

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 5 PETROLEUM STORAGE TANKS**
3 **PART 12 CORRECTIVE ACTION FOR STORAGE TANK SYSTEMS**
4 **CONTAINING PETROLEUM PRODUCTS**

5
6 20.5.12.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
7 [20.5.12.1 NMAC - Rp, 20 NMAC 5.12.100, 8/15/03]

8
9 20.5.12.2 SCOPE: This part applies to owners and operators of petroleum storage tanks as
10 defined in 20.5.1 NMAC. If the owner and operator of a petroleum storage tank are separate
11 persons, only one person is required to comply with the requirements of this part, including any
12 notice and reporting requirements; however, both parties are liable in the event of non-
13 compliance.
14 [20.5.12.2 NMAC - Rp, 20 NMAC 5.12.101, 8/15/03]

15
16 20.5.12.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the
17 provisions of the Hazardous Waste Act, ~~NMSA 1978~~, sections 74-4-1 through 74-4-14, NMSA
18 1978; the Ground Water Protection Act, ~~NMSA 1978~~, sections 74-6B-1 through 74-6B-14,
19 NMSA 1978; the Water Quality Act, ~~NMSA 1978~~, sections 74-6-1 through 74-6-17, NMSA
20 1978; and the general provisions of the Environmental Improvement Act, ~~NMSA 1978~~, sections
21 74-1-1 through ~~74-1-15~~ 74-1-16, NMSA 1978.
22 [20.5.12.3 NMAC - Rp, 20 NMAC 5.12.102, 8/15/03; A, x/xx/09]

23
24 20.5.12.4 DURATION: Permanent.
25 [20.5.12.4 NMAC - Rp, 20 NMAC 5.12.103, 8/15/03]

26
27 20.5.12.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the
28 bracketed history note at the end of a section.
29 [20.5.12.5 NMAC - Rp, 20 NMAC 5.12.104, 8/15/03]

30
31 20.5.12.6 OBJECTIVE: The purpose of this part is to provide for corrective action at sites
32 contaminated by releases from petroleum storage tank systems and to protect the public health,
33 safety and welfare and the environment of the state.
34 [20.5.12.6 NMAC - Rp, 20 NMAC 5.12.105, 8/15/03]

35
36 20.5.12.7 DEFINITIONS: The definitions in 20.5.1 NMAC apply to this part.
37 [20.5.12.7 NMAC - Rp, 20 NMAC 5.12.1201, 8/15/03]

38
39 ~~20.5.12.8 to 20.5.12.1199~~ [RESERVED]

40
41 ~~20.5.12.1200~~ 20.5.12.8 GENERAL:

42 A. Owners and operators of petroleum storage tank systems shall take corrective
43 action to address all releases, including such action as collection and analysis of relevant site-
44 specific data, soil remediation, groundwater and surface water remediation and any other
45 appropriate actions pursuant to this part, in a manner protective of public health, safety and
46 welfare and the environment.

1 B. Upon confirmation of a release pursuant to 20.5.7 NMAC or identification and
2 reporting of a release in any other manner, owners and operators of petroleum storage tank
3 systems shall comply with the requirements of this part if the release:

4 (1) is of unknown volume or is greater in volume than 25 gallons; or

5 (2) is of any size and the owner or operator is directed by the department to
6 comply with this part.

7 C. Owners and operators shall mail or deliver all written notices and reports required
8 under this part to be submitted to the department to the ~~following address or a district office if~~
9 ~~approved by the department:~~ owner or operator's assigned project manager from the petroleum
10 storage tank bureau, New Mexico environment department , 2044 Galisteo Street, Santa Fe, New
11 Mexico 87504.

12 D. Owners and operators shall comply with any site-specific timeline or deadline that
13 is issued or approved in writing by the department at the time of workplan approval. If no
14 applicable site-specific timeline has been issued or approved, the following timeline shall apply
15 to all corrective action requirements under this part. The time deadlines set forth in this part are
16 computed from the date of reporting of a release or of reporting of the confirmation of a
17 suspected release pursuant to 20.5.7 NMAC unless another event is specified in these ~~regulations~~
18 rules.

19 20 Default Corrective Action Timeline

21 22 Deadline, in days from report:	Action or deliverable due date, as defined above:
23 24 0	report <u>discovery or confirmation of a release</u> or report 25 confirmation of suspected release
26 3	72-hour report
27 14	14-day report
28 60	submit NAPL assessment
29 60	initiate interim removal of contaminated soil
30 60	preliminary investigation report
31 120	secondary investigation report
32 150	tier one evaluation report
33 180	tier two evaluation report
34 210	tier three evaluation report
35 When monitored natural attenuation is used:	
36 510	monitored natural attenuation (MNA) plan
37 570	implementation of MNA
38 935	first annual MNA monitoring report
39 935	annual evaluation of MNA report
40 When other remediation is used:	
41 510	conceptual remediation plan
42 540	final remediation plan
43 600	implementation of remediation
44 690	first quarterly monitoring report
45 965	annual evaluation of remediation system report

1 E. All owners and operators are responsible for compliance with all provisions of
2 this part. An owner or operator may designate a representative to facilitate compliance with this
3 part. The designation of such a representative shall not affect the department's right to seek
4 compliance at any time from any owner or operator and shall not relieve owners or operators of
5 any legal liabilities or responsibilities they may have under this part or otherwise under the law.

6 F. Except for ~~20.5.12.1203~~ 20.5.12.10, ~~20.5.12.1204~~ 20.5.12.11 and ~~20.5.12.1205~~
7 20.5.12.12 NMAC, owners and operators shall submit to the department written workplans for
8 all required corrective action under this part. Owners and operators may submit ~~W~~-workplans
9 may be submitted in stages to reflect the sequence or types of corrective action required by
10 20.5.12 NMAC at the site, but all required workplans shall be submitted to and approved by the
11 department in writing the owners and operators shall submit all required workplans to and obtain
12 approval by the department in writing for technical adequacy before the corrective action is
13 commenced.

14 G. Unless otherwise approved, a qualified firm as specified in 20.5.12 NMAC shall
15 perform all corrective action shall be performed by a qualified firm as specified in 20.5.16
16 NMAC and, when required in 20.5 NMAC by the rules in Title 20, Chapter 5, a professional
17 engineer as defined in 20.5.1.7 NMAC.

18 (1) All contractors and their subcontractors shall have appropriate licenses and
19 certifications and be in compliance with applicable local, state and federal laws and regulations,
20 including but not limited to the rules in Title 16, Chapter 39 governing engineers, 14.6.3 NMAC
21 governing contractors and 29 CFR part 1910 governing worker health and safety.

22 (2) Owners and operators shall identify all prime contractors and all
23 subcontractors in all workplans submitted to the department.

24 H. Where site conditions are amenable, owners and operators may use accelerated
25 site characterization techniques if pre-approved by the department.

26 I. ~~Owners and operators shall construct all monitoring wells in accordance with the~~
27 ~~bureau's Guidelines for Corrective Action in effect at the time the workplan was approved,~~
28 ~~unless other specifications are previously approved in writing by the department. All monitoring~~
29 wells shall be permitted in conformance with applicable federal, state and local laws and
30 regulations in effect at the time of installation.

31 J. Owners and operators shall clearly mark and secure monitoring wells and major
32 remediation equipment to prevent unauthorized access, ~~and~~ tampering and damage. Owners
33 and operators shall close or abandon all wells in accordance with the requirements of ~~any law~~
34 applicable federal, state and local laws and regulations and the bureau's Guidelines for Corrective
35 Action in effect at the time the workplan was approved.

36 K. The department shall notify all owners and operators of responsible party-lead sites
37 and contractors of state-lead sites in writing when it has determined that a deliverable completed
38 under an approved workplan is satisfactory. The written notice shall also inform the owner,
39 operator or contractor that any application for payment from the fund of costs associated with the
40 approved deliverable must be received by the department within 90 days of the date the owner,
41 operator or contractor received written notice of approval and that no extensions of this deadline
42 shall be granted.

43 [20.5.12.1200 NMAC - Rp, 20 NMAC 5.12.1200, 8/15/03, A/Rn, 20.5.12.1200 x/xx/09].
44 [The address of the petroleum storage tank bureau, remediation section is: 1301 Siler Road,
45 Building B, Santa Fe, New Mexico 87507.]

1 ~~20.5.12.1201~~ [RESERVED]

2
3 ~~20.5.12.1202~~20.5.12.9 CRITERIA FOR TIER ONE, TIER TWO AND TIER THREE
4 EVALUATIONS:

5 A. The department and owners and operators shall use ~~these~~ the following criteria for
6 tier one, tier two and tier three evaluations as described in ~~20.5.12.1213~~ 20.5.12.21, ~~20.5.12.1215~~
7 20.5.12.23 and ~~20.5.12.1217~~ 20.5.12.25 NMAC, ~~and the bureau's Guidelines for Corrective~~
8 ~~Action.~~

9 (1) Owners and operators shall develop a conceptual site exposure scenario to
10 identify all current and potential future receptors, direct and indirect pathways, routes of
11 exposure, and complete and incomplete exposure pathways, and to ensure that sufficient data is
12 available to evaluate sites in accordance with this part.

13 (2) For all complete pathways, owners and operators shall calculate target
14 concentrations for the relevant exposure media (air, soil, surface water, groundwater) using the
15 following components: intake equations, fate and transport models and parameters, target risk
16 goals, physical and chemical property parameters, toxicity parameters and exposure factors, ~~as~~
17 ~~set forth in chapter four of the bureau's Guidelines for Corrective Action or as otherwise~~
18 ~~approved by the department. For specific procedures to calculate the target concentrations, refer~~
19 ~~to the bureau's Guidelines for Corrective Action.~~

20 (3) ~~Using conservative default assumptions for the components listed in~~
21 ~~Paragraph (2) of this subsection, the department has developed tier one risk based screening~~
22 ~~levels (RBSLs) for contaminants of concern (COCs) in soil. The tables of RBSLs for~~
23 ~~contaminants of concern appear in the bureau's Guidelines for Corrective Action and are~~
24 ~~incorporated by reference. Owners and operators shall compare representative site~~
25 ~~concentrations to tier one levels in accordance with~~ 20.5.12.21 NMAC ~~and~~
26 ~~determine whether a tier two or a tier three evaluation in accordance with~~ 20.5.12.23
27 20.5.12.23 and ~~20.5.12.1217~~ 20.5.12.25 NMAC is necessary.

28 (4) The tier two and tier three evaluations shall consider site-specific
29 measurements or estimates for saturated hydraulic conductivity (cm/sec), groundwater gradient,
30 soil bulk density (g/cc), soil gradation, soil moisture content (percent by volume), effective
31 porosity, and fraction organic carbon content (percent), and other parameters if required by the
32 department. Owners and operators shall compare representative site concentrations to the tier
33 two site specific target concentrations (SSTLs) in accordance with ~~20.5.12.1215~~ 20.5.12.23
34 NMAC.

35 (5) In no case will the department ~~approve~~ make a "no further action" ~~status~~
36 ~~determination for a release if, for the target concentration for any contaminant of concern~~
37 ~~originating from the release or any route of exposure:~~

38 (a) the individual carcinogenic risk exceeds 0.00001; or

39 (b) the hazard quotient exceeds one.

40 (6) Owners and operators shall determine RBSLs using residential land use unless
41 the owner or operator can demonstrate that the current and the reasonable future land use is or
42 will likely be commercial or industrial and, therefore, that the assumption of commercial or
43 industrial land use is equally protective of public health, safety and welfare and the environment.

44 (7) Target surface water concentration criteria shall be as provided in 20.6.2,
45 20.7.10 and ~~20.5.12.1233~~ 20.5.12.42 NMAC.

1 (8) Target groundwater concentration criteria shall be as provided in 20.6.2 and
2 ~~20.5.12.1233~~ 20.5.12.42 NMAC, and, for domestic water supplies, as provided in 20.7.10
3 NMAC.

4 (9) Target concentrations for air, soil and water shall also take into account other
5 factors including vegetation effects, sensitive environmental receptors, and nuisance
6 considerations as required by this part.

7 B. Owners and operators shall obtain department concurrence with the results of and
8 the procedures used for the tiered evaluations before a remediation plan is approved by the
9 department, ~~before a petition to the WQCC for a variance granting alternative abatement~~
10 ~~standards is forwarded by the secretary to the WQCC~~, or before a "no further action" status
11 determination is approved by the department.

12 [20.5.12.1202 NMAC - Rp, 20 NMAC 5.12.1202, 8/15/03; A/Rn, 20.5.12.1202 x/xx/09]

13
14 ~~20.5.12.1203~~ 20.5.12.10 MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:

15 A. ~~Upon reporting of a release or reporting of the confirmation of a suspected~~
16 ~~discovery or confirmation of a release pursuant to 20.5.7 NMAC~~, owners and operators of the
17 storage tank system shall immediately prevent any further release from the storage tank system
18 by whatever means necessary, including removing product from the storage tank system or any
19 part of the storage tank system that is known to leak or is suspected of leaking. If necessary,
20 owners and operators shall remove the storage tank system from service in accordance with
21 20.5.8 NMAC.

22 B. Owners and operators shall inform the department in accordance with ~~20.5.7.700~~
23 20.5.7.8 NMAC of any release and action taken to mitigate immediate damage from the release.
24 [20.5.12.1203 NMAC - Rp, 20 NMAC 5.12.1203, 8/15/03; A/Rn, 20.5.12.1203 x/xx/09]

25
26 ~~20.5.12.1204~~ 20.5.12.11 MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:

27 A. Owners and operators shall undertake the initial abatement and site investigation
28 actions specified in this section within 72 hours of ~~the reporting of a release or reporting of the~~
29 ~~discovery or~~ confirmation of a ~~suspected~~ release pursuant to 20.5.7 NMAC, ~~unless a different~~
30 ~~using the default~~ timeline is as set forth elsewhere in this section in Subsection D of 20.5.12.8
31 NMAC or ~~unless as~~ otherwise directed or approved by the department.

32 B. Owners and operators shall identify the location and details of construction of all
33 private water supply wells, using readily accessible public records, within a 1,000 foot radius,
34 and all public water supply wells within a one mile radius of the storage tank system, and shall
35 determine if the identified wells lie within a designated wellhead protection area. Owners and
36 operators shall take appropriate measures to ~~ensure that~~ protect these water supplies ~~do not~~
37 ~~become contaminated from contamination~~.

38 C. Owners and operators shall contain or remediate releases which present an
39 imminent threat of contamination to or are within 500 feet of a surface water course as soon as
40 practicable to prevent contamination of surface water. If the surface water course is a drinking
41 water supply, within 24 hours owners and operators shall notify the owners or operators of all
42 ~~downstream~~ drinking water supplies likely to be affected by the release.

43 D. If the release has ~~already~~ contaminated a water supply, owners and operators shall
44 immediately provide a temporary replacement drinking water supply, as well as adequate
45 warnings or other mechanisms to prevent persons from drinking or otherwise contacting water
46 contaminated by the release. Within seven days of the ~~reporting of a spill or release or the~~

1 ~~reporting of the confirmation of a suspected~~ discovery or confirmation of a release pursuant to
2 20.5.7 NMAC that has contaminated a water supply, owners and operators shall provide a
3 replacement water supply which is of adequate quality and quantity for drinking, bathing,
4 cooking and washing. Owners and operators shall maintain the replacement water supply until
5 an alternate water supply sufficient for all domestic purposes is available.

6 E. Owners and operators shall identify the depth, location, composition and
7 construction of all underground utilities including water lines, sewer lines, communication
8 cables, electric lines, and natural gas lines within the area of the release to assess the
9 susceptibility of these utilities to permeation by contaminants or deterioration caused by
10 contaminants. Owners and operators shall notify the utility owner that the release has occurred
11 and obtain permission to perform a site check of the utilities or other subsurface structures most
12 likely to be contaminated by the release to determine whether petroleum products or vapors are
13 present.

14 F. Owners and operators shall complete an investigation to determine whether
15 potentially explosive or harmful vapors are present in any building, utility corridor, basement, or
16 other surface or subsurface structure on or adjacent to the release site.

17 (1) ~~This~~ The investigation shall include testing for vapors using the following:

18 (a) a combustible gas indicator or equivalent instrument calibrated
19 according to the manufacturer's instructions to test for potentially explosive levels of petroleum
20 hydrocarbon vapors; and

21 (b) a photoionization detector, flame ionization detector or another method
22 approved by the department calibrated according to the manufacturer's instructions to test for
23 potentially harmful petroleum hydrocarbon vapors.

24 (2) In the event owners and operators discover actual or potentially explosive
25 levels of petroleum hydrocarbon vapors greater than 20 percent of the lower explosive limit
26 (LEL) or potentially harmful petroleum hydrocarbon vapors reading greater than five whole
27 instrument units above ambient concentrations ~~or greater than 20 percent of the lower explosive~~
28 ~~limit (LEL)~~ in any structure in the vicinity of the release site, owners and operators shall confirm
29 and, if necessary, take immediate action to mitigate the vapor hazard. Within seven days of the
30 discovery of the vapors, owners and operators shall install and place into operation a vapor
31 mitigation system capable of reducing petroleum hydrocarbon vapors to safe levels within the
32 shortest reasonable time. The vapor mitigation system shall be designed by and constructed
33 under the direct, responsible, supervisory control of a professional engineer, when required by
34 the department.

35 (a) Once a vapor mitigation system has been installed, owners and operators
36 shall monitor and report in writing to the department the levels of potentially explosive or
37 harmful petroleum hydrocarbon vapors in the affected structures weekly for the first month and
38 monthly thereafter unless a different monitoring schedule is approved in writing by the
39 department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b)
40 of Paragraph (1) of this subsection.

41 (b) ~~Within 30 days a~~ After the vapor mitigation system has been in
42 operation for three months, owners and operators shall have 30 days to submit to the department
43 a written summary report containing the monitoring results. The department may direct the
44 owner and operator to modify the vapor mitigation system as necessary to reduce petroleum
45 hydrocarbon vapors to safe levels. Owners and operators shall submit monitoring results to the

1 department at three-month intervals until operation of the vapor mitigation system is
2 discontinued in accordance with this section.

3 (3) Owners and operators shall continue to operate the vapor mitigation system
4 until the results of three consecutive monthly monitoring events indicate the following:

5 (a) levels of potentially explosive petroleum hydrocarbon vapors are less
6 than 20 percent LEL; and

7 (b) levels of potentially harmful petroleum hydrocarbon vapors are less than
8 or equal to five whole instrument units above ambient levels in any structure in the vicinity of
9 the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this
10 subsection.

11 (4) When operation of a vapor mitigation system is discontinued, owners and
12 operators shall monitor the vapor levels in the structure weekly for the first month and monthly
13 thereafter until one calendar year has passed, or as otherwise directed or approved by the
14 department. If during this period the levels exceed those set forth in Subparagraphs (a) and (b)
15 of Paragraph (3) of this subsection, owners and operators shall notify the department and take the
16 necessary corrective action, as directed by the department.

17 G. Owners and operators shall remove any exposed petroleum products related to the
18 release and mitigate any related immediate fire and safety hazards as soon as possible, but in no
19 case no later than 72 hours after the confirmation or other identification of the release.
20 [20.5.12.1204 NMAC - Rp, 20 NMAC 5.12.1204, 8/15/03; A/Rn, 20.5.12.1204 x/xx/09]

21
22 ~~20.5.12.1205~~ 20.5.12.12 MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY
23 REPORTS:

24 A. Owners and operators shall make an oral report to the department summarizing
25 the abatement procedures undertaken and the results of action taken under ~~20.5.12.1203~~
26 20.5.12.10 and ~~20.5.12.1204~~ 20.5.12.11 NMAC within 72 hours of the ~~reporting of a release or~~
27 ~~reporting of the discovery or~~ confirmation of a ~~suspected~~ release pursuant to 20.5.7 NMAC.

28 B. Owners and operators shall submit a written report to the department within 14
29 days ~~of the discovery or confirmation of a release pursuant to 20.5.7 NMAC, along with in~~
30 addition to the written notice required under 20.5.7 NMAC. This report shall summarize all the
31 work performed pursuant to ~~20.5.12.1203~~ 20.5.12.10 and ~~20.5.12.1204~~ 20.5.12.11 NMAC and
32 shall include the following information, as appropriate:

33 (1) a map based on a United States geologic survey topographic map showing
34 locations of actual and potential receptors, including, but not limited to, private and public water
35 supplies identified pursuant to Subsection A of ~~20.5.12.1204~~ 20.5.12.11 NMAC. Owners and
36 operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of
37 the release, and shall also show on the map all surface water courses within a one mile radius of
38 the site;

39 (2) information about any water supplies known or suspected to have been
40 contaminated by the release;

41 (3) most likely direction of groundwater flow;

42 (4) a site plan map showing locations of ~~underground~~ utilities, surface structures
43 and storage tank systems;

44 (5) information about underground utilities gathered in accordance with
45 Subsection E of ~~20.5.12.1204~~ 20.5.12.11 NMAC;

46 (6) soil borings, logs, and details of construction of all wells, if available;

- 1 (7) description of any actions taken to abate adverse effects;
2 (8) data from vapor monitoring performed in the vicinity of the site;
3 (9) description of any actions taken to abate potentially explosive or harmful
4 vapors and any plans for further action;
5 (10) description of fire and safety hazards resulting from the release and actions
6 taken to abate such hazards;
7 (11) description of current and past ownership of the property, storage tank
8 systems, the substance stored in the system, age of tank and history of any tank removals;
9 (12) present land use, within 1,000 feet of the site; and
10 (13) records of tightness tests, repairs to the storage tank system, release detection
11 and monitoring results.

12 [20.5.12.1205 NMAC - Rp, 20 NMAC 5.12.1205, 8/15/03; A/Rn, 20.5.12.1205 x/xx/09]

13
14 ~~20.5.12.1206~~ 20.5.12.13 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:

15 A. Except for the 72-hour vapor check, owners and operators shall notify the
16 department at least four days prior to the collection of any samples which are required pursuant
17 to this part and upon which laboratory analyses are to be performed to allow the department an
18 opportunity to be present at the collection of samples or to split samples.

19 B. Owners and operators shall notify the department at least four days prior to the
20 decommissioning, destruction or abandonment of any wells.

21 C. Owners and operators shall collect, store and transport all samples necessary to
22 comply with the requirements of this part in a manner consistent with the nature of the known or
23 suspected contaminants ~~and the methods outlined in the bureau's Guidelines for Corrective~~
24 ~~Action in effect at the time the workplan for sampling was approved~~ and in conformance with
25 applicable federal, state and local laws and regulations.

26 [20.5.12.1206 NMAC - Rp, 20 NMAC 5.12.1206, 8/15/03; A/Rn, 20.5.12.1206 x/xx/09]

27
28 ~~20.5.12.1207~~ 20.5.12.14 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:

29 A. Owners and operators shall assess the potential for remediation of non-aqueous
30 phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL on
31 surface water, in any excavation pit, or in any well. Owners and operators shall submit the
32 assessment to the department in accordance with a timeline approved or issued by the department
33 or the timeline set forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC.

34 B. The department may direct or approve interim removal of NAPL when such
35 action is determined to be practical and necessary to protect public health, safety and welfare or
36 the environment. In this event, owners and operators shall remove NAPL in accordance with a
37 timeline approved or issued by the department or the timeline set forth in Subsection D of
38 ~~Section 20.5.12.1200~~ 20.5.12.8 NMAC.

39 C. Owners and operators shall remove NAPL in a manner that minimizes the spread
40 of contamination into uncontaminated media.

41 D. Owners and operators shall store and dispose of NAPL in accordance with all
42 flammable and combustible liquids codes approved by the state fire marshal or other local
43 authority, state hazardous waste regulations (20.4.1 NMAC), and any other applicable laws or
44 regulations.

1 E. Owners and operators shall report recovery and disposal of NAPL to the
2 department ~~in the format outlined in the bureau's Guidelines for Corrective Action in effect at the~~
3 ~~time the workplan for such recovery and disposal was approved.~~

4 [20.5.12.1207 NMAC - Rp, 20 NMAC 5.12.1207, 8/15/03; A/Rn, 20.5.12.1207 x/xx/09]

5
6 ~~20.5.12.1208~~ 20.5.12.15 INTERIM REMOVAL OF CONTAMINATED SOIL:

7 A. Owners and operators shall remediate contaminated soil in accordance with
8 ~~20.5.12.1202~~ 20.5.12.9, ~~20.5.12.1213~~ 20.5.12.21, ~~20.5.12.1215~~ 20.5.12.23, ~~20.5.12.1217~~
9 20.5.12.25, ~~20.5.12.1219~~ 20.5.12.27, and ~~20.5.12.1227~~ 20.5.12.35 NMAC, unless directed or
10 approved by the department to remove and treat contaminated soil in accordance with this
11 section.

12 (1) The department may direct or approve interim removal of contaminated soil
13 when such action is determined to be practical and necessary to protect public health, safety and
14 welfare or the environment.

15 (2) Under this section, owners and operators shall excavate, treat and dispose of
16 contaminated soil using methods approved by the department, in compliance with local laws and
17 regulations, and under a timeline issued or approved by the department or the timeline set forth
18 in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC.

19 (3) The department shall approve the vertical and horizontal extent of soil to be
20 excavated.

21 B. When treating or temporarily storing soil on site, owners and operators shall:

22 (1) for treatment on site, spread soil in a six-inch layer over an impervious liner or
23 other surface approved by the department to prevent infiltration to groundwater and place the
24 layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface
25 water;

26 (2) for temporary storage, place the soil in a secure, bermed area on an impervious
27 liner or surface or in a secured and properly labeled container, as approved by the department;
28 and

29 (3) handle soil in a manner that does not contaminate groundwater, surface water
30 or other uncontaminated soil or does not create or cause a public nuisance or threat to human
31 health, safety and welfare or the environment.

32 C. When contaminated soil is taken off site, owners and operators shall provide the
33 department with the following information within 14 days of removal of the soil from the site:

34 (1) written documentation of the type and concentration of contaminants, volume
35 and weight of soil, method of treatment, date transported, and location of the site of disposal or
36 treatment;

37 (2) a signed, written statement by the owner of the treatment or disposal site
38 describing the location of the site and expressly accepting the contaminated soil; and

39 (3) if contaminated soil is taken to a permitted solid waste facility, a manifest
40 signed by the generator, transporter and the owner or operator of the solid waste facility.

41 D. Remediation shall be considered complete when the requirements in ~~20.5.12.1233~~
42 20.5.12.42 NMAC are met.

43 E. In accordance with a timeline issued or approved by the department or the
44 timeline set forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC, owners and operators shall
45 submit to the department a report describing the removal and treatment of contaminated soil.

46 ~~The report shall conform to the bureau's Guidelines for Corrective Action.~~

1 (1) The report shall describe the soil removal action and its effectiveness,
2 including volumes and weight removed.

3 (2) Owners and operators shall submit the report within 30 days of the soil
4 removal action.

5 [20.5.12.1208 NMAC - Rp, 20 NMAC 5.12.1208, 8/15/03; A/Rn, 20.5.12.1208 x/xx/09]

6
7 ~~20.5.12.1209~~ 20.5.12.16 MINIMUM SITE ASSESSMENT, PRELIMINARY AND OTHER
8 REQUIRED INVESTIGATIONS:

9 A. A preliminary investigation is not required when owners and operators can
10 demonstrate that groundwater has not been contaminated and one of the following two
11 conditions apply:

12 (1) the release is remediated in accordance with this part within 72 hours ~~in~~
13 ~~accordance with this part~~ of discovery or confirmation; or

14 (2) the release is permanently contained within the UST excavation area or the
15 AST containment system.

16 B. If the contamination extends beyond the boundaries of the property where the
17 release originated, owners and operators shall conduct a secondary investigation in accordance
18 with 20.5.12.19 NMAC.

19 C. When the horizontal and vertical extent and magnitude of contamination from the
20 release have been characterized, owners and operators shall perform a tier one evaluation as
21 outlined in 20.5.12.9 and 20.5.12.21 NMAC.

22 [20.5.12.1209 NMAC - Rp, 20 NMAC 5.12.1209, 8/15/03; A/Rn, 20.5.12.1209 x/xx/09]

23
24 20.5.12.17 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION –

25 REQUIREMENTS: ~~B.~~ Owners and operators shall conduct a preliminary investigation in
26 accordance with this subsection and under a timeline approved or issued by the department or the
27 timeline set forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC. The preliminary
28 investigation shall determine the following ~~for use in development of a site conceptual exposure~~
29 ~~scenario and the tier one evaluation, unless otherwise directed or approved by the department:~~

30 (1)~~A.~~ if not previously identified and reported under ~~20.5.12.1205~~ 20.5.12.12
31 NMAC, the source of contamination, the ~~contaminants of concern~~ regulated substance released
32 or suspected of being released at the site, the media of concern, current ~~receptors, potential future~~
33 and potential receptors, current and anticipated ~~future~~ use of property, complete and incomplete
34 exposure pathways, and routes of exposure;

35 (2)~~B.~~ the horizontal and vertical extent and magnitude of soil contamination ~~in the~~
36 vadose zone by performing the following:

37 (a)~~(1)~~ conduct a soil boring survey by advancing a continuously cored soil
38 boring at each area of release where soil contamination is most likely to be encountered unless
39 otherwise directed by the department. The initial incident report and a soil vapor survey may be
40 used in locating these areas. Owners and operators shall advance at least one of the borings ~~to~~
41 the water table into the saturated zone or, with approval from the department, to a depth of 50
42 feet below the depth at which measured levels of contaminants in soil are no longer detectable by
43 laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field
44 instrument, are less than 100 whole instrument units;

45 (b)~~(2)~~ advance at least four additional soil borings to characterize the
46 release within property boundaries ~~by soil sample points~~. Borings shall be completed to the depth

1 at which contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon
2 vapor concentrations, as determined with a field instrument, are less than 100 whole instruments
3 units. If the soil borings indicate that contaminated soil extends beyond the boundary of the
4 property on which the storage tank system is located, owners and operators shall advance soil
5 borings ~~at locations within ten feet of the boundary of the property on which the storage tank~~
6 ~~system is located~~ sufficient to characterize the extent and magnitude of contamination within site
7 boundaries;

8 ~~(e)(3)~~ (3) assess ~~and record~~, at five-foot intervals, field estimates of
9 concentrations of petroleum hydrocarbons in the soil borings and select and prepare samples for
10 laboratory analysis ~~in accordance with the procedures contained in the bureau's Guidelines for~~
11 ~~Corrective Action in effect when the workplan was approved~~;

12 ~~(d)(4)~~ (4) gather field data for soil classification, determining and recording
13 color, grain size, texture, description of lithification, plasticity and clay content;

14 ~~(e)(5)~~ (5) ~~From samples taken from an uncontaminated area of the vadose zone,~~
15 determine ~~[in the laboratory derived values for soil bulk density (g/cc), soil moisture content~~
16 ~~(percent by volume), and effective porosity, and fraction organic carbon content (percent by~~
17 ~~volume) using samples taken from an uncontaminated area of the vadose zone; and~~

18 ~~(f)(6)~~ (6) ~~Record~~ delimit the horizontal and vertical extent of contaminant
19 saturated soil as defined in 20.5.1.7 NMAC;

20 ~~(3)C.~~ (3)C. whether groundwater or surface water has been contaminated above
21 applicable standards or whether a significant potential for groundwater or surface water
22 contamination is present by performing the following:

23 ~~(a)(1)~~ (1) ~~determine whether the release has contaminated groundwater by~~
24 ~~installing~~ at least three groundwater monitoring wells at locations where the results of the soil
25 boring survey conducted pursuant to this section indicate that groundwater may be contaminated;
26 ~~unless otherwise approved by the department. Owners and operators shall:~~

27 ~~(i)(a)~~ (i)(a) ~~owners and operators shall place three of the~~ locate monitoring
28 wells ~~to form a triangle so that groundwater gradient can be determined~~;

29 ~~(ii)(b)~~ (ii)(b) ~~owners and operators shall~~ install at least one monitoring well
30 on site in the area of highest contamination as determined by the soil borings installed in
31 accordance with the initial incident report and other relevant information;

32 ~~(iii)(c)~~ (iii)(c) ~~owners and operators shall~~ install at least one of the ~~other~~
33 monitoring wells in the ~~anticipated~~ estimated down-gradient direction from the area of highest
34 contamination;

35 ~~(iv)(d)~~ (iv)(d) ~~owners and operators shall~~ construct wells in accordance with
36 ~~the bureau's Guidelines for Corrective Action~~ all applicable federal, state and local laws and
37 regulations in effect at the time the workplan was approved; and

38 ~~(v)(e)~~ (v)(e) ~~owners and operators shall~~ survey the wells ~~to United States~~
39 ~~Geological Survey standards or equivalent, as described in the bureau's Guidelines for Corrective~~
40 ~~Action and using a licensed~~ New Mexico licensed professional surveyor, in decimal degrees of
41 latitude and longitude in accordance with NAD 83 ~~unless otherwise directed or approved by the~~
42 ~~department~~;

43 ~~(b)(2)~~ (2) ~~determine the approximate~~ calculate the direction and gradient of
44 groundwater flow;

45 ~~(e)(3)~~ (3) inspect all monitoring wells for the presence of NAPL using
46 ~~gasoline finding paste, an electronic interface probe, a clear bailer or other~~ a method approved by

1 the department. If NAPL is present in any well, ~~owners and operators shall~~ measure the apparent
2 thickness ~~of the layer~~, delimit its horizontal extent, and initiate recovery procedures in
3 accordance with ~~20.5.12.1207~~ 20.5.12.14 NMAC; and

4 ~~(d)~~(4) sample each monitoring well that does not contain NAPL and
5 analyze the sample for contaminants of concern ~~and in accordance with the bureau's Guidelines~~
6 ~~for Corrective Action in effect at the time the workplan was approved~~ to determine whether:

7 (4) (a) ~~whether~~ immediate mitigation procedures are warranted; and

8 (5) (b) ~~whether~~ other hazardous conditions exist as a result of the release if not
9 previously identified in accordance with ~~20.5.12.1204~~ 20.5.12.11 NMAC, ~~which owners and~~
10 ~~operators shall determine~~ by:

11 (a) (i) identifying the location and depth of underground utilities and other
12 subsurface structures on or adjacent to the site not identified earlier in accordance with
13 Subsection E of ~~20.5.12.1204~~ 20.5.12.11 NMAC;

14 (b)(ii) checking for the presence of vapors in accordance with ~~20.5.12.1204~~
15 20.5.12.11 and ~~20.5.12.1209~~ 20.5.12.16 NMAC; and

16 (e)(iii) identifying all other hazards and potential threats to public health,
17 safety and welfare and the environment which may exist as a result of the release.

18 C. ~~If the horizontal and vertical extent of contamination extends beyond the~~
19 ~~boundaries of the property where the release originated, owners and operators shall conduct a~~
20 ~~secondary investigation in accordance with 20.5.12.1211 NMAC.~~

21 D. ~~When the horizontal and vertical extent and magnitude of contamination from the~~
22 ~~release have been characterized, owners and operators shall perform a tier one evaluation as~~
23 ~~outlined in 20.5.12.1202 and 20.5.12.1212 NMAC.~~

24 [20.5.12.1209 NMAC - Rp, 20 NMAC 5.12.1209, 8/15/03; A/Rn, 20.5.12.1209 x/xx/09]

25
26 ~~20.5.12.1210~~ 20.5.12.18 MINIMUM SITE ASSESSMENT, PRELIMINARY
27 INVESTIGATION REPORT:

28 A. Owners and operators shall submit a written report of the preliminary
29 investigation and other requirements of the minimum site assessment as defined in 20.5.1.7
30 NMAC in accordance with a timeline issued or approved by the department or the timeline set
31 forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC. The report shall include the
32 information gathered under ~~20.5.12.1203~~ 20.5.12.10, ~~20.5.12.1204~~ 20.5.12.11, ~~20.5.12.1205~~
33 20.5.12.12 and ~~20.5.12.1209~~ 20.5.12.16 NMAC and shall conform to the requirements of ~~the~~
34 ~~bureau's Guidelines for Corrective Action in effect at the time the workplan was approved~~ this
35 section and 20.5.12.17 NMAC.

36 B. Owners and operators shall attach a statement signed by an authorized
37 representative of the qualified firm preparing the report for the owner or operator attesting to the
38 veracity of the information submitted in the report and attached documents.

39 C. The department shall review the report and notify owners and operators of any
40 inadequacies in the report ~~within 90 days~~ as soon as feasible. Owners and operators shall, in
41 accordance with a timeline issued or approved by the department ~~or the time line in Subsection D~~
42 ~~of 20.5.12.1200 NMAC~~, correct the report and resubmit it to the department for review and
43 written approval. If the revised report does not conform to the minimum site assessment,
44 preliminary investigation ~~report format as described in the bureau's Guidelines for Corrective~~
45 ~~Action in effect at the time the workplan was approved~~ requirements in this section and
46 20.5.12.17 NMAC, the department shall reject the report and the owner and operator shall be

1 determined not to have conducted a minimum site assessment for the purposes of ~~NMSA 1978,~~
2 section 74-6B-8B(1)(c) NMSA 1978. The department's failure to review or to comment on this
3 report shall not relieve the owner and operator of their responsibilities under this part or the law.

4 D. Owners and operators shall comply with the requirements of any local
5 government which has designated a wellhead/source water protection area that includes the area
6 of the release.

7 E. Owners and operators shall provide notice that includes the contaminants
8 identified, as well as the horizontal and vertical extent of those contaminants, to all ~~property~~
9 owners of property located within the horizontal extent of contamination.

10 [20.5.12.1210 NMAC - Rp, 20 NMAC 5.12.1210, 8/15/03; A/Rn, 20.5.12.1210 x/xx/09]

11
12 ~~20.5.12.1211~~ 20.5.12.19 SECONDARY INVESTIGATION:

13 A. Owners and operators shall perform a secondary investigation in accordance with
14 a timeline issued or approved by the department or the timeline set forth in Subsection D of
15 ~~20.5.12.1200~~ 20.5.12.8 NMAC when ~~the owner, operator or the department~~ makes at least one of
16 the following determinations about the site:

17 (1) ~~the owner or operator has not defined the horizontal and vertical~~ the extent and
18 magnitude of contamination in all media has not been delimited by the preliminary investigation;
19 or

20 (2) the release ~~otherwise~~ threatens public health, safety and welfare or the
21 environment.

22 B. The secondary investigation shall determine the following:

23 (1) the horizontal and vertical extent and magnitude of soil contamination both on
24 and off site;

25 (2) the horizontal extent and magnitude of dissolved phase groundwater
26 contamination both on and off site;

27 (3) the vertical extent and magnitude of dissolved phase groundwater
28 contamination, when site conditions warrant;

29 (4) characteristics, aerial extent, estimated volume and apparent thickness of
30 NAPL in wells;

31 (5) the elevation of groundwater and surface water and the gradient, rate and
32 direction of groundwater and surface water flow;

33 (6) the rate and direction of contaminant migration;

34 (7) the hydrologic properties of the contaminated portion of the aquifer including
35 hydraulic conductivity, transmissivity and storativity. The department may require field
36 verification of estimates made from literature;

37 (8) whether the aquifer is perched;

38 (9) whether the aquifer is confined or unconfined; and

39 (10) any other technical information requested by the department which is
40 reasonably necessary to meet the requirements of this part.

41 [20.5.12.1211 NMAC - Rp, 20 NMAC 5.12.1211, 8/15/03; A/Rn 20.5.12.1211 x/xx/09]

42
43 ~~20.5.12.1212~~ 20.5.12.20 SECONDARY INVESTIGATION REPORT:

44 A. Owners and operators shall submit a written report of the secondary investigation
45 to the department in accordance with a timeline issued or approved by the department or the
46 timeline set forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC. The report shall include all

1 information gathered under ~~20.5.12.1214~~ 20.5.12.19 NMAC and shall conform to the
2 requirements of the bureau's Guidelines for Corrective Action in effect at the time the workplan
3 was approved this part.

4 B. Owners and operators shall attach a statement signed by an authorized
5 representative of the qualified firm preparing the report for the owner or operator attesting to the
6 veracity of the information submitted in the report and attached documents.

7 C. The department shall review the report and notify owners and operators of any
8 inadequacies in the report ~~within 90 days~~ as soon as feasible. Owners and operators shall, in
9 accordance with a timeline issued or approved by the department ~~or the time line in Subsection D~~
10 ~~of 20.5.12.1200 NMAC~~, correct the report and resubmit it to the department for review and
11 written approval. If the revised report does not meet the requirements of ~~20.5.12.1214~~ 20.5.12.19
12 NMAC, the owner and operator will be in violation of this part until the inadequacies are
13 corrected. The department's failure to review or to comment on the secondary investigation
14 report shall not relieve the owner and operator of their responsibilities under this part or the law.

15 D. Owners and operators shall provide notice that includes the contaminants
16 identified, as well as horizontal and vertical extent of those contaminants, to all ~~property~~ owners
17 of property located within the ~~horizontal~~ extent of contamination who were not previously
18 notified in accordance with ~~20.5.12.1210~~ 20.5.12.18 NMAC.

19 [20.5.12.1212 NMAC - Rp, 20 NMAC 5.12.1212, 8/15/03; A/Rn 20.5.12.1212 x/xx/09]

20
21 ~~20.5.12.1213~~ 20.5.12.21 MINIMUM SITE ASSESSMENT, TIER ONE EVALUATION:

22 A. The tier one evaluation is intended to determine whether soil contamination poses
23 a threat to groundwater in the future. A tier one evaluation is required when owners and
24 operators can demonstrate that groundwater has not been contaminated. ~~The tier one evaluation~~
25 ~~is intended to determine whether soil contamination poses a threat to groundwater in the future.~~

26 B. ~~When~~ After the horizontal and vertical extent and magnitude of the soil
27 contamination from the release has been fully characterized ~~in all media~~, owners and operators
28 shall perform a tier one evaluation as described below ~~and in the bureau's Guidelines for~~
29 Corrective Action. The owners and operators shall:

30 (1) develop a site conceptual exposure scenario using data collected in accordance
31 with ~~20.5.12.1202~~ 20.5.12.9, ~~20.5.12.1205~~ 20.5.12.12, ~~20.5.12.1209~~ 20.5.12.16 and ~~20.5.12.1214~~
32 20.5.12.19 NMAC ~~following the procedures outlined in the bureau's Guidelines for Corrective~~
33 Action; and

34 (2) for each receptor and each complete pathway identified in the site conceptual
35 exposure scenario: (a) determine representative concentrations of contaminants of concern in
36 soil samples from the ~~preliminary and secondary investigations, in accordance with the bureau's~~
37 ~~Guidelines for Corrective Action~~, and compare these concentrations to risk-based screening
38 levels (RBSLs); ~~or~~

39 (b) ~~compare concentrations of contaminants of concern in water samples to~~
40 ~~the applicable state WQCC and EIB water quality standards.~~

41 C. When representative concentrations of any contaminant of concern equal or
42 exceed any RBSL for any exposure pathway, owners and operators shall perform a tier two
43 evaluation unless otherwise directed by the department.

44 D. ~~When concentrations are less than RBSLs and all requirements of 20.5.12.1233~~
45 ~~NMAC have been met, owners and operators are eligible for "No Further Action" status for the~~
46 ~~release.~~

1 [20.5.12.1213 NMAC - Rp, 20 NMAC 5.12.1213, 8/15/03; A/Rn, 20.5.12.1213 x/xx/09]

2
3 ~~20.5.12.1214~~ 20.5.12.22 MINIMUM SITE ASSESSMENT, TIER ONE EVALUATION
4 REPORT:

5 A. Owners and operators shall submit a written report of the tier one evaluation in
6 accordance with a timeline issued or approved by the department or the timeline set forth in
7 Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC. ~~The report shall conform to the requirements of~~
8 ~~the bureau's Guidelines for Corrective Action in effect at the time of workplan was approved.~~

9 B. Owners and operators shall attach a statement signed by an authorized
10 representative of the qualified firm preparing the report for the owner or operator attesting to the
11 veracity of the information submitted in the report and attached documents.

12 C. The department shall review the report and notify owners and operators of any
13 inadequacies in the report ~~within 90 days~~ as soon as feasible. Owners and operators shall, within
14 14 days of such notice of inadequacy, correct the report and resubmit it to the department for
15 review and written approval. The department's failure to review or to comment on this report
16 shall not relieve the owner and operator of their responsibilities under this part or the law.

17 [20.5.12.1214 NMAC - Rp, 20 NMAC 5.12.1214, 8/15/03; A/Rn, 20.5.12.1214 x/xx/09]

18
19 ~~20.5.12.1215~~ 20.5.12.23 TIER TWO EVALUATION:

20 A. Owners and operators shall perform a tier two evaluation to determine site
21 specific target levels (SSTLs) for soil for any complete exposure pathway where contaminants of
22 concern exceed any RBSL, as described below, ~~and in the Guidelines for Corrective Action:~~
23 Owners and operators shall:

24 (1) ~~Owners and operators shall~~ modify the site conceptual exposure scenario as
25 appropriate, using information obtained in the secondary investigations; and

26 (2) ~~For each receptor and complete pathway identified in the site conceptual~~
27 ~~exposure scenario:~~

28 (a) compare representative concentration of contaminants of concern in soil
29 samples from the ~~preliminary and secondary~~ investigations to SSTLs in soil for each receptor
30 and complete pathway identified in the site conceptual exposure scenario.

31 (b) ~~Compare concentrations of contaminants of concern in water samples~~
32 ~~from the preliminary and secondary investigations to the applicable WQCC and EIB water~~
33 ~~quality standards.~~

34 B. When representative concentrations of contaminants of concern equal or exceed
35 any SSTL in soil for any complete exposure pathway, owners and operators shall remediate soil
36 to the SSTLs in accordance with ~~20.5.12.1226~~ 20.5.12.34 or ~~20.5.12.1233~~ 20.5.12.42 NMAC or,
37 if directed by the department, perform a tier three evaluation.

38 C. ~~When concentrations of contaminants of concern equal or exceed any WQCC or~~
39 ~~EIB standard in ground or surface water, owners and operators shall remediate water to that~~
40 ~~standard in accordance with 20.5.12.1226 or 20.5.12.1233 NMAC.~~

41 D. ~~When representative concentrations of all contaminants of concern are less than~~
42 ~~SSTLs and applicable WQCC or EIB standards and all requirements of 20.5.12.1234 NMAC~~
43 ~~have been met, the owner and operator are eligible for "No Further Action" status for the release.~~

44 E. ~~When sufficient data are available, and concentrations of contaminants of concern~~
45 ~~equal or exceed any WQCC standard in groundwater, owners and operators may petition the~~

1 ~~WQCC for consideration of a variance approving alternative abatement standards in accordance~~
2 ~~with 20.5.12.1237 NMAC.~~

3 [20.5.12.1215 NMAC - Rp, 20 NMAC 5.12.1215, 8/15/03; A/Rn 20.5.12.1215 x/xx/09]

4
5 ~~20.5.12.1216~~ 20.5.12.24 TIER TWO EVALUATION REPORT:

6 A. Owners and operators shall submit a written report of the tier two evaluation to
7 the department in accordance with a timeline issued or approved by the department or the
8 timeline set forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8. The report shall conform to the
9 requirements of ~~20.5.12.1202~~ 20.5.12.9 and ~~20.5.12.1215~~ 20.5.12.23 NMAC ~~and the bureau's~~
10 ~~Guidelines for Corrective Action in effect at the time the workplan was approved.~~

11 B. Owners and operators shall attach a statement signed by an authorized
12 representative of the qualified firm preparing the report for the owner or operator attesting to the
13 veracity of the information submitted in the report and attached documents.

14 C. The department shall review the report and notify owners and operators in writing
15 of any inadequacies in the report ~~within 90 days as soon as feasible~~. Owners and operators shall,
16 in accordance with a timeline issued or approved by the department or the ~~time line~~ timeline set
17 forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC, address the inadequacies identified and
18 resubmit the report to the department for review and written approval. The department's failure
19 to review or to comment on this report shall not relieve the owner and operator of their
20 responsibilities under this part or the law.

21 [20.5.12.1216 NMAC - Rp, 20 NMAC 5.12.1216, 8/15/03; A/Rn 20.5.12.1216 x/xx/09]

22
23 ~~20.5.12.1217~~ 20.5.12.25 TIER THREE EVALUATION:

24 A. In certain cases, including but not limited to complex hydrogeology or sensitive
25 ecological receptors, the department may require a tier three evaluation, in place of or in addition
26 to a tier two evaluation. Owners and operators shall perform the tier three evaluation in
27 accordance with ~~20.5.12.1202~~ 20.5.12.9 NMAC ~~and the bureau's Guidelines for Corrective~~
28 ~~Action in effect at the time the workplan was approved.~~

29 B. When representative concentrations exceed any SSTL determined in accordance
30 with this section or exceed any WQCC or EIB standard for any contaminant of concern, owners
31 and operators shall remediate the site to the SSTLs in soil and WQCC and EIB standards in
32 groundwater and surface water. ~~Owners and operators may petition the WQCC for consideration~~
33 ~~of a variance approving alternative abatement standards for groundwater in accordance with~~
34 ~~20.5.12.1237 NMAC.~~

35 ~~C. If representative concentrations do not exceed any SSTL for any contaminant of~~
36 ~~concern and groundwater and surface water are not contaminated in excess of WQCC and EIB,~~
37 ~~owners and operators may request "No Further Action" status in accordance with 20.5.12.1234~~
38 ~~NMAC.~~

39 [20.5.12.1217 NMAC - Rp, 20 NMAC 5.12.1217, 8/15/03; A/Rn 20.5.12.1217 x/xx/09]

40
41 ~~20.5.12.1218~~ 20.5.12.26 TIER THREE EVALUATION REPORT:

42 A. Owners and operators shall submit a written report of the tier three evaluation to
43 the department in accordance with a timeline issued or approved by the department or the
44 timeline set forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC. The report shall conform
45 to the requirements of ~~20.5.12.1202~~ 20.5.12.9 and ~~20.5.12.1217~~ 20.5.12.25 NMAC ~~and the~~
46 ~~bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.~~

1 B. Owners and operators shall attach a statement signed by an authorized
2 representative of the qualified firm preparing the report for the owner or operator attesting to the
3 veracity of the information submitted in the report and attached documents.

4 C. The department shall review the report and notify owners and operators of any
5 inadequacies in the report ~~within 90 days~~ as soon as feasible. Owners and operators shall, in
6 accordance with a timeline issued or approved by the department or the timeline set forth in
7 Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC, correct the report and resubmit it to the
8 department for review and written approval. The department's failure to review or to comment
9 on the report shall not relieve the owner and operator of their responsibilities under this part or
10 the law.

11 [20.5.12.1218 NMAC - Rp, 20 NMAC 5.12.1218, 8/15/03; A/Rn, 20.5.12.1218 x/xx/09]

12
13 ~~20.5.12.1219~~ 20.5.12.27 CORRECTIVE ACTION REQUIREMENTS FOR TOTAL
14 PETROLEUM HYDROCARBONS (TPH): In addition to comparing representative soil
15 concentrations for all contaminants of concern to risk-based screening levels (RBSLs) and site-
16 specific target levels (SSTLs) and concentrations in groundwater and surface water to applicable
17 WQCC and EIB standards, in accordance with ~~20.5.12.1202~~ 20.5.12.9, ~~20.5.12.1213~~ 20.5.12.21,
18 ~~20.5.12.1215~~ 20.5.12.23 and ~~20.5.12.1217~~ 20.5.12.25 NMAC, owners and operators shall
19 mitigate, remediate, or remove TPH contamination in soil and groundwater, when directed by the
20 department based upon a determination by the department that the TPH contamination adversely
21 affects public health, safety and welfare or the environment.

22 [20.5.12.1219 NMAC - Rp, 20 NMAC 5.12.1219, 8/15/03; A/Rn 20.5.12.1219 x/xx/09]

23
24 ~~20.5.12.1220~~ 20.5.12.28 MONITORED NATURAL ATTENUATION:

25 A. When directed or approved by the department, owners and operators shall submit
26 a plan for monitored natural attenuation to the department if any of the following conditions have
27 been identified at the site:

28 (1) concentrations of contaminants of concern exceed site-specific target levels
29 (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water; or

30 (2) other conditions exist as a result of the release which threaten public health,
31 safety and welfare or the environment, as determined by the department.

32 B. Owners and operators shall submit the monitored natural attenuation plan in
33 accordance with this section and 20.5.12.29 NMAC and ~~in the bureau's Guidelines for Corrective~~
34 ~~Action and in~~ accordance with a timeline issued or approved by the department or the timeline
35 set forth in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC.

36 C. The intent of the monitored natural attenuation plan is to provide a written
37 description of the methodology proposed and demonstrate how the plan will achieve target
38 concentrations in a manner that is practicable, cost effective, and protective of public health,
39 safety and welfare and the environment. The content of the monitored natural attenuation plan,
40 at a minimum and as appropriate, shall include:

41 (1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all
42 existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing
43 petroleum storage tanks and ancillary equipment, other sources of contamination, extent and
44 magnitude of contamination, and existing and proposed monitoring wells;

45 (2) cross sections showing the source contaminant mass in relation to the
46 groundwater contamination;

1 (3) a topographic map of appropriate scale showing the site in relation to existing
2 and reasonably foreseeable future receptors;

3 (4) concentration contour maps depicting the extent and magnitude of the
4 contaminants of concern and the designated monitoring wells in relation to the site;

5 (5) a schematic drawing depicting the construction details including lithology and
6 screen intervals for the designated monitoring wells;

7 (6) the justification for selecting the designated monitoring wells;

8 (7) the recommended approach to monitoring including an implementation and
9 monitoring schedule, the analytical methods, and the justification for the recommendation;

10 (8) an estimation of the time necessary for achieving target concentrations, and a
11 demonstration through calculations or other appropriate means which supports this schedule;

12 (9) a contingency plan in case of a change in site conditions that threatens public
13 health, safety and welfare or the environment; ~~and~~

14 (10) ~~public notice;~~ and in conformance with the following requirements:

15 (a) owners and operators shall publish a legal notice of the submission or
16 planned submission of the monitored natural attenuation plan at least twice in a paper of general
17 circulation in the county in which soil or water has been contaminated by the release. The first
18 notice shall appear within one week of, but not later than, the day of submission of the monitored
19 natural attenuation plan to the department. The second publication of this notice shall occur no
20 later than seven days after the date the monitored natural attenuation plan is submitted to the
21 department, and owners and operators shall submit two certified affidavits of publication from
22 the newspaper to the department within 21 days after the date the monitored natural attenuation
23 plan is submitted;

24 (b) the notice shall contain the information specified in this section ~~and in~~
25 ~~the bureau's Guidelines for Corrective Action~~ including the following:

26 (i) a statement that a monitored natural attenuation plan has been
27 submitted to the department proposing actions to monitor natural attenuation of a release of
28 petroleum products;

29 (ii) the name and physical address of the site at which the release
30 occurred and the names and physical addresses of properties where any part of contaminant
31 plume is located, using adequate identification of the properties, including street addresses if
32 applicable;

33 (iii) a statement that a copy of the monitored natural attenuation plan
34 and all data and modeling related to the monitored natural attenuation plan, if applicable, can be
35 viewed at the department's main office and at the department's field office for the area in which
36 the release occurred; and

37 (iv) a statement that public comments on the plan must be delivered
38 within ~~twenty one (21)~~ days of the publication of the second notice, to the owner or operator's
39 assigned project manager at the petroleum storage tank bureau, New Mexico environment
40 department, 2044 Galisteo Street, Santa Fe, New Mexico 87504, or a district office if approved
41 by the department, and to the secretary of the environment department;

42 (c) within seven days of the date a monitored natural attenuation plan is
43 submitted to the department, owners and operators shall also mail by certified mail a copy of the
44 legal notice to adjacent property owners; and

45 (d) owners and operators shall post a notice of the submission of the
46 monitored natural attenuation plan at the release site within seven days of the submission of the

1 monitored natural attenuation plan. The notice shall contain the information specified in this
2 subsection and ~~the bureau's Guidelines for Corrective Action~~ and shall be at least 8.5 inches by
3 11 inches in size and prominently displayed in a location where it is likely to be seen by
4 members of the public for a continuous period until the monitored natural attenuation plan is
5 approved and implemented. Public comments must be received by the department within 21 days
6 of the date of the second publication of the public notice; and

7 (11) other requirements as directed by the department.

8 [20.5.12.1220 NMAC - N, 8/15/03; A/Rn 20.5.12.1220 x/xx/09]

9 [The address of the department's petroleum storage tank bureau, remediation section is: 1301
10 Siler Road, Building B, Santa Fe, New Mexico 87507.]

11
12 ~~20.5.12.1221~~ 20.5.12.29 REVIEW AND APPROVAL OF MONITORED NATURAL
13 ATTENUATION PLAN:

14 A. ~~Within 60 days of receipt of the monitored natural attenuation plan and a~~ After the
15 public comment period has ended, the department shall review the plan and shall either approve
16 the plan or notify the owner and operator in writing of the deficiencies of the plan. If the
17 secretary determines that a decision on the monitored natural attenuation plan must be postponed
18 due to significant comments from the public, the department ~~must~~ shall notify the owner and
19 operator within 30 days of such a postponement, and may extend its review period for a period
20 not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines
21 calculated from the end of the review period will be adjusted to reflect any extension.

22 B. The department may approve a monitored natural attenuation plan and impose
23 reasonable conditions.

24 C. If the department determines that the monitored natural attenuation plan is
25 inadequate, owners and operators shall modify the plan to correct the deficiencies specified by
26 the department and re-submit it within the time period specified by the department.

27 D. The department may provide notice of the submission of the monitored natural
28 attenuation plan to persons other than the owner and operator and provide for public participation
29 in the review process as the department deems appropriate or when there is significant public
30 interest. In the event that an informal public meeting, public hearing or other form of public
31 participation is conducted, the department may postpone its decision on the monitored natural
32 attenuation plan ~~for more than 60 days as required in Subsection A of this section~~ until after a
33 public hearing or meeting is held and a determination is made. Any public hearing or meeting
34 that is held due to significant public interest ~~should~~ shall be held within 60 days of determining
35 that there is significant public interest.

36 [20.5.12.1221 NMAC - N, 8/15/03; A/Rn 20.5.12.1221 x/xx/09]

37
38 ~~20.5.12.1222~~ 20.5.12.30 MONITORED NATURAL ATTENUATION PLAN
39 IMPLEMENTATION:

40 A. Owners and operators shall implement the approved monitored natural attenuation
41 plan in accordance with a timeline issued or approved by the department or the timeline set forth
42 in Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC.

43 B. Owners and operators shall monitor the contamination until the department
44 determines that the natural attenuation is determined to be complete pursuant to this part, or
45 unless otherwise approved by the department;.

46 [20.5.12.1222 NMAC - N, 8/15/03; A/Rn, 20.5.12.1222 x/xx/09]

1
2 ~~20.5.12.1223~~ 20.5.12.31 REPORTS ON THE MONITORED NATURAL ATTENUATION:

3 A. Owners and operators shall submit written reports to the department on the
4 progress of the ~~contamination decay by~~ monitored natural attenuation. ~~The reports shall be~~
5 ~~submitted~~ Owners and operators shall submit the reports annually unless otherwise a different
6 reporting period is directed or approved by the department and shall document all work
7 performed during the preceding interval and shall include at a minimum the following
8 information, as appropriate:

9 (1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all
10 existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing
11 petroleum storage tanks and ancillary equipment, other sources of contamination, extent and
12 magnitude of contamination, and existing and proposed monitoring wells;

13 (2) a topographic map of appropriate scale showing the site in relation to existing
14 and reasonably foreseeable future receptors;

15 (3) concentration contour maps depicting the extent and magnitude of the
16 contaminants of concern and the designated monitoring wells in relation to the site;

17 (4) tabulation of the current and historical results of all water quality analyses and
18 water elevation data;

19 (5) graphs of appropriate scale of the current and historical water quality analyses
20 and water elevation data versus time;

21 (6) data evaluation and interpretation, and recommendations; and

22 (7) other information required by the department.

23 B. Owners and operators shall submit the report within 30 days of the end of the
24 reporting period or as otherwise approved by the department.

25 [20.5.12.1223 NMAC - N, 8/15/03; A/Rn, 20.5.12.1223 x/xx/09]

26
27 ~~20.5.12.1224~~ 20.5.12.32 ANNUAL EVALUATION OF MONITORED NATURAL
28 ATTENUATION PLAN:

29 A. Owners and operators shall evaluate the effectiveness of the monitored natural
30 attenuation ~~approach plan~~ at the end of each year of monitoring and submit the evaluation to the
31 department for review unless otherwise approved or directed by the department.

32 B. When the department determines that the ~~approach plan~~ is not effectively
33 mitigating contamination according to the identified risks to public health, safety and welfare or
34 the environment, owners and operators shall propose an alternative approach or change in the
35 existing monitored natural attenuation plan within 30 days of the department's determination of
36 ineffectiveness. Within 30 days of the department's approval, owners and operators shall
37 implement the approved changes.

38 C. After implementation of any modification, owners and operators shall repeat
39 annually the evaluation process described in this section.

40 [20.5.12.1224 NMAC - N, 8/15/03; A/Rn, 20.5.12.1224 x/xx/09]

41
42 ~~20.5.12.1225~~ 20.5.12.33 MODIFICATION OF MONITORED NATURAL ATTENUATION
43 PLAN:

44 A. Owners and operators may petition the department to approve a modification of
45 the monitored natural attenuation plan for good cause.

1 B. ~~A monitored natural attenuation plan may only be modified~~ The department may
2 approve a modification of the monitored natural attenuation plan only if the modification is
3 approved by the department and if such modification provides adequate protection of public
4 health, safety and welfare and the environment and the owner or operator complies with the
5 public notice requirements of ~~20.5.12.1220~~ 20.5.12.28 NMAC.
6 [~~20.5.12.1225~~ NMAC - N, 8/15/03; A/Rn, 20.5.12.1225 x/xx/09]

7
8 ~~20.5.12.1226~~ 20.5.12.34 COMPLETION OF MONITORED NATURAL ATTENUATION:

9 A. Natural attenuation shall be considered complete when all of the following criteria
10 are met:

11 (1) no layer of NAPL greater than one-eighth inch in thickness is present on the
12 water table or in any of the wells;

13 (2) the ~~following~~ EIB standard of 0.1 mg/L for methyl tertiary butyl ether
14 (MTBE) has been met in groundwater and surface water: ~~methyl tertiary butyl ether (MTBE),~~
15 ~~dissolved concentration: 0.1 mg/L;~~

16 (3) all applicable site-specific target levels or risk-based screening levels in soil
17 and WQCC and EIB standards in groundwater have been achieved:

18 (a) the applicable standards shall be achieved concurrently at all compliance
19 wells ~~for at least eight consecutive quarters unless otherwise~~ as approved by the department.

20 (b) for verification that soil has reached target concentrations, owners and
21 operators shall install at least four soil borings, at least three of which are distributed throughout
22 the previously most contaminated portion of the vadose zone, unless otherwise approved by the
23 department;

24 (4) corrective action requirements for total petroleum hydrocarbons determined in
25 accordance with ~~20.5.12.1219~~ 20.5.12.27 NMAC have been met; and

26 (5) any other conditions which threatened public health, safety and welfare or the
27 environment have been abated.

28 B. If any of the conditions of Paragraphs (1) through (5) of Subsection A of this
29 section are not met, the department may require owners and operators to perform additional
30 remediation.

31 C. ~~If any of the target concentrations set forth or determined in accordance with this~~
32 ~~part are not met, owners and operators may request a determination by the department of~~
33 ~~technical infeasibility, may petition the New Mexico water quality control commission for a~~
34 ~~variance approving an alternative abatement standard, or may request approval by the~~
35 ~~department of a demonstration of equivalent protection, in accordance with 20.5.12.1237~~
36 ~~NMAC, for the MTBE standard in Subsection A of this section.~~

37 ~~D.~~ Termination of monitored natural attenuation in accordance with this section does
38 not relieve the owner and operator of any other liability or responsibility they may have under
39 this part or any other federal, state or local law or regulation.

40 ~~E.D.~~ Following department approval, and with 30 days notice unless otherwise
41 approved by the department, owners and operators shall properly abandon wells that are no
42 longer needed for monitoring, in accordance with law federal, state and local laws and
43 regulations ~~and using methods described in the bureau's Guidelines for Corrective Action which~~
44 ~~were in effect at the time the workplan was approved.~~

45 [~~20.5.12.1226~~ NMAC - N, 8/15/03; A/Rn, 20.5.12.1226 x/xx/09]

1 ~~20.5.12.1227~~ 20.5.12.35 CONCEPTUAL REMEDIATION PLAN:

2 A. When directed or approved by the department, owners and operators shall submit
3 ~~both a conceptual and a final~~ remediation plan to the department if any of the following
4 conditions have been identified at the site:

5 (1) a thickness of greater than one-eighth inch of NAPL is present on the surface
6 of the water, including in any excavation pit, or in any well;

7 (2) contaminant saturated soil is present;

8 (3) concentrations of contaminants of concern exceed site-specific target levels
9 (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water;

10 (4) total petroleum hydrocarbons in soil meet the criteria outlined in ~~20.5.12.1219~~
11 20.5.12.27 NMAC; or

12 (5) other conditions exist as a result of the release which threaten public health,
13 safety and welfare or the environment, as determined by the department.

14 B. All remediation plans shall include but are not [~~be~~] limited to methods to mitigate,
15 remove or otherwise remediate the contaminant source areas.

16 C. Owners and operators shall submit the conceptual remediation plan in accordance
17 ~~with the bureau's Guidelines for Corrective Action and in accordance with this section and a~~
18 ~~timeline issued or approved by the department or the timeline set forth in Subsection D of~~
19 ~~20.5.12.1200~~ 20.5.12.8 NMAC.

20 (1) ~~The intent of the~~ conceptual remediation plan is to shall provide a written
21 description of all of the methodologies proposed and ~~demonstrate~~ discuss how the plan will
22 achieve target concentrations and other goals of remedial action in a manner that is practicable,
23 cost effective, and protective of public health, safety and welfare and the environment. Owners
24 and operators shall obtain department approval for the conceptual remediation plan before
25 developing the final remediation plan.

26 (2) ~~The content of the~~ conceptual remediation plan, at a minimum and as
27 appropriate, shall include:

28 (a) a concise description of site conditions, including hydrogeology,
29 contaminant characteristics and plume dynamics;

30 (b) the recommended approach to remediation and justification for the
31 recommendation;

32 ~~(b)(c)~~ (c) a clear description of the goals of remediation and the target
33 concentrations to be met in each medium;

34 ~~(e)(d)~~ (d) a narrative description of the proposed methodologies including a
35 ~~comparative economic analysis~~ preliminary cost comparison and time[-]lines for achieving goals
36 of remediation;

37 ~~(d)(e)~~ (e) a cost estimate of implementation including installation, operation
38 and maintenance, and monitoring;

39 ~~(e)(f)~~ (f) a schematic diagram of the proposed remediation system or treatment
40 area and a narrative description of its operation;

41 ~~(f)(g)~~ (g) a plan view, to scale, of the site showing locations of the proposed
42 equipment or excavation boundaries in relation to the site's physical features and contaminant
43 plumes; ~~and~~

44 ~~(g)(h)~~ (h) a description of how the approach will achieve target concentrations
45 and other goals of remediation; and

1 ~~(h)(i)~~ a description of additional data required to support the conceptual
2 remediation plan and design of the final plan and how it will be collected. ~~This may include but~~
3 ~~is not limited to pilot testing and evaluation of contaminant plume dynamics.~~

4 [20.5.12.1227 NMAC - Rp, 20 NMAC 5.12.1220, 8/15/03; A/Rn, 20.5.12.1227 x/xx/09]

5
6 20.5.12.36 FINAL REMEDIATION PLAN

7 ~~D. A.~~ Following department approval of the conceptual remediation plan, owners and
8 operators shall develop a final remediation plan in accordance with this section ~~and the bureau's~~
9 ~~Guidelines for Corrective Action in effect at the time the workplan was approved~~ and shall
10 submit three copies of the final remediation plan to the department in accordance with a timeline
11 issued or approved by the department or the timeline set forth in Subsection D of ~~20.5.12.1200~~
12 20.5.12.8 NMAC.

13 ~~E. B.~~ The design and engineering of any final remediation plan that includes
14 mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis
15 shall be the responsibility of a professional engineer as defined in 20.5.1.7 NMAC. A
16 professional engineer shall sign and seal ~~A~~ all plans and drawings required pursuant to this
17 section, unless otherwise approved by the department, ~~shall be signed and sealed by a~~
18 ~~professional engineer.~~

19 ~~F. C.~~ In order to eliminate the potential to emit regulated substances to the
20 environment, all engineered remediation systems shall be designed, constructed and operated
21 such that malfunction or failure of any integral component results in automatic shut down of the
22 entire system. Integral components include but are not limited to pumps, blowers, oil-water
23 separators, oxidizer systems, air strippers, filtration systems and computers.

24 ~~G. D.~~ All final remediation plans shall, at a minimum, include all of the following:

25 (1) goals of remediation and target concentrations to be achieved in each medium;
26 (2) a site plan drawn to scale of no less than one inch equals 40 feet, showing all
27 existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing
28 storage tanks, other sources of contamination, extent and magnitude of contamination, and
29 existing and proposed monitoring wells;

30 (3) a hydrogeologic cross section showing contaminant mass in relation to the
31 remediation system and a topographic map of appropriate scale showing the site in relation to
32 existing and reasonably foreseeable future receptors;

33 (4) an implementation schedule;

34 (5) engineered plans and specifications in accordance with Subsection E of this
35 section;

36 ~~(5)(6)~~ a schedule for remediation of the source areas, for protection of receptors
37 identified in Paragraph (1) of this subsection, and for achieving target concentrations, and a
38 demonstration through calculations or other appropriate means which supports this schedule;

39 ~~(6)(7)~~ a design and schedule for a system optimization that meets the
40 requirements of ~~20.5.12.1234~~ 20.5.12.40 NMAC;

41 ~~(7)(8)~~ a contingency plan in case of a change in site conditions that threatens
42 public health, safety and welfare or the environment;

43 ~~(8)(9)~~ copies of all permits, permit applications, and property access agreements
44 required ~~for to initiate remediation,~~ including, if necessary, permits required by the state
45 engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air
46 emissions or a surface water national pollution discharge elimination system (NPDES) permit;

1 ~~(9)~~(10) public notice in conformance with the following requirements:

2 (a) owners and operators shall publish a legal notice of the submission or
3 planned submission of the final remediation plan at least twice in a paper of general circulation
4 in the county in which soil or water has been contaminated by the release. The first notice shall
5 appear within one week of, but not later than, the day of submission of the final remediation plan
6 to the department. The second publication of this notice shall occur no later than seven days
7 after the date the remediation plan is submitted to the department, and owners and operators shall
8 submit two certified affidavits of publication from the newspaper to the department within 21
9 days after the date the final remediation plan is submitted;

10 (b) the notice shall contain the information specified in this section ~~and in~~
11 ~~the bureau's Guidelines for Corrective Action~~ including the following:

12 (i) a statement that a remediation plan has been submitted to the
13 department proposing actions to remediate a release of petroleum products;

14 (ii) the name and physical address of the site at which the release
15 occurred and the names and physical addresses of properties where any part of the remediation
16 system will be located, using adequate identification of the properties, including street addresses
17 if applicable;

18 (iii) a statement that a copy of the remediation plan and all data and
19 modeling related to the remediation plan, if applicable, can be viewed at the department's main
20 office and at the department's field office for the area in which the release occurred; and

21 (iv) a statement that public comments on the plan must be delivered,
22 within ~~twenty one (21)~~ days of the publication of the second notice, to the ~~Petroleum Storage~~
23 ~~Tank Bureau, New Mexico Environment Department, 2044 Galisteo Street, Santa Fe, New~~
24 ~~Mexico 87504~~ owner or operator's assigned project manager at the petroleum storage tank
25 bureau, New Mexico environment department, or a district office if approved by the department,
26 and to the secretary of the environment department;

27 (c) within seven days of the date a remediation plan is submitted to the
28 department, owners and operators shall also mail by certified mail a copy of the legal notice to
29 adjacent property owners; and

30 (d) owners and operators shall post a notice of the submission of the
31 remediation plan at the release site within seven days of the submission of the remediation plan.
32 The notice shall contain the information specified in this subsection ~~and the bureau's Guidelines~~
33 ~~for Corrective Action~~ and shall be at least 8.5 inches by 11 inches in size and prominently
34 displayed in a location where it is likely to be seen by members of the public for a continuous
35 period until the remediation plan is approved and implemented. Public comments must be
36 received by the department within 21 days of the date of the second publication of the public
37 notice;

38 ~~(10)~~(11) for sites where contaminated media are being removed, a description of
39 the ultimate disposal site of contaminated media, location of excavation and trenching, and
40 method of limiting access by pedestrian and vehicular traffic; and

41 ~~(11)~~(12) other requirements as directed by the department.

42 H.E. In addition to the requirements of Subsection ~~[F]~~ D of this section, all final
43 remediation plans ~~which include mechanical or electrical equipment, engineered fill, pinning,~~
44 ~~shoring or slope stability analysis~~ shall include ~~all of the following:~~

45 (1) for engineered systems:

1 ~~(1)~~(a) unless otherwise approved by the department, a complete and definitive
2 engineering design for a mechanical, electrical, or constructed system, including drawings, plans,
3 diagrams and specifications which are signed and sealed by a professional engineer;

4 ~~(2)~~(b) process and instrumentation diagrams;

5 ~~(3)~~(c) mechanical arrangement plans and elevations, drawn to scale, showing
6 proposed wells, manifolds, piping details, instrumentation and sampling ports;

7 ~~(4)~~(d) details of vapor or fluid extraction or injection wells, as appropriate,
8 including screen length and placement in relation to ground surface, normal and low water table
9 elevations and geologic strata, screen slot size, depths and specifications of the filter pack and
10 seal, and drilling method;

11 ~~(5)~~(e) equipment and parts list and specifications including a spare parts list,
12 performance requirements, maintenance requirements and schedule;

13 ~~(6)~~(f) electric power requirements including a one-line diagram and schematics;

14 ~~(7)~~(g) operation and maintenance commitments and schedules for all facets of
15 the remediation system; and

16 ~~(8)~~(h) all other plans, diagrams and specifications that are necessary to properly
17 construct and operate the remediation system in accordance with the remediation plan including
18 but not limited to requirements for:

19 ~~(a)~~(i) trenching and protection from traffic;

20 ~~(b)~~(ii) concrete repair and replacement;

21 ~~(c)~~—protection of equipment from weather and vandalism;

22 ~~(d)~~(iii) restoration of property; and

23 ~~(e)~~(iv) location and protection of underground utilities.

24 (2) for excavation and disposal plans:

25 (a) plan view of proposed excavation relative to contaminant plume;

26 (b) cross-sections of proposed excavation depicting overburden,
27 contaminated material to be removed and backfill;

28 (c) volume calculations and slope stability analysis;

29 (d) description of excavation and backfill procedure to be performed in
30 conformance with OSHA and ASTM standards and regulations;

31 (e) traffic control plan;

32 (f) description of post-excavation of confirmation sampling;

33 (g) proposed final grade plan;

34 (h) post-excavation grade survey; and

35 (i) all other plans, diagrams and specifications that are necessary including
36 but not limited to requirements for:

37 (i) trenching and protection from traffic;

38 (ii) concrete repair and replacement;

39 (iii) restoration of property; and

40 (iv) location and protection of underground utilities.

41 [20.5.12.1227 NMAC - Rp, 20 NMAC 5.12.1220, 8/15/03; A/Rn, 20.5.12.1227 x/xx/09]

42 [The address of the petroleum storage tank bureau, remediation section is: 1301 Siler Road,
43 Building B, Santa Fe, New Mexico 87507.]

44
45 ~~20.5.12.1228~~ 20.5.12.37 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:

1 A. ~~Within 60 days of receipt of the final remediation plan and after the public~~
2 ~~comment period has ended,~~ The department shall review the plan and shall either approve the
3 plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary
4 determines that a decision on the remediation plan must be postponed due to significant
5 comments from the public, the department must notify the owner and operator within 30 days of
6 such a postponement, and may extend its review period for a period not to exceed 60 days unless
7 otherwise provided in Subsection D of this section. All deadlines calculated from the end of the
8 review period will be adjusted to reflect any extension.

9 B. The department may approve a final remediation plan and impose reasonable
10 conditions.

11 C. If the department determines that the final remediation plan is inadequate, owners
12 and operators shall modify the plan to correct the deficiencies specified by the department and
13 re-submit it within the time period specified by the department.

14 D. The department may provide notice of the submission of the remediation plan to
15 persons other than the owner and operator and provide for public participation in the review
16 process as the department deems appropriate or when there is significant public interest. In the
17 event ~~that~~ an informal public meeting, public hearing or other form of public participation is
18 conducted, the department may postpone its decision on the final remediation plan ~~for more than~~
19 ~~60 days as required in Subsection A of this section~~ until after a public hearing or meeting is held
20 and a determination is made. Any public hearing or meeting that is held due to significant public
21 interest ~~should~~ shall be held within 60 days of determining ~~that~~ there is significant public
22 interest.

23 [20.5.12.1228 NMAC - Rp, 20 NMAC 5.12.1221, 8/15/03; A/Rn, 20.5.12.1228 x/xx/09]

24
25 ~~20.5.12.1229~~ 20.5.12.38 IMPLEMENTATION OF FINAL REMEDIATION PLAN:

26 A. Owners and operators shall implement the approved, final remediation plan in
27 accordance with a timeline issued or approved by the department or the timeline set forth in
28 Subsection D of ~~20.5.12.1200~~ 20.5.12.8 NMAC. ~~When applicable,~~ Owners and operators shall
29 employ a professional engineer to ensure conformance with the final remediation plan including
30 excavation and installation, commissioning and operation of the system.

31 B. When the remediation plan includes mechanical or electrical equipment,
32 engineered fill, pinning, shoring or slope stability analysis:

33 (1) a professional engineer shall supervise conformance with the final remediation
34 plan including installation, commissioning and operation of the system ~~shall be performed under~~
35 ~~the supervision of a professional engineer;~~

36 (2) owners and operators shall operate the remediation system continuously until
37 the remediation is terminated pursuant to this part unless otherwise approved by the department;
38 and

39 (3) owners and operators shall report to the department all interruptions of the
40 operation of the remediation system [of] greater than 72 hours ~~to the department.~~

41 C. Owners and operators shall obtain written approval from the department prior to
42 implementing any change to the department-approved engineering design.

43 D. Following ~~installation and start-up of remediation system with electrical or~~
44 ~~mechanical components, engineered fill, pinning, shoring or slope stability analysis~~
45 implementation of the final remediation plan, owners and operators shall submit an "as-built"
46 drawings report signed and sealed by the project professional engineer showing including:

1 (1) any deviations from the drawings and specifications included in the final
2 remediation plan;

3 (2) a tabulation of pertinent data including but not limited to flow rates, pressures,
4 temperatures, and contaminant concentrations and groundwater elevations at start-up, and boring
5 logs and well completion diagrams; and

6 (3) ~~an inventory~~ information and documentation of purchased major remediation
7 equipment including, but not limited to serial number, model and manufacturer, description,
8 warranty information, operating manuals, maintenance requirements and purchase price.

9 [20.5.12.1229 NMAC - Rp, 20 NMAC 5.12.1222, 8/15/03; A/Rn, 20.5.12.1229 x/xx/09]

10
11 ~~20.5.12.1230~~ 20.5.12.39 QUARTERLY REPORTS ON THE REMEDIATION:

12 A. Owners and operators shall submit written reports to the department on the
13 operation of the remediation system. Owners and operators shall submit ~~T~~ the reports ~~shall be~~
14 ~~quarterly unless otherwise a different reporting period is approved by the department, and~~ shall
15 document all work performed during the preceding interval, and shall include the following
16 information, as appropriate:

17 (1) tabulation of the current and historical results of all water quality analyses and
18 water elevation data ~~in accordance with the requirements of the bureau's Guidelines for~~
19 ~~Corrective Action;~~

20 (2) evaluation of the performance and efficiency of each aspect of the
21 remediation:

22 (a) ~~This~~ the evaluation and all adjustments to system operation shall be
23 performed, as appropriate, under the direct, responsible, supervisory control of an authorized
24 representative of the qualified firm ~~or, when required, and~~ a professional engineer.

25 (b) owners and operators shall submit evidence that the performance of the
26 remediation system meets the operating standards outlined in the final remediation plan;

27 (3) verification based on calculations ~~verifying~~ that the schedule is being met for
28 source removal, protection of actual and potential receptors, ~~and~~ achievement of target
29 concentrations. ~~Owners and operators shall determine, quarterly and cumulative contaminant~~
30 ~~mass reduction totals to date in pounds and gallons of contaminants and shall provide the~~
31 ~~supporting calculations and documentation;~~

32 (4) records of system operation, including details but not limited to, periods of
33 shut-down and equipment malfunctions; the maintenance procedures performed on the
34 remediation system during the preceding quarter, including the names of the individuals
35 performing the maintenance; and an operation and maintenance schedule for the next quarter;

36 (5) ~~the amount of NAPL recovered~~ recovery, both cumulative and quarterly, and
37 details of its disposal;

38 (6) effluent vapor concentrations over time;

39 (7) evaluation and recommendations for improving the performance of the system
40 to achieve the goals of remediation; and

41 (8) other information required by the department.

42 B. Owners and operators shall submit the report within 30 days of the end of the
43 reporting period or as otherwise approved by the department.

44 [20.5.12.1230 NMAC - Rp, 20 NMAC 5.12.1223, 8/15/03; A/Rn, 20.5.12.1230 x/xx/09]

45
46 ~~20.5.12.1234~~ 20.5.12.40 ANNUAL EVALUATION OF REMEDIATION:

1 A. Owners and operators shall evaluate the effectiveness of the approach to
2 remediation at the end of each year of operation and submit the evaluation to the department for
3 review.

4 B. When the department determines that the approach to remediation is not
5 effectively remediating contamination according to the identified risks to public health, safety
6 and welfare and the environment, owners and operators shall propose an alternative approach or
7 change in the existing remediation plan within 30 days of the department's determination of
8 ineffectiveness. Within 30 days of the department's approval, owners and operators shall
9 implement the approved changes.

10 C. After implementation of any modification, owners and operators shall repeat
11 annually the evaluation process described in this section until monitoring to verify completion of
12 remediation in accordance with ~~20.5.12.1233~~ 20.5.12.42 NMAC commences.
13 [20.5.12.1231 NMAC - Rp, 20 NMAC 5.12.1224, 8/15/03; A/Rn, 20.5.12.1231 x/xx/09]
14

15 ~~20.5.12.1232~~20.5.12.41 MODIFICATION OF FINAL REMEDIATION PLAN:

16 A. Owners and operators may petition the department to approve a modification of
17 the final remediation plan for good cause.

18 B. ~~A remediation plan may only be modified if the modification is approved by the~~
19 ~~department, The department may modify a final remediation plan only if it~~ complies with
20 applicable regulations, ~~and~~ provides adequate protection of public health, safety and welfare and
21 the environment, and the owner and operator comply with the public notice requirements of
22 ~~20.5.12.1227~~ 20.5.12.34 NMAC.

23 [20.5.12.1232 NMAC - Rp, 20 NMAC 5.12.1225, 8/15/03; A/Rn, 20.5.12.1232 x/xx/09]
24

25 ~~20.5.12.1233~~20.5.12.42 COMPLETION OF REMEDIATION:

26 A. ~~Remediation shall be considered~~ The department shall consider remediation
27 complete when all of the following criteria are met:

28 (1) no layer of NAPL greater than one-eighth inch in thickness is present on the
29 water table or in any of the wells;

30 (2) the ~~following~~ EIB standard of 0.1 mg/L for methyl tertiary butyl ether
31 (MTBE) has been met in groundwater and surface water ~~:- Methyl tertiary butyl ether (MTBE),~~
32 ~~dissolved concentration: 0.1 mg/L; and~~

33 (3) all applicable site-specific target levels or risk-based screening levels in soil
34 and WQCC and EIB standards in groundwater have been achieved.

35 (a) All electrical and mechanical components of the remediation system
36 shall remain shut down ~~for~~ during the monitoring period described in this subsection.

37 (b) The department shall approve the designation of certain monitoring
38 wells as compliance wells. The applicable standards shall be achieved concurrently at all
39 compliance wells for at least eight consecutive quarters unless otherwise as approved by the
40 department.

41 (c) For verification of remediation of soil to target concentrations, owners
42 and operators shall install at least four soil borings, at least three of which are distributed
43 throughout the previously most contaminated portion of the vadose zone, ~~unless otherwise as~~
44 approved by the department;

45 (4) corrective action requirements for total petroleum hydrocarbons determined in
46 accordance with ~~20.5.12.1219~~ 20.5.12.27 NMAC have been met; and

1 (5) any other conditions which threatened public health, safety and welfare or the
2 environment have been abated or remediated.

3 B. If any of the conditions of Paragraphs (1) through (5) of Subsection A of this
4 section are not met, the department may require owners and operators to perform additional
5 remediation.

6 C. Notwithstanding the conditions in Subsection A of this section, owners and
7 operators may continue to operate the mechanical and electrical components of the remediation
8 system when it is effectively reducing contaminant concentrations, as determined and approved
9 by the department.

10 D. ~~If any of the target concentrations set forth or determined in accordance with this~~
11 ~~part are not met, owners and operators may request a determination by the department of~~
12 ~~technical infeasibility, may petition the New Mexico Water Quality Control Commission for a~~
13 ~~variance approving an alternative abatement standard, or may request approval by the~~
14 ~~department of a demonstration of equivalent protection, in accordance with 20.5.12.1237~~
15 ~~NMAC, for the MTBE standard in Subsection A of this section.~~

16 E. Termination of remediation in accordance with this section does not relieve the
17 owner and operator of any other liability or responsibility they may have under this part or any
18 other federal, state or local law or regulation.

19 ~~F.E.~~ Following department approval, ~~and with 30 days notice unless otherwise~~
20 ~~approved by the department,~~ owners and operators shall decommission the electrical and
21 mechanical components of the remediation system and properly abandon wells that are no longer
22 needed for remediation or monitoring, in accordance with federal, state and local laws and
23 regulations ~~and using methods described in the bureau's Guidelines for Corrective Action which~~
24 ~~were in effect at the time the workplan was approved.~~

25 [20.5.12.1233 NMAC - Rp, 20 NMAC 5.12.1226, 8/15/03; A/Rn, 20.5.12.1233 x/xx/09]

26
27 20.5.12.43 PROPERTY REUSE DETERMINATION:

28 A. A property reuse determination is a technical determination issued by the
29 department for sites contaminated by releases from petroleum storage tank systems to promote
30 their redevelopment and productive use. The property reuse determination shall only apply to
31 sites that have iron and manganese in groundwater above WQCC standards. A property reuse
32 determination is not a clean-closure certification or grounds for a no further action determination,
33 nor does it provide indemnification of an owner or operator from current or future environmental
34 liabilities or obligations. Further action at a property reuse site may be required under the
35 WQCC rules.

36 B. Any owner or operator may request that the department evaluate a site, multiple
37 sites, or a portion of a site for a property reuse determination by submitting a written request to
38 the department. The request shall include the following:

39 (1) description of the current and proposed future land use(s) of the site;
40 (2) description of the site including a historical overview and generalized
41 description of businesses, structures, vegetation, other prominent features, and location of the
42 site;

43 (3) surveyed plat of the site, and/or site map with legal description;
44 (4) completed current environmental conditions table listing all areas of
45 environmental concern on the site subject to remediation. The table shall include the following
46 information about each area of environmental concern:

- 1 (a) remedial action taken, date, regulatory agency;
2 (b) residual concentrations of contaminants of concern, including
3 WQCC standards that have not been achieved; and
4 (c) clean-up standards for contaminants of concern;
5 (5) chronology of events for each area investigated or remediated;
6 (6) monitoring plan to ensure that the current and proposed future use(s)
7 upon which the determination is dependent are maintained , if appropriate;
8 (7) affirmation from the property owner, if different from the requestor, that
9 current or proposed future land uses will be maintained; and
10 (8) other relevant documents, as requested by the department.

11 C. Owners and operators shall receive approval of a request for a property reuse
12 determination for the release when the owner or operator has completed remediation pursuant to
13 20.5.12.42 NMAC, with the exception of iron and manganese in excess of WQCC groundwater
14 standards. A property reuse determination letter shall include a statement that the department
15 shall have the right to conduct audits to ensure that the current and proposed future use(s) upon
16 which the determination is dependent are maintained.

17 D. A property reuse determination shall not have any effect on any permit,
18 compliance plan, order, or other formal or informal enforcement mechanism applicable to the
19 site, and shall not relieve an owner or operator from the obligations to comply with other
20 applicable federal, state and local laws.

21 E. Upon completion of an assessment by the department that a site, multiple sites or
22 portion of a site qualifies for a property reuse determination, the department shall issue the
23 following deliverables:

- 24 (1) property reuse determination letter; and
25 (2) property reuse certificate.

26 F. The department shall have the right to conduct audits to ensure that the risk to
27 human health, safety and welfare and the environment has not significantly changed and that
28 current and proposed future use(s) upon which the determination is dependent are maintained.

29 G. If new information becomes available or circumstances arise indicating that the
30 environmental or land use conditions upon which the determination were based have changed,
31 the department may reverse the property reuse determination.

32 [20.5.12.43 NMAC – N, x/xx/09]

33
34 ~~20.5.12.1234~~20.5.12.44 NO FURTHER ACTION STATUS DETERMINATION:

35 A. A no further action determination is a technical determination issued by the
36 department that documents that the owner or operator of a site has met all applicable WQCC and
37 EIB remediation standards and that no contaminant will present a significant risk of harm to
38 public health, safety and welfare and the environment.

39 B. Any owner or operator may request that the department evaluate a site for a no
40 further action determination by submitting a written request to the department. The request shall
41 include the following, if requested by the department:

42 (1) description of the site including a historical overview and generalized
43 description of businesses, structures, vegetation, other prominent features, and location of the
44 site;

- 45 (2) surveyed plat of the site, and/or site map with legal description;
46 (3) completed current environmental conditions table listing all areas of

1 environmental concern on the site subject to remediation. The table shall include the following
2 information about each area of environmental concern:

3 (a) remedial action taken, date, regulatory agency;

4 (b) residual contaminants of concern;

5 (c) clean-up status; and

6 (d) clean-up standards for contaminants of concern;

7 (4) chronology of events for each area investigated or remediated; and

8 (5) other relevant documents, as requested by the department.

9 A. C. Owners and operators shall receive approval of a request for a no further action
10 status determination for the release when all of the following conditions are met:

11 (1) groundwater and surface water contamination related to the release is less than
12 or equal to WQCC and EIB standards, and where there had been groundwater contamination
13 related to the release, the applicable standards have been achieved concurrently at all compliance
14 wells for at least eight consecutive quarters unless otherwise approved by the department;

15 (2) soil contamination is less than or equal to applicable RBSLs or SSTLs, unless
16 otherwise approved by the department under Subparagraph (c) of Paragraph 3 of Subsection A of
17 20.5.12.41 NMAC; and

18 (3) any other conditions which did threaten public health, safety and welfare or
19 the environment have been adequately mitigated.

20 B. D. Owners and operators shall receive approval of a request for no further action
21 status determination for the release when subsurface water does not meet the definition of
22 “subsurface water” in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101
23 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance
24 with this part and any other conditions which threatened public health, safety and welfare or the
25 environment have been adequately mitigated.

26 C. ~~When all of the requirements of Subsection A are not met, owners and operators may~~
27 ~~seek to:~~

28 ~~(1) demonstrate technical infeasibility to the satisfaction of the department and in~~
29 ~~accordance with 20.5.12.1235 NMAC; or~~

30 ~~(2) receive approval of a variance for an alternative abatement standard from the~~
31 ~~WQCC for any of its groundwater standards and meet all WQCC variance conditions.~~

32 E. Upon completion of an assessment by the department that a site qualifies
33 for a no further action determination, the department shall issue a no further action determination
34 letter.

35 F. Any of the following may result in a reversal of a no further action status
36 determination:

37 (1) new information becomes available or circumstances arise indicating that an
38 unacceptable ~~threat~~ risk to public health, safety and welfare or the environment exists; or

39 (2) a change in use or reasonable foreseeable future use of land or resources,
40 including a change from less sensitive land use to more sensitive land use, such as from
41 commercial or industrial to residential, and including the drilling of water supply wells in the
42 vicinity of remaining contamination.

43 [20.5.12.1234 NMAC - Rp, 20 NMAC 5.12.1227, 8/15/03; A/Rn, 20.5.12.1234 x/xx/09]

44 ~~20.5.12.1235 DEMONSTRATION OF TECHNICAL INFEASIBILITY:~~

1 A.—When owners and operators are unable to fully meet the target concentrations or
2 other remediation criteria set forth in the final remediation plan or an approved modification of
3 the plan, using cost-benefit justifiable technologies, and the concentrations of contaminants of
4 concern are greater than the target concentrations and less than two times those target
5 concentrations, owners and operators may propose to the department that compliance with the
6 final remediation plan and all revised remediation plans is technically infeasible. Owners and
7 operators shall make the demonstration of technical infeasibility in accordance with Subsection E
8 of 20.6.2.4103 NMAC and this section.

9 B.—Owners and operators may demonstrate technical infeasibility by a statistically
10 valid extrapolation of the decrease in concentration of any of the contaminants of concern over a
11 20-year period, such that projected future reductions during that time would be less than 20
12 percent of the concentration of the contaminant of concern at the time the infeasibility proposal
13 is prepared.

14 C.—Owners and operators may demonstrate a statistically valid decrease with a
15 minimum of eight consecutive quarters of monitoring, unless otherwise approved by the
16 department, using the arithmetic mean sample result for each contaminant of concern in each
17 compliance well. In no event shall technical infeasibility be considered unless the contamination
18 level at the time of the proposal is less than or equal to two times the standard for that
19 contaminant.

20 D.—Electrical and mechanical components of the remediation system shall remain
21 shut down for the monitoring period described in Subsection C of this section.

22 E.—A qualified laboratory shall perform all sample analyses upon which technical
23 infeasibility is to be determined.

24 [20.5.12.1235 NMAC - Rp, 20 NMAC 5.12.1228, 8/15/03]

25
26 ~~20.5.12.1236~~20.5.12.45 REQUEST FOR EXTENSION OF TIME:

27 A. For good cause shown, the department may extend the time for complying with
28 any deadline set forth in this part. The request shall specify the reason for the request, all actions
29 taken to comply with the deadline and the period of time for which the extension is requested.

30 B. The department shall not grant an extension for more than 30 days at a time
31 unless the department determines additional time is warranted. The department may place
32 conditions on the extension.

33 C. Lack of diligence or failure of owners and operators to comply with these
34 regulations shall be grounds for denying a request for an extension of time.

35 [20.5.12.1236 NMAC - Rp, 20 NMAC 5.12.1229, 8/15/03; Rn, 20.5.12.1236 x/xx/09]

36
37 ~~20.5.12.1237~~ DEMONSTRATION OF EQUIVALENT PROTECTION:

38 A.—Except for the granting of a variance from WQCC standards by the WQCC and
39 the approval of technical infeasibility by the department, the department may approve or
40 disapprove, based upon the information provided, a demonstration of equivalent protection to
41 any provision of this part whenever it is found by a preponderance of the evidence that the
42 methods, technologies, operations and procedures used by owners and operators will, in fact,
43 protect public health, safety and welfare and the environment to a degree which is equal to or
44 greater than that which is provided by this part.

45 B.—Except as expressly prohibited in Subsection A of this section, owners and
46 operators may seek to demonstrate protection of public health, safety and welfare and the

1 environment equivalent to that provided by any provision of this part by filing a written request
2 with the department. The request shall include:

3 (1) — the names and addresses of the owner and operator of the storage tank system
4 which caused the release;

5 (2) — the address or a description of the property at which the release occurred;

6 (3) — the specific provision of 20.5.12 NMAC for which an owner or operator
7 wishes to demonstrate equivalent protection;

8 (4) — a description of the proposed methodologies, technologies, operations or
9 procedures and a demonstration of how and why they will protect public health, safety and
10 welfare and the environment to a degree which is equal to or greater than that which is provided
11 by 20.5.12 NMAC; and

12 (5) — supporting documentation, data, and other pertinent information including
13 technical, hydrogeological and engineering information as is deemed necessary by the
14 department to review the request.

15 C. — ~~Owners and operators may petition the WQCC for a variance to its groundwater
16 quality standards in accordance with Subsection F of 20.6.2.4103 NMAC and 20.1.3 NMAC.
17 Owners and operators shall file the request for variance with the secretary and provide a copy to
18 the Petroleum Storage Tank Bureau. Owners and operators shall prepare the petition in
19 accordance with the bureau's Guidelines for Corrective Action. Review, approval, disapproval
20 and other procedural requirements for any variance under this section shall conform with the
21 requirements of Subsection F of 20.6.2.4103 NMAC and applicable laws.~~

22 D. — ~~The department may approve all or part of any demonstration of equivalent
23 protection. If a demonstration is not approved in whole or in part, owners and operators may
24 obtain a review of the decision in accordance with the administrative review provisions in
25 20.5.10 NMAC.~~

26 E. — ~~The department may disapprove all or part of any demonstration of equivalent
27 protection or may approve the demonstration with conditions or impose conditions on or
28 withdraw an existing approval when new information becomes available or circumstances
29 change such that an unacceptable threat to public health, safety and welfare or the environment
30 exists.~~

31 [20.5.12.1237 NMAC - Rp, 20 NMAC 5.12.1230, 8/15/03]

32
33 ~~20.5.12.1238 to 20.5.12.1299~~ 20.5.12.45 to 20.5.12.105 [RESERVED]

34
35 HISTORY OF 20.5.12 NMAC:

36 Pre-NMAC History:

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

39 EIB/USTR 12, Underground Storage Tank Regulations - Part XII - Corrective Action for
40 Petroleum UST Systems, filed 6/13/90.

41
42 History of Repealed Materials:

43 20 NMAC 5.12, Environmental Protection, Underground Storage Tanks, Corrective Action for
44 UST Systems Containing Petroleum Products (filed 10/6/95), repealed 2/2/00.

45 20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products (filed
46 12/30/99), repealed 8/15/03.

1
2 Other History:
3 EIB/USTR 12, Underground Storage Tank Regulations - Part XII - Corrective Action for
4 Petroleum UST Systems, filed 6/13/90, was renumbered, reformatted and replaced by 20 NMAC
5 5.12, Underground Storage Tanks, Corrective Action for UST Systems Containing Petroleum,
6 effective 11/05/95.
7 20 NMAC 5.12, Underground Storage Tanks, Corrective Action for UST Systems Containing
8 Petroleum, filed 10/06/95, was replaced by 20 NMAC 5.12, Corrective Action for UST Systems
9 Containing Petroleum Products, effective 2/2/00.
10 20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products, filed
11 12/30/99, was renumbered, reformatted and replaced by 20.5.12 NMAC, Corrective Action for
12 Storage Tank Systems Containing Petroleum Products, effective 8/15/03.
13