

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
 2 **CHAPTER 5 PETROLEUM STORAGE TANKS**
 3 **PART 19 DELIVERY PROHIBITION**

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 5 **20.5.19.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.
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7 **20.5.19.2 SCOPE:** This part applies to owners and operators of storage tanks and facilities and to product
 8 deliverers, as defined in 20.5.1 NMAC, and to any person subject to the provisions of 20.5 NMAC.
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10 **20.5.19.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the
 11 Hazardous Waste Act, sections 74-4-1 through 74-4-14 NMSA 1978; the Groundwater Protection Act, sections 74-
 12 6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, sections
 13 74-1-1 through 74-1-17 NMSA 1978.
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15 **20.5.19.4 DURATION:** Permanent.
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17 **20.5.19.5 EFFECTIVE DATE:** _____, unless a later date is indicated in the bracketed history note at
 18 the end of a section.
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20 **20.5.19.6 OBJECTIVE:** The purpose of this part is to set forth the prohibitions for the delivery, deposit,
 21 acceptance or sale of product at or to a storage tank or a facility that has been determined by the department to be
 22 ineligible for such delivery, deposit, acceptance or sale, in order to protect the public health, safety and welfare and
 23 the environment of the state.
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25 **20.5.19.7 DEFINITIONS:**

26 A. The definitions in 20.5.1 NMAC shall apply to this part.

27 B. As used in this part, the term "sale" shall mean a retail or non-retail transaction for the dispensing of
 28 product.
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30 **20.5.19.8 GENERAL:** It shall be unlawful for any owner, operator or product deliverer to deliver to,
 31 deposit into, accept or sell a regulated substance at or to a storage tank or a facility that has been identified by the
 32 department as ineligible for product delivery, deposit, acceptance or sale. It shall also be unlawful for any person to
 33 remove, tamper with, destroy or damage a red tag or certificate posted pursuant to this part.
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35 **20.5.19.9 DELIVERY PROHIBITIONS:**

36 A. Mandatory Ineligibility. The department shall classify a storage tank as ineligible for delivery,
 37 deposit, acceptance or sale of product if any of the following conditions exist at the storage tank, or shall classify a
 38 facility as ineligible for delivery, acceptance or sale of product if any of the following conditions exist at every
 39 storage tank at the facility:

- 40 (1) Required spill prevention equipment is not installed;
- 41 (2) Required overfill protection equipment is not installed;
- 42 (3) Required leak detection equipment is not installed; or
- 43 (4) Required corrosion protection equipment is not installed,

44 including required corrosion protection equipment for a buried metal flexible connector.

45 B. Discretionary Ineligibility. The department may, in its sole discretion, classify a storage tank as
 46 ineligible for delivery, deposit, acceptance or sale of product if any of the following conditions exist at the storage
 47 tank, or may classify a facility as ineligible for delivery, acceptance or sale of product if any of the following
 48 conditions exist at every storage tank at the facility:

- 49 (1) Improper operation or maintenance of required equipment for:
 - 50 (a) spill prevention;
 - 51 (b) overfill prevention;
 - 52 (c) leak detection; or
 - 53 (d) corrosion protection; or

54 (2) Operation of the storage tank or facility in a manner that creates an imminent threat to the public
 55 health and the environment.
 56

57 **20.5.19.10 PROCEDURES FOR CLASSIFYING A STORAGE TANK OR FACILITY AS**
 58 **INELIGIBLE:**

1 A. Mandatory Ineligibility.

2 1. Notice of Intent to Red Tag. Upon identification of a condition or conditions at one or more storage
3 tanks at a facility under Subsection A of 20.5.19.9 NMAC, the department shall issue the owner and operator a
4 notice of intent to red tag stating the violations and providing the owner or operator thirty (30) days from the date of
5 the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the
6 department will prohibit delivery to, and operation of, each storage tank with one or more conditions identified
7 under 20.5.19.9 NMAC at the facility if the violations are not corrected. The notice of intent to red tag shall state if
8 the facility is in a rural and remote area as defined in 20.5.1.7 NMAC, and shall grant a deferral as provided in
9 20.5.19.15 NMAC.

10 B. Discretionary Ineligibility.

11 1. Notice of Violation. Upon identification of a condition or conditions at one or more storage tanks at
12 a facility under Subsection B of 20.5.19.9 NMAC, the department shall issue the owner and operator a notice of
13 violation stating the violation and providing the owner or operator thirty (30) days from the date of the notice to
14 correct the violation. The notice of violation shall inform the owner and operator that the violation cited could
15 subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

16 2. Notice of Deficiency. If the owner or operator fails to correct the violations within the timeframe
17 provided in the notice of violation, the department shall issue the owner or operator a notice of deficiency re-stating
18 the violations and providing the owner or operator an additional thirty (30) days from the date of the notice to
19 correct the violations. The notice of deficiency shall inform the owner and operator that the violations cited could
20 subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

21 3. Notice of Intent to Red Tag. If the owner or operator fails to correct the violations within the
22 timeframe provided in the notice of deficiency, the department shall issue the owner or operator a notice of intent to
23 red tag re-stating the violations and providing the owner or operator an additional thirty (30) days from the date of
24 the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the
25 department will prohibit delivery to, and operation of, the identified tanks at the facility if the violations are not
26 corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.1.7
27 NMAC, and shall grant a deferral as provided in 20.5.19.15 NMAC.

28 C. Red Tag. If the owner or operator fails to correct the violations within the timeframe provided in the
29 notice of intent to red tag, the department shall affix a red tag to the fill pipe and nozzles of every storage tank with
30 one or more conditions identified under 20.5.19.9 NMAC at the facility pursuant to 20.5.19.11 NMAC.

31 D. Notification of Installation, Replacement, Repair or Modification. Owners and operators shall give
32 the department notice of any installation, replacement, repair or modification performed to correct the conditions
33 listed in the notice of violation, notice of deficiency or notice of intent to red tag in accordance with 20.5.4 NMAC
34 and 20.5.5 NMAC. The department may grant a waiver of the time periods required by those parts if warranted by
35 the circumstances.

36 **20.5.19.11 IDENTIFICATION OF INELIGIBLE STORAGE TANKS OR FACILITIES:**

37 A. Red Tag. In order to prevent the delivery, deposit, acceptance or sale of product at or to a storage tank
38 or a facility that has been identified by the department as ineligible under 20.5.19.9 and 20.5.19.10 NMAC, the
39 department shall affix a tamper-proof red tag to the fill pipe and nozzles of every storage tank with one or more
40 conditions identified under 20.5.19.9 NMAC at the facility forty-eight (48) hours after posting the name and address
41 of the facility on the department's website list of facilities that are ineligible for delivery. The department shall
42 document the level of stored product in each storage tank with one or more conditions identified under 20.5.19.9
43 NMAC prior to affixing a red tag to the fill pipe(s) of the storage tank.

44 B. Certificate. In order to prevent the delivery, deposit, acceptance or sale of product at or to a storage
45 tank or a facility that has been classified by the department as ineligible under 20.5.19 NMAC, the department shall
46 post a certificate, conspicuously displayed at the facility, clearly prohibiting the delivery, deposit, acceptance or sale
47 of product at every storage tank at the facility to which the department has affixed a red tag.

48 C. Red Tag Tampering Prohibited. It shall be unlawful for any person, other than an authorized
49 representative of the department, to remove, tamper with, destroy or damage a red tag affixed to any storage tank or
50 nozzle or a certificate posted at a storage tank facility by department personnel.

51 D. Performance Standards. Owners and operators shall continue to adhere to all performance
52 standards of 20.5 NMAC after placement of one or more red tags and a certificate at a facility, including but not
53 limited to leak detection, corrosion protection and monthly inspections.

54 **20.5.19.12 REGULATED SUBSTANCE REMOVAL:** Owners and operators shall empty all regulated
55 substances from storage tanks that have been affixed with a red tag if the violations have not been corrected within
56 thirty (30) days of the placement of the red tag. This section shall not limit or supersede the application of 20.5.7
57

1 NMAC in the event of a suspected or confirmed release. If no suspected or confirmed release exists, owners and
2 operators shall:

3 A. empty all regulated substances from each storage tank at the facility that has been affixed with a red
4 tag in accordance with 20.5.8 NMAC, and shall provide written notice to the inspector who issued the red tag when
5 each tank has been emptied, with the name, address, telephone number and email address of the person who
6 removed the regulated substances from the tank; and

7 B. continue to meet all requirements for temporary closure in 20.5.8.9 NMAC, including
8 operation of cathodic protection and release detection equipment and payment of the annual fee, or shall
9 permanently close the tank in compliance with 20.5.8.10 NMAC.

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11 **20.5.19.13 NOTIFICATION PROCESSES FOR STORAGE TANK OWNERS AND OPERATORS**
12 **AND PRODUCT DELIVERERS:**

13 A. Owners and Operators. Any notice required by 20.5.19.10 NMAC shall be provided to an owner or
14 operator in the following manner:

15 (1) Owner or operator present. If the owner or operator is present on the site, the department shall
16 provide to the owner or operator the notice of violation, notice of deficiency, or notice of intent to red tag.

17 (2) Owner and operator not present. If neither the owner nor operator is present on the site, the
18 department shall immediately notify an employee in charge of the facility in the manner provided in Paragraph (1)
19 above and shall send a copy of the written notice to the owner and operator within twenty-four (24) hours of
20 notifying the employee in charge of the facility or of affixing a red tag and certificate.

21 B. Product Deliverers. The department shall notify all product deliverers forty-eight (48) hours before the
22 department affixes a red tag to the fill pipes and nozzles of each storage tank with one or more conditions identified
23 under 20.5.19.9 NMAC by posting the name and address of the facility on the department's website list of facilities
24 that contain storage tanks which are ineligible for delivery. Product deliverers shall be responsible for checking the
25 website or contacting the department prior to any product delivery.

26 [The department provides a list of storage tank facilities containing storage tanks with delivery prohibitions. The list
27 is available on the department's website, www.nmenv.state.nm.us or by contacting the Petroleum Storage Tank
28 Bureau at 505-476-4397 or 1301 Siler Road, Building B, Santa Fe, New Mexico 87507.]

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30 **20.5.19.14 RECLASSIFYING INELIGIBLE STORAGE TANKS OR FACILITIES AS ELIGIBLE TO**
31 **RECEIVE PRODUCT:**

32 A. Statement of Compliance from Owner or Operator. In order for an owner or operator
33 of a storage tank or facility which has been determined by the department as ineligible under this rule to have the
34 storage tank or facility reclassified by the department as eligible to receive delivery of product, the owner or
35 operator shall provide a written statement of compliance to the department and the inspector listed in the notice that
36 the conditions listed in the notice of intent to red tag have been corrected. The written statement shall contain the
37 date, owner or operator's name, how the conditions have been corrected, by whom, and the date of correction.

38 B. Department Confirmation. The department shall, in its sole discretion, determine whether the
39 conditions listed in the notice of intent to red tag have been corrected as soon as practicable but within no more than
40 three (3) business days after receipt of the owner's written statement of compliance. If the conditions have not been
41 corrected, the department shall notify the owner or operator in the manner prescribed by 20.5.19.13 NMAC.

42 C. Removal of Red Tag and Notice of Ineligibility. Upon verification of compliance, department
43 personnel shall:

44 (1) immediately remove each red tag and certificate at the facility, and document the level of
45 product in each tank; and

46 (2) as soon as practicable, remove the facility from the department's website list of facilities
47 that contain storage tanks which are ineligible for delivery.

48 [The department provides an optional form for compliance with Subsection A. The form is available on the
49 department's website, www.nmenv.state.nm.us or by contacting the Petroleum Storage Tank Bureau at 505-476-
50 4397 or 1301 Siler Road, Building B, Santa Fe, New Mexico 87507.]

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52 **20.5.19.15 DELIVERY PROHIBITION DEFERRAL IN RURAL AND REMOTE AREA:** The
53 department shall defer classifying a storage tank or facility as ineligible for delivery, deposit, acceptance or sale of
54 product if such classification would jeopardize the availability of, or access to, motor fuel in a rural and remote area
55 as defined in 20.5.1.7 NMAC. The department may only defer application of delivery prohibition for up to 180 days
56 after determining a storage tank or facility is ineligible for delivery, deposit, acceptance or sale of product pursuant
57 to 20.5.19.10.A(1) or 20.5.19.10.B(3) NMAC.
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1 **20.5.19.16 DELIVERY AUTHORIZATION IN EMERGENCY SITUATIONS OR FOR TANK**
 2 **TESTING:**

3 A. Emergency Situations. The department may authorize delivery or deposit of product to an emergency
 4 generator tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the
 5 satisfaction of the department that:

6 (1) a commercial power failure or other declared state of emergency exists; and

7 (2) the emergency generator tank:

8 (a) provides power supply;

9 (b) stores petroleum; and

10 (c) is used solely in connection with an emergency system, legally required standby system or
 11 optional standby system.

12 B. Tank Testing. The department may authorize delivery or deposit of product to a storage tank that is
 13 otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the
 14 department that delivery or deposit is necessary to test or calibrate a tank.

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 16 **20.5.19.17 ADDITIONAL REQUIREMENTS:**

17 A. Storage Tank Equipment Tampering Prohibited. It shall be unlawful for any person, including
 18 product deliverers, to remove, tamper with, destroy, damage or disable storage tank equipment, including but not
 19 limited to release detection and other safety mechanisms, in the course of delivery of any product.

20 B. Compliance with Rules. A product deliverer shall be responsible for ensuring that all deliveries are
 21 made in compliance with 20.5 NMAC.

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 23 **20.5.19.18 ADMINISTRATIVE APPEALS:** Any owner or operator of a facility that contains storage tanks
 24 to which the department has affixed a red tag prohibiting delivery pursuant to this part may appeal to the secretary
 25 by submitting a written request for hearing.

26 A. Timelines. The request must be made in writing to the secretary within five (5) business days after
 27 notice of the department's action has been issued or the decision of the department shall be final. If an appeal is
 28 received within the five (5) business day time limit, the secretary shall hold a hearing within seven (7) business days
 29 after receipt of the request. The secretary shall notify the person who requested the hearing of the date, time and
 30 place of the hearing by certified mail.

31 B. Burden of Proof. In the appeal hearing, the burden of proof is on the person who requested the
 32 hearing.

33 C. Procedures.

34 (1) Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed
 35 upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final
 36 decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will
 37 conduct the hearing and make the final decision.

38 (2) The department shall make an audio recording of the hearing. If either party wants the hearing
 39 transcribed, that party shall bear the costs of transcription.

40 (3) In appeal hearings, the rules governing civil procedure and evidence in district court shall not
 41 apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly
 42 presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and
 43 examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine
 44 persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide
 45 and announce if the hearing record will remain open, for how long, and for what reason it will be left open.

46 D. Secretary's Decision. Based upon the evidence presented at the hearing, the secretary shall
 47 sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within
 48 seven (7) business days following the close of the hearing record. The decision shall state the reasons therefore and
 49 shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

50 E. No Stay of Action. The filing of an administrative appeal shall not stay any action, compliance or
 51 corrective action required by the red tag issued by the department.

52 F. Judicial Review. Judicial review of the secretary's final order shall be as provided by law. The filing of
 53 a judicial appeal shall not stay any action, compliance or corrective action required by the secretary's decision.