

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Notice of Public Meeting and Rulemaking Hearing

The New Mexico Environmental Improvement Board (Board) will hold a public hearing at its regularly convened meeting on October 3, 2011 at 9 a.m. and continuing on October 4, 2011, if necessary, in Room 317, State Capitol, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501. The hearing location may change prior to October 3, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oosts/eib.htm> prior to the hearing. The purpose of the hearing in the matter EIB No. 11-13 (R) is to consider proposed amendments to Petroleum Storage Tank Regulations, 20.5.1 NMAC (General Provisions), 20.5.2 NMAC (Registration of Tanks), 20.5.4 NMAC (New and Upgraded Storage Tank Systems), 20.5.5 NMAC (General Operating Requirements), 20.5.6 NMAC (Release Detection), 20.5.7 NMAC (Reporting and Investigation of Suspected and Confirmed Releases), 20.5.10 NMAC (Administrative Review), 20.5.12 NMAC (Corrective Action for Storage Tank Systems Containing Petroleum Products), 20.5.13 NMAC (Corrective Action for UST Systems Containing Other Regulated Substances), 20.5.14 NMAC (Certification of Tank Installers), 20.5.16 NMAC (Qualification of Persons Performing Corrective Action), and 20.5.18 NMAC (Operator Training). The Board is also considering the adoption of a proposed new rule, 20.5.19 NMAC (Delivery Prohibition). The New Mexico Environment Department (NMED) is the proponent of the amendments and new rule.

The federal Energy Policy Act of 2005, 42 U.S.C. sec. 15801 et seq., requires that states implement programs to prohibit the delivery, deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible. The New Mexico State Legislature provided the statutory authority for compliance with this requirement in 2010, including above ground storage tanks in the delivery prohibition program (HB 81). A proposed new rule would implement these requirements, establishing mandatory and discretionary classifications for ineligible facilities; providing opportunity to correct violations before a facility is deemed ineligible; requiring removal of regulated substances within a specified timeframe; providing a red-tag mechanism for identification of ineligible facilities; allowing prompt return to operation upon reclassification; authorizing a deferral for rural and remote facilities; authorizing deferral in emergency situations and for tank testing; prohibiting tampering; and providing an expedited appeal process.

In addition to complying with these federal and state requirements, HB 81 also eliminated the exemption for emergency generator tanks and expanded the exemption for heating oil tanks in the Hazardous Waste Act and the Groundwater Protection Act, which are included as proposed rule amendments. Other major changes to the proposed rules would clarify and expand on secondary containment requirements for underground storage tanks (UST) and above ground storage tanks (AST), including extending the deadline for closing or upgrading existing AST secondary containment; clarify the support and concrete foundation requirements for installation of AST tanks; extend tank tightness testing requirements; clarify visual inspection requirements

for AST systems; add reporting requirements for leak detector testing; add threshold standards for reporting a release; expand the list of persons who may seek review of NMED determinations; change clean up requirements to reduce the costs that the Corrective Action Fund will pay; change vapor mitigation standards to meet federal requirements; streamline and clarify the renewal process for certified tank installers; add an operator training exemption for temporarily closed tanks; extend timelines for NMED review of trainer applications; and add provisions providing for revocation or suspension of a trainer's certificate.

Please note that formatting and minor technical changes in the regulations other than those proposed by petitioners may be proposed at the hearing. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, a copy of the Bureau's proposed amendments and Petition and Statement of Reasons are posted on the NMED website at <http://www.nmenv.state.nm.us/ust/draftregs.html>.

Written comments regarding the proposed revisions may be addressed to Ms. Felicia Orth at the above address, and should reference docket number EIB 11-13 (R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Hazardous Waste Act, Section 74-4-5 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing. A witness may participate by telephone when an emergency or other circumstances dictate, and must receive permission from the hearing officer sufficiently in advance of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so on or before 5:00 pm on September 15, 2011. The notice of intent shall:

1. identify the person or entity for whom the witness(es) will testify;
2. identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
4. attach the text of any recommended modifications to the proposed changes; and
5. list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on September 15, 2011, and should reference the name of the regulation, the date of the hearing, and docket number EIB 11- 13(R). Notices of intent to present technical testimony shall be submitted to:

Felicia Orth, Acting Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley at the Human Resources Bureau by September 15, 2011. The Human Resources Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network at 1-800-659-1779.

The Board may make a decision on the proposed regulatory changes at the conclusion of the hearing, or the board may convene a meeting after the hearing to consider action on the proposal.