

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 7 REPORTING AND INVESTIGATION OF SUSPECTED AND
CONFIRMED RELEASES

20.5.7.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
 [20.5.7.1 NMAC - Rp, 20 NMAC 5.7.100, 8/15/03]

20.5.7.2 SCOPE: This part applies to owners and operators of storage tanks as defined in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.
 [20.5.7.2 NMAC - Rp, 20 NMAC 5.7.101, 8/15/03]

20.5.7.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, [~~NMSA 1978,~~] sections 74-4-1 through 74-4-14, NMSA 1978, and the general provisions of the Environmental Improvement Act, [~~NMSA 1978,~~] sections 74-1-1 through [~~74-1-15]~~ 74-1-16, NMSA 1978.
 [20.5.7.3 NMAC - Rp, 20 NMAC 5.7.102, 8/15/03]

20.5.7.4 DURATION: Permanent.
 [20.5.7.4 NMAC - Rp, 20 NMAC 5.7.103, 8/15/03]

20.5.7.5 EFFECTIVE DATE: ~~August 15, 2003~~ _____, 2009, unless a later date is indicated in the bracketed history note at the end of a section.
 [20.5.7.5 NMAC - Rp, 20 NMAC 5.7.104, 8/15/03]

20.5.7.6 OBJECTIVE: The purpose of 20.5.7 NMAC is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to ensure that suspected and confirmed releases from storage tank systems are promptly reported and investigated and that corrective action is promptly initiated.
 [20.5.7.6 NMAC - Rp, 20 NMAC.5.7.105, 8/15/03]

20.5.7.7 DEFINITIONS: The definitions in 20.5.1 NMAC apply to this part.
 [20.5.7.7 NMAC - Rp, 20 NMAC.5.7.106, 8/15/03]

~~[20.5.7.8 to 20.5.7.699 - [RESERVED]]~~

~~[20.5.7.700]~~ 20.5.7.8 REPORTING OF SPILL OR RELEASE:

A. Owners and operators shall give notice of any suspected or confirmed release from a storage tank system pursuant to [~~20.5.7.701]~~ 20.5.7.9 or 20.5.7.10 NMAC, or any spill or any other relevant emergency situation to the department by telephone within 24 hours. The owner or operator giving the notice shall provide the following items of information to the best of the owner's or operator's knowledge:

(1) The name, address, and telephone number of the agent in charge of the site at which the storage tank system is located, as well as the name, address and telephone number of the owner and the operator of the system;

(2) The name and address of the site at which the storage tank system is located and the location of the storage tank system on that site;

(3) The date, time, location and duration of the spill, release or suspected release;

(4) The source and cause of the spill, release or suspected release;

(5) The tank system description;

(6) A description of the spill, release or suspected release, including its chemical composition;

(6)(7) The estimated volume of the spill, release or suspected release; and

(7)(8) Any actions taken to mitigate immediate damage from the spill, release or suspected release.

B. Owners and operators shall ~~[mail or deliver]~~ provide a written report describing the spill, release or suspected release and any investigation or follow-up action ~~[taken or to be taken]~~ to the department within 14 days of the incident. The written report shall verify the prior oral notification as to each of the items of information listed in Subsection A of ~~[20.5.7.700 NMAC]~~ this section and provide any appropriate ~~[additions or corrections]~~ amendments to the information contained in the prior oral notification.

C. ~~[If the owner and operator of a storage tank are separate persons, only one person is required to notify the department of any releases; however, both parties are liable in the event of noncompliance.]~~ The department shall determine whether a release is a confirmed release based on the 24-hour and 14-day reports prepared in accordance with 20.5.7.8, 20.5.7.9 and 20.5.7.10 NMAC, monitoring results, system checks, the investigation performed in accordance with 20.5.7.9 NMAC, and any other information available to the department. The department shall provide a written determination that a release is a confirmed release to all affected owners and operators, and shall state the basis for the determination.

[20.5.7.700 NMAC - Rp, 20 NMAC.5.7.700, 8/15/03]

[To provide notice to the department under Subsection A of this section, telephone the department staff person currently on duty; to obtain this number, check the department's website at www.nmenv.state.nm.us/ust/leakweek.html.]

[The department provides an optional Incident Reporting form on the department's website at www.nmenv.state.nm.us/ust/leakweek.html that may be used for Subsection B of this section.]

~~[20.5.7.701]~~ 20.5.7.9 **[REPORTING]** SUSPECTED RELEASES:

A. Owners and operators of storage tank systems shall report the following conditions, which are considered suspected releases, to the department within 24 hours, in accordance with ~~[20.5.7.700]~~ 20.5.7.8 NMAC, and follow the procedures in ~~[20.5.7.703 NMAC]~~ Subsection B of this section:

~~[A-]~~ (1) evidence of released regulated substances in the vicinity of the storage tank site, including but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water;

~~[B-]~~ (2) unusual operating conditions such as, but not limited to, the erratic function of product dispensing equipment, the sudden loss of a regulated substance from the storage tank system, an unexplained presence of water in the tank, the presence of a regulated substance in the annular or interstitial space of double-walled tanks or piping, and anything other than a "pass"

result from any release detection method in 20.5.6 NMAC, unless system equipment is found to be defective but not leaking and is immediately repaired or replaced; or

~~[C.]~~ (3) monitoring results from a release detection method described ~~[under]~~ in 20.5.6[.601, 602, 603 and 604] NMAC that are anything other than a “pass” result, or that indicate a release may have occurred.

B. Owners and operators shall investigate all suspected releases of regulated substances within 14 days of discovery of the suspected release. Owners and operators shall conduct a system test, site check or another procedure, with prior approval by the department of the procedure.

(1) System test. Owners and operators shall conduct appropriate system tests approved by the department according to the requirements for tightness testing in Subsection C of 20.5.6.14 NMAC and Subsection B of 20.5.6.23 NMAC to determine whether a leak exists in the storage tank system. Further investigation is not required if test results for the storage tank system do not show a leak exists and if environmental contamination is not the basis for the suspected release report. If test results show that a storage tank system leak exists, owners and operators shall follow the procedures set forth in this chapter.

(2) Site check. When there is evidence of a release of a regulated substance in the vicinity of a storage tank system, owners and operators shall conduct a site check as directed by the department.

(a) Owners and operators shall investigate a release in the locations where contamination is most likely to be present at the storage tank site.

(b) In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored regulated substance, the basis for the suspected release report, the type of backfill, depth to groundwater, and other appropriate site-specific conditions.

(c) The department shall approve sample types, locations and methods of measurement.

C. Owners and operators shall report all results of the system test, site check or other procedure approved by the department in accordance with this part.

[20.5.7.701 NMAC - Rp, 20 NMAC.5.7.701, 8/15/03]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the department’s website at www.nmenv.state.nm.us/ust/leakweek.html.]

~~[20.5.7.702]~~ 20.5.7.10 CONFIRMED RELEASES:

A. Owners and operators of storage tank systems shall report the following conditions to the department within 24 hours, in accordance with ~~[20.5.7.700]~~ 20.5.7.8 NMAC:

(1) visible leaks or seeps from any part of a storage tank system; and

(2) evidence of released regulated substances at the storage tank site including, but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water.

~~[(2) — visible leaks or seeps from any part of a storage tank system.~~

~~[B.] — The department shall determine whether a release is a confirmed release based on the 24-hour and 14-day reports prepared in accordance with 20.5.700, 701, 702, and 703 NMAC, monitoring results, system checks, the investigation performed in accordance with 20.5.7.703 NMAC, and any other information available to the department. The department shall provide a~~

~~written determination that a release is a confirmed release to any affected owners and operators, and shall state the basis for the determination.]~~

~~[C.]B.~~ Owners and operators of storage tank systems shall address confirmed releases in accordance with 20.5.12 and 20.5.13 NMAC, and shall close the system in accordance with 20.5.8 NMAC until the system is repaired or replaced so that the release will not recur.

[20.5.7.702 NMAC - Rp, 20 NMAC.5.7.702, 8/15/03]

~~[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the department's website at www.nmenv.state.nm.us/ust/leakweek.html.]~~

[20.5.7.703 — INVESTIGATION OF SUSPECTED RELEASES:

~~A. — Owners and operators shall immediately investigate all suspected releases of regulated substances requiring reporting under 20.5.7.701 NMAC within 14 days. Owners and operators shall conduct a system test, monitoring result check, site check or another procedure approved by the department.~~

~~(1) — System test. Owners and operators shall conduct appropriate system tests approved by the department according to the requirements for tightness testing in Subsection C of 20.5.6.603 NMAC and Subsection B of 20.5.6.604 NMAC to determine whether a leak exists in the storage tank system. Further investigation is not required if test results for the storage tank system, do not show a leak exists and if environmental contamination is not found.~~

~~(2) — Site check. When there is evidence of a release of a regulated substance in the vicinity of a storage tank system owners and operators shall conduct a site check even if the test results for the storage tank system do not show a leak exists.~~

~~(a) — Owners and operators shall investigate a release in the locations where contamination is most likely to be present at the storage tank site.~~

~~(b) — In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored regulated substance, the type of initial alarm or cause for suspicion, the type of backfill, depth to groundwater, and other factors appropriate for identifying a possible release.~~

~~(c) — Sample types, locations and methods of measurement shall be approved by the department.~~

~~B. — Owners and operators shall report all results of the system test, monitoring result check, site check or other procedure approved by the department in accordance with 20.5.7 NMAC.]~~

[20.5.7.703 NMAC - Rp, 20 NMAC.5.7.703, 8/15/03]

[20.5.7.704] 20.5.7.11 [CLEANUP OF] SPILLS AND OVERFILLS:

A. Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow, and report the spill or overflow to the department within 24 hours in accordance with [20.5.7.700] 20.5.7 8 NMAC except as provided in Subsection C of [20.5.7.704 NMAC] this section, and begin corrective action in accordance with 20.5.12 and 20.5.13 NMAC in the following cases:

(1) any spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons, that causes a sheen on nearby surface water, or that creates a vapor hazard pursuant to [20.5.12.1204] 20.5.12.11 NMAC; and

(2) any spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and 40 CFR part 302.

B. Owners and operators of storage tank systems shall contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons, and a spill or overfill of a hazardous substance that is less than the reportable quantity. Owners and operators shall notify the department if cleanup cannot be accomplished within 24 hours, or within another reasonable time period which has been established by the department.

C. Pursuant to 40 CFR parts 302.7 and 355.40, owners and operators shall also immediately report a release of a hazardous substance equal to or in excess of its reportable quantity [~~shall also be reported immediately~~] to the National Response Center under sections 102 and 103 of CERCLA and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

[20.5.7.704 NMAC - Rp, 20 NMAC.5.7.704, 8/15/03]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the department's website at www.nmenv.state.nm.us/ust/leakweek.html.]

HISTORY OF 20.5.7 NMAC:

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

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting and Investigation, filed 9/12/88.

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting, Investigation and Confirmation, filed 6/12/90.

History of Repealed Material: 20 NMAC 5.7, Underground Storage Tank Regulations - Release Reporting, Investigations, and Confirmation (filed 10/6/95), repealed 8/15/03.

Other History:

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting, Investigation and Confirmation, filed 6/12/90, renumbered, reformatted and replaced by 20 NMAC 5.7, Underground Storage Tanks - Release Reporting, Investigations and Confirmation, effective 11/5/95;

20 NMAC 5.7, Underground Storage Tanks - Release Reporting, Investigations and Confirmation, filed 10/6/95 was renumbered, reformatted and replaced by 20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 8/15/03.