

**Petroleum Storage Tank Bureau
Stakeholder Meetings
Spring 2011**

Introduction

- PSTB held a series of stakeholder meetings last fall to review proposed changes to Parts 1, 2, 4, 5, 6, 7, 12, 13, 14, 18 and a new Part 19.
- Based on feedback from those meetings, this series of stakeholder meetings will propose new revisions to select parts and expand on the proposed new rule for delivery prohibition.
- The revisions proposed today are new; we will not be reviewing revisions presented last fall.

Introduction (cont'd)

- Rule Revision Timeline

- Dates of Stakeholder Meetings: Roswell, April 28; Albuquerque, May 3; Santa Fe, May 5; Farmington, May 12
- Once stakeholder meetings are complete and comments have been incorporated, in early July PSTB will appear before the Environmental Improvement Board (EIB) to request a hearing date.
- PSTB will give public (including stakeholders) minimum of 60 days notice of hearing date and opportunity to review proposed revisions.
- Likely EIB hearing date is early October.
- If approved, rules should be effective by December 2011 (30 days after publication).

**Revisions to Part 4
(20.5.4 NMAC)
New and Upgraded Storage
Tank Systems: Design,
Construction and Installation**

AST Secondary Containment: Single-Walled Tanks and Piping

- NEW Concrete Secondary Containment (20.5.4.29.B(1))
At stakeholder meetings last fall, NMED proposed to delete the requirement that concrete secondary containment be coated or internally lined, and instead replaced this requirement with provisions to allow new containment to be designed and constructed in accordance with industry standards or code of practice, with professional engineer stamps and approval. Feedback was positive.

AST Secondary Containment: Single-Walled Tanks and Piping

- EXISTING Concrete Secondary Containment (20.5.4.29.B(2))
Feedback from stakeholder meetings last fall indicated that professional engineer stamp may be difficult to obtain for existing concrete secondary containment, however.

New options:

- (a) Meet requirements for new concrete secondary containment; OR
- (b) Provide report, stamped by PE, that system can contain a release of regulated substances for 7 days and properly support the AST; OR
- (c) Coat or internally line the containment in accordance with manufacturer's instructions or industry code or standard; OR
- (d) Obtain Department approval for an alternate method under 20.5.4.38

AST Secondary Containment

- 20.5.5.10 Repair of concrete secondary containment
- Add word “significant” so that rule only requires repair of significant cracks
- PSTB will require repair if crack is growing and does or could soon affect integrity of secondary containment

Deadlines for Closing or Upgrading Existing AST Systems and Existing Emergency Generator Systems

AST deadlines were a big topic of discussion at last fall's stakeholder meetings. Based on feedback, PSTB Bureau Chief Jim Norton issued written policy on December 3, 2010 that PSTB would exercise its enforcement discretion until rules are final, and would propose new rule revisions.

Policies regarding deadlines:

1. Bureau will not enforce July 1, 2011 upgrade deadline for secondary containment for existing ASTs;
2. Bureau will not enforce July 1, 2011 deadline to close any UST being used as an AST, as this deadline will be changed to match the new AST upgrade deadline of July 1, 2013;
3. AST systems that have been upgraded will be grandfathered in.

Deadlines for Closing or Upgrading Existing AST Systems

Proposed New Rule Revisions

For existing AST systems, deadline is July 1, 2011 EXCEPT:

1. July 1, 2013 for existing AST secondary containment
2. July 1, 2013 to close any UST being used as an AST
3. Good faith upgrades to AST system secondary containment made in compliance with 20.5.4 prior to December 3, 2010 are deemed in compliance with deadline
(20.5.4.35.A)

Deadlines for Closing or Upgrading Existing Emergency Generator Systems

Proposed New Rule Revisions

For emergency generator systems, deadline is July 1, 2013 to:

1. Upgrade AST and UST emergency generator systems existing as of July 1, 2011 to meet all performance standards for new AST and UST systems in Part 4 (need not submit project drawings); OR
2. Close any AST or UST emergency generator system that does not meet the performance standards in Part 4

(20.5.4.35.B)

**Proposed Revisions to
20.5.10 and 20.5.14 NMAC and
Related Definitions in 20.5.1 NMAC**

Part 1

Definitions

- Defines “contractor” as a “person who has an agreement to perform corrective action on behalf of the state or owners and operators.”
- Deletes definition of “contracting company” in accordance with changes to Part 14.

Part 10

Administrative Review

- Lists persons who may seek review of PSTB decisions under Part 10's informal procedures.
- Defines an “aggrieved party” as:
 - An owner, operator, designated representative, contractor, or offeror aggrieved by a PSTB decision
 - A person denied designation as a representative under Part 17
 - A person denied qualification or disqualified under Part 16
- Clarifies/expands application of Part 10 and removes redundant language.

Part 14

Certified Installers

- Any "person" (individual or company) who performs installation, repair, replacement or modification of a storage tank system must be or employ a certified installer (individual), who shall exercise supervisory control over the work.
- Corrects language that can be construed as authorizing companies to be certified as installers, as certified installers must be individuals. (20.5.14.17A)
- Deletes "contracting company" throughout Part 14 and substitutes "person," which avoids confusion with "contractor" (a new definition in Part 1) and is more inclusive. (20.5.14.8, 20.5.14.9, 20.5.14.17)

Outline of Proposed Delivery Prohibition Rule (20.5.19 NMAC)

Scope and Objective

- Scope (20.5.19.2)
 - The part will apply to owners and operators of storage tank systems and facilities, product deliverers, and any person subject to the provisions of 20.5 NMAC
- Objective (20.5.19.6)
 - The objective of the part is to provide prohibitions for the delivery, deposit, acceptance or sale of product to a storage tank system or 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

Definitions

These are new definitions that will be added to 20.5.1.7 (General Provisions), to be used in 20.5.19 (Delivery Prohibitions)

- ▶ Corrosion protection = a technique to prevent the corrosion of a metal surface, which may include application of a paint or coating material approved for this purpose
- ▶ Imminent threat to public health and the environment = a condition that creates a substantial probability of harm, requiring immediate action to prevent, reduce or mitigate the actual or potential damages

Definitions (cont'd)

- Product = regulated substance
- Product deliverer = any person who delivers or deposits product into a storage tank system, including but not limited to major oil companies, jobbers, petroleum transportation companies, and other product delivery entities
- Red tag = a tamper-resistant tag on a storage tank system's fill pipes and nozzles that is easily visible and clearly identifies a storage tank system as ineligible for product delivery, deposit, acceptance or sale

General Prohibition

- It shall be unlawful for any owner, operator or product deliverer to deliver to, deposit into, accept, dispense or sell a regulated substance at or to a facility that has been identified by the Department as ineligible for product delivery, deposit, acceptance or sale (20.5.19.8).

Delivery Prohibitions

Criteria for determining which storage tanks are ineligible:

- ▶ **Mandatory ineligibility** - the Department must classify a facility as ineligible for delivery, deposit, acceptance or sale as soon as practicable (from the federal Guidelines) if required spill prevention, overfill protection, leak detection or corrosion protection equipment is not installed (20.5.19.9.A)
- ▶ **Discretionary ineligibility** - the Department may classify a facility as ineligible after a written warning or citation (from the federal Guidelines) if the above equipment is not properly maintained or operated; or operation of the storage tank facility creates an imminent threat to public health and the environment (20.5.19.9.B)

Specific Violations Triggering Delivery Prohibition

LEVEL A: Mandatory prohibition

- 4.8 Failure to install corrosion protection equipment on UST system
- 4.16.A Failure to install corrosion protection equipment on AST system
- 4.29[1] Failure to install leak detection equipment for a single-walled AST system: no secondary containment
- 4.33 Failure to install spill prevention equipment on AST system
- 4.33.A.(1) Failure to install spill prevention equipment on UST system
- 4.33.A.(2) Failure to install overfill prevention equipment on UST system
- 4.33.A.(3) Failure to install overfill prevention equipment on AST system
- 6.8.A Failure to install leak detection equipment on AST system
- 6.9 Failure to install leak detection equipment for UST system
- 6.11.A(1) Failure to install an automatic line leak detector on pressurized piping for UST system
- 6.11.A[3] Failure to install an automatic line leak detector on pressurized piping for AST system

Specific Violations Triggering Delivery Prohibition

LEVEL B: Discretionary prohibition (after warning); Sample violations:

- 4.13.B(2) Failure to O&M corrosion protection for UST with Cathodic Protection
- 4.20.A[2] Failure to O&M corrosion protection for steel piping in contact with soil or water in AST system
- 5.10.G Failure to O&M corrosion protection for steel 2ndary containment; AST
- 5.14[2] Failure to O&M spill prevention equipment; AST: tear or hole in equipmt
- 5.15.B[1] Failure to test CP system for UST system within 6 months of installation or repair and every 3 years thereafter
- 5.15.C[2] Failure to monitor impressed current system every 60 days AST system
- 6.9.A Failure to O&M leak detection equipment for UST system
- 6.11.C Failure to O&M leak detection for underground suction piping on AST system: no annual line tightness test
- 6.14 Failure to operate and maintain leak detection for UST system: manual tank gauging

Procedures for Classifying a Storage Tank Facility as Ineligible

NMED is proposing three stages of notices:

1. Notice of Violation
 2. Notice of Deficiency
 3. Notice of Intent to Red Tag
- Each notice provides owner/operator with 30 days to correct the violation(s), and informs owner/operator that failure to correct could result in red tag (20.5.19.10.A, 20.5.19.10.B, 20.5.19.10.C).
 - This tiered system of notice gives owners/operators ample opportunity to prevent shutdown; some states (e.g., Ark., Colo., Del., Okl.) authorize immediate red tags in the field for certain violations.

Procedures for Classifying a Storage Tank Facility as Ineligible (cont'd)

- Will use other methods to shut down if possible release or imminent threat to environment
- EPA objects to extended time period and multiple warnings for mandatory prohibition; no other state is this generous
- Possible modifications:
 - Only 30-day warning with intent to red tag?
 - Less than 3 notices and 90 days to correct?
 - Immediate red tag in the field (Colorado, Arkansas)?
 - Need for due process

Procedures for Classifying a Storage Tank Facility as Ineligible (cont'd)

“Red Tag”:

If owner/operator fails to correct the violation(s) within the timeframe provided in the Notice of Intent to Red Tag, the Department will affix a red tag to the fill pipe and nozzles of every storage tank system at the facility (20.5.19.10.D).

- Note that several states (e.g., Oregon, Texas) use a “green tag” system, which requires that a certificate be posted on all eligible systems and facilities before a delivery can occur.

Identification of Ineligible Storage Tanks and Facilities

Two forms of identification:

1. Red tag (affixed to the fill pipe and nozzles of every storage tank system at the ineligible facility) (20.5.19.11.A)
2. Certificate (displayed at the facility) (20.5.19.11.B)
 - Red tag tampering is prohibited (20.5.19.11.C)
 - In addition, owner/operator must continue to meet all performance standards after placement of red tag (includes leak detection, corrosion protection and monthly inspections) (20.5.19.11.D)

Regulated Substance Removal

Requirements:

- ▶ Owners/operators must remove regulated substances within 30 days of placement of red tag (20.5.19.12)
- ▶ If no release, owners/operators must empty all regulated substances from tanks per 20.5.8 and continue to meet all requirements for temporary closure, or permanently close the facility (20.5.19.12.A, 20.5.19.12.B)
- ▶ Owners/operators must follow 20.5.7 if a suspected or confirmed release exists (20.5.19.12)

Notification Processes for Storage Tank Owners/Operators and Product Deliverers

- Owners/Operators: when owner/operator is present, written notice is given in person; when neither owner/operator present, Department gives employee in charge written notice and sends copy to owner/operator within 24 hours (20.5.19.13.A)
- Product Deliverers: if the owner/operator fails to correct the violations pursuant to the Notice of Intent to Red Tag, the Department will post the name and address of the facility it intends to red tag on its website (www.nmenv.state.nm.us) 48 hrs. prior to affixing the red tag (20.5.19.13.B)

Notification Processes for Storage Tank Owners/Operators and Product Deliverers (cont'd)

Note that other states such as Colorado only provide 24 hours notice to product deliverers; Alabama requires posting by no later than Wednesday at 12am each week, which is effective at Wednesday at 12am of that week.

Reclassifying Ineligible Storage Tank Owners/Operators as Eligible to Receive Product

To reclassify an ineligible storage tank, the owner/operator must submit a statement of compliance (20.5.19.14.A).

The statement must:

- ▶ be in writing,
- ▶ contain the owner/operator's name, and
- ▶ state how the conditions have been corrected, by whom, and the date of correction

The Department must confirm eligibility within 3 business days after receiving statement of compliance (20.5.19.14.B).

Reclassifying Ineligible Storage Tank Owners/Operators as Eligible to Receive Product (cont'd)

After confirmation, the Department will immediately remove the red tag and certificate, and remove the facility from the Department's website list of ineligible facilities as soon as practicable (20.5.19.14.C).

Note that some states require that storage tanks be reclassified within 5 business days; New Mexico response time will be shorter.

Delivery Prohibition Deferral in Rural and Remote Areas

- ▶ The Department will defer classifying a facility as ineligible if the classification would jeopardize the availability of or access to motor fuel in rural and remote areas (20.5.19.15)
- ▶ Deferral is for limited period up to 180 days after the Department determines that a facility is ineligible for delivery, deposit, acceptance or sale of product (red tag) (20.5.19.15)
- ▶ “Rural and remote” = an area that is more than 20 miles from another facility that sells fuel to the public and is open year round (20.5.1.7)

Delivery Authorization in Specific Situations; Additional Requirements

▶ Delivery Authorization:

Delivery may be authorized by the Department to an emergency generator tank in emergency situations or to a facility for tank testing (20.5.19.16.A, 20.5.19.16.B)

▶ Additional Requirements:

- All persons are prohibited from tampering with storage tank equipment (20.5.19.17.A)
- All product deliverers must ensure that deliveries are made in compliance with 20.5 NMAC (20.5.19.17.B)

We want to avoid this!



And this!



Administrative Appeals

An owner/operator of a facility that has been red-tagged may appeal to the Secretary (NM Environment Department) (20.5.19.18).

- Proposed process is designed to provide an expedited appeal for owners/operators who are subject to a red tag shutdown, in order to ensure timely due process (Part 10 administrative review timelines are significantly longer).

Administrative Appeals (cont'd)

- Appeal request must be in writing, submitted within 5 working days after red tag has been affixed, or decision is final (20.5.19.18.A)
- Hearing will be held within 7 working days after receipt of request (20.5.19.18.A)
- Burden of proof is on person requesting the hearing (20.5.19.18.B)
- Hearing will be held at place designated by Secretary unless other agreement is made; Secretary may designate other person to conduct hearing and make final decision (20.5.19.18.C)

Administrative Appeals (cont'd)

- ▶ Department makes audio recording of hearing; if either party wants hearing transcribed, that party must pay for transcription (20.5.19.18.C)
- ▶ Rules of evidence and civil procedure do not apply, though testimony, cross-examination, exhibits, witnesses and exhibits are allowed; testimony is under oath (20.5.19.18.C)
- ▶ Secretary (or designee) must issue written order within 7 working days following the close of the hearing record (20.5.19.18.D)
- ▶ No stay of delivery prohibition/red tag during the appeal process (20.5.19.18.E)
- ▶ Secretary's final order may be appealed; if appealed, no stay of any action, compliance or corrective action required by the Secretary's order (20.5.19.18.F)

Summary of NM Approach

- Provides a meaningful program that will improve public safety and protect the environment
- Complies with federal Guidelines and New Mexico state law to preserve federal grant funding
- Provides ample opportunity and process for owners/operators to avoid shutdown
- Provides for expedited hearing if facility is red-tagged
- Ensures prompt renewal of operations at a facility once compliance is achieved

Contact Information

- For changes or inclusion to Stakeholder mailing list, contact:
Bertha Aragon (505) 476-4393 or Bertha.Aragon@state.nm.us
- To comment on proposed rules, or for information on rule revision process, contact:
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- To review proposed rules, go to www.nmenv.state.nm.us/ust (click on proposed rules)
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Suggestions and Comments from Stakeholders