

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 19 DELIVERY PROHIBITION

20.5.19.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

20.5.19.2 SCOPE: This part applies to owners and operators of storage tank systems and facilities and to product deliverers, as defined in 20.5.1 NMAC, and to any person subject to the provisions of 20.5 NMAC.

20.5.19.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, sections 74-4-1 through 74-4-14, NMSA 1978; the Groundwater Protection Act, sections 74-6B-1 through 74-6B-14, NMSA 1978; and the general provisions of the Environmental Improvement Act, sections 74-1-1 through 74-1-16, NMSA 1978.

20.5.19.4 DURATION: Permanent.

20.5.19.5 EFFECTIVE DATE: _____, unless a later date is indicated in the bracketed history note at the end of a section.

20.5.19.6 OBJECTIVE: The purpose of this part is to set forth the prohibitions for the delivery, deposit, acceptance or sale of product at or to a storage tank facility that has been determined by the department to be ineligible for such delivery, deposit, acceptance or sale, in order to protect the public health, safety and welfare and the environment of the state.

20.5.19.7 DEFINITIONS: The definitions in 20.5.1 NMAC shall apply to this part.

20.5.19.8 GENERAL: It shall be unlawful for any owner, operator or product deliverer to deliver to, deposit into, accept or sell a regulated substance at or to a storage tank facility that has been identified by the department as ineligible for product delivery, deposit, acceptance or sale. It shall also be unlawful for any person to remove, tamper with, destroy or damage a red tag or certificate posted pursuant to this part.

20.5.19.9 DELIVERY PROHIBITIONS:

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

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

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

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

- (1) Improper operation or maintenance of required equipment for:
 - (a) spill prevention;

- (b) overfill prevention;
 - (c) leak detection; or
 - (d) corrosion protection; or
- (2) Operation of the storage tank facility in a manner that creates an imminent threat to the public health and the environment.

20.5.19.10 PROCEDURES FOR CLASSIFYING A STORAGE TANK FACILITY AS INELIGIBLE:

A. Notice of Violation. Upon identification of a condition or conditions at a storage tank facility under Subsections A and B of 20.5.19.9 NMAC, the department shall issue the owner and operator a notice of violation stating the violation and providing the owner or operator thirty (30) days from the date of the notice to correct the violation. The notice of violation shall inform the owner and operator that the violation cited could subject the owner and operator to delivery prohibition if the violations are not corrected.

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

C. Notice of Intent to Red Tag. If the owner or operator fails to correct the violations within the timeframe provided in the notice of deficiency, the department shall issue the owner or operator a notice of intent to red tag re-stating the violations and providing the owner or operator an additional thirty (30) days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to, and operation of, the storage tank facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is a rural and remote facility as defined in 20.5.19.14 NMAC, and shall grant a deferral as provided in that section.

D. Red Tag. If the owner or operator fails to correct the violations within the timeframe provided in the notice of intent to red tag, the department shall affix a red tag to the fill pipe and nozzles of every storage tank system at the facility pursuant to 20.5.19.11 NMAC.

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

20.5.19.11 IDENTIFICATION OF INELIGIBLE STORAGE TANK FACILITIES:

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

B. Certificate. In order to prevent the delivery, deposit, acceptance or sale of product at or to a facility that has been classified by the department as ineligible under 20.5.19 NMAC,

the department shall post a certificate, conspicuously displayed at the facility, clearly prohibiting the delivery, deposit, acceptance or sale of product at the facility.

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

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

20.5.19.12 REGULATED SUBSTANCE REMOVAL: Owners and operators shall empty all regulated substances from tank systems that have been affixed with a red tag if the violations have not been corrected within thirty (30) days of the placement of the red tag. This section shall not limit or supersede the application of 20.5.7 NMAC in the event of a suspected or confirmed release. If no suspected or confirmed release exists, owners and operators shall:

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

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

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

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

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

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

B. Product Deliverers. The department shall notify all product deliverers forty-eight (48) hours before the department affixes a red tag to the fill pipes and nozzles of a storage tank facility by posting the name and address of the facility on the department's website list of facilities that are ineligible for delivery. Product deliverers shall be responsible for checking the website or contacting the department prior to any product delivery.

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

20.5.19.14 RECLASSIFYING INELIGIBLE STORAGE TANK FACILITIES AS ELIGIBLE TO RECEIVE PRODUCT:

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

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

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

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

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

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

20.5.19.15 DELIVERY PROHIBITION DEFERRAL IN RURAL AND REMOTE

AREAS: The department shall defer classifying a storage tank as ineligible for delivery, deposit, acceptance or sale of product if such classification would jeopardize the availability of, or access to, motor fuel in a rural and remote areas. The department may only defer application of delivery prohibition for up to 180 days after determining a storage tank is ineligible for delivery, deposit, or acceptance of product pursuant to 20.5.19.10.D NMAC.

20.5.19.16 DELIVERY AUTHORIZATION IN EMERGENCY SITUATIONS OR FOR TANK TESTING:

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

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

(2) the emergency generator tank:

(a) provides power supply;

(b) stores petroleum; and

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

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

20.5.19.17 ADDITIONAL REQUIREMENTS:

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

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

20.5.19.18 ADMINISTRATIVE APPEALS: Any owner or operator of a facility at which the department affixes a red tag prohibiting delivery pursuant to this part may appeal to the secretary by submitting a written request for hearing.

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

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

C. Procedures.

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

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

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

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

D. No Stay of Action. The filing of an administrative appeal shall not stay any action, compliance or corrective action required by the notice issued by the department.

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