch line pressure within one hour. Owners and operators shall conduct an annual test of the operation of the leak detector in accordance with the manufacturer's requirements.

Revisions to Part 6: Release Detection (11)

20.5.6.23.B. Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

Note that this language is different from that on the webpage, to address drafting errors.

ECO TANK
806-486-5235



V
A
P
O
R

03/15/2005

DANGER
NO SMOKING
OR OPEN FLAMES

Revisions to Part 6: Release Detection (12)

20.5.6.20 VISUAL INSPECTION REQUIREMENTS FOR ASTS:

B. Owners and operators shall maintain a written log of the visual inspections for each AST conducted monthly to include the following:

- (1) the date and time the inspection was conducted;
- (2) name and signature of the person who conducted the inspection;
- (3) comments on the condition of each AST;
- (4) the results of each inspection.

[Formerly codified in 20.5.6.603.H.]

(5) the volume of water found in the AST and if the water has been removed from the tank.

Paragraph 5 is new and will ensure owners/operators meet and document the requirement in 20.5.5.8.F to check monthly for water in a tank and properly dispose of any found.

Revisions to Part 6: Release Detection (13)

20.5.6.22 AUTOMATIC TANK GAUGING REQUIREMENTS

FOR ASTS: Owners and operators of aboveground storage tanks may use automatic tank gauging as a method of release detection if the tank system meets all of the following requirements:

A. The automatic tank gauging system can conduct inventory control or another test of equivalent performance in accordance with the following:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the AST are recorded each operating day.

(2) 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.

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the AST inventory volume before and after delivery.

*Subsection A is new & parallels the UST requirements in 20.5.6.14;
continued next slide*

Revisions to Part 6: Release Detection (14)

(4) Deliveries are made through a drop tube that extends to within one foot of the AST bottom, unless the AST is bottom loaded.

(5) 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.

(6) 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.

(7) 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.





Revisions to Part 6: Release Detection (15)

20.5.6.23.D. Interstitial monitoring. Owners and operators may use interstitial monitoring if they ensure that interstitial monitoring for double-walled piping, whether under pressure or under suction, is approved in advance in by the department, and that the interstitial monitoring complies with the following:

(1) the piping manufacturer's requirements; or

(2) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and;

(3) there shall be automatic shutoff of the turbine if the sensors used for interstitial monitoring detects regulated substances or water within the interstice in the containment sumps associated with the piping.

This is a new technology not mentioned in the federal regulations but the use of which is mentioned in the Energy Policy Act of 2005.

Revisions to Part 6: Release Detection (16)

20.5.6.24 Alternate methods

At a minimum, the request for an alternate method shall contain the following:

- 1) date the form is completed;
- (2) facility name, number, address (with county) and telephone number;
- (3) owner name, 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; and
- (6) justification of proposed alternate method or material, including citation to the standard or code supporting its use and demonstration of its equivalent protection of public health, safety and welfare and the environment.

This is new and is similar to the Alternate Methods request language in Parts 4 & 5. The PSTB has an optional form for this request.

Revisions to Part 6: Release Detection (17)

20.5.6.24.D. In addition to the requirements in Subsections B and C of this section, for any request for an alternate method of release detection for hazardous substance UST systems, owners and operators shall provide information to the department on effective corrective action technologies, health risks and chemical and physical properties of the stored substance, and the characteristics of the UST site.

This new Subsection D is from 40 CFR 280.42(b)(5)(ii), and addresses the increased risks posed by certain hazardous substances. In order to be equivalent to federal regulation, this requirement should be added.

Revisions to Part 6: Release Detection (18)

Questions and comments
from Stakeholders

Revisions to Part 8: Out of Service Systems and Closure

- General re-numbering and re-formatting
- Separated sections
- Conformed information required in rules and in Bureau's forms

Revisions to Part 8: Out of Service Systems and Closure (continued)

20.5.1.7.R. "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.

20.5.8.11.A. Continued use of a storage tank system to store a non-regulated substance is considered a change-in-service

20.5.1.7.DX. "Return to service" means bring a storage tank into operation after the tank has been in temporary or permanent closure.

New definitions and regulatory language to clarify terms used in Part 8, for which owners and operators must give notice and opportunity for inspector to supervise.



NO TANK #33
FRET VAPOR
627107





Revisions to Part 8: Out of Service Systems and Closure (3)

20.5.8.8 REQUIRED NOTIFICATION PRIOR TO TEMPORARY OR PERMANENT CLOSURE, OR RETURN TO SERVICE, REMOVAL, OR CHANGE IN SERVICE:

- A. Notice required.
- B. Opportunity for inspector to be present.
- C. Critical junctures.
- D. Required information in written 30-day notice
- E. Oral notice at least 24 hours in advance of the commencement of the procedure.
- F. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this Subsection; however, all parties are liable in the event of noncompliance.

[The bureau has optional forms for use in providing notice required in this section.]

Part of this notice section formerly was in Part 5, but is better placed here to target those doing closure.

Revisions to Part 8: Out of Service Systems and Closure (4)

20.5.8.8.D. Owners and operators shall give at least 30 days written notice before removal, change in service, return to service or closure of a storage tank system. At a minimum, the notice shall contain the following information:

(1) date the form is completed;

(2) facility name, number, address (with county), and telephone number;

(3) owner name, 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.

This is the information required for 30-day written notice. It allows inspectors to review applicable standards, codes, manufacturers recommendations for equipment to be installed, and to coordinate scheduling.



Revisions to Part 8: Out of Service Systems and Closure (5)

20.5.8.8. 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.

This is the oral notice allowing inspectors, installers, owners and operators to coordinate last minute scheduling, equipment and testing requirements, and oversight required.

Not a new requirement; this has always been in place. Some still fail to give this notice, however.

Revisions to Part 8: Out of Service Systems and Closure (6)

20.5.8.9.E. 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 tank system. American Petroleum Institute Publication RP 1615, “Installation of Underground Petroleum Storage Systems” may be used to comply with this requirement.

After being empty for a period of time, some tanks and piping will leak. It is therefore important to demonstrate their integrity prior to filling a tank system.



Revisions to Part 8: Out of Service Systems and Closure (7)

20.5.8.10.D. Owners and operators that have installed any monitoring wells as release detection pursuant to 20.5.6 NMAC shall properly close the wells in a manner approved by the department as part of permanent closure activities.

This is a new requirement, as a result of a site closure where the owner wanted to leave monitoring wells in place that could serve as a conduit for surface contaminants to easily reach groundwater.

Required by many other state programs.

Sensible requirement that follows codes, standards, and remediation site closure requirements.

Gives inspectors flexibility to determine manner of closing wells, based on site specific needs and characteristics (plug wells or pull wells)

Revisions to Part 8: Out of Service Systems and Closure (8)

20.5.8.11 CHANGES-IN-SERVICE:

A. Continued use of a storage tank system to store a non-regulated substance is considered a change-in-service.

Change in location language is in Subsection B and is duplicative in A.

B. Owners and operators shall notify the department in compliance with 20.5.8.8 NMAC of any change in service, including a change in location of ASTs that are operational and registered pursuant to 20.5.2 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 in meeting the requirements of 20.5.8 NMAC. The current edition of the following cleaning and closure procedures may be used to comply with the requirements of this section:

[codes and standards omitted]

Revisions to Part 8: Out of Service Systems and Closure (9)

- *Section D (requiring either owner or operator to give notice and comply) was deleted, as it is identical to language in 20.5.8.2 that applies to the entire part, including this section.*
- *These requirements were formerly contained in 801 with Permanent Closure, but were separated into a section for easier reference and clarity.*

Revisions to Part 8: Out of Service Systems and Closure (10)

20.5.8.12.A(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.

The determination about what types of samples should be taken, by what methods and where, is better made by trained and experienced bureau inspectors, than by owners and operators.



Revisions to Part 8: Out of Service Systems and Closure (11)

20.5.8.12.A(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.

This new provision was added, to give inspectors the flexibility to waive soil sampling if site-specific circumstances indicate this is appropriate. However, the last sentence gives the bureau the right to later require sampling if site-specific indications are there has been a release.

Revisions to Part 8: Out of Service Systems and Closure (12)

20.5.8.13.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 may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

As ASTs do not have an excavation zone like a UST, it is important to clarify that the site assessment should cover the entire area where a release is likely.

Revisions to Part 8: Out of Service Systems and Closure (13)

Questions and comments
from Stakeholders

Revisions to Part 14: Tank Installer Certification

- Divided sections and re-numbered them for ease of reference
- Clarified that modifications and replacement of tanks also require a certified installer
- Changed focus from “certificate” and “certificate holder” to “certification”
- Deleted “in writing” requirement for most Bureau approvals, to allow easier and less formal oral approval
- Deleted any references to Level A and B UST installers, and to 2-year certificates

Revisions to Part 14: Tank Installer Certification (continued)

20.5.14.9.A...Exceptions to this requirement for a certified installer include:

- (2) coating or lining of secondary containment for AST systems;

New exception

Important qualification for this work is certification for, training in or experience with the particular coating or lining (required in 20.5.4.29 on AST Secondary Containment)



Revisions to Part 14: Tank Installer Certification (3)

20.5.14.10.A(6) The applicant shall pass the on-site examination for which 20.5.14.13 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank, dispenser or meter, venting, ancillary equipment and initial testing.

Clarifies that the on-site exam for UST installers must include the complete equipment and technology typically used in the entire system

Similar provision in 20.5.14.11.A(6) for ASTs

Excludes package module-type systems that do not really require any installation other than plugging in electrical connection

Revisions to Part 14: Tank Installer Certification (4)

20.5.14.10.A(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, and that the applicant shall continuously maintain evidence of a passing grade on an installer's test from an approved certification educator. For example, if an installer passes an International Code Council test good for two years, the installer must re-take and pass the test before the end of the two-year period to maintain New Mexico certification for four years.

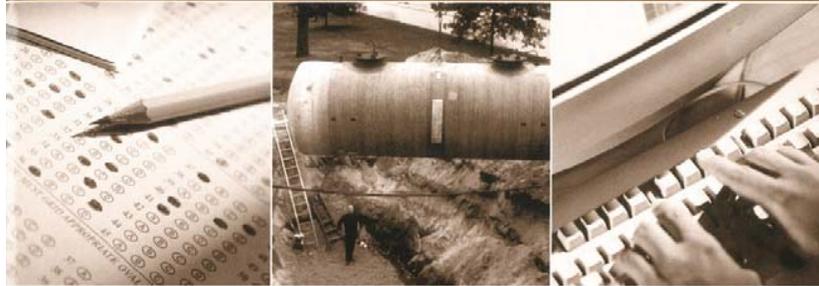
Revisions to Part 14: Tank Installer Certification (5)

- *Clarifies that the installers must continuously maintain certification from approved educator*
- *The only educator currently approved, the International Code Council, tests and certifies every 2 years, although PSTB certifies for 4 years*
- *Similar provision in 20.5.14.11.A(9) for ASTs*
- *Also clarified in 20.5.14.16.G, Installer Duties and Obligations (see next slide)*

2007 ICC UST/AST Examination Program Bulletin



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Revisions to Part 14: Tank Installer Certification (6)

20.5.14.16.G. Certified installers shall maintain certification from an approved certification educator throughout the term of certification granted pursuant to this part.

Even though New Mexico renews certification every 4 years, the installer must renew with ICC (or another approved educator) every 2 years

Revisions to Part 14: Tank Installer Certification (7)

20.5.14.16.D ... Where the installation, replacement, or repair or modification is being performed for an owner or operator on a contract basis, both the certified individual and the contracting company for whom the individual works are responsible for the accuracy of the representations made.

Contracting company is the term used in Subsection A; the term certified contractor is not used elsewhere in the part.

Important to hold responsible both the installer and the company, as the company generally has more resources to correct any error and is often the decision-maker sending particular staff to jobs



01/20/2007



Revisions to Part 14: Tank Installer Certification (8)

20.5.14.17 COMPLAINTS:

A. When the department receives a signed written complaint from any person which indicates an apparent violation of applicable law by a certified installer, the department shall provide a copy of the complaint to the certified installer, 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.

This change simply clarifies that it is the department that will provide a copy of its letter inquiring about installer practices to anyone who complains about an installer



Revisions to Part 14: Tank Installer Certification (9)

Questions and comments
from Stakeholders

Response to Public Comments

- Review of comments
 - Last Stakeholder meeting May 9
 - Written comments received after Stakeholder meeting
 - Some comments on formatting not answered here
 - Questions about particular facilities are not answered, as they are site- and facility-specific and should be discussed with local inspectors
- Changes made to Parts 1-5
- Comments and questions from Stakeholders

Review of Public Comments

Comment: PSTB should better define “loading rack” (20.5.1.7) to include more than just equipment

Response: PSTB clarified the definition to cover loading and unloading activities, and to include not just the equipment but also the area around a loading rack.

Other comments on loading racks:

Regulated only if attached to regulated tanks?

Lube racks regulated too?

Distinction between large loading racks at bulk facilities and small ones for jobbers only filling bobtails?

Response: Lube and loading racks are only regulated if they are attached to regulated tanks within the maximum and minimum tanks sizes.

Review of Public Comments (continued)

Comment: Clarify definition of AST to include aggregate volume of 1,320 like SPCC. Also, would the PSTB consider raising size limits and regulating bigger ASTs?

Response: Language in definition on “combination of tanks” comes directly from statute (74-4-3.A NMSA 1978). We added the word “manifolded” to the definition to clarify that only tanks directly connected are aggregated to determine regulated size. The Bureau is considering regulating larger ASTs and has met with the Ground Water Bureau on this question. The Bureaus must analyze the number of affected tanks, staffing and resources required, effects on the Corrective Action Fund, and feature of large tanks that might require different staffing, training, and certification for inspection.

Review of Public Comments (3)

Comment: Who should determine if a tank is regulated, the tank owner or the Bureau?

Response: Bureau inspectors will make a determination about whether any particular tank is regulated, based on the particulars of the tank and its use, and on Bureau's policies. This encourages consistency and fairness in regulation and exemption status.

Comment: If an owner/operator has cathodic protection, does he also need an internal lining?

Response: If you have CP, you do not need internal lining; if you have internal lining, you do not need CP. These requirements are in 20.5.4.13 NMAC.

Review of Public Comments (4)

Comment: Will the PSTB regulate transport piping used at marinas from ASTs to dispensers on moving docks?

Response: The PSTB does not regulate transportation, but does regulate piping. Where transport piping is attached to a regulated tank, then we will regulate that piping.

Comment: Does the PSTB have a list of approved corrosion experts (for Part 4 and Part 5 requirements)?

Response: The Bureau does not have a list, but recommends going to the NACE website: (www.nace.org/nace/education/certification/certsearch.asp) to search for certified experts throughout New Mexico, listed by specialty or by area.

Review of Public Comments (5)

Comment: Please work with other state agencies on exemptions to definition of tanks used in oil and gas industry.

Response: The PSTB will continue to work with OCD and Mining & Minerals to avoid dual regulation where possible, while still following its mandates from the Legislature.

Comment: It helps owners/operators know about continuing requirements to have a corrosion prevention plan, so perhaps this should not be removed from 20.5.4.

Response: Inspectors will continue to work with owners/operators on these plans to ensure compliance, but the plans need not be in writing approved in advance by the PSTB.

Review of Public Comments (6)

Comment: Will an SPCC plan satisfy the requirement for a Operation and Maintenance Plan in Part 5?

Response: Yes, if the SPCC plan is current and if it contains everything required in the rules. Also, the Bureau reversed the order of O&M plan requirements, as suggested.

Comment: Can other plans fulfill the O&M plan requirement?

Response: Other plans that contain the same requirements, whether they are SPCC or facility-specific plans prepared by the owner or operator are fine and can fulfill the O&M plan requirements.

Review of Public Comments (7)

Comment: How will existing systems have the Operations and Maintenance plan approved in advance? Will there be a phase-in period for existing systems?

Response: 20.5.5.9 requires O&M plans, which is a new requirement for USTs although SPCC has required such a plan for ASTs for at least 10 years. EPA has recommended this type of plan for USTs for several years. The Bureau believes owners/operators will have adequate time to develop these plans before the rules become effective (if they do not already have them).

Comment: Add IFC to codes and standards in Parts 4 and 5 since many local fire official already use the IFC.

Response: The PSTB agrees and did this.

Review of Public Comments (8)

Comment: Does the PSTB require flash-back arrestors for vents?

Response: Flash-back arrestors are required for natural gas tanks, but not required by national codes and standards for petroleum tanks.

Comment: Please make sure to provide a phase-in period for new requirements, to give owners/operators time to save money, to acquire equipment and to come into compliance.

Response: Secondary containment for USTs is required by the federal Energy Policy Act, effective February 2007, so this requirement is already behind the federal implementation schedule and cannot be delayed. However, this requirement is not triggered until an owner replaces or installs a system or components, which allows owners to plan ahead. This is the major new requirement in these rules.

Review of Public Comments (9)

Comment: Are there different requirements for bottom loading and top loading vehicles?

Response: The PSTB has no specific requirements for bottom loading. The rules require spill and overfill prevention, regardless of the type of loading.

Comment: Please clarify the “replace” definition – is it 5 feet per line of piping, or 5 feet total at a facility?

Response: The definition means 5 feet per line of piping, not total.

Review of Public Comments (10)

Comment: Information required on the registration form in 20.5.2.14.A(11) includes whether the fuel is “alcohol-enriched” which could be confusing. In some locations, alcohol is added to unleaded fuel in winter months for air quality requirements. These tanks have historically been called “unleaded” on registration forms.

Response: “Alcohol-enriched” means any alcohol blend, and must be distinguished from unleaded gasoline to allow a discussion of compatibility of a storage tank system.

Comment: The registration form also asks for information on emergency generator tanks, which should not be included as these tanks are exempt from regulation.

Response: The Bureau is seeking to repeal the exemption for emergency generator tanks, as they are regulated by federal law (in order to maintain primacy). It will be helpful to collect information about these tanks, even if they are currently exempt.

Review of Public Comments (11)

Comment: 20.5.4.10.A(3) on Performance Standards for Steel USTs seems to imply that impressed current systems are required, as it does not mention sacrificial anode systems until Subsection B.

Response: This language was added to be identical to that in 40 CFR 280.20(a)(2). The PSTB does not read this section to require only impressed current systems; the Bureau has and will continue to allow sacrificial anode systems.

Comment: 20.5.4.15.C on Secondary Containment for USTs is confusing, especially paragraph 3.

Response: This language came from EPA Guidelines. The exemption in C(3) means that only the replaced portion of piping must have secondary containment; other un-touched piping need not have secondary containment.

Review of Public Comments

Questions and Comments From Stakeholders

Changes to Parts 1-5

- Only changes made since the last Stakeholder meeting will be mentioned
- Some changes are the result of revisions to Parts 6, 8 and 14
- Others are the result of public comments
- Minor changes involving grammatical corrections and clarifications that do not change meaning will not be discussed today
- Power Point does not allow strike-through to show, so this language has been deleted for this presentation. The draft on the webpage contains the struck through language.

Changes to Part 1

20.5.1.7 DEFINITIONS: As used in 20.5.1 through 20.5.16 NMAC, the following definitions apply.

B. "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.....

The word “manifolded” was added to clarify that the combination of tanks is only tanks permanently joined, in response to a public comment.

Changes to Part 1 (continued)

P. "Certified individual-UST level A" means an individual who was certified by the department prior to August 15, 2003, to install and repair UST systems in this state.

Q. "Certified individual-UST level B" means an individual who was certified by the department prior to August 15, 2003 to replace, install or repair equipment on a UST system in this state such as: overfill and spill containment devices, line and tank leak detectors, submergible pumps and drop tubes. A certified individual-level B installer was not certified to install or repair UST tanks or lines, unless also certified as UST level A.

Both these definitions were deleted. The Bureau has not certified different levels since changing these rules in 2003, and the current rules do not use these terms. It is confusing to have definitions for terms not used in the rules. Any enforcement action against a certified installer for pre-2003 activities will be based on prior rules that include these definitions. They are no longer necessary or applicable in the current rules.

Changes to Part 1 (3)

- Changes were made to all the drinking water terms used in the rules, to mirror changes to NM's Drinking Water rules, effective April 16, 2007
 - Community water system (20.5.1.7.T)
 - Non-community water system (20.5.1.7.CP)
 - Potable drinking water well (20.5.1.7.DF)
 - Public water system (20.5.1.7.DM)

Changes to Part 1 (4)

20.5.1.7.BX. "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.

This definition from inspector experience, to cover an area at ASTs currently falling through the cracks and not receiving regulatory attention. This is a prime area for spills and soil contamination.

Changes to Part 1 (5)

20.5.1.7.DQ. "Regulated substance" means:

(2) 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.

This language is in the federal definition in 40 CFR 280.12, and helps clarify the term. We have added ethanol-based motor fuels for clarity, as these fuels were not widely used in the 1980s when EPA developed these rules, but they are in general use now. EPA policies and interpretation of its rules, and most other states, include ethanol fuels in this definition.

Changes to Part 2

20.5.2.2 SCOPE: This part applies to any owner and operator of a storage tank as provided in 20.5.1 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 even of noncompliance.

This language is in the Scope sections of all parts of the rule, and was only missing from Part 2 due to oversight.

20.5.2.16 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 operation, and the owner and operator shall advise the department, in writing, within 7 days of any change in mailing address.

We deleted the word “promptly” and inserted “7 days” to clarify when owners and operators must advise the Bureau of address changes.

Changes to Part 3

20.5.3.3008 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.

The words "removed or otherwise" were deleted just before the words "permanently closed." This is to clarify that permanent closure involves more than just removing a tank – it also requires site assessment, usually by soil sampling. Until the owner takes this last step, the PSTB considers the tank "in use" and continues to charge annual tank fees.

Changes to Part 4

Citations were added to the International Fire Code (29.5.4.10.C(17), 20.5.4.16.C(12), 20.5.4.19.B(6), 20.5.4.25.B(2), 20.5.4.30.C(4), and 20.5.4.34.A(3).

This change was suggested in a public comment.

20.5.4.15.C. In a manifolded UST system, secondary containment is only required for a new or replaced UST; existing USTs in a manifolded system are not required to have secondary containment. Additionally, the secondary containment requirements of this section shall not apply to:

(1) repairs meant to restore a UST, piping or dispenser to operating condition;

(2) piping runs that are not new or replaced for USTs with multiple piping runs; or

This language was change to clarify how the secondary containment rule applies to manifolded tanks. The old paragraph 2 was deleted.

Changes to Part 4 (continued)

20.5.4.15.B(3) To determine if any part of a UST system is within 1,000 feet of any existing community water systems, potable drinking water well, or source water, at a minimum owners and operators shall measure the distance from the closest part of the new or replaced UST, piping or dispenser, or other part of a UST system, to the closest part of the nearest community water system, potable drinking water well, or source water, including such components as the location of wellheads for groundwater, depth to groundwater, the location of the intake point for surface water, water lines, processing tanks, water storage tanks, and water distribution or service lines. The 1,000 foot measurement shall be from all directions (vertical, lateral, and diagonal).

Only the last sentence has been added since the last Stakeholder's meeting, in response to a question about how the 1,000 feet will be measured.

Changes to Part 4 (3)

20.5.4.19.C. 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; and

(d) a description of any unusual circumstances involving the AST;

(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.

Subparagraph (e) is new, to allow the Bureau to inquire about site- and facility-specific questions.

Changes to Part 5

20.5.5.9 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. 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.

The PSTB added the last sentence to ensure owners and operators select an appropriate plan for their storage tank system.

Changes to Part 5 (continued)

20.5.5.9.A. At a minimum the operations and maintenance plan shall include the following:

(1) a detailed plan showing what inspections, operations, testing and maintenance shall be done on a daily, monthly, quarterly and annual basis 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 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; and

The Bureau added the last sentence to ensure that owners and operators have an appropriate plan for properly disposing of any substances found during checks of tanks and secondary containment. Also, we corrected the typo in the last sentence (“regulated substance”).

Changes to Part 5 (3)

20.5.5.9.C. Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

The Bureau added this subsection in response to public comments, to clarify that other plans, such as SPCC plans, with all required information may serve as Operation and Maintenance Plan for purposes of these rules.

International Fire Code citations added to 20.5.5.14.A(6), 20.5.5.15.B(3)(g), and 20.5.5.17.B(12).

These citations were added to reflect changes being made by the State Fire Marshal, and as a result of a public comment.

Changes to Parts 1-5

Questions and Comments From Stakeholders

Schedule for Implementation

- Request hearing date for Parts 1-5, 6, 8 and 14 at EIB meeting August 7
- Hearing in November or December
 - Requires 60 days' public notice
 - Notice to be published in Albuquerque Journal and New Mexico Register
- Rules to be effective early in 2008
- Next steps:
 - Work during Legislative Session on statutory changes
 - Revise rules on remediation
 - Begin process of revising rules if statute is changed

Stakeholder Comments

- This Power Point will be on our website early next week
 - Please share it with colleagues
 - It is too large to send by email
- Stakeholder support at EIB hearings is welcomed and helpful
- Do we need another Stakeholder meeting?
 - PSTB will accept written comments on today's material through noon next Thursday July 19
 - On response to public comments made today
 - Could this be done electronically?
- Any other Stakeholder questions or comments?

Thank you for coming and working with us
on this major rule revision project