



**NEW MEXICO
ENVIRONMENT DEPARTMENT**



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**EXECUTIVE SUMMARY
OF MAJOR CHANGES IN THE PROPOSED RULES**

The proposed rules include numerous changes, including non-substantive formatting changes; minor substantive changes that do not require significant modifications in practice, certification, or equipment; and major substantive changes. The purpose of this Executive Summary is to identify only the most significant changes proposed in the rules: those affecting equipment, testing, operating practices, and enforcement. An exhaustive list and discussion of all proposed changes is included in the Statement of Reasons.

Part 1: General Provisions

The major changes in Part 1 would:

- eliminate the exemption for tanks associated with emergency generator systems, to conform to state and federal law (20.5.1.2, 20.5.1.7);
- delete heating oil from farm, ranch and residential tank exclusion and create an exclusion for tanks using heating oil on the premises to conform to state and federal law (20.5.1.7);
- add a definition of “emergency generator system” following federal Energy Policy Act Guidelines, and add a definition of “installation of a new dispenser system” to clarify secondary containment requirements (20.5.1.7);
- add definitions for new Part 19 following federal Energy Policy Act Guidelines (“product,” “product deliverer” and “red tag”), similar definitions from other states (“imminent threat to health and the environment” – CA, CO, DE) and staff input

(“corrosion protection” – a term used in the federal Guidelines but not defined/definition needed to differentiate from “cathodic protection,” which is defined in 20.5.1) (20.5.1.7);

- delete definition of “contracting company” (the more inclusive term “person” is used in Part 14) (20.5.1.7); and
- add definition of “contractor” to clarify that the term refers to persons performing corrective action on behalf of owners, operators or the state to include this group with administration review provided in Part 10 (20.5.1.7).
- re-number the definitions in 20.5.1.7, to group them alphabetically. Although not a major change, note should be made that the numbering of the Part 1 rules filed with the EIB on June 24, 2011 will differ from the Part 1 rules filed on September 9, 2011.

Part 2: Registration of Tanks

The major change in Part 2 would:

- require registration of emergency generator systems within 90 days of effective date of the rule to conform to state and federal law (20.5.2.8).

Part 4: New and Upgraded Storage Tank Systems: Design, Construction and Installation

The major changes in Part 4 would:

- clarify the secondary containment requirements for UST systems to include replaced UST systems and new or replaced dispenser systems following federal Energy Policy Act Guidelines (20.5.4.15);
- exclude non-pressurized manifold piping from the piping replacement requirements following federal Energy Policy Act Guidelines (20.5.4.15);
- clarify the support and concrete foundation requirements for installation of AST systems, including minimum compression strength, per discussions with stakeholders (20.5.4.19);
- delete the requirement that new concrete secondary containment be coated or internally lined and instead provide owners and operators with a wider range of options for design, construction and installation, as requested by stakeholders (20.5.4.29);
- delete the requirement that existing concrete secondary containment that is upgraded using a coating or lining include a report on the installation prepared by a certified coating expert, and instead allow multiple options for upgrading existing AST concrete secondary containment, as requested by stakeholders (20.5.4.29); and

- extend for 2 years the deadlines for closing or upgrading existing AST secondary containment based on the Department’s 12/3/10 written policy and requests from stakeholders, and add deadlines for closing or upgrading emergency generator systems (20.5.4.35).

Part 5: General Operating Requirements

The major changes in Part 5 would:

- add language allowing operation/maintenance plans for unmanned systems to be kept in an alternate location and eliminate the plan requirement for temporarily closed systems unless certain conditions exist, per stakeholder request (20.5.5.9);
- clarify language regarding repair of concrete secondary containment systems to require repair of only significant cracks, as requested by stakeholders (20.5.5.10); and
- clarify language regarding “water” and “rainfall events” to encompass other liquids that may run off into sumps, secondary containment and vaults to ensure removal of fuel to better protect the environment (20.5.5.8, 20.5.5.10, 20.5.5.11, 20.5.5.12).

Part 6: Release Detection

The major changes in Part 6 would:

- exempt emergency power generator tanks from release detection requirements to conform to state and federal law (20.5.6.2);
- reinforce the requirement that new UST systems may only use interstitial monitoring with secondary containment per federal Energy Policy Act Guidelines (20.5.6.9);
- clarify that UST systems allowed to use monthly inventory control and tank tightness testing are those installed prior to April 4, 2008, as UST systems installed after that date must install secondary containment (20.5.6.9);
- delete the requirement that only USTs with capacity up to 2,000 gallons may use manual tank gauging, as federal requirements do not contain a similar limitation (20.5.6.9);
- clarify visual inspection requirements for double-walled and double-bottomed AST systems to prevent releases, including several optional inspection methods (20.5.6.20); and
- add reporting requirements for leak detector testing to ensure releases are not occurring (20.5.6.23).

Part 7: Reporting and Investigation of Suspected and Confirmed Releases

The major change in Part 7 would:

- add threshold standards for reporting a release based on evidence of release of regulated substance in soils, to provide a concrete number for quantifying the reporting of releases following a federal screening level. (20.5.7.10).

Part 10: Administrative Review

The major change in Part 10 would:

- add a definition of “aggrieved party” to clarify and expand the list of persons who may seek review of Department determinations (20.5.10.7, 20.5.10.8, 20.5.10.9, 20.5.10.10).

Part 12: Corrective Action for Storage Tank Systems Containing Petroleum Products

Part 13: Corrective Action for UST Systems Containing Other Regulated Substances

The major changes in Part 12 and Part 13 would:

- clarify that the Bureau oversees all tank cleanups to ensure effective technology is employed and all cleanup standards addressed, to best protect public health, safety and the environment (20.5.12.8, 20.5.13.8);
- require department approval before a tier evaluation, or risk assessment, is performed, because it is not always appropriate and is not a necessary expense for which the Corrective Action Fund should pay. The current rules require owners of all sites to perform a tiered analysis (20.5.12.9, 20.5.12.16, 20.12.5.21);
- eliminate the requirement for owners/operators to drill to groundwater in all site investigations, which in some areas is deep and quite expensive, in order to demonstrate that groundwater has not been contaminated – the Bureau will only authorize this cost when site conditions indicate it is appropriate; (20.5.12.16, 20.5.12.21, 20.5.13.15); and
- change provisions establishing vapor mitigation standards to meet the OSHA standard to better protect public health, safety and the environment (20.5.12.11, 20.5.13.10).

Part 14: Certification of Tank Installers

The major changes in Part 14 would:

- clarify that a certified tank installer is not required for closure to make this process more affordable for owners and operators of tanks (20.5.14.8);
- streamline and clarify the renewal process for certified tank installers (20.5.14.15);
- correct language that could be construed as authorizing a company to be certified as an installer, as a certified installer must be an individual (20.5.14.8, 20.5.14.9, 20.5.14.17); and
- delete language making the company for whom the certified installer works responsible for the accuracy of representations made by the certified installer to the owner or operator, as the objective of Part 14 is to regulate the individuals who actually perform the installation, maintenance, repair or removal of storage tank systems (20.5.14.17).

Part 16: Qualifications of Persons Performing Corrective Action

The major changes in Part 16 would:

- delete redundant appeal provisions and integrate Part 10's appeal provisions (20.5.16.13, 20.5.16.14, and 20.5.16.15).

Part 18: Operator Training

The major changes in Part 18 would:

- add an exemption for temporarily closed tanks so that re-training and presence of a trained operator is not necessary unless certain tank conditions exist, to eliminate unnecessary expense for tank owners (20.5.18.8);
- add a deadline for designation of operators of emergency generator systems (20.5.18.12);
- exempt most emergency generators systems from the presence of a certified operator (20.5.18.13);
- extend timelines for Department review of trainer applications (20.5.18.16);
- add provisions providing for revocation or suspension of a trainer's certificate in compliance with the Uniform Licensing Act to ensure due process (20.5.18.16); and
- add a new section allowing request for approval of alternate method for presence of operators at emergency generator systems (if owner/operator is not eligible for exemption per 20.5.18.13) (20.5.18.20).

Part 19 (new): Delivery Prohibition

The new Part 19 would:

- prohibit the delivery, deposit, acceptance or sale of product at or to a storage tank or facility holding petroleum identified by the Department as ineligible, to implement state law (20.5.19.2, 20.5.19.6, 20.5.19.8);
- establish mandatory and discretionary classifications for ineligibility following state law and federal Energy Policy Act Guidelines (20.5.19.9);
- give owners and operators ample opportunity to correct violations by providing notice before a storage tank or facility is deemed ineligible for delivery, deposit, acceptance or sale following state law and federal Energy Policy Act Guidelines (20.5.19.10);
- provide a mechanism (similar to those used by other states) for identifying an ineligible storage tank or facility (20.5.19.11);
- require removal of regulated substances within a specified timeframe to prevent releases at facilities that are not operating to protect health and the environment (20.5.19.12);
- provide a red-tag notification process to owners/operators and product deliverers (20.5.19.13);
- provide prompt procedures for reclassifying an ineligible storage tank or facility as eligible to return to operation (20.5.19.14);
- authorize a deferral for rural and remote facilities that meets requirements of state law and federal Energy Policy Act Guidelines (20.5.19.15);
- authorize delivery in emergency situations and for tank testing (20.5.19.16);
- prohibit tampering with storage tank equipment and require product deliverers to comply with 20.5 NMAC (20.5.19.17); and
- provide an administrative appeal process for any owner or operator of a facility that contains storage tanks that have been red-tagged to ensure prompt and fair due process (20.5.19.18).