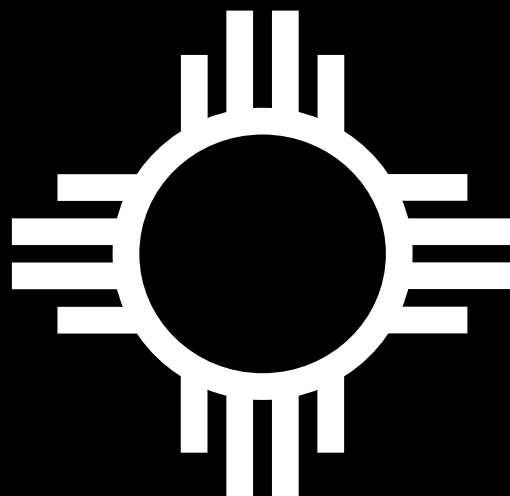


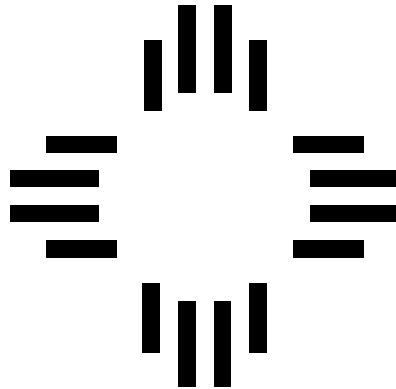
**NEW
MEXICO
REGISTER**



Volume XIV
Issue Number 14
July 31, 2003

New Mexico Register

**Volume XIV, Issue Number 14
July 31, 2003**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division
Santa Fe, New Mexico
2003

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New Mexico Register

Volume XIV, Number 14

July 31, 2003

Table of Contents

Notices of Rulemaking and Proposed Rules

Education, Board of	
Notice of Proposed Rulemaking	407
Information Technology Commission	
Notice of Proposed Rulemaking and Procedural Order	408
Mining Commission	
Notice of Public Meeting and Hearing of the New Mexico Mining Commission	409
Public Regulation Commission	
Notice of Proposed Rulemaking - Location of Large Capacity Plants and Transmission Lines	409
Water Quality Control Commission	
Notice of Public Hearing	410

Adopted Rules and Regulations

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Children, Youth and Families Department

Prevention and Intervention Division

8.15.2 NMAC	A/E	Requirements for Child Care Assistance Programs for Clients and Child Care Providers	413
-------------	-----	--	-----

Engineer, Office of the State

19.25.9 NMAC	N	Prohibitions on Use of Surface Water and Ground Water in Designated Areas	414
--------------	---	---	-----

Environmental Improvement Board

20.5.1 NMAC;			
20 NMAC 5			
Parts 4 - 16	R	Repeal of Parts 1, 4 through 16 of Title 20 Chapter 5	415
20.5.1 NMAC	N	Petroleum Storage Tanks - General Provisions	417
20.5.4 NMAC	N	Petroleum Storage Tanks - New and Upgraded Storage Tank Systems: Design, Construction and Installation	424
20.5.5 NMAC	N	Petroleum Storage Tanks - General Operating Requirements	430
20.5.6 NMAC	N	Petroleum Storage Tanks - Release Detection	435
20.5.7 NMAC	N	Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases	440
20.5.8 NMAC	N	Petroleum Storage Tanks - Out-of-Service Systems and Closure	441
20.5.9 NMAC	N	Petroleum Storage Tanks - Financial Responsibility	443
20.5.10 NMAC	N	Petroleum Storage Tanks - Administrative Review	466
20.5.11 NMAC	N	Petroleum Storage Tanks - Lender Liability	467
20.5.12 NMAC	N	Petroleum Storage Tanks - Corrective Action for Storage Tank Systems Containing Petroleum Products	471
20.5.13 NMAC	N	Petroleum Storage Tanks - Corrective Action for UST Systems Containing Other Regulated Substances	485
20.5.14 NMAC	N	Petroleum Storage Tanks - Certification of Tank Installers	496
20.5.15 NMAC	N	Petroleum Storage Tanks - Corrective Action Fund Use and Expenditures	500
20.5.16 NMAC	N	Petroleum Storage Tanks - Qualification of Persons Performing Corrective Action	502

Game and Fish, Department of

19.31.8 NMAC	A	Big Game and Turkey	504
--------------	---	-------------------------------	-----

Regulation and Licensing Department

Manufactured Housing Division

14.12.2 NMAC A

Manufactured Housing Requirements..... 505

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF EDUCATION

NEW MEXICO STATE BOARD OF EDUCATION NOTICE OF PROPOSED RULEMAKING

The New Mexico State Board of Education ("State Board") will convene on Wednesday, August 27, 2003. Committees are scheduled to meet on Wednesday, August 27, 2003 and Thursday, August 28, 2003. Final actions on the proposed rulemaking will be taken at the regular meeting of the State Board on Friday, August 29, 2003. The committee meetings and the regular meeting will be held in Mabry Hall, State Education Building, 300 Don Gaspar, Santa Fe, New Mexico. Information regarding any change in the location of the meetings, the addition or change of meeting days or times, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The State Board may consider the following items of rulemaking at the meeting:

Rule Number	Rule Name	Proposed Action
6.20.2 NMAC	GOVERNING BUDGETING AND ACCOUNTING FOR NEW MEXICO PUBLIC SCHOOLS AND SCHOOL DISTRICTS	Amend rule*
6.21.2 NMAC	AUDIT RESOLUTION PROCESS, APPLICATION HEARING PROCESS, ENFORCEMENT PROCESS	Amend rule*
6.30.2.15 NMAC	STANDARDS FOR EXCELLENCE	Amend rule (replace Section 15 - CONTENT STANDARDS – SCIENCE in its entirety)+
6.60.6 NMAC	CONTINUING LICENSURE FOR LICENSED EDUCATORS IN NEW MEXICO	Repeal and replace rule#
6.60.6 NMAC	CONTINUING LICENSURE FOR LICENSED EDUCATORS IN NEW MEXICO	Adopt new rule#
6.60.7 NMAC	EDUCATOR LICENSURE APPLICATION FEE	Amend rule#
6.63.2 NMAC	LICENSURE FOR SCHOOL NURSES, GRADES K-12	Amend rule#
6.63.6 NMAC	LICENSURE FOR SCHOOL COUNSELORS, K-12	Amend rule#
6.63.10 NMAC	LICENSURE FOR SUBSTITUTE TEACHERS	Amend rule#
6.64.2 NMAC	COMPETENCIES FOR ENTRY-LEVEL LANGUAGE ARTS TEACHERS	Amend rule#
6.64.3 NMAC	COMPETENCIES FOR ENTRY-LEVEL READING TEACHERS	Amend rule#
6.64.4 NMAC	COMPETENCIES FOR ENTRY-LEVEL MATHEMATICS TEACHERS	Amend rule#
6.64.5 NMAC	COMPETENCIES FOR ENTRY-LEVEL SCIENCE TEACHERS	Amend rule#
6.64.6 NMAC	COMPETENCIES FOR ENTRY-LEVEL SOCIAL STUDIES TEACHERS	Amend rule#
6.64.7 NMAC	COMPETENCIES FOR ENTRY-LEVEL HEALTH EDUCATION TEACHERS	Amend rule#
6.64.8 NMAC	COMPETENCIES FOR ENTRY-LEVEL LIBRARY MEDIA SPECIALISTS	Amend rule#
6.64.11 NMAC	TESOL COMPETENCIES	Amend rule#
6.64.12 NMAC	LICENSURE IN MODERN, CLASSICAL, AND NATIVE LANGUAGES	Amend rule#
6.64.13 NMAC	COMPETENCIES FOR ENTRY-LEVEL PERFORMING ARTS AND VISUAL ARTS EDUCATION TEACHERS	Amend rule#
6.64.14 NMAC	COMPETENCIES FOR ENTRY-LEVEL PHYSICAL EDUCATION TEACHERS	Amend rule#
6.64.15 NMAC	COMPETENCIES FOR ENTRY-LEVEL TECHNOLOGY EDUCATION TEACHERS	Adopt new rule#
6.63.14 NMAC (Proposed NMAC No.)	LICENSURE IN NATIVE LANGUAGE AND CULTURE	Adopt new rule#
6.69.3 NMAC	PERFORMANCE EVALUATION REQUIREMENTS FOR TEACHERS, ADMINISTRATORS, LIBRARY MEDIA SPECIALISTS, AND COUNSELORS	Amend rule#

6.69.4 NMAC (Proposed NMAC No.)	PERFORMANCE EVALUATION SYSTEM REQUIREMENTS FOR TEACHERS	Adopt new rule#
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* Finance, Transportation and Administration Committee. These rules have been previously noticed and disseminated for public comment. A public hearing was previously held to obtain public comment regarding the proposed amendments. Copies of the proposed rule changes identified with (*) may be obtained from Logan Martin at (505) 827-6626. Written comments concerning the rules identified with (*) should be submitted to Logan Martin, School Budget & Finance Analysis Unit, State Department of Education, 300 Don Gaspar, Santa Fe, NM 87501-2786. Comments may also be telefaxed to Mr. Martin at (505) 827-9931 or submitted electronically to lmartin@sde.state.nm.us. Comments will be accepted until 5 p.m. on August 15, 2003; however, submission of written comments as soon as possible is encouraged.

Educator Quality Committee. The rules are currently being disseminated for public comment. The times and locations of pending hearings are available under the topic "SDE Information Links" on the State Department of Public Education's website (<http://sde.state.nm.us/>). Copies of the proposed rules identified with (#) may be obtained from Ms. Linda Olivas or may be accessed on the State Department of Public Education's website (<http://sde.state.nm.us/>). Written comments concerning the rules identified with (#) should be submitted to James Ball, Director, Professional Licensure, State Department of Education, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Comments may also be telefaxed to Mr. Ball at (505) 827-4148 or submitted electronically to <mailto:jball@sde.state.nm.us>. Comments will be accepted until 5 p.m. on August 15, 2003; however, submission of written comments as soon as possible is encouraged.

+ Instructional Services Committee. The proposed amendments have been disseminated for public comment and public hearings have been held. The public comment period closed on July 3, 2003. A copy of the draft Content Standards – Science – may be accessed on the State Department of Public Education's website (<http://sde.state.nm.us/>). Copies of the proposed rule changes identified with (+) may also be obtained from Ms. Doris Sandoval at (505) 827-6574.

Individuals with disabilities who require this information in an alternative format or

need any form of auxiliary aid to attend or participate in this meeting, please contact the State Board of Education Office at (505) 827-6571 as soon as possible.

The Board attempts to follow the order and date of items as listed on the Agenda; however, the order and date of specific items are tentative and may vary from the printed Agenda.

Comments, questions, or requests for copies of the Agenda should be directed to Mary Jo Bradley, State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or (505) 827-6571.

**NEW MEXICO
INFORMATION
TECHNOLOGY
COMMISSION**

STATE OF NEW MEXICO
INFORMATION TECHNOLOGY
COMMISSION

IN THE MATTER OF ADOPTING
1.12.10 NMAC, INTERNET, INTRANET,
EMAIL, AND DIGITAL NETWORK
USAGE

NOTICE OF PROPOSED
RULEMAKING AND PROCEDURAL
ORDER

I. SOLICITATION OF COMMENTS

The Information Technology Commission (Commission) issues this Notice of Proposed Rulemaking to provide an opportunity for public comment and to create a record for a decision on a proposed new rule: 1.12.10 NMAC, Internet, Intranet, Email, and Digital Network Usage. The Commission requests written comments from all interested persons and entities on the proposed new rule.

All relevant and timely comments, including data, views, or arguments, will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order issued by the Commission.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before August 28, 2003. All relevant and timely comments, including data, views, or arguments will be considered by the Commission before final action is taken in this proceeding. Written comments must be filed prior to the deadline for receipt of comments either in hard copy with the Deputy Chief Information Officer, Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501 or by electronic mail to the Deputy Chief Information Officer at cio@state.nm.us. The rule number must appear on each submittal. Comments will be available for public inspection during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Sections 2-11-1 NMSA 1978 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

IT IS FURTHER ORDERED that the Commission may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that staff of the Office of the Chief Information Officer shall cause a copy of this Notice to be published once in the *New Mexico Register*, once in the *Albuquerque Journal*, and to be

posted to the Internet at <http://www.cio.state.nm.us> all on or before July 30, 2003. To obtain a copy of the proposed rule: (1) send the rule name, rule number, and a self-addressed envelope to the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501; (2) call the Office of the Chief Information Officer at 505-476-0400 with the rule name and rule number; e-mail the Deputy Chief Information Officer at cio@state.nm.us with the rule name and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail); or download the proposed rule from the Internet at <http://www.cio.state.nm.us>. The proposed rule is also available for inspection and copying during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT individuals with a disability who are in need of summaries or other types of accessible forms of the proposed rule or comments may contact the Deputy Chief Information Officer at (505)476-0400.

DONE, this 15th day of July, 2003.

INFORMATION TECHNOLOGY COMMISSION

By: Moira Gerety, Chair

NEW MEXICO MINING COMMISSION

NOTICE OF PUBLIC MEETING AND HEARING OF THE NEW MEXICO MINING COMMISSION

The New Mexico Mining Commission will hold a regular meeting and hearing at **10:00 A.M. Thursday, September 18, 2003 in Room 307 of the State Capitol Building** (the Roundhouse) in Santa Fe, NM. Due to its potential length the hearing may continue on Friday, September 19, 2003 in Room 307 beginning at 9:00 A.M.

During the meeting the Mining Commission will conduct a public hearing on a petition for rulemaking submitted by the Mining and Minerals Division (MMD) on June 18, 2003 (Petition 03-01). The Commission will consider revisions of regulations 19.10.12 NMAC – Financial Assurance, NM Mining Act Rules. To view Petition 03-01 go to the Mining and Minerals Division’s homepage at <http://www.emnrd.state.nm.us/Mining/Choose New Mexico Mining Commission in the lower left-hand corner, then NMMC Proposed Rulemaking>. Copies of the pro-

posed rule changes are also available from the New Mexico Energy, Minerals & Natural Resources Department, Mining and Minerals Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505 or by calling 505/476-3400. At the conclusion of the hearing, the Mining Commission may deliberate and make final decisions on the petition. Additionally, the Commission may discuss other issues that may come before it.

Hearings on petitions for rulemaking are conducted pursuant to the Mining Commission's Guidelines for Rulemaking. To view the Guidelines go to the Mining and Minerals Division’s homepage at <http://www.emnrd.state.nm.us/Mining/Choose New Mexico Mining Commission in the lower left-hand corner, then Guidelines for Rulemaking>.

Notices of intent to present technical testimony must be received by the Clerk of the Mining Commission, C/O Mining and Minerals Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 not later than 5 p.m. Monday, September 8, 2003 and should reference the petition number and the date of the hearing.

A copy of the agenda for the meeting/hearing will be available at least 24 hours before the meeting and may be obtained by contacting Alysia Leavitt or John Pfeil at 476-3400. If you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Leavitt or Pfeil at 476-3400 at least 48 hours prior to the hearing. Public documents can be provided in various accessible forms. Please contact Leavitt or Pfeil if a summary or other type of accessible form is needed.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF)
THE ADOPTION OF A)
RULE REGARDING) Utility Case
LOCATION OF) No. 3810
LARGE CAPACITY)
PLANTS AND TRANS-)
MISSION LINES)**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation

Commission (“Commission”) proposes to adopt a rule specifying the contents of an application for approval of the location of a large capacity plant or transmission line pursuant to NMSA 1978, Section 62-9-3 (2001). This matter comes before the Commission on Staff’s Petition for Rulemaking.

THE COMMISSION FINDS AND CONCLUDES:

1. The Public Regulation Commission Act authorizes the Commission to “adopt such reasonable administrative, regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties.” NMSA 1978, Section 8-8-4(B)(10) (1999).

2. Section 62-9-3(B) of the New Mexico Statutes requires Commission approval, before any construction begins, of the location of any plant designed for, or capable of, operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without New Mexico, whether or not owned or operated by a person that is a public utility subject to regulation by the Commission, or of transmission lines in connection with such plant, on a location within New Mexico. NMSA 1978, Section 62-9-3(B).

3. Section 62-9-3(C) states: Application for approval shall contain all information required by a commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits.

Id. Section 62-9-3(C).

4. This Commission notes that applications for the siting of plants designed for, or capable of, operation at a capacity of three hundred thousand kilowatts or more have been rare over the years. In recent years, such applications have exclusively involved generating stations that would serve as merchant plants. Merchant plants are those designed to serve the wholesale market within and without New Mexico and that are not designed to serve New Mexico customers exclusively. Nonetheless, plants that are designed for, or capable of, operation at a capacity of three hundred thousand kilowatts or more will not necessarily be used as merchant plants, but may also be used to serve New Mexico customers partially or completely (such as the

Palo Verde Nuclear Generating Station).

5. Staff, in its Petition for Rulemaking, states that the purpose of its proposed rule is to provide guidance to future applicants who seek location approval under Section 62-9-3 and to ensure that applicants submit complete applications so that the Commission can make an informed decision within the six month statutory time limit.

6. The Commission finds that it should consider adopting a rule to specify the contents of an application for approval of the location of a large capacity plant or transmission line. The proposed rule is attached to this Order as Exhibit A.

7. The Commission will take written comments on the proposed rule from any person wishing to comment. Interested persons shall file their written comments no later than September 13, 2003. Any person wishing to respond to comments may do so by submitting written response comments no later than October 10, 2003. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. A copy of the proposed rule in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to Exhibit A shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

8. Comments on the proposed rule shall be sent to, and additional copies of the proposed rule can be obtained from:

Melanie Sandoval

New Mexico Public Regulation Commission

Attention: Proposed Rule on Approval of Location of Large Capacity Plant

224 East Palace Avenue, Marian Hall
Santa Fe, NM 87501

Telephone: (505) 827-6968

Additional copies of the proposed rule may also be downloaded from the Commission's Web Site, www.nmprc.state.nm.us, under "Meetings, Public Notices."

9. The Commission will

review all timely submitted written comments and will hold public hearings to take oral comment regarding the proposed rule. The schedule and locations for these public hearings is as follows:

Wednesday, September 10, 2003, Gallup, New Mexico (the specific time and location of this hearing will be announced at a later time);

Friday, September 12, from 1:30 to 4:30 p.m., at City Council Chambers (Basement Chambers Room), 1 Civic Plaza, Albuquerque, New Mexico;

Monday, September 15, 2003, at 9:00 a.m., at the first floor hearing room of Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico;

Wednesday, October 1, 2003, Clovis, New Mexico (the specific time and location of this hearing will be announced at a later time);

Thursday, October 9, 2003, at 5:00 p.m., at the City Council Chambers, Las Cruces City Hall, 200 North Church, Las Cruces, New Mexico.

Additional public hearings may be scheduled. Further notice will be issued regarding the time and location of any additional hearings that are scheduled.

10. Interested persons should contact the Office of General Counsel at (505) 827-6947 to confirm the date, time and place of any public hearing, since hearings are occasionally rescheduled.

11. Any person with a disability requiring special assistance in order to participate in a hearing should contact the Office of General Counsel at (505) 827-6947 at least 48 hours prior to the commencement of the hearing.

12. Copies of this Notice should be sent to all interested persons and should be published in two newspapers of general circulation in the state and in the New Mexico Register.

IT IS THEREFORE ORDERED:

A. The "Location of Large Capacity Plants and Transmission Lines," attached to this Notice as Exhibit A, is proposed for adoption as a permanent rule as provided by this Notice.

B. Interested persons shall file their written comments on the proposed rule as provided in this Notice.

C. Public hearings shall be held as provided in this Notice.

D. Staff of the Utility Division shall mail a copy of this Notice, including Exhibit A, to all interested persons. Staff shall cause this Notice to be published, without Exhibit A, in two newspapers of general circulation in the state and in the New Mexico Register, and shall pro-

vide the Notice by e-mail or facsimile transmission to those persons who have so requested.

E. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 8th day of July, 2003.

NEW MEXICO PUBLIC REGULATION COMMISSION

LYNDA M. LOVEJOY, CHAIRWOMAN

DAVID W. KING, VICE CHAIRMAN

HERB H. HUGHES, COMMISSIONER

JEROME D. BLOCK, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

NEW MEXICO WATER QUALITY CONTROL COMMISSION

WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING

The New Mexico Water Quality Control Commission ("WQCC") will hold a public hearing after its regularly convened meeting beginning at 9:00 a.m. on Tuesday September 9, 2003 in Room 321 of the New Mexico State Capitol Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. Any interested persons or parties are encouraged to participate or attend.

The public hearing will be held to consider the amendment to 20.6.2.4105 NMAC proposed below. The reason for the proposed amendment is to extend the current exemption from abatement plan requirements for underground storage tanks to both above ground and underground storage tanks, to be consistent with recent legislative amendments giving the Petroleum Storage Tank Bureau authority over both above ground and underground storage tanks. The Environmental Improvement Board recently amended the Petroleum Storage Tank Regulations (20.5.5 NMAC) to provide preventive requirements and technical tank standards for above ground storage tanks, access to the Corrective Action Fund for leaks from above ground storage tanks, and corrective action requirements for remediation of leaks from above

ground storage tanks.

The proponent of the proposed amendment is the New Mexico Petroleum Storage Tank Bureau (the "Bureau") of the New Mexico Environment Department (the "Department"). The Bureau proposes to amend 20.6.2.4105 NMAC as follows:

20.6.2.4105 NMAC – Exemptions from Abatement Plan Requirements

The proposed amendment deletes the word "underground" from the exemption in 20.6.2.4105.A(1) NMAC so that all storage tanks (aboveground and underground) fall under the same exemption. Additionally, the proposed amendment corrects the title of the storage tank regulations, which has been changed to "Petroleum Storage Tank Regulations."

The hearing will be conducted in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings, adopted pursuant to the Water Quality Act, NMSA 1978, Section 74-6-6.

Any person may provide a general written statement concerning the regulation amendment at or before the hearing by filing the statement with the Secretary of the WQCC, Geraldine Madrid-Chavez, at Environment Department, Secretary to WQCC, P.O. Box 26110, Santa Fe, New Mexico 87502. Any person may provide a general oral statement or non-technical testimony concerning the proposed amendment at the hearing.

Any person who intends to provide a technical written statement or technical oral testimony concerning the proposed change to the regulations shall file an original and ten copies of a statement of intent to present technical testimony on or before Monday August 25, 2003 with Geraldine Madrid-Chavez, Environment Department, Secretary to WQCC, P.O. Box 26110, Santa Fe, New Mexico 87502, and 1 copy with the petitioner (Petroleum Storage Tank Bureau, New Mexico Environment Department, 2044 Galisteo Street, Suite A, Santa Fe, NM 87504). The statement of intent to present technical testimony shall:

1. Identify the person filing the statement, the witness, and the person for whom the witness(es) will testify;
2. Identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
3. Summarize, or include a copy of, the direct testimony of each tech-

nical witness and state the anticipated duration of the testimony of that witness;

4. Include the text of any recommended modifications to the proposed regulatory changes;

5. List and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

Interested persons may review hard copies of the proposed amendments during regular business hours at the Petroleum Storage Tank Bureau located at 2044 Galisteo Street, Suite A, in Santa Fe, New Mexico; at the Albuquerque District Office located at 4131 Montgomery Boulevard NE; or at the Environment Department's web site at www.nmenv.state.nm.us. Interested persons may also contact Edwina Ferguson at 505 984-1741 to obtain hard copies of the proposed amendments.

The WQCC may make a decision on the proposed regulatory changes at the conclusion of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aide, i.e. sign language interpreter, to participate in any aspect of this hearing, please contact Cliff Hawley at (505) 827-2844, New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. (TDD or TDY users please access this number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-959-1779.)

End of Notices and Proposed Rules Section

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Adopted Rules and Regulations

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PREVENTION AND INTERVENTION DIVISION

This is an emergency amendment to 8.15.2.17 NMAC

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the fourteen (14) calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 - 19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Out of School Time Care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (Part time 1).

F. Out of School Time Care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (Full time).

G. Out of School Time Care provided for 5 hours or less per week are paid at the 25% rate (Part time 3) regardless of provider type.

H. Monthly Reimbursement Rates

Licensed Child Care Centers								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$467.84	\$352.60	\$350.88	\$264.45	\$233.92	\$176.30	\$116.96	\$88.15
Toddler	\$417.19	\$345.00	\$312.89	\$258.75	\$208.60	\$172.50	\$104.30	\$86.25
Pre-School	\$386.48	\$322.50	\$289.86	\$241.88	\$193.24	\$161.25	\$96.62	\$80.63
School Age	\$337.11	\$311.75	\$252.83	\$233.81	\$168.56	\$155.88	\$84.28	\$77.94
Licensed Group Homes (Capacity: 7-12)								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$370.48	\$324.38	\$277.86	\$243.29	\$185.24	\$162.19	\$92.62	\$81.10
Toddler	\$335.40	\$320.00	\$251.55	\$240.00	\$167.70	\$160.00	\$83.85	\$80.00
Pre-School	\$329.55	\$315.00	\$247.16	\$236.25	\$164.78	\$157.50	\$82.39	\$78.75
School Age	\$325.00	\$305.00	\$243.75	\$228.75	\$162.50	\$152.50	\$81.25	\$76.25

Licensed Family Homes (Capacity: 6 or less)								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$365.20	\$320.00	\$273.90	\$240.00	\$182.60	\$160.00	\$91.30	\$80.00
Toddler	\$325.08	\$315.00	\$243.81	\$236.25	\$162.54	\$157.50	\$81.27	\$78.75
Pre-School	\$324.17	\$310.00	\$243.13	\$232.50	\$162.09	\$155.00	\$81.04	\$77.50
School Age	\$319.28	\$300.00	\$239.46	\$225.00	\$159.64	\$150.00	\$79.82	\$75.00
Registered Homes and In-Home Child Care								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-School	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School Age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider. Providers located in the three metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, ~~and~~ Dona Ana, ~~and~~ San Juan counties. All other providers receive the rural rate.

J. The department pays a differential rate to former gold and silver licensed providers and providers holding national accreditation status. Former gold and silver licensed providers receive an additional \$66.00 per month and \$33.00 per month, respectively, for full time care above the base reimbursement standard. In order to continue at these reimbursement rates a provider must meet and maintain former gold and silver licensing requirements. If a former gold or silver licensed provider fails to meet the former gold and silver licensing requirements this could result in the provider reimbursement reverting to a lower level of reimbursement. Providers holding national accreditation status receive an additional ~~[\$66.00 per~~ **\$75.00 per child per** month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this

will result in the provider reimbursement reverting to a lower level of reimbursement.

K. AIM HIGH is a voluntary quality child care improvement pilot program that is open to all registered and licensed child care providers. The department pays a differential rate to providers achieving AIM HIGH levels as follows: Level 3 at \$16.50 per month per child for full time care above the base reimbursement rate; Level 4 at \$33.00 per month per child for full time care above the base reimbursement rate, and Level 5 at ~~[\$66.00 per month per~~ **\$75.00 per child per month** for full time care above the base reimbursement rate.

L. The department pays a differential rate equivalent to 10% of the applicable full-time rate to providers who provide full-time care during non-traditional hours. Providers who provide part-time care during non-traditional hours will be paid a differential rate subject to the proration schedule delineated in 8.15.2.17 (D) NMAC.

M. If a significant change occurs in the client's circumstances, (for example, an increase or decrease in income or a change in work schedule) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the avail-

ability of funds, which may be shorter than the usual six month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp 8.15.2.17 NMAC, 11-01-02; A, 03-01-03; A, 07-16-03]

**NEW MEXICO OFFICE
OF THE STATE
ENGINEER**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 25 ADMINISTRATION
AND USE OF WATER-GENERAL
PROVISIONS
PART 9 PROHIBITIONS ON
USE OF SURFACE WATER AND
GROUND WATER IN DESIGNATED
AREAS**

19.25.9.1 ISSUING AGENCY:
Office of the State Engineer.

[19.25.9.1 NMAC - N, 07/31/03]

19.25.9.2 SCOPE: This rule applies to all geographic areas within the jurisdiction of the state engineer. This rule shall not be construed to limit or otherwise alter the jurisdiction, power, or authority of the state engineer.

[19.25.9.2 NMAC - N, 07/31/03]

**19.25.9.3 S T A T U T O R Y
AUTHORITY:** Section 72-2-1 NMSA 1978 grants the state engineer the general supervision of waters of the state. Section 72-2-8 NMSA 1978 grants the state engineer the authority to adopt regulations and codes, and to issue orders that are necessary to accomplish its duties.

[19.25.9.3 NMAC - N, 07/31/03]

19.25.9.4 DURATION: Permanent; until later amended, repealed or replaced.
[19.25.9.4 NMAC - N, 07/31/03]

19.25.9.5 EFFECTIVE DATE: July 31, 2003, unless a later date is cited in the history note at the end of a section.
[19.25.9.5 NMAC - N, 07/31/03]

19.25.9.6 OBJECTIVE: The objective of this Part is to place restrictions on wells and transfers of either surface water or ground water within the boundaries of certain areas as determined by the state engineer in the interest of safety and the protection of life and property within the state of New Mexico.
[19.25.9.6 NMAC - N, 07/31/03]

19.25.9.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in Chapter 72 NMSA 1978. Unless defined below or in a specific section, all other words used in these regulations shall be given their customary and accepted meanings: "Superfund" means federal and state laws designed to clean up sites where past, improper disposal of hazardous substances caused soil, surface water and ground water contamination.
[19.25.9.7 NMAC - N, 07/31/03]

19.25.9.8 PROHIBITED ACTIVITIES: It shall be unlawful for any person or persons to drill new wells, or transfer either surface water or ground water to existing wells in any areas designated by the state engineer as restricted from such activities.
[19.25.8 NMAC - N, 07/31/03]

19.25.9.9 AREAS SUBJECT TO PROHIBITIONS: By order of the office of the state engineer, it is prohibited to drill new wells, appropriate new surface water or ground water, or transfer either surface water or ground water to existing wells within the following geographic areas: **FRUIT AVENUE PLUME SUPERFUND SITE.** The state engineer hereby prohibits any drilling of new wells or transfer of either surface water or ground water to existing wells within the boundaries in Albuquerque, New Mexico identified as the Fruit Avenue Plume Superfund Site within which the ground water is contaminated with tetrachloroethene (PCE), trichloroethene (TCE), cis-1, 2-dichloroethene and trans-1, 2-dichloroethene. Both PCE and TCE levels are above drinking water standards, and this prohibition is necessary to protect the public welfare. The Fruit Avenue Plume area is approximately bounded by Fruit Avenue to the north, Elm

Street to the east, Tijeras/Martin Luther King Avenue to the south, and 4th Street to the west. The precise delineations of the area are as follows:

[Please see MAP, page 416]

19.25.9.10 PENALTIES: Violation of this Part is a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than two hundred and fifty dollars (\$250.00), for each offense; and each day of continued violation shall constitute a separate offense; or by imprisonment in the county jail not to exceed one year or both for each and every violation pursuant to Section 72-12-11 NMSA 1978.
[19.25.9.10 NMAC - N, 07/31/03]

HISTORY OF 19.25.9 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20.5.1 NMAC, Petroleum Storage Tanks, General Provisions, filed April 30, 2002, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.1 NMAC, Petroleum Storage Tanks, General Provisions, effective August 15, 2003.

20 NMAC 5.4, Petroleum Storage Tanks, New and Upgraded UST Systems: Design, Construction and Installation, filed February 27, 1997, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Storage Tank Systems: Design, Construction and Installation, effective August 15, 2003.

20 NMAC 5.5, Petroleum Storage Tanks, General Operating Requirements, filed February 27, 1997, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective August 15, 2003.

20 NMAC 5.6, Petroleum Storage Tanks, Release Detection, filed February 27, 1997, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.6 NMAC, Petroleum Storage Tanks, Release Detection, effective August 15, 2003.

20 NMAC 5.7, Petroleum Storage Tanks, Release Reporting, Investigation and Confirmation, filed October 6, 1995, with the State Records Center and Archives, is

repealed effective August 15, 2003, and re-promulgated as 20.5.7 NMAC, Petroleum Storage Tanks, Reporting and Investigation of Suspected and Confirmed Releases, effective August 15, 2003.

20 NMAC 5.8, Petroleum Storage Tanks, Out-of-service Systems and Closure, filed February 27, 1997, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.8 NMAC, Petroleum Storage Tanks, Out-of-service Systems and Closure, effective August 15, 2003.

20 NMAC 5.9, Petroleum Storage Tanks, Financial Responsibility, filed February 27, 1997, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.9 NMAC, Petroleum Storage Tanks, Financial Responsibility, effective August 15, 2003.

20 NMAC 5.10, Petroleum Storage Tanks, Administrative Review, filed February 27, 1997, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review, effective August 15, 2003.

20 NMAC 5.11, Petroleum Storage Tanks, Lender Liability, filed February 27, 1997, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.11 NMAC, Petroleum Storage Tanks, Lender Liability, effective August 15, 2003.

20 NMAC 5.12, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Petroleum Products, filed December 30, 1999, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.12 NMAC, Petroleum Storage Tanks, Corrective Action for Storage Tank Systems Containing Petroleum Products, effective August 15, 2003.

20 NMAC 5.13, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, filed October 6, 1995, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective August 15, 2003.

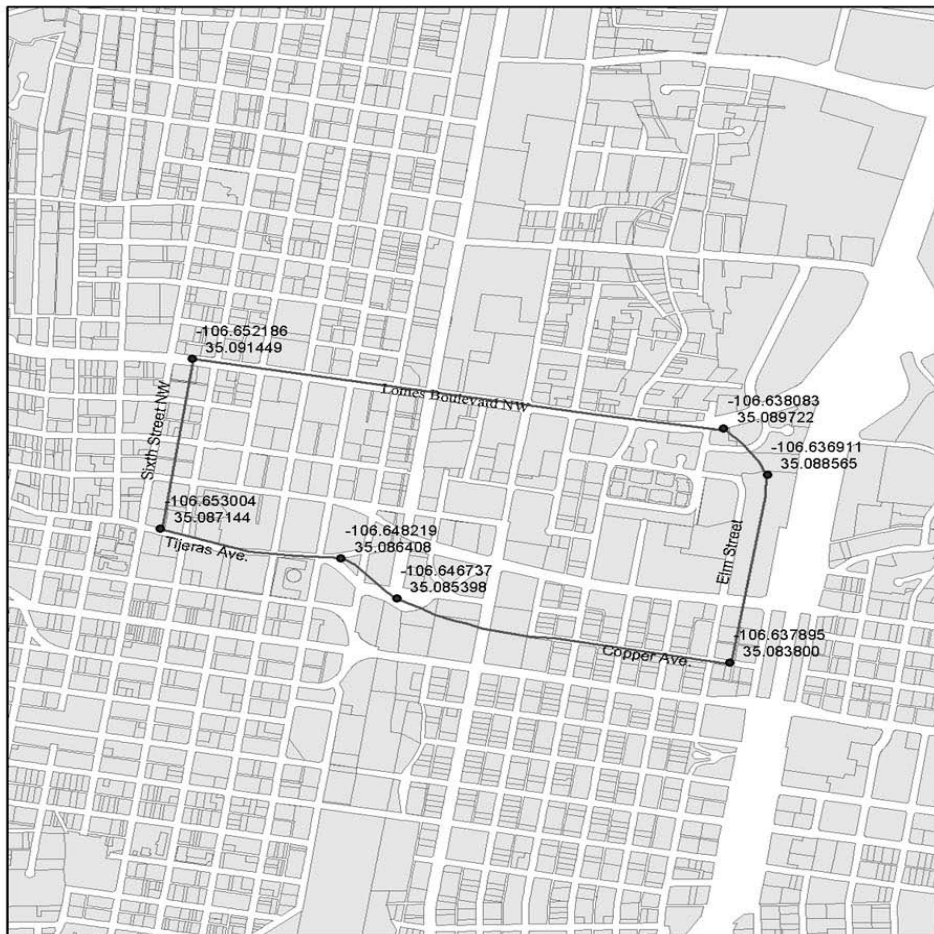
20 NMAC 5.14, Petroleum Storage Tanks, Certification of Tank Installers, filed February 27, 1997, with the State Records Center and Archives, is repealed effective

[New Mexico Environmental Improvement Board *Repeals* continued on page 417.]

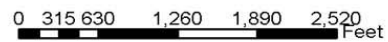
MAP, 19.25.9.9

State Plane Nad-27 feet

Latitude	Longitude	X	Y
35.087144	-106.653004	379,437	1,487,207
35.091449	-106.652186	379,688	1,488,772
35.089722	-106.638083	383,904	1,488,127
35.088565	-106.636911	384,253	1,487,705
35.083800	-106.637895	383,952	1,485,972
35.085398	-106.646737	381,309	1,486,564
35.086408	-106.648219	380,867	1,486,933



Fruit Avenue Plume Superfund Site



[19.25.9.9 NMAC - N, 07/31/03]

August 15, 2003, and re-promulgated as 20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers, effective August 15, 2003.

20 NMAC 5.15, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures filed December 30, 1999, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures, effective August 15, 2003.

20 NMAC 5.16, Petroleum Storage Tanks, Qualification of Contractors, filed December 30, 1999, with the State Records Center and Archives, is repealed effective August 15, 2003, and re-promulgated as 20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action, effective August 15, 2003.

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 5 P E T R O L E U M
STORAGE TANKS
PART 1 GENERAL PROVI-
SIONS**

20.5.1.1 ISSUING AGENCY:
New Mexico Environmental Improvement Board.
[20.5.1.1 NMAC - Rp, 20.5.1.1 NMAC, 8/15/03]

20.5.1.2 SCOPE:
A. 20.5.1 through 20.5.16 NMAC apply to owners and operators of storage tanks as defined in 20.5.1.7 NMAC except as otherwise provided in Subsections B and C of this section.

B. Any UST system holding hazardous wastes that are listed or identified under Subtitle C of the federal Resource Conservation and Recovery Act, or a mixture of such hazardous waste and other hazardous regulated substances, is excluded from these regulations. This subsection does not apply to any UST system containing petroleum.

C. The following types of storage tank systems are excluded from the requirements of 20.5.2 through 20.5.16 NMAC:

(1) any wastewater treatment tank systems and any wastewater treatment tank system that is part of a wastewater treatment

facility regulated under section 402 or 307(b) of the federal Clean Water Act;

(2) equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

(3) any UST system with a capacity of 110 gallons or less or any AST system with a capacity of 1,320 gallons or less, or any AST system with a capacity of 55,000 gallons or more;

(4) any UST system that contains a de minimis concentration of regulated substances;

(5) any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(6) any storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954;

(7) any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR part 50 appendix A;

(8) airport hydrant fuel distribution systems;

(9) UST systems with field-constructed tanks; and

(10) any UST or AST system that stores fuel solely for use by emergency power generators.

D. Notwithstanding the foregoing exclusions, no person may install a storage tank system listed in Subsection C of this section for the purpose of storing regulated substances unless such storage tank system (whether of single or double-walled construction):

(1) will prevent releases due to corrosion or structural failure for the operational life of the tank; and

(2) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) the material used in the construction or lining of the tank is compatible with the substance to be stored.

E. Parts 20.5.4 through 20.5.9 NMAC shall not apply to an existing AST or UST system which has never contained a regulated substance until the system is placed in service.

[20.5.1.2 NMAC - Rp, 20.5.1.2 NMAC, 8/15/03]

20.5.1.3 S T A T U T O R Y
AUTHORITY: Parts 20.5.1 through 20.5.16 NMAC are promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14; the Ground Water Protection Act, NMSA 1978, sections 74-6B-1 through 74-

6B-14; and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.1.3 NMAC - Rp, 20.5.1.3 NMAC, 8/15/03]

20.5.1.4 D U R A T I O N :
Permanent.

[20.5.1.4 NMAC - Rp, 20.5.1.4 NMAC, 8/15/03]

20.5.1.5 EFFECTIVE DATE:
August 15, 2003 unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.1.5 NMAC - Rp, 20.5.1.5 NMAC, 8/15/03]

20.5.1.6 OBJECTIVE: The purpose of 20.5.1 through 20.5.16 NMAC is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.1.6 NMAC - Rp, 20.5.1.6 NMAC, 8/15/03]

20.5.1.7 DEFINITIONS: As used in 20.5.1 through 20.5.16 NMAC, the following definitions apply.

A. "Above ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of an underground storage tank system and releases associated with overfills and transfer operations during regulated substance deliveries to or dispensing from an UST system.

B. "Above ground storage tank" or "AST" means a single tank or combination of tanks, including pipes connected thereto, that is 1,320 gallons or more, and less than 55,000 gallons, is permanently installed, and is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and fourteen and seven tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. Tanks in vaults and special enclosures are ASTs. A compartment tank with combined total capacity greater than 1,320 gallons and less than 55,000 gallons is an AST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. Above ground storage tank does not include (regardless of size) any:

(1) farm, ranch or residential tank used for storing motor fuel or heating oil for noncommercial purposes;

(2) pipeline facility, including gathering lines regulated under the federal

Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(3) surface impoundment, pit, pond or lagoon;

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or the oil field service industry operations;

(7) tank associated with an emergency generator system;

(8) tanks, bulk terminals, or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business. Bulk plants are not included in the exemption:

(9) multiple tanks at a facility, that are individually less than 1,320 gallons, unless tanks that are siphoned together have a cumulative total capacity greater than 1,320 gallons;

(10) pipes connected to any tank exempted by Paragraphs (1) through (9) of this subsection.

C. "Accidental release" means any sudden or non-sudden release neither expected nor intended by the tank owner or operator of petroleum or other regulated substance from a storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage.

D. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps associated with a storage tank.

E. "Applicable standards" means the most relevant target concentrations that legally apply to a site.

F. "AST system" means an above ground storage tank and its associated ancillary equipment and containment system, if any.

G. "Basin sump" means a liquid-tight collection container with no valves, joints or other penetrations.

H. "Below ground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below ground portions of a storage tank system and releases associated with overfills and transfer operations as the regulated substance is delivered to or dispensed from a storage tank.

I. "Beneath the surface of

the ground" means beneath the ground surface or otherwise covered with materials so that physical inspection is precluded.

J. "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

K. "Bulk plant" means a facility which is not a bulk terminal, and which is used for the temporary storage of petroleum products prior to delivery to gasoline stations, convenience stores, and commercial accounts, which is smaller than a bulk terminal and is not equipped with any processing equipment.

L. "Bulk terminal" means a large facility for storing and handling petroleum products that receives and stores bulk deliveries of gasoline and other products from a pipeline, barges, or directly from a nearby refinery. Equipment at the terminal facility is usually capable of further processing the product, including but not limited to: injection of additives or conversion of gasoline vapors received from transports after making deliveries using stage one vapor recovery back to liquid form.

M. "Bureau" means the New Mexico petroleum storage tank bureau.

N. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

O. "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

P. "Certified individual-UST level A" means an individual who was certified by the department prior to August 15, 2003, to install and repair UST systems in this state.

Q. "Certified individual-UST level B" means an individual who was certified by the department prior to August 15, 2003 to replace, install or repair equipment on a UST system in this state such as: overfill and spill containment devices, line and tank leak detectors, submersible pumps and drop tubes. A certified individual-level

B installer was not certified to install or repair UST tanks or lines, unless also certified as UST level A.

R. "Certified installer" refers generally to both AST and UST certified installers.

S. "Certified installer-AST" means an individual who has been certified by the department after August 15, 2003 under 20.5.14.1404 NMAC to install and repair AST systems in this state.

T. "Certified installer-UST" means an individual who has been certified by the department after August 15, 2003 under 20.5.14.1403 NMAC to install and repair UST systems in this state.

U. "Chief financial officer," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

V. "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for extended periods of time and under varied environmental conditions (i.e., at different temperatures).

W. "Connected piping" means all above ground and underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual storage tank system, the piping which joins the two storage tank systems should be allocated equally between them.

X. "Consumptive use" with respect to heating oil means the oil is burned on the premises.

Y. "Contain" means the stopping of further migration of a regulated substance from a release into or through groundwater, surface water and/or soil.

Z. "Containment" means that contamination from a release has been contained and is not spreading, migrating, spilling, infiltrating or otherwise traveling into uncontaminated areas. Verification of containment requires the performance of physical measurements that provide positive proof that contamination is contained.

AA. "Containment sump" means a liquid-tight collection container, which may have valves, joints or penetrations, such as piping penetrations.

AB. "Contaminant" means any regulated substance as defined in this section, any constituent of a regulated substance, or any combination of a regulated substance or constituent thereof with any other substance or matter.

AC. "Contaminant of concern" means any contaminant which is sus-

pected of being released at the site based on site history for which:

(1) the New Mexico water quality control commission has adopted standards pursuant to the Water Quality Act, NMSA 1978, sections 74-6-1- through 74-6-17;

(2) the New Mexico environmental improvement board has adopted standards, action levels, risk-based screening levels or site specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act; or

(3) the New Mexico environment department has established or approved site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act.

AD. "Contaminant saturated soil" means soil exclusive of the water table and capillary fringe in which non-aqueous phase liquid is observable in the soil or, if sufficiently liquid, drains from the soil when the soil is suspended on filter paper or its equivalent.

AE. "Contaminated soil" means soil containing detectable quantities of contaminants of concern.

AF. "Contracting company" means a corporation, partnership, or duly constituted individual proprietorship which contracts to install or repair storage tank systems for third parties.

AG. "Controlling interest" means direct ownership or other legal control of at least fifty percent of the voting stock of another entity.

AH. "Corrective action" means an action taken to investigate, minimize, eliminate, or clean up a release to protect the public health, safety, and welfare or the environment.

AI. "Corrective action fund" or "fund" means the fund created pursuant to the Ground Water Protection Act, NMSA 1978, Section 74-6B-7, to pay or reimburse for corrective action performed pursuant to 20.5 NMAC and the Ground Water Protection Act.

AJ. "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers International (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping sys-

tems and metal tanks.

AK. "Corrosion prevention plan" means a plan approved in writing by a corrosion expert for a UST or AST or associated piping, or secondary containment, which plan is designed to maintain the integrity of the tank or piping for its useful life.

AL. "Critical junctures" means the steps of an installation, modification, repair or removal of a tank system which are important to the prevention of releases and which are described in 20.5.5 NMAC.

AM. "Department" means the New Mexico environment department, also known as the New Mexico department of environment.

AN. "Director" means the director of the environmental protection division of the department.

AO. "Direct responsible supervisory control" means responsibility for the direction, control, and/or supervision of investigation and remediation activities to assure that the work is performed in accordance with appropriate industry and regulatory quality standards.

AP. "Effectively mitigating" means that the approach taken to corrective action has contained the release and is achieving reductions in contamination levels such that the standards described in 20.5.12 and 20.5.13 NMAC will be met in a manner protective of public health, safety and welfare and the environment, within the period of time specified in the plan for remediation by monitored natural attenuation or otherwise.

AQ. "EIB" means the environmental improvement board.

AR. "EIB standards" means standards set forth in 20.5.12, 20.5.13 and 20.7.10 NMAC.

AS. "Electrical equipment" means equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

AT. "Emergency repair" means a repair required by immediate danger of a release, or by an immediate threat to public health, safety and welfare, or to the environment.

AU. "Environmental improvement board" (EIB) means the board created in the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

AV. "Environmental Improvement Act" means the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

AW. "Excavation zone" is defined as the area containing the tank system and backfill material bounded by the

ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

AX. "Existing AST system" means an AST system which is used to contain an accumulation of regulated substances or for which installation commenced on or before June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either: (1) a continuous on-site physical construction or installation program has begun, or: (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

AY. "Existing UST system" means a UST system which is used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system, and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

AZ. "Exposed petroleum products" means petroleum that is present in the non-aqueous phase (i.e. not dissolved in water) on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements and manholes.

BA. "Exposed hazardous substance" means a regulated substance other than petroleum that is present on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements or manholes.

BB. "Farm tank" is a tank located on a tract of land devoted to the production of crops, or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, range land and nurseries with growing operations.

BC. "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is

prepared: (1) a 10-K report submitted to the SEC; (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or (3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

BD. "Flow-through process tank" is a tank that is integral to a production process through which there is a steady or uninterrupted flow of materials during the operation of the process.

BE. "Functionality test" means a test for automatic line leak detectors which determines whether they are operating correctly.

BF. "Fund" means the Corrective Action Fund which was created pursuant to NMSA 1978, Section 74-6B-7, to pay or reimburse for corrective action required at leaking storage tank sites.

BG. "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

BH. "Ground Water Protection Act" means the Ground Water Protection Act, NMSA 1978, sections 74-6B-1 through 74-6B-14.

BI. "Guidelines for corrective action" means any written guidance developed by the New Mexico petroleum storage tank bureau, approved by the secretary for use and distribution to the public, and pertaining to the technical or financial requirements in 20.5.7, 20.5.12, 20.5.13 and 20.5.15 to 20.5.17 NMAC.

BJ. "Hazardous substance UST system" or "hazardous substance UST" means an underground storage tank system that contains an accumulation of hazardous substances defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA) or a mixture of such substances and petroleum, and which is not a petroleum UST system.

BK. "Hazardous Waste Act" means the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14.

BL. "Heating oil" refers to a type of fuel oil that is one of eight technical grades. These grades are: No. 1; No. 2; No. 4--light; No. 4--heavy; No. 5--light; No. 5--heavy; No. 6; and residual. Heating oil also refers to fuel oil substitutes such as kerosene or diesel when used for heating purposes.

BM. "Hydraulic lift tank"

means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

BN. "Initiation of containment" means the point in time at which a system designed to achieve containment is put into continuous operation.

BO. "Install" or "installation" means the work involved in placing a storage tank system or any part thereof in, on or above the ground and preparing it to be placed in service.

BP. "Integrity test" means an evaluation process that has been independently tested and approved by a nationally recognized association or independent testing laboratory to determine, in the case of a UST, the suitability of the tank for continuous containment of a regulated substance, or, in the case of an AST, both the suitability of the tank for continuous containment of a regulated substance and the necessary hydraulic properties of the tank to contain the outward pressure of the regulated substance.

BQ. "Internal inspection" means a formal inspection of an AST by an inspector authorized by the American Petroleum Institute or certified by the Steel Tank Institute. The inspection shall determine whether the AST tank bottom or shell is severely corroded and leaking, and shall include an evaluation of the tank bottom and shell thickness to see whether they meet minimum thickness requirements. The inspector shall visually examine all tanks included in the inspection and, if applicable, check for tank bottom settlement.

BR. "Interstitial monitoring" is a leak detection method which entails the surveillance of the space between a storage tank system's walls and the secondary containment system for a change in steady state conditions. In a double-walled tank, this change may be indicated by a loss of vacuum, a drop in pressure, a drop in the fluid level in a visible reservoir, or the detection of the regulated substance and/or water in the interstitial space. In a secondary containment system consisting of a liner (natural or synthetic) or a vault, the surveillance consists of frequent to continuous sampling from a monitoring well between the UST and the liner to detect the presence of regulated substance in the well(s). In a secondary containment system consisting of concrete or geo-synthetic liner associated with an AST system, the surveillance consists of frequent to continuous monitoring of containment sumps and of the space between the tank, shell and the concrete or geo-synthetic liner.

BS. "Inventory controls" are techniques used to identify a loss of

product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

BT. "Landfarming" is the remediation of petroleum contaminated soils on or at ground surface using natural aeration and volatilization, disking and natural and enhanced bioremediation to reduce the concentrations of petroleum hydrocarbons to regulatory levels; requires a groundwater discharge permit.

BU. "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(1) by EPA or a state to require corrective action or to recover the costs of corrective action;

(2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) by any person to enforce the terms of a financial assurance mechanism.

BV. "Liquid" means any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM D 5, *Test for Penetration for Bituminous Materials*. When not otherwise identified, the term liquid shall mean both flammable and combustible liquids.

BW. "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

BX. "Local government" shall have the meaning given this term by applicable state law. The term is generally intended to include counties, municipalities, school districts, and special districts, including flood control and conservancy districts.

BY. "Lower explosive limit" means the lowest percentage of a substance in an airspace that is explosive.

BZ. "LST Ranking System" means the Leaking Storage Tank Ranking System, the ranking or site prioritization system developed for and modified by the department using the Analytical Hierarchy Process to rank sites where a release from a storage tank has occurred based upon public health, safety and welfare and environmental concerns.

CA. "Magnitude of contamination" means the maximum concentrations

of contaminants of concern that resulted from a release.

CB. "Minimum site assessment (MSA)" means the sum total of all of the following activities:

(1) reporting, investigating and confirming a release pursuant to 20.5.7 NMAC; and

(2) determining the on-site extent, magnitude and impact of contamination by conducting investigations and reporting to the department pursuant to 20.5.12.1204 NMAC or 20.5.13.1303 NMAC (initial abatement), 20.5.12.1205 NMAC or 20.5.13.1304 NMAC (report on initial abatement), 20.5.12.1209 NMAC or 20.5.13.1308 NMAC (preliminary investigation), and 20.5.12.1210 NMAC or 20.5.13.1309 NMAC (report on the preliminary investigation).

CC. "Mobile AST" means an above ground storage tank that is not field-erected, and which is capable of changing in location.

CD. "Modification" means any change to any portion of a storage tank system that is not a repair. For purposes of 20.5.14 NMAC, the term does not include the process of relining a tank through the application of such materials as epoxy resins.

CE. "Monitored natural attenuation" means a methodology for remediation that relies upon a variety of naturally occurring chemical, physical and biological processes to achieve target concentrations in a manner that is equally as protective of public health, safety and welfare, and the environment as other methods, and that is accompanied by a program of monitoring to document the progress and results of the above mentioned processes.

CF. "Monthly" means once per month, not to exceed 35 days.

CG. "Motor fuel" is a petroleum-based fuel used in the operation of an engine that propels a vehicle for transportation of people or cargo.

CH. "NAPL" means non-aqueous phase liquid as defined in this section.

CI. "New AST system" means an AST system for which installation has commenced after June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank, and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the

tank system to be completed within a reasonable time.

CJ. "New storage tank system" means a new AST system or a new UST system.

CK. "New UST tank system" means an UST system for which installation has commenced after December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction at the site or installation of the tank, and if either: (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

CL. "Non-aqueous phase liquid" (NAPL) means an interstitial body of liquid oil, petroleum product or organic solvent or other organic substance, including an emulsion containing such material; in the case of liquid oil or a petroleum product, the term is synonymous with "phase separated hydrocarbon" and "free product."

CM. "Non-commercial purposes" with respect to motor fuel means not for resale.

CN. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank. This definition is intended to assist in the understanding of 20.5.9 NMAC and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

CO. "On the premises where stored" with respect to heating oil means storage tank systems located on the same property where the stored heating oil is used.

CP. "Operational life" is the period beginning from the time when the installation of the tank system is commenced until it is properly closed under 20.5.8.801 NMAC.

CQ. "Operator" means any person in control of, or having responsibility for, the daily operation of a storage tank system.

CR. "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

CS. "Owner" means, in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns a storage tank used

for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use. For purposes of the registration requirements of 20.5.2 NMAC only, the term "owner" excludes any person who: (1) had a UST taken out of operation on or before January 1, 1974, (2) had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984, or (3) had an AST taken out of operation on or before July 1, 2002.

CT. "Permanently installed AST" means an AST that is on site for more than 365 consecutive days and dispensing or storing a regulated substance for distribution at any time during that period.

CU. "Person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" includes a consortium, a joint venture, a commercial entity, and the United States Government.

CV. "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.

CW. "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

CX. "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with storage tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

CY. "Petroleum tank system," "petroleum storage tank" or "petroleum UST" means a storage tank system that contains an accumulation of petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

CZ. "Pipeline facilities, including gathering lines," are new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws

comparable to either act.

DA. "Piping" means all pipes, fittings, shear valves, and associated connectors of a storage tank system.

DB. "Positive sampling, testing or monitoring results" refers to the results of sampling, testing or monitoring using a method described in 20.5.6 NMAC that indicate a release from a storage tank system has occurred.

DC. "Potentially explosive levels of petroleum hydrocarbon vapors" means vapors which register in excess of twenty percent LEL (lower explosive limit) on a combustible gas indicator properly calibrated for pentane.

DD. "Potentially harmful petroleum hydrocarbon vapors" means vapors which register a reading of five whole units above ambient concentrations total aromatic hydrocarbons in any structure in the vicinity of the release site, on a photoionization detector, flame ionization detector or an equivalent device properly calibrated to detect hydrocarbon vapors at a minimum detection limit of at least one ppm.

DE. "Private water supply" means a system for the provision of water for human consumption or domestic purposes, if such system does not have at least 15 service connections or does not regularly serve an average of 25 individuals at least 60 days during the year.

DF. "Professional engineer" is an individual licensed in New Mexico to engage in the practice of engineering under the New Mexico Engineering and Surveying Practices Act, NMSA 1978, sections 61-23-1 through 61-23-32.

DG. "Project drawings" means schematic drawings of tanks, piping, and ancillary equipment, which need not be prepared, stamped or signed by a professional engineer.

DH. "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

DI. "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of a storage tank system through one of the mechanisms listed in 20.5.9.905 through 20.5.9.916 NMAC, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

DJ. "Public water supply"

means a system for the provision to the public of water for human consumption if such system has at least 15 service connections or regularly serves an average of at least 25 individuals at least 60 days out of the year.

DK. "Qualified firm" means a person, as defined in this section, qualified by the department under 20.5.16 NMAC to undertake corrective action.

DL. "RBSL" means risk-based screening level as used in 20.5.12 NMAC.

DM. "Receptor" means a person, plant or animal community, structure, utility, surface water, designated well-head or source water protection area or water supply well that is or may be adversely affected by a release.

DN. "Regulated substance" means:

(1) for USTs: any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act, as amended; and

(2) for ASTs and USTs: petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and fourteen and seven tenths pounds per square inch absolute. Asphalt is not a regulated substance.

DO. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance from a storage tank system into groundwater, surface water or soil.

DP. "Release detection" means determining whether a release of a regulated substance has occurred from a storage tank system into the environment or into the interstitial area between a storage tank system and a secondary barrier around it.

DQ. "Remediation" is the process of reducing the concentration of contaminants in air, water or soil to a level that poses an acceptable risk to public health, safety and welfare and the environment.

DR. "Repair" means to restore or replace any defective or damaged part of a storage tank system. For purposes of 20.5.5 and 20.5.14 NMAC, repair does not include normal maintenance; notice need not be provided for normal maintenance, and normal maintenance need not be performed by a certified tank installer. For these purposes, normal maintenance shall include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or

overflow systems, or work on line or tank leak detection systems, then the activity is not normal maintenance and must be performed by a certified tank installer, unless the activity is exempted by Subsection A of 20.5.14.1401 NMAC or Subsection A of 20.5.14.1402 NMAC.

DS. "Residential tank" is a tank located on property used primarily for dwelling purposes.

DT. "Risk-based screening level" (RBSL) means an action level or target level for a contaminant of concern determined using default criteria set by the department and site specific data for thickness of the contaminated zone and depth to groundwater in the tier one evaluation in accordance with 20.5.12 NMAC and the bureau's guidelines for corrective action.

DU. "Secondary containment" means a system installed around a storage tank and its piping and associated ancillary equipment that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, synthetic impervious liners.

DV. "Secretary" means the secretary of the New Mexico environment department also known as the secretary of the environment.

DW. "Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

DX. "Site" means a place where there is or was at a previous time one or more storage tank and may include areas contiguous to the actual location or previous location of the tanks.

DY. "Site conceptual exposure scenario" means a qualitative evaluation of exposure information for a site that identifies the relevant contaminant source, release mechanisms, media of concern, complete and incomplete exposure pathways, and receptors.

DZ. "Site-specific target level" (SSTL) means an action level or target level for a contaminant of concern determined using more site-specific data than the tier one evaluation in the tier two or tier three evaluations in 20.5.12 NMAC.

EA. "Special enclosure" means an above or below grade AST installation that surrounds an AST or ASTs, including but not limited to pits, cellars, and basements.

EB. "Spill" means:

(1) any spill or overflow of a regulated substance that exceeds its reportable quantity under CERCLA (40 CFR 302);

(2) any spill or overflow of petroleum that exceeds 25 gallons or causes a sheen on surface water or reaches groundwater; or

(3) any spill or overflow of petroleum of 25 gallons or less the clean up of which cannot be accomplished within 24 hours.

EC. "SSTL" means site-specific target level as used in 20.5.12 NMAC.

ED. "Storage tank" means any above ground storage tank or underground storage tank.

EE. "Storage tank fee" means fees required by NMSA 1978, Section 74-4-4.4 and NMSA 1978, Section 74-6B-9.

EF. "Storage tank system" means a storage tank and its associated ancillary equipment and containment system, if any.

EG. "Stormwater or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

EH. "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

EI. "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of a storage tank release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

EJ. "Sump" means any pit or reservoir that meets the definition of tank, including troughs or trenches connected to it, that serves to temporarily collect regulated substances.

EK. "Surface impoundment" is a natural topographic depression,

man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well.

EL. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

EM. "Tank" is a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

EN. "Target concentrations" means any concentration of a contaminant to which a medium is required to be remediated under any provision of 20.5 NMAC protective of human health, safety and welfare, and the environment. For purposes of 20.5.13 NMAC, target concentrations as they apply to soil contamination shall be based on standards prescribed by applicable law or, if there are no applicable standards, the standard set forth in 20.6.3.110 NMAC.

EO. "Termination" under Subsections A and B of 20.5.9.957 NMAC means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

EP. "Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of groundwater into a tank system).

EQ. "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

ER. "Underground release" means any below ground release.

ES. "Underground storage tank" or "UST" means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. A compartment tank with combined total capacity greater than 110 gallons is a UST and for purposes of these regula-

tions is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. The term does not include any:

(1) farm, ranch or residential tank of 1,100 gallons or less capacity used for storing motor fuel or heating oil for non-commercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines which are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank associated with an emergency generator system;

(10) tank exempted by rule of the EIB after finding that the type of tank is adequately regulated under another federal or state law; or

(11) pipes connected to any tank exempted by Paragraphs (1) through (10) of this subsection.

ET. "Unsaturated zone" is the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

EU. "USTR" means the version of the environmental improvement board's underground storage tank regulations in effect prior to adoption of the standard format in the New Mexico Administrative Code in 1995.

EV. "UST system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

EW. "Vault" means a liquid-tight structure that completely surrounds a tank, that is above, below or partially above or below the ground surface.

EX. "Wastewater treatment tank" means a tank that is part of a wastewater treatment facility regulated under

either section 402 or 307(b) of the federal Clean Water Act and which receives and treats or stores an influent wastewater which contains regulated substances.

EY. "WQCC" means the New Mexico water quality control commission.

EZ. "WQCC standards" means standards set forth in 20.6.4 NMAC, standards for interstate and intrastate streams, and 20.6.2 NMAC, ground and surface water protection.

[20.5.1.7 NMAC - Rp, 20.5.1.7 NMAC, 8/15/03]

20.5.1.8 to 20.5.1.106
[RESERVED]

20.5.1.107 SAVINGS CLAUSE: This rule shall not affect any administrative or judicial enforcement action pending on the effective date of 20.5.1 through 20.5.16 NMAC.

[20.5.1.107 NMAC - Rp, 20.5.1.107 NMAC, 8/15/03]

20.5.1.108 COMPLIANCE WITH OTHER REGULATIONS: Compliance with 20.5 NMAC does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.5.1.108 NMAC - Rp, 20.5.1.108 NMAC, 8/15/03]

20.5.1.109 CONSTRUCTION: The petroleum storage tank regulations, 20.5 NMAC, shall be liberally construed to effectuate the purposes of the Hazardous Waste Act and the Ground Water Protection Act.

[20.5.1.109 NMAC - Rp, 20.5.1.109 NMAC, 8/15/03]

20.5.1.110 SEVERABILITY: If any part, section or application of 20.5 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.5.1.110 NMAC - Rp, 20.5.1.110 NMAC, 8/15/03]

20.5.1.111 to 199 [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 4 NEW AND UPGRAD-
ED STORAGE TANK SYSTEMS:
DESIGN, CONSTRUCTION AND
INSTALLATION**

20.5.4.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[20.5.4.1 NMAC - Rp 20 NMAC 5.4.100, 8/15/03]

20.5.4.2 SCOPE: This part applies to owners and operators of storage tanks as provided 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.

[20.5.4.2 NMAC - Rp 20 NMAC 5.4.101, 8/15/03]

20.5.4.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.4.3 NMAC - Rp 20 NMAC 5.4.102, 8/15/03]

20.5.4.4 D U R A T I O N : Permanent.

[20.5.4.4 NMAC - Rp 20 NMAC 5.4.103, 8/15/03]

20.5.4.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.4.5 NMAC - Rp 20 NMAC 5.4.104, 8/15/03]

20.5.4.6 OBJECTIVE: The purpose of 20.5.4 NMAC is to set forth the requirements for the design, construction, installation and upgrading of storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.4.6 NMAC - Rp 20 NMAC 5.4.105, 8/15/03]

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

[20.5.4.7 NMAC - Rp 20 NMAC 5.4.106, 8/15/03]

20.5.4.8-20.5.4.399 [RESERVED]

[20.5.4.8-20.5.4.399 NMAC - Rp 20 NMAC 5.4.108-399, 8/15/03]

20.5.4.400 PERFORMANCE STANDARDS FOR UST SYSTEMS: In order to prevent releases due to structural failure, corrosion or spills and overfills for

as long as the UST system is used to store regulated substances, owners and operators of any UST system shall meet the following requirements:

A. Tanks. Owners and operators shall properly design and construct each new tank, provide project drawings, and maintain existing USTs so that any portion that routinely contains regulated substances and is in contact with the ground or water shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

(1) If the tank is constructed of fiberglass-reinforced plastic, owners and operators shall meet the requirements of the current edition of an industry code or standard approved in advance in writing by the department. The following codes may be used to comply with this requirement:

(a) Underwriters Laboratories Standard 1316, "Standard for Safety for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures;"

(b) Underwriters' Laboratories of Canada CAN4-S615-M83, "Standard for Underground Reinforced Plastic Tanks;"

(c) American Society of Testing and Materials D4021 "Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(2) If the tank is constructed of steel, owners and operators shall submit to the department a corrosion prevention plan, which must be approved in writing by the department prior to installation. The plan shall be approved in writing by a corrosion expert prior to submission to the department, and shall be based on the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. For existing USTs with corrosion protection in place, owners and operators shall submit a corrosion prevention plan to the department no later than August 15, 2004. The following may be used to comply with this requirement:

(a) National Fire Protection Association 30, "Flammable and Combustible Liquids Code;"

(b) National Fire Protection Association 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages;"

(c) American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems;"

(d) American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;"

(e) National Association of Corrosion Engineers International Standard RP0169 "Control of External Corrosion on Underground or Submerged Metallic Piping Systems;"

(f) Steel Tank Institute R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems;"

(g) American Petroleum Institute Publication RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks;"

(h) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection;"

(i) National Association of Corrosion Engineers International Standard RP0285, "Corrosion Control of Underground Storage Tanks Systems by Cathodic Protection;" or

(j) American Society of Testing and Materials G158, "Standard Guide for Three Methods of Assessing Buried Steel Tanks."

(3) In addition, owners and operators shall ensure that for any new steel tank systems, owners and operators shall design and install any cathodic protection system (whether impressed current or sacrificial) to allow ready determination of current operating status. The following may be used to comply with this requirement:

(a) Steel Tank Institute "Specification for Sti-P3 System of External Corrosion Protection of Underground Steel Storage Tanks;"

(b) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks;"

(c) Underwriters' Laboratories of Canada CAN4-S603-N85, "Standard for Underground Steel Tanks;"-

(d) Underwriters' Laboratories of Canada CAN4-G603.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Steel;"

(e) Underwriters' Laboratories of Canada CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems;"

(f) National Association of Corrosion Engineers Standard RP0285, "Corrosion Control of Underground Storage Tanks Systems by Cathodic Protection," or

(g) Underwriters Laboratories Standard 58, "Standard For Safety for Steel Underground Tanks for Flammable and Combustible Liquids."

(4) If the tank is constructed of a

steel-fiberglass-reinforced-plastic composite, owners and operators shall meet the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(a) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks;" or

(b) Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(5) If the tank is constructed of metal without additional corrosion protection measures:

(a) owners and operators shall install the tank at a site that is approved in writing by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life, which shall be approved in advance of installation in writing by the department; and

(b) owners and operators shall maintain records that demonstrate compliance with the requirements of Subparagraph (a) of this Paragraph for the operational life of the tank.

(6) If the tank construction and corrosion protection are determined in writing by the department prior to installation to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than Paragraphs (1) through (5) of this subsection, owners and operators shall maintain a copy of this determination at the facility.

(7) Upgraded tanks. Tanks upgraded by the following methods shall meet the following additional requirements:

(a) If a tank has been internally lined, owners and operators shall, within 10 years after installation of internal lining and every five years thereafter, internally inspect the lined tank in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendation, approved in advance in writing by the department. National Leak Prevention Association 631, Chapter B may be used to comply with this requirement. If the internal lining is not performing in accordance with the original design specifications, owners and operators shall repair the lining to original design specifications in accordance with an industry code or standard approved in advance in writing by the department. American Petroleum Institute RP 1631 may be used to comply with this

requirement.

(b) Cathodic protection. If a tank was upgraded by cathodic protection, the cathodic protection system shall meet the requirements of Paragraph (2) of Subsection A of 20.5.4.400 NMAC.

B. Piping. Owners and operators shall properly design and construct new piping, provide project drawings, and properly maintain existing piping that routinely contains regulated substances and is routinely in contact with the ground or water. Owners and operators shall ensure that piping is compatible with the regulated substance conveyed, and shall protect the piping from corrosion in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(1) If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, owners and operators shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(a) Underwriters Laboratories Standard 971, "Standard for Safety for Nonmetallic Underground Piping for Flammable Liquids;"

(b) Underwriters Laboratories Standard 567, "Pipe Connectors for Petroleum Products and LP-Gas;"

(c) Underwriters' Laboratories of Canada Guide ULC-107.7, "Glass-Fibre Reinforced Plastic Pipe and Fittings;" or

(d) Underwriters' Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(2) If owners and operators construct or operate piping of steel with cathodic protection, owners and operators shall:

(a) coat the piping with a suitable dielectric material;

(b) field-install only a cathodic protection system designed by a corrosion expert;

(c) design any impressed current system to allow ready determination of current operating status as required in Subsection C of 20.5.5.501 NMAC; and

(d) submit to the department a corrosion prevention plan, which must be approved in writing by the department prior to installation. The plan shall be approved by a corrosion expert prior to submission to the department, and shall be based on the current edition of an industry standard or

code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators shall submit a corrosion prevent plan to the department no later than August 15, 2004.

(3) If owners and operators construct the piping of steel without additional corrosion protection measures owners and operators shall:

(a) install the piping at a site that is approved in writing by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operational life; and

(b) maintain records that demonstrate compliance with the requirements of Subparagraph (a) of this paragraph for the operational life of the piping; or

(4) If owners and operators construct or operate piping of steel, and the piping is not routinely in contact with the ground or water, then owners and operators shall construct the piping totally above the ground with all surfaces visible and the piping shall be coated with a suitable material approved by the piping manufacturer. If steel piping is entirely contained in a concrete trench which has no cracks, seams or joints, and the piping is not routinely in contact with the ground or water, the coating is not required, and the trench shall be designed and constructed to allow for easy access to visually inspect the entire piping run. Any such trench shall contain a collection system, such as a basin sump, for draining collected liquid.

(5) If the piping construction and corrosion protection are determined in writing by the department prior to installation to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in Paragraphs (1) through (4) of this subsection, owners and operators shall maintain a copy of this determination at the facility.

(6) If owners and operators install more than one type of piping at a UST system, then owners and operators shall comply with the above requirements applicable to each type of piping for that run of piping.

C. Installation. Owners and operators shall properly install all USTs and piping in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department, provide project drawings, in accordance with the manufacturer's instructions, and provide project drawings. The following may be used to comply with this requirement:

(1) American Petroleum Institute Publication RP 1615, "Installation of

Underground Petroleum Storage Systems;"

(2) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems;" or

(3) American Society of Mechanical Engineering Standard B31.3, "Process Piping."

[20.5.4.400 NMAC - Rp 20 NMAC 5.4.400, 8/15/03]

20.5.4.401 PERFORMANCE STANDARDS FOR NEW AST SYSTEMS: In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as the AST system is used to store regulated substances, owners and operators of new AST systems shall meet the following requirements:

A. Tanks. Owners and operators shall properly design, construct, install and initially test each tank in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department and provide project drawings.

(1) The following may be used to comply with the requirements of this subsection:

(a) Underwriters Laboratories 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids;"

(b) Underwriters Laboratories 2085, "Standard for Safety for Protected Aboveground Tanks for Flammable and Combustible Liquids;"

(c) Underwriters Laboratories 2245, "Standard for Safety for Below-Grade Vaults for Flammable Liquid Storage Tanks;"

(d) American Petroleum Institute Standard 650, "Welded Steel Tanks for Oil Storage;"

(e) National Fire Protection Association 30, "Flammable and Combustible Liquids Code;" or

(f) National Fire Protection Association 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages."

(2) After August 15, 2003, owners and operators shall not install for aboveground use any tank designed and built for underground use, unless the tanks meet the requirements of Subsection C of 20.5.4.405 NMAC.

(3) Owners and operators shall protect from corrosion any steel portion of a tank that routinely contains regulated substances and is routinely in contact with the ground or water, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing

by the department.

(a) Owners and operators of new ASTs shall submit to the department a corrosion prevention plan, which must be approved in writing by the department prior to installation. Owners and operators of existing ASTs shall submit a corrosion prevention plan no later than August 15, 2004.

(b) The plan shall be approved in writing by a corrosion expert prior to submission to the department, and shall be based on the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. An example of a corrosion prevention plan is: when the tank is elevated, owners and operators shall ensure that the underside of the tank is not in contact with any surface other than the tank supports.

(c) Owners and operators of existing ASTs shall implement their corrosion protection plan by July 1, 2006.

(4) The following may be used to comply with the requirements of Paragraph (3) of Subsection A of 20.5.4.401 NMAC:

(a) National Fire Protection Association 30, "Flammable and Combustible Liquids Code;"

(b) National Fire Protection Association 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages;"

(c) Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling;"

(d) American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;"

(e) National Association of Corrosion Engineers International Standard RP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems;"

(f) Steel Tank Institute R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems;" or

(g) Steel Tank Institute R893, "Recommended Practice for External Corrosion Protection of Shop Fabricated Aboveground Tank Floors."

(5) If owners and operators install a field-erected tank, owners and operators shall comply with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(a) American Petroleum Institute Standard 620, "Design and Construction of

Large, Welded, Low Pressure Storage Tanks;"

(b) American Petroleum Institute Standard 650, "Welded Steel Tanks for Oil Storage;"

(c) American Petroleum Institute Specification 12B, "Bolted Tanks for Storage of Production Liquids;"

(d) American Petroleum Institute Specification 12D, "Field Welded Tanks for Storage of Production Liquids;" or

(e) American Society of Mechanical Engineers B96.1, "Welded Aluminum-Alloy Storage Tanks."

B. Piping. Owners and operators shall properly design and construct and provide project drawings for piping that routinely contains regulated substances in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. Owners and operators shall install all piping in accordance with the piping manufacturer's recommendations.

(1) The following may be used to comply with this requirement:

(a) third party certification from a nationally recognized laboratory;

(b) American Society of Mechanical Engineering Standard B31.3, "Process Piping;"

(c) American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless;"

(d) American Society of Testing and Materials A106, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service;" or

(e) American Society of Testing and Materials A135, Standard Specification for Electric-Resistance-Welded Steel Pipe."

(2) If owners and operators construct or operate piping of fiberglass-reinforced plastic, the piping shall be completely underground or with a suitable cover approved by the piping manufacturer, or with equivalent protection approved by the piping manufacturer and approved in writing by the department prior to installation. The following may be used to comply with this requirement:

(a) Underwriters Laboratories Standard 971, "Standard for Safety for Nonmetallic Underground Piping for Flammable Liquids;"

(b) Underwriters Laboratories Standard 567, "Pipe Connectors for Petroleum Products and LP-Gas;" or

(c) Underwriters' Laboratories of Canada Guide ULC-1077, "Glass Fibre Reinforced Plastic Pipe and Fittings."

(3) If owners and operators construct or operate flexible piping, the piping

shall be approved by the manufacturer for the application for which it is used, and approved in writing by the department prior to installation. The following may be used to comply with this requirement:

(a) Underwriters Laboratories Standard 971, "Standard for Safety for Nonmetallic Underground Piping for Flammable Liquids;" or

(b) Underwriters Laboratories Standard 567, "Pipe Connectors for Petroleum Products and LP-Gas."

(4) If owners and operators construct or operate piping of steel, the piping shall either:

(a) be totally above the ground with all surfaces visible, and the piping shall be coated with a suitable material approved by the piping manufacturer; or

(b) be entirely contained in secondary containment that complies with the requirements of Subsection C of this section, and is coated with a suitable material approved by the piping manufacturer.

(5) The following may be used to comply with the requirements of Paragraph (4) of Subsection B of this section:

(a) American Society of Mechanical Engineering Standard B31.3, "Process Piping;"

(b) American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless;"

(c) American Society of Testing and Materials A 135, "Standard Specification for Electric-Resistance-Welded Steel Pipe;" or

(d) National Association of Corrosion Engineers International Standard RP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

(6) If owners and operators construct or operate the piping of another material, or using a different method of construction or installation, owners and operators shall propose it to the department at least 30 days prior to installation, and shall not install the alternate piping material unless and until the department approves the material and installation in writing. The department shall not grant the request for alternate piping unless owners and operators demonstrate that the request will provide equivalent protection of health, safety and welfare and the environment.

(7) Above ground tanks located at an elevation so as to produce a gravity head on the dispenser or piping shall be equipped with a solenoid valve which meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the Department.

National Fire Protection Association 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages," may be used to meet this requirement. Owners and operators shall install and adjust the solenoid valve so that fuel cannot flow by gravity from the tank to the dispenser if the piping fails when the dispenser is not in use.

(8) Owners and operators shall ensure that piping is compatible with the regulated substance conveyed, and shall protect piping from impact, settlement, vibration, expansion, corrosion, damage by fire, and stress due to tidal action.

(9) Owners and operators shall use a flex connector to join piping to the shear valve underneath the dispenser, unless the dispenser is mounted on top of the tank, and shall protect the flex connector from corrosion.

(10) Owners and operators of AST systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

(11) Owners and operators of AST systems at marinas shall electrically isolate dock piping where excessive stray current are encountered.

(12) Owners and operators shall maintain records that demonstrate compliance with the requirements of 20.5.4.401 NMAC, as required by 20.5.5.504 NMAC.

(13) If owners and operators install more than one type of piping at an AST system, then owners and operators shall comply with the above requirements applicable to each type of piping for that run of piping.

C. Secondary containment for AST systems. Owners and operators shall design, provide project drawings for, and construct all new AST systems with one of the following secondary containment systems.

(1) Owners and operators shall base all secondary containment systems on the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(a) Petroleum Equipment Institute Publication RP 200, "Recommended Practices for Installation of Above Ground

Storage Systems for Motor Vehicle Fueling;"

(b) Society of Protective Coatings SSPC-TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment;"

(c) American Concrete Institute Publication ACI 350R, "Environmental Engineering of Concrete Structures;" or

(d) American Petroleum Institute Standard 650, "Welded Steel Tanks for Oil Storage."

(2) Owners and operators may use double-walled ASTs and piping as secondary containment;

(3) Owners and operators shall construct a containment area under and around single-walled ASTs and piping. Internal lining of ASTs shall not be used as a method of secondary containment. Owners and operators shall design and construct secondary containment to minimize damage to the surfaces of the tanks due to corrosion, accumulation of water, and stray electrical current.

(a) Owners and operators shall ensure that a regulated substance is chemically compatible with the secondary containment material. If owners and operators store more than one type of regulated substance within a single containment area, owners and operators shall ensure that the substances are chemically compatible with each other and with the containment material;

(b) Volume of containment area: owners and operators shall construct a containment area which has a capacity of at least one hundred ten percent of the size of the largest AST in the containment area plus the area displaced by the other AST(s);

(4) Owners and operators may use concrete for construction of the containment area. If owners and operators use concrete, the concrete containment shall be constructed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, which shall be approved in advance of construction in writing by the department. Concrete secondary containment shall be internally lined with a material which has a permeability rate to the regulated substance stored of 1×10^{-7} centimeters per second or less. Existing AST systems with existing secondary containment constructed of concrete meet the requirements of this section if the secondary containment is made impervious in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory and approved in advance in writing by the department, and if

the material used has a permeability rate to the regulated substance stored of 1×10^{-7} centimeters per second or less. Concrete secondary containment for piping shall be designed and constructed to allow for easy access to visually inspect the entire piping run, and shall contain a collection system, such as a basin sump, for draining collected liquid.

(5) The following may be used to comply with the concrete secondary containment requirements:

(a) American Concrete Institute 350R, "Environmental Engineering of Concrete Structures;"

(b) American Concrete Institute 224R, "Control of Cracking in Concrete Structures;"

(c) National Association of Corrosion Engineers International RP0892, "Coatings and Linings over Concrete for Chemical Immersion and Containment Service;" or

(d) Society of Protective Coatings TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment."

(6) Owners and operators may use geo-synthetic membrane for construction of the containment area. If owners and operators use geo-synthetic membrane, the geo-synthetic membranes or liners shall have a minimum thickness of 60 mils and shall be installed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department, or in accordance with the manufacturer's specifications. Earthen dike fields shall be lined with a geo-synthetic membrane to qualify as secondary containment.

(7) Owners and operators may use steel for construction of the containment area. If owners and operators use steel for secondary containment, the owners and operators shall cathodically protect the containment area, and shall submit to the department a corrosion prevention plan, which has been approved in writing by a corrosion expert, and which must be approved in writing by the department prior to installation.

(8) Owners and operators shall not use clay for the construction of the containment area.

(9) Owners and operators may use a vault which complies with the requirements of Subsection F of this section as secondary containment.

D. Venting. Owners and operators shall design and construct venting for all new AST systems, following the current edition of an industry standard or code of practice developed by a nationally recog-

nized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(1) Petroleum Equipment Institute Publication RP200 "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling;" or

(2) National Fire Protection Association 30, "Flammable and Combustible Liquids Code."

E. Installation. Owners and operators shall provide project drawings for and install all ASTs and piping in accordance with the manufacturer's instructions, and in accordance with the requirements for site planning; foundation support and anchorage; fills, gauges and vents; environmental protection; testing and inspection; in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling." may be used to comply with this requirement.

F. Vaults. Owners and operators shall provide project drawings for and install new AST systems which include vaults in accordance with the following requirements:

(1) A vault must completely enclose each tank, with no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank. Each tank shall be enclosed in its own vault, although adjacent vaults may share a common wall. However, for good cause shown, the department, in its sole discretion, may grant a variance from the one-tank-one-vault requirement for existing tanks only, if owners and operators demonstrate that the variance will provide equivalent protection of health, safety and welfare and the environment.

(2) Vault construction. The walls and floor of a vault shall be constructed of reinforced concrete at least six inches thick. The top of an above-grade vault shall be constructed of noncombustible material and be designed to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault. The top of an at-grade or below-grade vault shall be designed to safely relieve or contain the force of any explosion occurring inside the vault. The top and floor of the vault and the tank foundation shall be designed to withstand the anticipated loading, including

loading from vehicular traffic, where applicable. The walls and floor of any vault installed below grade shall be designed in compliance with good engineering practice to withstand anticipated soil and hydrostatic loading.

(3) A vault shall be liquid tight with no backfill around the tank.

(4) There shall be adequate space between the tank and the vault for inspection of the tanks and its appurtenances.

(5) Above-grade vaults shall be resistant to damage from the impact of a motor vehicle, or suitable collision barriers shall be installed.

(6) A vault shall include connections to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.

(7) A vault shall be equipped with a detection system capable of detecting liquids, including water, and of activating an audible alarm.

(8) A vault shall include a means for recovering liquid from the vault. If a pump is used to meet this requirement, it shall not be permanently installed in the vault. Electric-powered portable pumps shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. National Fire Protection Association 70, "National Electrical Code," may be used to comply with this requirement.

(9) All tanks, piping and other associated equipment in the interior of a vault shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. National Fire Protection Association 70, "National Electrical Code," may be used to comply with this requirement.

(10) Venting of vaults. Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level. Emergency vents shall be vapor tight and may be permitted to discharge inside the vault. Owners and operators shall not use long-bolt manhole covers for this purpose. Owners and operators shall ensure that all vault vents meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement: National Fire Protection Association 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and

Noncombustible Particulate Solids."

(11) Vault entry. A vault shall include a method of personnel entry. Owners and operators shall post a warning sign indicating procedures for safe entry at each entry point. Owners and operators shall secure each entry point against unauthorized entry and vandalism. Owners and operators shall provide each vault with a suitable means for admission of a fire suppression agent.

G. Dispensers. Owners and operators shall install a containment sump underneath each dispenser associated with an AST, unless the dispenser is located within secondary containment. Owners and operators shall hydrostatically test the sump upon installation, in accordance with manufacturer's recommendations. The following may be used to comply with this containment sump requirement: dispenser liners, under-dispenser containment, dispenser pans, and dispenser sump liners. [20.5.4.401 NMAC - N, 8/15/03]

20.5.4.402 OTHER REQUIREMENTS FOR STORAGE TANK SYSTEMS: The following are required as of August 15, 2004, for ASTs, and as of December 22, 1998 for USTs.

A. Spill and overfill prevention equipment. Except as provided in Paragraph (4) of this subsection, to prevent spilling and overfilling associated with transfers of regulated substances to storage tank systems, owners and operators shall use the following spill and overfill prevention methods:

(1) spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(2) overfill prevention equipment for USTs that will:

(a) automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(b) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level audible alarm.

(3) overfill prevention equipment for ASTs that will:

(a) automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(b) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level audible and visual alarm.

(4) Owners and operators are not required to use the spill and overfill prevention equipment specified in Paragraphs (1), (2) or (3) of this subsection if approved in

writing in advance by the department where:

(a) alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1), (2) or (3) of this subsection;

(b) the storage tank system is filled by transfers of no more than 25 gallons at one time; or

(c) Owners and operators are not required to install and operate spill and overfill prevention equipment required in Paragraph (1) of this subsection for any AST system where the fill port is located within a secondary containment system meeting the requirements of Subsection C of 20.5.4.401 NMAC.

(5) Owners and operators shall install any AST for a marina with a system that will allow the level of regulated substance in the AST to be monitored during a delivery of fuel to the AST in addition to spill catchment basins. Unless the AST system is equipped with an audible overfill alarm that will alert the transfer operator at 90 percent of capacity, and overfill protection which will shut off flow of product during a fuel delivery to the tank at 95 percent, owners and operators shall visually monitor the delivery of fuel.

B. Certification of installation. For installations after August 15, 2003, owners and operators shall demonstrate compliance with Subsection E of 20.5.4.401 NMAC (for ASTs) and Subsection C of 20.5.4.400 NMAC (for USTs) using one or more of the following methods of certification, testing or inspection and shall provide a certification of compliance on the UST or AST registration form required by 20.5.2 NMAC, which asserts that:

(1) the installer has been certified by the tank and piping manufacturers;

(2) the installer has been certified or licensed as required in 20.5.14 NMAC; except for ASTs, this provision shall not become effective until August 15, 2004;

(3) the installation has been inspected and certified by a registered professional engineer with education and experience in UST system or AST system installation (whichever is applicable);

(4) the installation has been inspected and approved by the department; or

(5) all work listed in the manufacturer's installation checklists has been completed.

[20.5.4.402 NMAC - N, 8/15/03]

20.5.4.403 [RESERVED]

[20.5.4.403 NMAC - Rp 20 NMAC 5.4.403, 8/15/03]

20.5.4.404 ALTERNATE METHOD: If owners and operators want to install tanks, piping, storage tank systems, spill and overfill equipment or secondary containment by another method in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.4.404 NMAC - N, 8/15/03]

20.5.4.405 DEADLINES FOR CLOSING OR UPGRADING EXISTING AST SYSTEMS. Not later than July 1, 2011, all owners and operators shall upgrade existing AST systems as follows:

A. Existing AST systems shall meet all performance standards for new AST systems in 20.5.4.401, 402, 404 and 406 NMAC; with the exception that existing AST systems need not submit project drawings; or

B. Owners and operators shall close any AST system that does not meet performance standards in 20.5.4.401, 402, 404 and 406 NMAC.

C. Owners and operators shall close existing underground storage tanks installed as above ground storage tanks before August 15, 2003, in compliance with the closure requirements in 20.5.8 NMAC, including applicable requirements for corrective action in 20.5.12 and 13 NMAC, unless each underground tank meets one of the following requirements:

(1) The tank is certified for above-ground use by the original equipment manufacturer, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in writing by the department;

(2) A professional engineer certifies that the tank meets the standards for above-ground use in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in writing by the department; or

(3) The tank is certified for above-ground use by either an authorized inspector with certification from the American Petroleum Institute, or a Steel

Tank Institute trained and certified tank inspector, approved in advance in writing by the department. The inspector shall personally inspect the tank in order to complete the certification process.

(4) Owners and operators shall deliver all proposed certifications pursuant to this section to the department at least 90 days prior to the upgrade deadline, to allow the department time to approve or disapprove the proposed certification. If the department disapproves the proposed certification of underground storage tanks for above-ground use, owners and operators shall close the tanks in compliance with the closure requirements in 20.5.8 NMAC, including applicable requirements for corrective action under 20.5.12 and 13 NMAC. [20.5.4.405 NMAC - N, 8/15/03]

20.5.4.406 CERTIFICATE OF COMPLIANCE; NOTIFICATION REQUIREMENTS:

A. All owners and operators of new storage tank systems shall certify in the registration form required by 20.5.2 NMAC compliance with the following requirements:

(1) installation of tanks and piping under Subsection C of 20.5.4.400 NMAC for UST systems, Subsection E of 20.5.4.401 NMAC for AST systems or 20.5.4.404 NMAC for either;

(2) cathodic protection of steel tanks and piping in 20.5.4.400 NMAC for UST systems, 20.5.4.401 NMAC for AST systems or 20.5.4.404 NMAC for either;

(3) financial responsibility under 20.5.9 NMAC; and

(4) release detection under 20.5.4.602, 603 and 604 NMAC.

B. All owners and operators of new storage tank systems shall ensure that the installer certifies in the registration form that the methods used to install the tanks and piping comply with the requirements in Subsection C of 20.5.4.400 NMAC for UST systems and Subsection E of 20.5.4.401 NMAC for AST systems.

C. Any person who sells a tank intended to be used as a storage tank must notify the purchaser of such tank of the owner's registration obligations under Part 20.5.2 NMAC and other obligations under 20.5 NMAC.

[20.5.4.406 NMAC - Rp 20 NMAC 5.4.402, 8/15/03]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION**

**CHAPTER 5 P E T R O L E U M
STORAGE TANKS**

**PART 5 GENERAL OPERATING
REQUIREMENTS**

20.5.5.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[20.5.5.1 NMAC - Rp 20 NMAC 20.5.100, 8/15/03]

20.5.5.2 SCOPE: This part applies to owners and operators of storage tanks as provided 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.

[20.5.5.2 NMAC - Rp 20 NMAC 20.5.101, 8/15/03]

20.5.5.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.5.3 NMAC - Rp 20 NMAC 20.5.102, 8/15/03]

20.5.5.4 D U R A T I O N : Permanent.

[20.5.5.4 NMAC - Rp 20 NMAC 20.5.103, 8/15/03]

20.5.5.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.5.5 NMAC - Rp 20 NMAC 20.5.104, 8/15/03]

20.5.5.6 OBJECTIVE: The purpose of 20.5.5 NMAC is to ensure that the operation and maintenance of storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.5.6 NMAC - Rp 20 NMAC 20.5.105, 8/15/03]

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

[20.5.5.7 NMAC - Rp 20 NMAC 20.5.106, 8/15/03]

20.5.5.8-20.5.5.399 [RESERVED]

20.5.5.400 OPERATION AND MAINTENANCE OF STORAGE TANK

SYSTEMS: Owners and operators shall properly maintain all tanks, piping and other associated equipment for all storage tank systems required in 20.5.4.400, 401, 402, and 404 (if applicable) NMAC, and shall ensure that all tanks, piping and other associated equipment for all storage tank systems are fully operational at all times.

A. Owners and operators shall visually inspect monthly an AST and all its components that are readily accessible to visual inspection.

B. Owners and operators shall maintain the exterior coating of an AST and ancillary equipment not in contact with soil in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement: Society of Protective Coating SSPC PA-1, "Shop, Field, and Maintenance Painting of Steel."

C. Owners and operators shall mark fill port lids of ASTs and underground storage tanks (USTs) in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement: American Petroleum Institute RP1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals." Owners and operators shall clearly label the contents of all storage tanks.

D. If any steel piping installed in a trench is used in an AST or UST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any water that has accumulated in the trench within one week of a rainfall event, and shall remove any other debris that has accumulated inside the trench. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of water and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

E. Owners and operators shall maintain containment sumps under dispensers required by Subsection G of 20.5.4.401 NMAC, and draw off water that has accumulated in the sumps within one week of a rainfall event, and shall remove any other debris that has accumulated inside the basin sumps. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If grav-

ity drain valves are used to remove water from the containment sumps, owners and operators shall keep all valves closed except during the process of draining water.

F. Owners and operators of AST systems shall adopt an operations and maintenance plan, which shall be kept and followed for the life of the system. If all exterior surfaces of the AST system are completely visible, readily accessible, and not in contact with the ground or soil, then those owners and operators are not required to perform internal inspections and tightness testing as part of their operations and maintenance plan, but shall comply with the requirements for inspections and testing required for installations, modification and repairs by 20.5.4, 20.5.5 and 20.5.6 NMAC. The operations and maintenance plan shall be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The following may be used to comply with this requirement:

(1) American Petroleum Institute 570, "Pipe Inspection Code: Inspection Repair, Alteration, and Rerating of In-Service Piping Systems;"

(2) American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction;" or

(3) Steel Tank Institute Standard SP001, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids."

G. Owners and operators shall check ASTs monthly for the presence of water at the lowest possible point(s) inside the tank, and remove any water found to the extent technically possible. Owners and operators shall properly dispose of any and all water removed from an AST.

[20.5.5.400 NMAC - N, 8/15/03]

20.5.5.401 OPERATION AND MAINTENANCE OF SECONDARY CONTAINMENT:

A. Owners and operators shall maintain and repair secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

B. Owners and operators shall not store inside the secondary containment any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself. Owners and operators shall not store any material in the secondary containment that reduces the volume of the secondary containment below the requirement in

Subsection C of 20.5.4.401 NMAC.

C. Owners and operators shall draw off water that has accumulated in the secondary containment within one week of a rainfall event, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If gravity drain valves are used to remove water from the secondary containment, all valves will be kept closed except during the process of draining water.

D. In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system, owners and operators shall keep the spill containment buckets, catchment basins, containment sumps, basin sumps, and piping trenches free of water, regulated substances and debris.

E. Owners and operators shall maintain, repair and replace any concrete secondary containment systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(1) Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment;"

(2) American Concrete Institute 224R, "Control of Cracking in Concrete Structures;" or

(3) American Concrete Institute "Concrete Repair Manual."

F. Owners and operators shall maintain, repair and replace any geosynthetic liner according to manufacturer's instructions, which owners and operators shall keep readily available at the facility for the life of the liner.

G. Owners and operators shall protect from corrosion any secondary containment constructed of steel, and shall cathodically protect any portion of the steel secondary containment that is in contact with soil or water. Owners and operators shall maintain the exterior of any steel secondary containment in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement: Society of Protective Coatings SSPC-PA-1, "Shop, Field, and Maintenance Painting of Steel."

H. Owners and operators of above ground storage tanks which are

either double-walled or which have an interstitial space that is monitored as a method of release detection shall comply with the following requirements:

(1) Where design and release detection method allow the interstice of a double-walled above ground storage tank to be visually inspected without disturbance of the release detection system, owners and operators shall annually visually inspect for the presence of water, regulated substances or debris.

(2) Owners and operators shall notify the department in accordance with 20.5.7 NMAC if a visual inspection, other inspection or testing conducted in accordance with 20.5.5 or 20.5.6 NMAC indicate that a release may have occurred.

(3) If testing conducted in accordance with 20.5.4, 20.5.5 or 20.5.6 NMAC indicates that the stored regulated substance is leaking into the interstice of the AST, then owners and operators shall have the tank repaired in accordance with the tank manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(4) Owners and operators shall monitor all vertical ASTs with an interstitial space between the tank bottom and secondary containment for the presence of water or regulated substances. If gravity drain valves are used for monitoring and removal of water or regulated substances, owners and operators shall keep them closed except during the process of monitoring and draining.

(5) Owners and operators shall keep all sumps associated with interstitial monitoring free of water.

(6) Owners and operators shall inspect all sensors used to monitor interstitial spaces annually in accordance with manufacturer's recommendations, or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(7) Owners and operators shall remove all liquid found in interstitial spaces, and dispose of it properly.
[20.5.5.401 NMAC - N, 8/15/03]

20.5.5.402 OPERATION AND MAINTENANCE OF VAULTS:

A. Owners and operators shall maintain and repair the walls and floor of a vault in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in writing by the department. The following may be used to comply with this requirement:

(1) Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment;"

(2) American Concrete Institute 224R, "Control of Cracking in Concrete Structures;" or

(3) American Concrete Institute "Concrete Repair Manual."

B. Owners and operators shall visually inspect the interior of any vault from the outside monthly, and annually shall enter and inspect the interior of the vault. Owners and operators shall draw off any water that has accumulated in a vault within one week of a rainfall event if the water is in contact with the tank or piping (but need not draw off water only in contact with a tank's saddles, skid or other support), and shall remove any other debris that has accumulated inside the vault and which is in contact with the tank, piping or saddle, skid or other support. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If a basin sump is located in the vault, owners and operators shall keep the liquid trap free of water and debris. Owners and operators shall not install any valves in any basin sump in a vault.

C. Owners and operators shall not store inside a vault any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself.

D. Owners and operators shall ensure that a vault is well vented before any fuel transfer begins, and that all vents in the vault are kept open during the transfer.

E. For vaults with roofs, owners and operators shall properly maintain and repair the roof of a vault in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

[20.5.5.402 NMAC - N, 8/15/03]

20.5.5.403 OPERATION AND MAINTENANCE OF VENTING SYSTEMS: Owners and operators shall maintain and repair venting systems in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement: National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids."

[20.5.5.403 NMAC - N, 8/15/03]

[20.5.5.404-499] RESERVED

20.5.5.500 SPILL AND OVERFILL CONTROL:

A. Owners and operators shall ensure that releases due to spilling or overfilling do not occur. Owners and operators shall ensure that all spill and overflow equipment required in Subsection A of 20.5.4.402 NMAC is properly maintained and fully operational at all times. Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(1) National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids;"

(2) American Petroleum Institute Publication RP 1621, "Bulk Liquid Stock Control at Retail Outlets;"

(3) National Fire Protection Association 30, "Flammable and Combustible Liquids Code;"

(4) National Fire Protection Association 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages;" or

(5) Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling."

B. Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with 20.5.7.703 NMAC.

[20.5.5.500 NMAC - Rp 20 NMAC 20.5.500, 8/15/03]

20.5.5.501 OPERATION AND MAINTENANCE OF CORROSION PROTECTION: Owners and operators of steel storage tank systems with any steel tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the storage tank system is used to store regulated substances.

A. Owners and operators shall operate and maintain corrosion protection systems to continuously provide corrosion protection to all metal components of

the system that are in contact with the ground or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

(1) Steel Tank Institute, "Specification for Sti-P3 System of External Corrosion Protection of Underground Steel Storage Tanks;"

(2) Underwriters Laboratories Standard 1746, "External Corrosion Protection System for Steel Underground Storage Tanks;"

(3) Underwriters' Laboratories of Canada CAN4-S603-N85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids;"

(4) Underwriters' Laboratories of Canada CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids;"

(5) Underwriters' Laboratories of Canada CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems;"

(6) National Association of Corrosion Engineers International Standard RP0-0285, "Corrosion Control of Underground Storage Tanks Systems by Cathodic Protection;" or

(7) Underwriters Laboratories Standard 58, "Standard for Safety for Steel Underground Tanks for Flammable and Combustible Liquids."

B. Owners and operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) Frequency. Owners and operators shall test all cathodic protection systems within six months of installation and at least every three years thereafter or according to another reasonable time frame approved in advance in writing by the department; and

(2) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory

(3) The following may be used to comply with this requirement:

(a) National Association of Corrosion Engineers International RP0285, "Corrosion Control of Underground Storage

Tank Systems by Cathodic Protection;"

(b) National Fire Protection Association 30, "Flammable and Combustible Liquids Code;"

(c) National Fire Protection Association 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages;"

(d) American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems;"

(e) American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;" or

(f) National Association of Corrosion Engineers International RP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

C. Owners and operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility, and indicate who performed each inspection.

D. For storage tank systems using cathodic protection, owners and operators shall maintain records of the operation of the cathodic protection in accordance with 20.5.5.504 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(1) The results of the last three inspections required in Subsection C of this section; and

(2) The results of testing from the last two inspections required in Subsection B of this section.

[20.5.5.501 NMAC - Rp 20 NMAC 20.5.501, 8/15/03]

20.5.5.502 COMPATIBILITY: Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system. Owners and operators storing alcohol blends shall use the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. The following may be used to comply with this requirement:

A. American Petroleum Institute Publication RP1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations;" or

B. American Petroleum Institute Publication RP1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and

Service Stations."

[20.5.5.502 NMAC - Rp 20 NMAC 20.5.502, 8/15/03]

20.5.5.503 REPAIRS AND MODIFICATIONS: Owners and operators of a storage tank system shall ensure that repairs and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances. The repairs shall meet the following requirements:

A. Owners and operators shall properly conduct repairs and modifications to storage tank systems in accordance with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department. Owners and operators shall not internally line ASTs as a means of repairing an AST. The following may be used to comply with this requirement:

(1) National Fire Protection Association 30, "Flammable and Combustible Liquids Code;"

(2) American Petroleum Institute Publication RP 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines;"

(3) American Petroleum Institute Publication RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks;"

(4) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection;"

(5) National Fire Protection Association 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages;"

(6) Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling;"

(7) American Society for Testing and Materials ES40, "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection;"

(8) American Petroleum Institute 570, "Piping Inspection Code: Inspection, Repair, Alteration and Rerating of In-Service Piping Systems;" or

(9) American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

B. Owners and operators shall ensure that repairs and modifications to fiberglass-reinforced plastic tanks are made by the manufacturer's authorized representatives, or in accordance with the cur-

rent edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

C. Owners and operators shall replace metal pipe sections and fittings that have released a regulated substance as a result of corrosion or other damage. Owners and operators shall repair, modify and replace fiberglass pipes and fittings in accordance with the manufacturer's specifications. Owners and operators shall repair, modify and replace flexible piping according to manufacturer's instructions.

D. Owners and operators shall tightness test a storage tank system that has been modified on completion of the modification prior to returning the system to service. Owners and operators shall tightness test storage tank systems that have been repaired in accordance with Subsection C of 20.5.6.603 NMAC and Subsection B of 20.5.6.604 NMAC within 30 days following the date of the completion of the repair except as provided in Paragraphs (1) through (3) of Subsection D of this section:

(1) The repaired or modified tank is internally inspected in accordance with the current edition of an industry code or standard approved in advance in writing by the department;

(2) The repaired or modified portion of the storage tank system is monitored monthly for releases in accordance with a method specified in Subsections D through H of 20.5.6.603 NMAC; or

(3) Owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

E. Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with Subsections B and C of 20.5.5.501 NMAC to ensure that it is operating properly.

F. Owners and operators of a storage tank system shall maintain records of each repair and modification for the remaining operating life of the storage tank system that demonstrate compliance with the requirements of this section.

G. Owners and operators shall repair an above ground storage tank if an internal inspection determines that a release is occurring or that the tank bottom or shell thickness is below minimum thickness requirements. The owners and operators shall keep the records of internal inspections for the life of the tank.

Minimum thickness requirements shall be determined by one of the following:

(1) the manufacturer's specifications;

(2) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory; or

(3) the minimum thickness for the tank bottom shall never be less than one half of the original bottom plate thickness and minimum thickness for the tank shall never be less than 0.1 inch.

[20.5.5.503 NMAC - Rp 20 NMAC 20.5.503, 8/15/03]

20.5.5.504 REPORTING AND RECORD KEEPING: Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the federal Resource Conservation and Recovery Act, as amended.

A. Reporting. Owners and operators shall submit the following information to the department:

(1) Registration for all storage tank systems in accordance with 20.5.2 NMAC, which includes certification of installation for new UST and AST systems in accordance with Subsection B of 20.5.4.402 NMAC;

(2) Reports of all releases in accordance with 20.5.2 NMAC, including suspected releases in accordance with 20.5.7.701 NMAC, spills and overfills in accordance with 20.5.7.700 NMAC, and confirmed releases in accordance with 20.5.7.702 NMAC;

(3) Corrective actions planned or taken as required by 20.5.12 and 5.13 NMAC; and

(4) A notification before storage tank system installation, repair or modification in accordance with 20.5.5 NMAC, permanent closure or change-in-service in accordance with 20.5.8 NMAC. It may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs.

B. Record keeping. Owners and operators shall maintain the following information:

(1) a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used, in accordance with Paragraph (5) of Subsection A of 20.5.4.400 NMAC and Paragraph (3) of Subsection B of 20.5.4.400 NMAC;

(2) documentation of operation of

corrosion protection equipment in accordance with 20.5.5.501 NMAC;

(3) documentation of storage tank system repairs in accordance with Subsection F of 20.5.5.503 NMAC;

(4) recent compliance with release detection requirements in accordance with 20.5.6.605 NMAC;

(5) results of the site investigation conducted at permanent closure in accordance with 20.5.8.804 NMAC;

(6) inspection logs required by 20.5.5 NMAC and 20.5.6 NMAC;

(7) tank tightness, internal inspection and integrity test documents required by 20.5 NMAC; and

(8) any other record or written approval required in 20.5.4 through 20.5.6 NMAC.

C. Availability and maintenance of records. Owners and operators shall keep the required records either:

(1) at the storage tank site and immediately available for inspection by the department or

(2) at a readily available alternative site and the records shall be provided for inspection to the department upon request. If records are not available at a site during inspection, owners and operators shall mail or send by facsimile transmission to the inspector within 10 working days all records requested by the inspector.

(3) In the case of permanent closure records required under 20.5.8.804 NMAC, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

D. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of non-compliance

[20.5.5.504 NMAC - Rp 20 NMAC 20.5.504, 8/15/03]

20.5.5.505 INSPECTIONS, MONITORING AND TESTING:

A. For the purpose of enforcing the provisions of these regulations, any owner and operator of a storage tank shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit the department representative at all reasonable times to have access to, and to copy all records relating to such tanks. Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, NMSA 1978, sections 50-9-1 through 50-9-25, so that stor-

age tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized:

(1) to enter at reasonable times any establishment or place where a storage tank is located;

(2) to inspect the storage tank system and obtain samples of its contents; and

(3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

B. The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge

C. Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures. To ensure that the inspector has an opportunity to be present during the steps in these procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department oral notice of the dates on which critical junctures in the installation, repair, modification or closure of the storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours. Notice shall be given as follows:

(1) Owners, operators and certified tank installers shall give at least 30 days written notice before the installation, modification or repair of a storage tank system. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide notice of emergency repairs as soon as possible after completing emergency repairs.

(2) Owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure.

(3) If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this Subsection; however, all parties are liable in the event of

noncompliance.

D. As used in this section, the term "critical junctures" means:

(1) in the case of an installation:

(a) preparation of the excavation immediately prior to receiving backfill and a UST or piping for an AST or UST;

(b) installation of any tank pad, vault, or secondary containment for an AST system;

(c) setting of a UST and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(d) any time during the installation in which components of piping are connected;

(e) all pressure testing of the storage tank system, including associated piping, performed during the installation; and

(f) completion of backfill and filling of the excavation.

(2) in the case of a repair, internal lining or other modification, including repair or modification of cathodic protection:

(a) the completion of the excavation of existing tanks or piping;

(b) the actual performance of the repair, lining or modification;

(c) any time during the project in which components of the piping are connected; and

(d) any time during the project in which the tank or its associated piping is tested.

(3) in the case of a tank removal or storage tank system closure:

(a) the completion of the excavation of a UST or piping;

(b) the cleaning and devaporizing of a tank;

(c) the actual removal of a UST or its associated piping from the ground, or the filling of a UST in place;

(d) the actual permanent closure of an AST from any location where it has been in use; and

(e) the assessment of a tank site for releases.

[20.5.5.505 NMAC - Rp 20 NMAC 20.5.505, 8/15/03]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 P E T R O L E U M STORAGE TANKS
PART 6 RELEASE DETECTION**

20.5.6.1 ISSUING AGENCY:

New Mexico Environmental Improvement Board.

[20.5.6.1 NMAC - Rp, 20 NMAC 5.6.100, 8/15/03]

20.5.6.2 SCOPE: This part applies to owners and operators of storage tanks as provided 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.

[20.5.6.2 NMAC - Rp, 20 NMAC 5.6.101, 8/15/03]

20.5.6.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14; the Ground Water Protection Act, NMSA 1978, sections 74-6B-1 through 74-6B-14; and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.6.3 NMAC - Rp, 20 NMAC 5.6.102, 8/15/03]

20.5.6.4 D U R A T I O N : Permanent.

[20.5.6.4 NMAC - Rp, 20 NMAC 5.6.103, 8/15/03]

20.5.6.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.6.5 NMAC - Rp, 20 NMAC 5.6.104, 8/15/03]

20.5.6.6 OBJECTIVE: The purpose of 20.5.6 NMAC is to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.6.6 NMAC - Rp, 20 NMAC.5.6.105, 8/15/03]

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

[20.5.6.7 NMAC - Rp, 20 NMAC 5.6.106, 8/15/03]

20.5.6.8 to 20.5.6.599 [RESERVED]

20.5.6.600 DEADLINES FOR RELEASE DETECTION FOR ALL STORAGE TANK SYSTEMS:

A. Owners and operators

of new and existing storage tank systems shall provide a method, or combination of methods, of release detection that meet all of the following requirements.

(1) The system can detect a release from any portion of the tank, connected piping, and ancillary equipment that routinely contains a regulated substance.

(2) The system is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

(3) The system meets the performance requirements in 20.5.6.601 through 606, NMAC, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.

(4) In addition, methods for USTs used after December 22, 1990, except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in Subsection B, Paragraph (1) of Subsection C, and Subsection D of 20.5.6.603 NMAC or Subsections A and B of 20.5.6.603 NMAC with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. When a release detection method operated in accordance with the performance standards in 20.5.6 NMAC indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.2.204 and 20.5.7 NMAC.

C. Owners and operators of all UST systems shall comply with the release detection requirements of this section.

D. New AST systems shall meet the release detection requirements of 20.5.6.601 through 606 NMAC when installed. Existing AST systems shall meet the release detection requirements of 20.5.6.601 through 606 NMAC by the following dates, which are also described in the table below:

Schedule for phase-in of release detection for AST systems

Date of Installation	Deadline	Tank	Piping
On or before June 30, 1991, or unknown	August 15, 2004	Internal inspection or visual inspection	Tightness test or visual inspection
	August 15, 2004	Applicable method of release detection	Applicable method of release detection
On or after July 1, 1991	August 15, 2004	Applicable method of release detection	Applicable method of release detection

Applicable Method: Owners and operators shall ensure that one of the applicable methods of release detection in Subsections D, G or H of 20.5.6.603 NMAC or 20.5.6.604 is used to meet the requirements in 20.5.6 NMAC.

(1) Owners and operators of ASTs installed on or before June 30, 1991, or where the installation date is unknown, shall perform a tightness test or an internal inspection on the AST system by August 15, 2004. The tightness test or internal inspection shall be conducted in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and shall be approved in advance in writing by the department. Whether or not a tightness test or internal inspection shows that a system has a suspected release, owners and operators shall have until August 15, 2004, to comply with the release detection requirements of 20.5.6 NMAC. If a tightness test or internal inspection shows that a system has a suspected release, then owners and operators shall comply with the requirements of 20.5.7 NMAC. The following may be used to comply with the above testing requirements:

(a) American Petroleum Institute Standard: API Specification 12F: "Shop-Welded Tanks for Storage of Production Liquids;"

(b) American Petroleum Institute Standard 650, "Welded Steel Tanks for Oil Storage," with applicable addenda;

(c) American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction;"

(d) Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling;"

(e) Underwriters Laboratories Standards: UL 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids;" or

(f) Steel Tank Institute Standard SP001, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids."

(2) Owners and operators of ASTs installed on or after July 1, 1991 shall comply with the release detection requirements in 20.5.6.601 through 20.5.6.606 NMAC by August 15, 2004.

(3) For an AST system of any age with tanks or piping that are completely visible, readily accessible and not in contact with the ground or soil, owners and operators may use visual inspection in compliance with Subsection H of 20.5.6.603 NMAC and Subsection E of 20.5.6.604 NMAC as release detection for those portions completely visible, readily accessible and not in contact with the ground or soil, and need not perform any internal inspection or tightness test required by this subsection for those portions.

E. Owners and operators shall perform a tightness test or internal inspection of ASTs 10 years after installation, unless the AST is in secondary containment that complies with the requirements of Subsection C of 20.5.4.401 NMAC. The following may be used as guidance for compliance with this requirement:

(1) American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction;" or

(2) Steel Tank Institute Standard SP001, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids."

F. For any existing storage tank system to which an owner and operator cannot apply a method of release detection that complies with the requirements of 20.5.6 NMAC by the deadlines in 20.5.6 NMAC, the owner and operator shall complete the closure procedures in 20.5.8 NMAC.

[20.5.6.600 NMAC - Rp, 20 NMAC.5.6.600, 8/15/03]

20.5.6.601 REQUIREMENTS FOR PETROLEUM STORAGE TANK SYSTEMS:

A. Owners and operators of petroleum storage tank systems shall provide release detection for tanks by monitoring monthly for releases using one of the methods listed in Subsections D through G of 20.5.6.603 NMAC with the following exceptions:

(1) UST systems that meet the performance standards in 20.5.4.400 NMAC may use the monthly inventory control requirements in Subsection A or B of 20.5.6.603 NMAC, in conjunction with tank tightness testing conducted in accordance with Subsection C of 20.5.6.603 at least every five years until 10 years after the tank is installed or upgraded under Subsection A of 20.5.4.400 NMAC.

(2) UST systems that do not meet the performance standards in 20.5.4.400 NMAC shall upgrade under 20.5.4.400 NMAC or permanently close under 20.5.8.801 NMAC.

(3) USTs with capacity of 550 gallons or less may use manual tank gauging conducted in accordance with Subsection B of 20.5.6.603 NMAC.

B. Owners and operators of petroleum storage tank systems shall provide release detection for piping that routinely contains regulated substances by monitoring for releases in a manner specified below.

(1) Piping that conveys regulated substances under pressure shall comply with the following requirements:

(a) Owners and operators shall equip pressurized piping with an automatic line leak detector in accordance with Subsection A of 20.5.6.604 NMAC; and

(b) owners and operators of pressurized piping shall either conduct annual line tightness testing in accordance with Subsection B of 20.5.6.604 NMAC or shall conduct monthly monitoring in accordance with Subsections C or E of 20.5.6.604 NMAC, as applicable.

(2) Piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every three years and in accordance with Subsection B of 20.5.6.604 NMAC or use a monthly monitoring method conducted in accordance with Subsection C of 20.5.6.604 NMAC. No release detection is required for suction piping that is designed and constructed to meet all of the following standards:

(a) The below-grade piping operates at less than atmospheric pressure.

(b) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(c) Only one check valve is included in each suction line.

(d) The check valve is located directly below and as close as practical to the suction pump.

(e) A method is provided that allows compliance with Subparagraphs (b) through (d) of Paragraph (2) of Subsection B of this section to be readily determined.

[20.5.6.601 NMAC - Rp, 20

NMAC.5.6.601, 8/15/03]

20.5.6.602 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS:

A. Owners and operators of hazardous substance UST systems shall provide release detection at existing UST systems that meets the requirements for petroleum UST systems in 20.5.6.601 NMAC. Owners and operators shall install at hazardous substance UST systems one or more of the release detection requirements in Subsection B of this section, and shall comply with the standards listed below as applicable.

B. Release detection at new hazardous substance UST systems shall meet the following requirements.

(1) Owners and operators shall design, construct and install secondary containment systems to:

(a) contain regulated substances released from the tank system until they are detected and removed;

(b) prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(c) be checked for evidence of a release monthly. The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with Paragraph (1) of Subsection B of this section.

(2) Double-walled tanks shall be designed, constructed, and installed to:

(a) contain a release from any portion of the inner tank within the outer wall; and

(b) detect the failure of the inner wall.

(3) External liners (including vaults) shall be designed, constructed, and installed to:

(a) contain 100 percent of the capacity of the largest tank within its boundary;

(b) prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(c) surround the tank completely, that is, preventing lateral as well as vertical migration of regulated substances.

(4) Underground piping shall be equipped with secondary containment that satisfies the requirements of Paragraph (1) of Subsection B of this section. In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with Subsection A of 20.5.6.604 NMAC.

[20.5.6.602 NMAC - Rp, 20 NMAC.5.6.602, 8/15/03]

20.5.6.603 METHODS OF RELEASE DETECTION FOR TANKS: Owners and operators shall conduct each method of release detection for tanks used to meet the requirements of 20.5.6.601 NMAC in accordance with the following:

A. Inventory control for USTs or another test of equivalent performance shall be conducted monthly to detect a release of at least one percent of flow-through plus 130 gallons on a monthly basis in accordance with all of the following requirements:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the UST are recorded each operating day.

(2) The equipment used is capable of measuring the level of regulated substance over the full range of the UST's height to the nearest one-eighth of an inch.

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the UST inventory volume before and after delivery.

(4) Deliveries are made through a drop tube that extends to within one foot of the UST bottom.

(5) Regulated substance dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn.

(6) The measurement of any water level in the bottom of the UST is made to the nearest one-eighth of an inch at least once a month. Practices described in the American Petroleum Institute Publication RP1621, "Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of Subsection A of 20.5.6.603 NMAC.

B. Manual tank gauging for USTs shall meet all of the following requirements.

(1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours for tanks of 1,100 gallons or less nominal capacity and at least 44 hours for tanks greater than 1,100 gallons during which no liquid is added to or removed from the tank.

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period.

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

(4) A leak is suspected and subject to the requirements of 20.5.7 NMAC if the variation between beginning and ending measurements exceeds the weekly or

monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1000 gallons	13 gallons	7 gallons
1001-2000 gallons	26 gallons	13 gallons

(5) Only regulated tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in Subsection A of 20.5.6.603 NMAC. Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this part.

C. Tank tightness testing.

(1) For USTs, tank tightness testing or another test of equivalent performance shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the UST that routinely contains regulated substance while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(2) For ASTs, tank tightness testing or another test of equivalent performance shall be capable of detecting a 0.2 gallon per hour leak rate from any portion of the AST that routinely contains regulated substance while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

D. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control may be used for USTs or ASTs if the automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product.

E. For USTs but not for ASTs, testing or monitoring for vapors within the soil gas of the excavation zone shall meet all of the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area.

(2) The stored regulated substance, or a tracer compound placed in the UST system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices locat-

ed in the excavation zone in the event of a release from the UST.

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days.

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the UST.

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the UST system, a component or components of that substance, or a tracer compound placed in the UST system.

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in Paragraphs (1) through (4) of Subsection E of 20.5.6.603 NMAC and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance.

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

F. For USTs but not for ASTs, testing or monitoring for liquids on the groundwater shall meet all of the following requirements.

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one.

(2) Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the UST system and the monitoring wells or devices is not less than 0.01 centimeters per second, that is, the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials.

(3) The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions.

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack.

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible.

(6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of non-aqueous phase liquid on top of the groundwater in the monitoring wells.

(7) Within and immediately below the UST system excavation zone, the

site is assessed to ensure compliance with the requirements in Paragraphs (1) through (5) of this subsection and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product.

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

G. Interstitial monitoring between the storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank system that routinely contains regulated substance and also meets one of the following requirements:

(1) For double-walled storage tank systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains regulated substance, and the sampling or testing method complies with the requirements of the current edition of an industry code or standard approved in writing in advance by the department. The following may be used to comply with this requirement:

(a) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Storage Tanks;" or

(b) Steel Tank Institute Standard F921 "Standard for Aboveground Tanks with Integral Secondary Containment."

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier. The monitoring system shall meet all of the following requirements.

(a) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable, at least 1 x 10 (-6) centimeters per second for the regulated substance stored, to direct a release to the monitoring point and permit its detection.

(b) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

(c) For cathodically protected USTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

(d) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days.

(e) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions.

(f) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For USTs with an internally fitted liner, an automated device can detect a release between the inner wall of the UST and the liner, and the liner is compatible with the regulated substance stored.

(4) For ASTs inside secondary containment, owners and operators may use interstitial monitoring, provided that:

(a) either the ASTs are manufactured or upgraded to include a double-walled bottom which can be remotely monitored, or the ASTs are installed inside the secondary containment with an impervious barrier beneath the ASTs and the interstice between them can be remotely monitored;

(b) groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative, which could result in a release going undetected for more than 30 days; and

(c) owners and operators conduct an annual test of the operation of the interstitial sensor in accordance with the manufacturer's requirements.

H. For ASTs, visual inspection may be used if all portions of the ASTs, including the AST bottoms, are completely visible, readily accessible, not in contact with the ground or soil, and are inspected monthly. Owners and operators shall record in a log the date, time, initials of the inspector, comments on the condition of each AST, and the results of each inspection. Owners and operators shall keep visual inspection logs available at the facility. [20.5.6.603 NMAC - Rp, 20 NMAC.5.6.603, 8/15/03]

20.5.6.604 METHODS OF RELEASE DETECTION FOR PIPING: Each method of release detection for piping used to meet the requirements of 20.5.6.601 NMAC shall be conducted in accordance with the following requirements:

A. Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at 10 pounds per square inch line pressure within one hour. Owners and operators shall conduct an annual test of the operation of the leak detector in accordance with the manufacturer's requirements.

B. Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour

leak rate at one and one-half times the operating pressure.

C. Applicable tank methods. Any of the methods in Subsections E through G of 20.5.6.603 NMAC may be used if they are designed to detect a release from any portion of underground piping that routinely contains regulated substances.

D. Interstitial monitoring. Owners and operators may use interstitial monitoring if they ensure that interstitial monitoring for double-walled piping, whether under pressure or under suction, is approved in advance in writing by the department, and that the interstitial monitoring complies with either:

(1) the piping manufacturer's requirements; or

(2) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory.

E. For above ground storage tanks, visual inspection may be used for piping if all portions of the piping are completely visible, readily accessible, not in contact with the ground or soil, and are inspected monthly. Owners and operators shall record in a log the date, time, initials of the inspector, comments on the condition of the piping, and the results of each inspection. Owners and operators shall keep visual inspection logs available at the facility.

[20.5.6.604 NMAC - Rp, 20 NMAC.5.6.604, 8/15/03]

20.5.6.605 ALTERNATE METHODS:

A. If owners and operators want to install another method of release detection equipment for tanks or piping required in 601 through 604 of 20.5.6 NMAC in accordance with the current edition of an industry code or standard, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. Owners and operators may propose inventory control as a method of leak detection for ASTs, which will only be approved on a case-by-case basis by the department in accordance with Subsections B, C or D of 20.5.6.605 NMAC.

B. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment as the methods provided in this section.

C. Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if, for either ASTs or USTs,

it can detect a 0.2 gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

D. The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the methods allowed in Subsections C through G of 20.5.6.603 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment.

[20.5.6.605 NMAC - N, 8/15/03]

20.5.6.606 RELEASE DETECTION RECORDKEEPING:

A. All storage tank system owners and operators shall maintain records in accordance with 20.5.5.504 NMAC demonstrating compliance with all applicable requirements of this part. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

B. These records shall meet all of the following requirements:

(1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five years, or for another reasonable period of time approved in advance of installation in writing by the department, from the date of installation.

(2) The results of any sampling, testing, or monitoring shall be maintained for at least one year, or for another reasonable period of time approved in advance of installation in writing by the department, except that the results of tank tightness testing conducted in accordance with Subsection C of 20.5.6.603 NMAC shall be retained until the next test is conducted.

(3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one year after the servicing work is completed, or for another reasonable time period approved in advance of installation in writing by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five years from the date of installation.

[20.5.6.606 NMAC - Rp, 20 NMAC 5.6.605, 8/15/03]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 5 P E T R O L E U M 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 S T A T U T O R Y
AUTHORITY: This part is promulgated
pursuant to the provisions of the Hazardous
Waste Act, NMSA 1978, sections 74-4-1
through 74-4-14, and the general provisions
of the Environmental Improvement Act,
NMSA 1978, sections 74-1-1 through 74-1-
15.

[20.5.7.3 NMAC - Rp, 20 NMAC 5.7.102,
8/15/03]

20.5.7.4 D U R A T I O N :
Permanent.

[20.5.7.4 NMAC - Rp, 20 NMAC 5.7.103,
8/15/03]

20.5.7.5 EFFECTIVE DATE:
August 15, 2003, unless a later date is indi-
cated 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 pur-
pose of 20.5.7 NMAC is to regulate storage
tank systems in order to protect the public
health, safety and welfare and the environ-
ment of the state, and to ensure that sus-
pected 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 REPORTING OF
SPILL OR RELEASE:

A. Owners and operators
shall give notice of any suspected or con-
firmed release from a storage tank system
pursuant to 20.5.7.701 NMAC, or any spill
or any other emergency situation to the
department by telephone within 24 hours.
The owner or operator giving the notice
shall provide the following items of infor-
mation to the best of the owner's or opera-
tor's knowledge:

(1) The name, address, and tele-
phone number of the agent in charge of the
site at which the storage tank system is
located, as well as 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) A description of the spill,
release or suspected release, including its
chemical composition;

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

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

B. Owners and operators
shall mail or deliver a written report
describing the spill, release or suspected
release and any investigation or follow-up
action taken or to be taken to the depart-
ment 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 and
provide any appropriate additions or correc-
tions to the information contained in the
prior oral notification.

C. If the owner and opera-
tor 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 noncompli-
ance.

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

20.5.7.701 REPORTING SUS-
PECTED RELEASES: Owners and opera-
tors 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
NMAC, and follow the procedures in
20.5.7.703 NMAC:

A. evidence of released
regulated substances in the vicinity of the
storage tank site, including but not limited
to, the presence of non-aqueous phase liq-
uid or vapors in soils, basements, sewer and
utility lines, groundwater, drinking water or
nearby surface water;

B. unusual operating con-
ditions such as, but not limited to, the errat-
ic function of product dispensing equip-
ment, the sudden loss of regulated sub-
stance 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, 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;

C. monitoring results from
a release detection method described under
20.5.6.601, 602, 603 and 604 NMAC that
indicate a release may have occurred.

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

20.5.7.702 C O N F I R M E D
RELEASES:

A. Owners and operators
of storage tank systems shall report the fol-
lowing conditions to the department within
24 hours, in accordance with 20.5.7.700
NMAC:

(1) evidence of released regulated
substances at the storage tank site including,
but not limited to, the presence of non-aque-
ous phase liquid or vapors in soils, base-
ments, 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, moni-
toring results, system checks, the investiga-
tion performed in accordance with
20.5.7.703 NMAC, and any other informa-
tion available to the department. The
department shall provide a written determi-
nation that a release is a confirmed release
to any affected owners and operators, and

shall state the basis for the determination.

C. Owners and operators of storage tank systems shall address confirmed releases in accordance with 20.5.12 and 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]

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 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 to the department within 24 hours in accordance with 20.5.7.700 NMAC except as provided in Subsection C of 20.5.7.704 NMAC, and begin corrective action in accordance with 20.5.12 and 13 NMAC in the following cases:

(1) 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 NMAC; and

(2) spill or overflow 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) 40 CFR 302.

B. Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons, and a spill or overflow 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 another reasonable time period which has been established by the department.

C. Pursuant to 40 CFR sections 302.7 and 355.40, 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]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 5 PETROLEUM STORAGE TANKS PART 8 OUT-OF-SERVICE SYSTEMS AND CLOSURE

20.5.8.1 ISSUING AGENCY: New Mexico Environmental Improvement Board. [20.5.8.1 NMAC - Rp, 20 NMAC 5.8.100, 8/15/03]

20.5.8.2 SCOPE: This part applies to owners and operators of storage tanks as provided 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.

[20.5.8.2 NMAC - Rp, 20 NMAC 5.8.101, 8/15/03]

20.5.8.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.8.3 NMAC - Rp, 20.NMAC 5.8.102, 8/15/03]

20.5.8.4 D U R A T I O N : Permanent:

[20.5.8.4 NMAC - Rp, 20 NMAC 5.8.103, 8/15/03]

20.5.8.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.8.5 NMAC - Rp, 20 NMAC 5.8.104, 8/15/03]

20.5.8.6 OBJECTIVE: The purpose of 20.5.8 NMAC is to regulate storage tank systems to protect the public health, safety and welfare and the environment of the state, and to provide safe and effective closure requirements for out-of-service systems.

[20.5.8.6 NMAC - Rp, 20 NMAC 5.8.105, 8/15/03]

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

[20.5.8.7 NMAC - Rp, 20 NMAC 5.8.106, 8/15/03]

20.5.8.8 to 20.5.8.798 [RESERVED]

20.5.8.799 NOTIFICATION OF TEMPORARY OR PERMANENT CLOSURE OR RETURN TO SERVICE:

A. At least 30 days before beginning either permanent closure, temporary closure, a change-in-service, or removal of a tank pursuant to Subsections B, C, or D of 20.5.8. NMAC, or within another reasonable time period if approved in advance in writing by the department, owners and operators shall notify the department orally or in writing of their intent to close or make the change-in-service, unless such action is in response to corrective action.

B. Additionally, owners

and operators shall notify the department orally or in writing at least 30 days prior to placing any regulated substance into a tank that has been in temporary or permanent closure.

C. 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.

[20.5.8.799 NMAC - N, 8/15/03]

20.5.8.800 TEMPORARY CLOSURE:

A. A storage tank system is empty when all regulated substances have been removed using commonly employed practices so that no more than two and a half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remain in the system. When a storage tank system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection in accordance with 20.5.5 NMAC, and any release detection in accordance with 20.5.6 NMAC. Owners and operators shall comply with 20.5.7, 20.5.12 and 20.5.13 NMAC if a release is suspected or confirmed. However, release detection is not required as long as the storage tank system is empty.

B. When a storage tank system is temporarily closed for three months or more, owners and operators shall also comply with all of the following requirements:

(1) leave vent lines open and functioning;

(2) cap and secure all other lines, pumps, manways, and ancillary equipment; and

(3) for ASTs, disconnect and cap all associated piping from the AST as soon as the tank is emptied and cleaned.

C. When a UST system is temporarily closed for more than 12 months, owners and operators shall permanently close the UST system if it does not meet either performance standards for new UST systems or the UST upgrade requirements in 20.5.4.400 and 402 NMAC, except that the spill and overfill equipment requirements do not have to be met. When an AST system is temporarily closed for more than 12 months, owners and operators shall permanently close the AST system if it does not meet the performance standards for new AST systems in 20.5.4.401 and 402 NMAC except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.8.801 through 804 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.8.802 NMAC before applying for such an extension.

D. When a field-erected AST system has been temporarily closed for three to 12 months, and meets the performance standards for new AST systems in 20.5.4.401 and 402 NMAC, prior to placing any regulated substance in the AST system, owners and operators shall:

(1) perform an internal inspection on the AST in accordance with the current edition of an industry code or standard approved in advance in writing by the department;

(2) perform a tightness test on all piping in accordance with the current edition of an industry code or standard approved in advance in writing by the department; and

(3) perform a functionality test on any automatic line leak detectors in accordance with the manufacturer's recommendations.

[20.5.8.800 NMAC - Rp, 20 NMAC 5.8.800, 8/15/03]

20.5.8.801 PERMANENT CLOSURE AND CHANGES-IN-SERVICE:

A. Owners and operators shall perform the required assessment of the excavation zone under 20.5.8.802 NMAC after notifying the department but before completion of permanent closure or a change-in-service.

B. To permanently close a tank, owners and operators shall empty and clean it by removing all liquids, accumulated sludges, and vapors. Owners and operators shall properly dispose of any liquids and sludge removed from a storage tank.

(1) Owners and operators shall either remove from the ground all USTs closed permanently or fill them with an inert solid material.

(2) Owners and operators shall perform the following closure operations on ASTs:

(a) ASTs being closed in place shall be rendered vapor free. Owners and operators shall make provisions for adequate ventilation to ensure that the AST remains vapor free.

(b) Vent lines shall remain open and shall be maintained in accordance with the current edition of a standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendations.

(c) All access openings shall be secured, normally with spacers, to assist

ventilation.

(d) ASTs shall be secured against tampering and flooding.

(e) The name of the product last stored, the date of permanent closure and "PERMANENTLY CLOSED" shall be stenciled in a readily visible location on each AST.

(f) Piping shall be removed or closed in place. If closed in place, piping shall be disconnected from ASTs, rendered vapor free, and filled with inert material, capped or blind flanged. Owners and operators seeking to close piping in place shall propose a closure plan for the piping in writing to the department at least 30 days prior to closure. The department may approve the plan on a case-by-case basis, after considering the extent and depth of piping, the proximity of the piping to buildings, the extent of pavement at the facility, and other factors raised by owners and operators. If the department does not approve a closure plan, owners and operators shall remove the piping.

(g) Owners and operators shall dismantle or remove ASTs and secondary containment to the extent needed to conduct the site assessment required in 20.5.8.802 NMAC.

(3) For mobile ASTs, owners and operators shall perform all of the closure requirements in Paragraph (2) of this subsection, except they need not perform the requirements of Subparagraph (a), (e) or (f) of Paragraph (2) of this subsection. Owners and operators shall remove or cap piping when permanently closing a mobile AST. Owners and operators shall perform a site assessment that complies with the requirements of 20.5.8.802 NMAC after permanent closure of any permanently installed mobile tank.

C. Continued use of a storage tank system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 20.5.8.802 NMAC. Owners and operators shall properly dispose of any liquids and sludge removed from a storage tank. The current edition of the following cleaning and closure procedures may be used to comply with this section:

(1) American Petroleum Institute Publication RP 1604, "Closure of Underground Petroleum Storage Tanks;"

(2) American Petroleum Institute Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks;"

(3) American Petroleum Institute Publication RP 2016, "Guidelines and Procedures for Entering and Cleaning

Petroleum Storage Tanks;”

(4) American Petroleum Institute Publication 2202, “Dismantling and Disposing of Steel from Aboveground Leaded Gasoline Storage Tanks;”

(5) American Petroleum Institute Publication RP 1631, "Interior Lining and Periodic Inspections of Underground Storage Tanks," may be used as guidance for compliance with this section; or

(6) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard...Working in Confined Space," may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

D. For ASTs, a change in location shall be considered a change in service. Owners and operators shall notify the department of a change in location of ASTs that are operational and registered pursuant to 20.5.2 NMAC.

E. If the owner and operator of a storage tank system are separate persons, only one person is required to give the notice and take the actions required in this section; however, both parties are liable in the event of noncompliance. [20.5.8.801 NMAC - Rp, 20 NMAC 5.8.801, 8/15/03]

20.5.8.802 ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE:

A. Before permanent closure or a change-in-service is completed, owners and operators shall measure for the presence of a release where contamination is most likely to be present at the storage tank site. In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the method of closure, the nature of the stored regulated substance, the type of backfill for any USTs, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Examples of sample locations may include but are not limited to piping junctions, under dispensers and under storage tanks. The requirements of this section are satisfied if one of the external release detection methods allowed in Subsections E and F of 20.5.6.603 NMAC is operating in accordance with the requirements in 20.5.6.603 NMAC at the time of closure, and indicates no release has occurred.

B. If contaminated soils, contaminated groundwater, non-aqueous phase liquid or vapor is discovered under Subsection A of this section, or by any other manner, owners and operators shall notify the department in accordance with 20.5.7 NMAC and begin corrective action in accordance with 20.5.12 and 20.5.13 NMAC.

[20.5.8.802 NMAC - Rp, 20 NMAC

5.8.802, 8/15/03]

20.5.8.803 APPLICABILITY TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:

When directed by the department, owners and operators of UST systems permanently closed before December 22, 1988, shall assess the excavation zone and close the UST systems in accordance with this part if releases from the UST may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment. When directed by the department, owners and operators of AST systems permanently closed before August 15, 2003 shall assess the excavation zone and close the AST systems in accordance with this part if releases from the AST may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

[20.5.8.803 NMAC - Rp, 20 NMAC 5.8.803, 8/15/03]

20.5.8.804 CLOSURE RECORDS:

A. Owners and operators shall maintain records in accordance with 20.5.5.504 NMAC that are capable of demonstrating compliance with closure requirements under this part. The results of the excavation zone assessment required in 20.5.5.802 NMAC shall be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

- (1) by the owners and operators who took the storage tank system out of service;
- (2) by the current owners and operators of the storage tank system site; or
- (3) by mailing these records to the department if they cannot be maintained at the closed facility.

B. If the owner and operator of a storage tank system are separate persons, only one person is required to maintain the records required in this part; however, both parties are liable in the event of noncompliance.

[20.5.8.804 NMAC - Rp, 20 NMAC 5.8.804, 8/15/03]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 9 FINANCIAL RESPONSIBILITY**

20.5.9.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[20.5.9.1 NMAC - Rp, 20 NMAC 5.9.100, 8/15/03]

20.5.9.2 SCOPE: This part applies to owners and operators of petroleum storage tanks as defined in 20.5.1 NMAC. If the owner and operator are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[20.5.9.2 NMAC - Rp, 20 NMAC 5.9.101, 8/15/03]

20.5.9.3 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, and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.9.3 NMAC - Rp, 20 NMAC 5.9.102, 8/15/03]

20.5.9.4 DURATION: Permanent.

[20.5.9.4 NMAC - Rp, 20 NMAC 5.9.103, 8/15/03]

20.5.9.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.9.5 NMAC - Rp, 20 NMAC 5.9.104, 8/15/03]

20.5.9.6 OBJECTIVE: The purpose of this part is to require owners and operators of petroleum storage tanks systems to demonstrate financial responsibility for their systems and to protect the public health, safety and welfare and the environment of the state.

[20.5.9.6 NMAC - Rp, 20 NMAC 5.9.105, 8/15/03]

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

20.5.9.8 to 20.5.9.899 [RESERVED]

20.5.9.900 APPLICABILITY: A. This part applies to owners and operators of all petroleum storage tank systems except as otherwise provided in this section.

B. Owners and operators of petroleum above ground storage tank systems are allowed a phase-in period for compliance with this part as provided in 20.5.9.901 NMAC.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this part.

D. The requirements of this part do not apply to owners and operators of storage tank systems described in Subsection B or C of 20.5.1.2 NMAC.

E. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[20.5.9.900 NMAC - Rp, 20 NMAC 5.9.900, 8/15/03]

20.5.9.901 PHASE-IN FOR ABOVE GROUND STORAGE TANKS: Owners and operators of above ground storage tanks shall comply with the requirements of 20.5.9 NMAC by July 1, 2007.

[20.5.9.901 NMAC - Rp, 20 NMAC 5.9.901, 8/15/03]

20.5.9.902 [RESERVED]

20.5.9.903 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY:

A. Owners and operators of petroleum storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, \$1 million; and

(2) For all other owners or operators of petroleum storage tanks, \$500,000.

B. Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of 1 to 100 petroleum underground storage tanks, \$1 million; and

(2) for owners or operators of 101 or more petroleum underground storage tanks, \$2 million.

C. Owners and operators of petroleum above ground storage tanks

shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum above ground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of 1 to 100 petroleum above ground storage tanks, \$1 million; and

(2) for owners or operators of 101 or more petroleum above ground storage tanks, \$2 million.

The annual aggregate on above ground storage tanks is separate from the annual aggregate on underground storage tanks, although an owner or operator of both above ground and underground storage tanks may include both types of tanks within the same annual aggregate if the aggregate is no less than the total of the annual aggregates required for each type of tank.

D. For the purposes of Subsections B, C and G of this section only, "a petroleum underground storage tank" or "a petroleum above ground storage tank" means a single containment unit and does not mean combinations of single containment units.

E. Except as provided in Subsection F of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) taking corrective action;

(2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in Subsections A, B and C of this section.

F. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanism.

G. Owners and operators shall review the amount of aggregate assurance provided whenever additional petroleum storage tanks are acquired or installed. If the number of either petroleum underground storage tanks or petroleum above ground storage tanks for which assurance shall be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance for that particular type of tank (UST or AST) by the anniversary of the date on which the mech-

anism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, owner and operators shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

H. The amounts of assurance required under this section exclude legal defense costs.

I. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

[20.5.9.903 NMAC - Rp, 20 NMAC 5.9.903, 8/15/03]

20.5.9.904 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS:

A. Subject to the limitations of Subsections B and C and the requirements of Subsection D of this section:

(1) an owner or operator may use any one or combination of the mechanisms listed in 20.5.9.905 NMAC through 20.5.9.913 NMAC to demonstrate financial responsibility under this part for one or more storage tanks; and

(2) a local government owner or operator may use any one or combination of the mechanisms listed in 20.5.9.905 NMAC through 20.5.9.917 NMAC to demonstrate financial responsibility under this part for one or more storage tanks.

B. An owner or operator may use a guarantee or surety bond under 20.5.9.908 NMAC to establish financial responsibility only if the attorney general of the state has submitted a written statement to the department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in this state. The department received this statement on July 24, 1988.

C. An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

D. An owner or operator who intend to use one mechanism or a combination of mechanisms for tanks in more than one state may use the federal forms found in 40 CFR Part 280. If an owner or operator uses the federal forms, the owner or operator shall attach the following addendum: It is hereby acknowledged and agreed that, with respect to the storage tanks locat-

ed in New Mexico, any and all references to Subtitle I of the federal Resource Conservation and Recovery Act or to one or more of the regulations of the U.S. Environmental Protection Agency promulgated under Subtitle I and included in 40 CFR Part 280 are deemed references to the New Mexico Hazardous Waste Act and the applicable provisions of 20.5 NMAC, the New Mexico Petroleum Storage Tank Regulations.
[20.5.9.904 NMAC - Rp, 20 NMAC 5.9.904, 8/15/03]

20.5.9.905 FINANCIAL TEST OF SELF INSURANCE:

A. An owner or operator, or guarantor, may satisfy the requirements of 20.5.9.903 NMAC by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, shall meet the criteria of Subsection B or C of this section based on year-end financial statements for the latest completed fiscal year.

B. Criteria for option one.

(1) The owner or operator, or guarantor, shall have a tangible net worth of at least 10 times:

(a) the total of the applicable aggregate amounts required by 20.5.9.903 NMAC based on the number of storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;

(b) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, sections 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(c) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR sections 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

(2) The owner or operator, or guarantor, shall have a tangible net worth of at least \$10 million.

(3) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer worded as specified in 20.5.9.955 NMAC.

(4) The owner or operator, or guarantor, shall either:

(a) file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification

Administration; or

(b) report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

C. Criteria for option two.

(1) The owner or operator, or guarantor, shall meet the financial test requirements of 40 CFR section 264.147(f)(1), substituting the appropriate amounts specified in Paragraphs (1) and (2) of Subsection B of 20.5.9.903 NMAC for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer, worded as specified in 20.5.9.955 NMAC.

(5) If the financial statements of the owner or operator, or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, or guarantor, shall obtain a special report by an independent certified public accountant stating that:

(a) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor, with the amounts in such financial statements; and

(b) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

D. To demonstrate that it meets the financial test under Subsection B or C of this section, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as shown in 20.5.9.955 NMAC.

E. If an owner or operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the

year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The secretary may require reports of financial condition at any time from the owner or operator, or guarantor. If the secretary finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of Subsections B or C and D of 20.5.9.905 NMAC, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

G. If the owner or operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the secretary that he no longer meets the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.9.905 NMAC - Rp, 20 NMAC 5.9.905, 8/15/03]

20.5.9.906 GUARANTEE:

A. An owner or operator may satisfy the requirements of 20.5.9.903 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

(1) a firm that:

(a) possesses a controlling interest in the owner or operator;

(b) possesses a controlling interest in a firm described under Subparagraph (a) of Paragraph (1) of Subsection A of this section; or

(c) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(2) a firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of 20.5.9.905 NMAC based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in 20.5.9.955 NMAC and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or non renewal of the guarantee, notice to the

owner or operator. If the secretary notifies the guarantor that he no longer meets the requirements of the financial test of Subsection B or C of 20.5.9.905 NMAC and 20.5.9.955 NMAC, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the secretary. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in Subsection E of 20.5.9.924 NMAC.

C. The guarantee shall be worded as specified in 20.5.9.956 NMAC.

D. An owner or operator who uses a guarantee to satisfy the requirements of 20.5.9.903 NMAC shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.9.922 NMAC. This standby trust fund shall meet the requirements specified in 20.5.9.913 NMAC.

[20.5.9.906 NMAC - Rp, 20 NMAC 5.9.906, 8/15/03]

20.5.9.907 INSURANCE AND RISK RETENTION GROUP COVERAGE:

A. An owner or operator may satisfy the requirements of 20.5.9.903 NMAC by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

B. Each insurance policy shall be amended by an endorsement worded as specified in Subsection A of 20.5.9.957 NMAC or evidenced by a certificate of insurance worded as specified in Subsection B of 20.5.9.957 NMAC, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[20.5.9.907 NMAC - Rp, 20 NMAC 5.9.907, 8/15/03]

20.5.9.908 SURETY BOND:

A. An owner or operator may satisfy the requirements of 20.5.9.903 NMAC by obtaining a surety bond that conforms to the requirements of this section.

The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded as specified in 20.5.9.958 NMAC.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or operator who uses a surety bond to satisfy the requirements of 20.5.9.903 NMAC shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.9.922 NMAC. This standby trust fund shall meet the requirements specified in 20.5.9.913 NMAC.

[20.5.9.908 NMAC - Rp, 20 NMAC 5.9.908, 8/15/03]

20.5.9.909 LETTER OF CREDIT:

A. An owner or operator may satisfy the requirements of 20.5.9.903 NMAC by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

B. The letter of credit shall be worded as specified in 20.5.9.959 NMAC.

C. An owner or operator who uses a letter of credit to satisfy the requirements of 20.5.9.903 NMAC shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the secretary will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the secretary under 20.5.9.922 NMAC. This standby trust fund shall meet the requirements specified in 20.5.9.913 NMAC.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of

credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

[20.5.9.909 NMAC - Rp, 20 NMAC 5.9.909, 8/15/03]

20.5.9.910 USE OF STATE REQUIRED MECHANISM:

A. An owner or operator may use a state-required financial mechanism to meet the requirements of 20.5.9.903 NMAC if the secretary determines that the state mechanism is at least equivalent to the financial mechanisms specified in this part.

B. The secretary will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

C. The state, an owner or operator, or any other interested party may submit to the secretary a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of 20.5.9.903 NMAC. The submission shall include copies of the appropriate state statutory and regulatory requirements and shall show the amount of funds for corrective action or for compensating third parties assured by the mechanism(s). The secretary may require the petitioner to submit additional information as is deemed necessary to make this determination.

D. Any petition under this section may be submitted on behalf of all of the state's petroleum underground storage tank owners and operators, petroleum above ground storage tank owners and operators, or both petroleum underground and above ground storage tank owners and operators.

E. The secretary will notify the petitioner of the determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this part. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of 20.5.9.903 NMAC for storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

[20.5.9.910 NMAC - Rp, 20 NMAC 5.9.910, 8/15/03]

20.5.9.911 STATE FUND OR OTHER STATE ASSURANCE:

A. An owner or operator may satisfy the requirements of 20.5.9.903 NMAC for storage tanks located in New Mexico if the state assures that monies will be available from a state fund or state assur-

ance program to cover costs up to the limits specified in 20.5.9.903 NMAC or otherwise assures that such costs will be paid if the secretary determines that the state's assurance is at least equivalent to the financial mechanisms specified in this part.

B. The secretary will evaluate the equivalency of a state fund or other state assurance principally in terms of: certainty of the availability of funds for taking corrective action; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

C. The secretary shall consider a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of storage tanks to which the funds may be applied. The secretary may also consider additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the secretary, the owner or operator of a covered class of storage tanks will be deemed to be in compliance with the requirements of 20.5.9.903 NMAC for the amounts and types of costs covered by the state fund or other state assurance.

D. Within 60 days after the secretary determines the state's fund or other assurance is acceptable in lieu of other financial mechanisms specified in 20.5.9 NMAC the secretary shall provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the secretary shall include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action or for compensating third parties that is assured by the state. The owner or operator shall maintain this letter or certificate on file as proof of financial responsibility in accordance with Paragraph (8) of Subsection B of 20.5.9.921 NMAC.

[20.5.9.911 NMAC - Rp, 20 NMAC 5.9.911, 8/15/03]

20.5.9.912 TRUST FUND:

A. An owner or operator may satisfy the requirements of 20.5.9.903 NMAC by establishing a trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The wording of the trust agreement shall be identical to the wording specified in 20.5.9.963 NMAC with the addition of the addendum required

by Subsection D of 20.5.9.904 NMAC, and shall be accompanied by a formal certification of acknowledgment as specified in Subsection B of 20.5.9.963 NMAC.

C. The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the secretary for release of the excess.

E. If other financial assurance as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the secretary for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection D or E of this section, the secretary will instruct the trustee to release to the owner or operator such funds as the secretary specifies in writing.

[20.5.9.912 NMAC - Rp, 20 NMAC 5.9.912, 8/15/03]

20.5.9.913 STANDBY TRUST FUND:

A. An owner or operator using any one of the mechanisms authorized by 20.5.9.906, 908, or 909 NMAC shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The standby trust agreement shall be worded as specified in 20.5.9.963 NMAC.

C. The secretary will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the secretary determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator may establish one trust fund as the depositary mechanism for all funds assured in compliance with this rule.

[20.5.9.913 NMAC - Rp, 20 NMAC 5.9.913, 8/15/03]

20.5.9.914 LOCAL GOVERNMENT BOND RATING TEST:

A. A general purpose local government owner or operator or local govern-

ment serving as a guarantor, or a local government owner or operator or guarantor which is not a general purpose local government but which has the legal authority to issue general obligation bonds, may satisfy the requirements of 20.5.9.903 NMAC by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

B. A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and also does not have the legal authority to issue general obligation bonds may satisfy the requirements of 20.5.9.903 NMAC by having both a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues, and a Moody's rating of Aaa, A, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard and Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

C. The local government owner or operator or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

D. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection A of this section shall sign a letter worded exactly as specified in Subsection A of 20.5.9.964 NMAC.

E. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection B of this section shall sign a letter worded exactly as specified in Subsection B of 20.5.9.964 NMAC.

F. The secretary may require reports of financial condition at any time from the local government owner or operator, or local government guarantor. If the secretary finds, on the basis of such

reports or other information, that the local government owner or operator, or guarantor, no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

G. If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

[20.5.9.914 NMAC - Rp, 20 NMAC 5.9.914, 8/15/03]

20.5.9.915 LOCAL GOVERNMENT FINANCIAL TEST:

A. A local government owner or operator may satisfy the requirements of 20.5.9.903 NMAC by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator shall meet the criteria of Paragraphs (2) and (3) of Subsection B of this section based on year-end financial statements for the latest completed fiscal year.

B. The criteria for local government financial test.

(1) The local government owner or operator shall have the following information available, as shown in the year-end financial statements for the latest completed fiscal year.

(a) Total revenues. "Total revenues" is the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(b) Total expenditures. "Total expenditures" is the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing,

employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(c) Local revenues. "Local revenues" is total revenues as defined in Subparagraph (a) of Paragraph (1) of Subsection B of this section minus the sum of all transfers from other governmental entities, including all monies received from Federal, state, or local government sources.

(d) Debt service. "Debt service" is the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. It includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. It excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(e) Total funds. "Total funds" is the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. It includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(f) Population is the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in Subsection C of this section and 20.5.9.965 NMAC.

C. To demonstrate that it meets the financial test under Subsection B of this section, the chief financial officer of

the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as specified in 20.5.9.965 NMAC.

D. If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

E. The secretary may require reports of financial condition at any time from the local government owner or operator. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of Subsections B and C of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

F. If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the secretary that it no longer meets the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.9.915 NMAC - Rp, 20 NMAC 5.9.915, 8/15/03]

20.5.9.916 LOCAL GOVERNMENT GUARANTEE:

A. A local government owner or operator may satisfy the requirements of 20.5.9.903 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either the state or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall do one of the following:

(1) demonstrate that it meets the bond rating test requirement of 20.5.9.914 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.9.964 NMAC to the local government owner or operator;

(2) demonstrate that it meets the worksheet test requirements of 20.5.9.915 and 20.5.9.965 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.9.965 NMAC to the local government owner or operator; or

(3) demonstrate that it meets the

local government fund requirements of Subsection A, B or C of 20.5.9.917 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.9.967 NMAC to the local government owner or operator.

B. If the local government guarantor is unable to demonstrate financial assurance under any provision of 20.5.9.914 or 20.5.9.915 NMAC or Subsection A, B, or C of 20.5.9.917 NMAC at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in Subsection C of 20.5.9.924 NMAC.

C. The guarantee agreement shall be worded as specified in Subsection A or B of 20.5.9.966 NMAC, depending on which of the following alternative guarantee arrangements is selected.

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the secretary, the guarantee shall be worded as specified in Subsection A of 20.5.9.966 NMAC.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the secretary for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in Subsection B of 20.5.9.966 NMAC.

D. If the guarantor is the state, the local government guarantee with standby trust shall be worded as specified in Paragraph (1) of Subsection A of 20.5.9.966 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee with standby trust shall be worded as specified in Paragraph (2) of Subsection A of 20.5.9.966 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

E. If the guarantor is the state, the local government guarantee without standby trust shall be worded as specified in Paragraph (1) of Subsection B of 20.5.9.966 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in Paragraph (2) of Subsection B of 20.5.9.966 NMAC, except that instructions in brackets are to be

replaced with relevant information and the brackets deleted.

[20.5.9.916 NMAC - Rp, 20 NMAC 5.9.916, 8/15/03]

20.5.9.917 LOCAL GOVERNMENT FUND: A local government owner or operator may satisfy the requirements of 20.5.9.903 NMAC by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in Subsection B of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets the requirements in either Subsection A, B or C of this section.

A. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for the full amount of coverage required under 20.5.9.903 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage.

B. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for five times the full amount of coverage required under 20.5.9.903 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under 20.5.9.903 NMAC, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund.

C. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the "pay-in-period." The

amount of each payment shall be determined by this formula: $(TF - CF)/Y$ Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and

(1) the local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both; or

(2) the local government owner or operator has a letter signed by the state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter shall also state that prior voter approval is not necessary before use of the bonding authority.

D. To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor shall sign a letter worded exactly as specified in 20.5.9.967 NMAC.

[20.5.9.917 NMAC - Rp, 20 NMAC 5.9.917, 8/15/03]

20.5.9.918 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR:

A. Owners and operators may substitute any alternate financial assurance mechanisms as specified in this part, provided that at all times they maintain an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 20.5.9.903 NMAC.

B. After obtaining alternate financial assurance as specified in this part, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

[20.5.9.918 NMAC - Rp, 20 NMAC 5.9.918, 8/15/03]

20.5.9.919 CANCELLATION OR NON-RENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE:

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 20.5.9.924 NMAC, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the secretary of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with Subsection B of 20.5.9.921 NMAC. [20.5.9.919 NMAC - Rp, 20 NMAC 5.9.919, 8/15/03]

20.5.9.920 REPORTING BY OWNER OR OPERATOR:

A. Owners and operators shall submit the appropriate forms listed in Subsection B of 20.5.9.921 NMAC documenting current evidence of financial responsibility to the secretary:

(1) within 30 days after the owner or operator identifies a release from a storage tank required to be reported under 20.5.2.204 NMAC or 20.5.7 NMAC;

(2) if the owner or operator fails to obtain alternate coverage as required by this part, within 30 days after the owner or operator receives notice of:

(a) commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(b) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(c) failure of a guarantor to meet

the requirements of the financial test, or

(d) other incapacity of a provider of financial assurance, except as provided in Paragraph 3 of this subsection;

(3) if the owner or operator fails to obtain alternate coverage as required by this part, within 60 days after the owner or operator receives notice that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs; or

(4) as required by Subsection G of 20.5.9.905 NMAC and Subsection B of 20.5.9.919 NMAC.

B. Owners and operators shall certify compliance with the financial responsibility requirements of this part as specified in the new tank registration form when registering a new storage tank under 20.5.2.202 NMAC.

C. The secretary may require an owner or operator to submit evidence of financial assurance as described in Subsection B of 20.5.9.921 NMAC or other information relevant to compliance with this part at any time.

[20.5.9.920 NMAC - Rp, 20 NMAC 5.9.920, 8/15/03]

20.5.9.921 RECORD KEEPING:

A. Owners and operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this part for a storage tank until released from the requirements of this part under 20.5.9.923 NMAC. An owner or operator shall maintain such evidence at the storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

B. Owners and operators shall maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in 20.5.9.905 NMAC through 20.5.9.910 NMAC or 20.5.9.912 NMAC or 20.5.9.914 through 20.5.9.917 NMAC shall maintain a copy of the instrument worded as specified in this part.

(2) An owner or operator using a financial test or guarantee, a local government financial test a local government guarantee supported by the local government financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any

amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under Subsection D of 20.5.9.916 NMAC shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under 20.5.9.914 NMAC shall maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under 20.5.9.916 NMAC, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 20.5.9.914 NMAC shall maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by a state fund or other state assurance shall maintain on file a copy of any evidence of coverage supplied by or required by the State under Subsection D of 20.5.9.911 NMAC.

(9) An owner or operator using a local government fund under 20.5.9.917 NMAC shall maintain the following documents:

(a) a copy of the state constitutional provision or local government statute charter, ordinance, or order dedicating the fund, and

(b) year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under Subsection A of 20.5.9.917 NMAC using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance the amount of funding during the year, and the closing balance in the fund.

(c) If the fund is established under Subsection A of 20.5.9.917 NMAC using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum under Subsection A of 20.5.9.917 NMAC or attestation by the state attorney general as specified under Subsection A of 20.5.9.917 NMAC.

(10) A local government owner or operator using the local government guar-

antee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11) Owners and operators using an assurance mechanism specified in 20.5.9.905 through 20.5.9.917 NMAC shall maintain an updated copy of a certification of financial responsibility worded as specified in 20.5.9.971 NMAC. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).
[20.5.9.921 NMAC - Rp, 20 NMAC 5.9.921, 8/15/03]

20.5.9.922 DRAWING ON FINANCIAL ASSURANCE MECHANISMS:

A. The secretary shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the secretary, up to the limit of funds provided by the financial assurance mechanism, into the standby trust under certain conditions:

(1) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and the secretary determines or suspects that a release from a storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the secretary pursuant to 20.5.2 or 20.5.7 NMAC of a release from a storage tank covered by the mechanism; or

(2) The conditions of Paragraph (1) or Paragraph (2) of Subsection B of this section are satisfied.

B. The secretary may draw on a standby trust fund when:

(1) the secretary makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 20.5.12 NMAC; or

(2) the secretary has received one of the following:

(a) certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid, worded as specified in 20.5.9.972 NMAC; or

(b) a valid final court order establishing a judgment against the owner or operator for bodily injury or property dam-

age caused by an accidental release from a storage tank covered by financial assurance under this part and the secretary determines that the owner or operator has not satisfied the judgment.

C. If the secretary determines that the amount of corrective action costs and third-party liability claims eligible for payment under Subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The secretary shall pay third-party liability claims in the order in which the secretary receives certifications under Subparagraph (a) of Paragraph (2) and valid court orders under Subparagraph (b) of Paragraph (2) of Subsection B of this section.

D. A governmental entity acting as guarantor under Subsection E of 20.5.9.916 NMAC shall make payments as directed by the secretary under the circumstances described in Subsections A, B and C of this section.

[20.5.9.922 NMAC - Rp, 20 NMAC 5.9.922, 8/15/03]

20.5.9.923 RELEASE FROM THE REQUIREMENTS:

An owner or operator is no longer required to maintain financial responsibility under this part for a storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 20.5.8 NMAC.

[20.5.9.923 NMAC - Rp, 20 NMAC 5.9.923, 8/15/03]

20.5.9.924 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.9.921 NMAC documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.9.906 NMAC.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.9.921 NMAC documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.9.916 NMAC.

E. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in this part within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall notify the secretary.

F. Within 60 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

[20 NMAC 5.9.924 - Rp, 20 NMAC 5.9.924, 8/15/03]

20.5.9.925 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS:

A. If at any time after a standby trust is funded upon the instruction of the secretary with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) replenish the value of financial assurance to equal the full amount of coverage required; or

(2) acquire another financial

assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 20.5.9.903 NMAC. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

[20.5.9.925 NMAC - Rp, 20 NMAC 5.9.925, 8/15/03]

20.5.926 to 20.5.954 [RESERVED]

20.5.9.955 FORM DOCUMENTS FOR FINANCIAL TEST OF SELF INSURANCE: To demonstrate that it meets the financial test under Subsection B or C of 20.5.9.905 NMAC, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or another financial test under 20.5.9 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list

each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC. If this financial test is used to assure both underground and above ground storage tanks, identify each tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC.

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR parts 271 and 145:

EPA Regulations	Amount
Closure (264.143 and 265.143)	\$ _____
Post-Closure Care (264.145 and 265.145)	\$ _____
Liability Coverage (264.147 and 265.147)	\$ _____
Corrective Action (264.101(b))	\$ _____
Plugging and Abandonment (144.63)	\$ _____
Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
Total	\$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of Subsection B of 20.5.9.905 NMAC are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of Subsection C of 20.5.9.905 NMAC are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee \$ _____
 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$ _____
 3. Sum of lines 1 and 2 \$ _____
 4. Total tangible assets \$ _____
 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
 6. Tangible net worth [subtract line 5 from line 4] \$ _____
- | | Yes | No |
|---|-----|-----|
| 7. Is line 6 at least \$10 million? | ___ | ___ |
| 8. Is line 6 at least 10 times line 3? | ___ | ___ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | ___ | ___ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | ___ | ___ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | ___ | ___ |
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] | ___ | ___ |

Alternative II

1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee \$ _____
2. Amount of corrective action, closure and post-closure care costs, liability cover-age, and plugging and abandonment costs covered by a financial test, and/or guarantee \$ _____
3. Sum of lines 1 and 2 \$ _____
4. Total tangible assets \$ _____
5. Total liabilities [if any of the amount reported on line 3

is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____

6. Tangible net worth [subtract line 5 from line 4] \$ _____

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] \$ _____

	Yes	No
8. Is line 6 at least \$10 million?	_____	_____
9. Is line 6 at least 6 times line 3?	_____	_____
10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]	_____	_____
11. Is line 7 at least 6 times line 3? [Fill in either lines 12-15 or lines 16-18:]	_____	_____
12. Current assets	\$ _____	
13. Current liabilities	\$ _____	
14. Net working capital [subtract line 13 from line 12]	\$ _____	
	Yes	No
15. Is line 14 at least 6 times line 3?	_____	_____
16. Current bond rating of most recent bond issue	_____	_____
17. Name of rating service	_____	
18. Date of maturity of bond	_____	
	Yes	No
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? [If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]	_____	_____

For both Alternative I and Alternative II complete the certification with this statement:

I hereby certify that the wording of this letter is identical to the wording specified in 20.5.9.955 NMAC as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

[20.5.9.955 NMAC - Rp, 20 NMAC 5.9.955, 8/15/03]

20.5.9.956 FORM DOCUMENT FOR GUARANTEE: The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the New Mexico Environment Department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

(1) Guarantor meets or exceeds the financial test criteria of Subsection B, C or D of 20.5.9.905 New Mexico Administrative Code (NMAC) and agrees to comply with the requirements for guarantors as specified in Subsection B of 20.5.9.906 NMAC.

(2) [Owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.] This guarantee satisfies 20.5.9.903 NMAC requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating the above-identified above ground storage tank(s).

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the secretary has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the guarantor, upon instructions from the secretary of the Environment Department, shall fund a standby trust fund in accordance with the provisions of 20.5.9.913 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the secretary determines that [owner or operator] has failed to perform corrective action for releases arising out

of the operation of the above-identified tank(s) in accordance with 20.5.12 NMAC, the guarantor upon written instructions from the secretary shall fund a standby trust in accordance with the provisions of 20.5.9.913 NMAC in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the secretary, shall fund a standby trust in accordance with the provisions of 20.5.9.913 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of Subsections B, C and D of 20.5.9.905 NMAC, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC, the New Mexico Petroleum Storage Tank Regulations.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.12 NMAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee

of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.9.903 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 20.5.9.956 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[20.5.9.956 NMAC - Rp, 20 NMAC 5.9.956, 8/15/03]

20.5.9.957 FORM DOCUMENTS FOR INSURANCE AND RISK RETENTION GROUP COVERAGE: To use insurance to satisfy requirements of 20.5.9.903 NMAC, as described in 20.5.9.907 NMAC, each insurance policy shall be amended by an endorsement worded as specified in Subsection A of this section or evidenced by a certificate of insurance worded as specified in Subsection B of this section, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

A. Required Wording for Endorsement.

ENDORSEMENT

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non sudden accidental releases" or "accidental release"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections a through e of this Paragraph 2 are hereby amended to conform with subsections a through e:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to

the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.9.905 through 20.5.9.912 NMAC.

c. Whenever requested by the Secretary of the Environment Department, ["Insurer" or "Group"] agrees to furnish to the Secretary a signed duplicate original of the policy and endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Paragraph (1) of Subsection A of 20.5.9.957 NMAC and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing],

Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

B. Required wording for certificate of insurance.

CERTIFICATION

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as above ground or underground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.9.905 through 20.5.9.912 NMAC.

c. Whenever requested by the Secretary of the Environment Department, the ["Insurer" or "Group"] agrees to furnish to the Secretary a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Subsection B of 20.5.9.957 NMAC and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Type name of person signing]

[Title of person signing],

Authorized Representative of [name of Insurer or Risk Retention Group] [Address of Representative] [20.5.9.957 NMAC - Rp, 20 NMAC 5.9.957, 8/15/03]

20.5.9.958 FORM DOCUMENT FOR SURETY BOND: To satisfy the requirements of 20.5.9.908 NMAC, the surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" arising from operating the storage tank"].

Penal sums of bond:

Per occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the New Mexico Environment Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for

the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the federal Resource Conservation and Recovery Act (RCRA), as amended, and the New Mexico Hazardous Waste Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully "take corrective action, in accordance with 20.5.12 NMAC and the instructions of the Secretary of the New Mexico Environment Department for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 20.5.9 NMAC, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct

result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.9.903 NMAC.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Secretary that the Principal has failed to ["take corrective action, in accordance with 20.5.12 NMAC and the Secretary's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with 20.5.12 NMAC and the Secretary's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.9.913 NMAC.

Upon notification by the Secretary that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Secretary has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.9.913 NMAC.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal

and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 20.5.9.958 NMAC, as such regulations were constituted on the date this bond was executed.

Principal
 [Signature(s)]
 [Name(s)]
 [Title(s)]
 [Corporate seal]
 Corporate Surety(ies)
 [Name and address]
 State of Incorporation:
 Liability limit: \$
 [Signature(s)]
 [Name(s) and title(s)]
 [Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$
 [20.5.9.958 NMAC - Rp, 20 NMAC 5.9.958, 8/15/03]

20.5.9.959 FORM DOCUMENT FOR LETTER OF CREDIT: To satisfy the requirements of 20.5.9.909 NMAC, the letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCA-
 BLE STANDBY LETTER OF CREDIT
 [Name and address of issuing institution]

[Name and address of the Secretary of the New Mexico Environment Department]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of:

(1) your sight draft, bearing reference to this letter of credit, No. , and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the federal Resource Conservation and Recovery Act of 1976, as amended, and the New Mexico Hazardous Waste Act, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties

for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate and the above ground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground and above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.9.903 NMAC.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or opera-

tor] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 20.5.9.959 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

[20.5.9.959 NMAC - Rp, 20 NMAC 5.9.959, 8/15/03]

20.5.9.960 - 20.5.9.962
 [RESERVED]

20.5.9.963 FORM DOCUMENTS FOR STANDBY TRUST FUND:

A. To satisfy the requirements of 20.5.9.912 NMAC, the standby trust agreement shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of " or "a national bank"], the "Trustee."

Whereas, the New Mexico Environmental Improvement Board, "EIB," has established certain regulations applicable to the Grantor, requiring that an owner or operator of a storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the storage tank. The attached

Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.);].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Secretary of the New Mexico Environment Department's, the "Secretary's," instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Environment Department.

Section 4. Payment for

["Corrective Action" and/or "Third-Party Liability Claims"]

The Trustee shall make payments from the Fund as the Secretary shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.9.903 New Mexico Administrative Code (NMAC)..

The Trustee shall reimburse the Grantor, or other persons as specified by the Secretary, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the

Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other dis-

position;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in 20.5.9 NMAC.

Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Secretary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Secretary, except as provided for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Secretary if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the

written direction of the Grantor and the Trustee, or by the Trustee and the Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of New Mexico, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 20.5.9.963 NMAC and Paragraph (1) of Subsection B of 20.5.9.913 NMAC as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

B. The standby trust agreement, or trust agreement, shall be accompanied by a formal certification of acknowledgment similar to the following.

State of

County of

On this [date], before me person-

ally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

[20.5.9.963 NMAC - Rp, 20 NMAC 5.9.963, 8/15/03]

20.5.9.964 FORM DOCUMENTS FOR LOCAL GOVERNMENT BOND RATING TEST:

A. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection A of 20.5.9.914 NMAC shall sign a letter word exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

L E T T E R FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue	Maturity	Outstanding
Bond	Rating	
Date	Date	
Amount	Rating	Agency
		[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection A of 20.5.9.964 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

B. To demonstrate that it meets the local government bond rating test, the chief financial office of a local government owner or operator and/or guarantor described in Subsection B of 20.5.9.914 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

L E T T E R FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating,

and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue	Maturity
Outstanding	Bond
Rating	
Date	Date
Amount	Rating
	[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection B of 20.5.9.964 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.9.964 NMAC - Rp, 20 NMAC 5.9.964, 8/15/03]

20.5.9.965 FORM DOCUMENT FOR LOCAL GOVERNMENT FINANCIAL TEST:

To demonstrate that it meets the financial test under Subsection B of 20.5.9.914 NMAC, the chief financial officer of the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

L E T T E R FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for

[insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC.

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

W O R K - SHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues

a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)

c. Total Revenues (dollars)

2. Total Expenditures

a. Expenditures (dollars)

Value consists of the

sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)

c. Total Expenditures (dollars)

3. Local Revenues

a. Total Revenues (from 1c) (dollars)

b. Subtract total inter-governmental transfers (dollars)

c. Local Revenues (dollars)

4. Debt Service

a. Interest and fiscal charges (dollars)

b. Add debt retirement (dollars)

c. Total Debt Service (dollars)

5. Total Funds (dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population

a. Total Revenues (from 1c)

b. Population (from 6)

c. Divide 7a by 7b

d. Subtract 417

e. Divide by 5,212

f. Multiply by 4.095

8. Total Expenses to Population

a. Total Expenses (from 2c)

b. Population (from 6)

c. Divide 8a by 8b

d. Subtract 524

e. Divide by 5,401

f. Multiply by 4.095

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c)

b. Total Revenues (from 1c)

c. Divide 9a by 9b

d. Subtract .695

e. Divide by .205

f. Multiply by 2.840

10. Debt Service to Population

a. Debt Service (from 4d)

b. Population (from 6)

c. Divide 10a by 10b

d. Subtract 51

e. Divide by 1,038

f. Multiply by -1.866
11. Debt Service to Total Revenues

4d)

(from 1c)

12. Total Revenues to Total Expenses

1c)

2c)

13. Funds Balance to Total Revenues

(from 1c)

14. Funds Balance to Total Expenses

2c)

15. Total Funds to Population

16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 20.5.9.965 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.9.965 NMAC - Rp, 20 NMAC 5.9.965, 8/15/03]

20.5.9.966 FORM DOCUMENTS FOR LOCAL GOVERNMENT GUARANTEE:

A. Required form docu-

ments for guarantees with standby trusts.

(1) Local government guarantee with standby trust made by the state. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.] This guarantee satisfies the requirements of 20.5.9 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and the above-identified above ground storage tank (s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust

fund in accordance with the provisions of 20.5.9.922 NMAC; in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.12 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.9.922 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.9.922 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.9.NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement entered into to meet the requirements of 20.5.9.903 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection A of 20.5.9.966 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee with standby trust made by a local government. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.9.914 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.9.915 NMAC, or the local government fund under Subsection A, B or C of 20.5.9.917 NMAC.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification

submitted pursuant to 20.5.2.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.9 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.9.922 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.12 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.9.922 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon writ-

ten instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.9.922 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 {Bankruptcy}, U.S. Code naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to the New Mexico Petroleum Storage Tank Regulations (20.5 NMAC).

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.9 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or

agreement other than a contract or agreement entered into to meet the requirements of 20.5.9.903 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection A of 20.5.9.966 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

B. Required form documents for guarantees without standby trusts.

(1) Local government guarantee without standby trust made by the state. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.9 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occur-

rence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.12 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.9 NMAC for the above identified tank(s),

except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.9.903 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection B of 20.5.9.966 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee without standby trust made by a local government. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New

Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.9.914 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.9.915 NMAC 20 NMAC 5.9.915, the local government fund under of Subsections A, B and C of 20.5.9.917 NMAC.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.2.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.9 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon

written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.12 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5.9 NMAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.9 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising

from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.9.903 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection B of 20.5.9.966 NMAC as such regulations were constituted on the effective date shown immediately below.

Effective date:
[Name of Guarantor]
[Authorized signature for Guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:
[20.5.9.966 NMAC - Rp, 20 NMAC 5.9.966 NMAC, 8/15/03]

20.5.9.967 FORM DOCUMENT FOR LOCAL GOVERNMENT FUND: To demonstrate that it meets the requirements of the local government fund, as specified in 20.5.9.917 NMAC, the chief financial officer of the local government owner or operator and/or guarantor shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

L E T T E R
FROM CHIEF FINANCIAL OFFICER
I am the chief financial officer of

[insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating an underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under 20.5.9.903 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under 20.5.9.903 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund of close of last fiscal year):

[If fund balance is incrementally funded as specified in Subsection C of 20.5.9.917 NMAC, insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in period: _____]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 20.5.9.967 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.9.967 NMAC - Rp, 20 NMAC 5.9.967, 8/15/03]

20.5.9.968 - to - 20.5.9.970 [RESERVED]

20.5.9.971 FORM DOCUMENT FOR RECORD KEEPING:

A. An owner or operator using an assurance mechanism specified in 20.5.9.905 through 20.5.9.917 NMAC shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of 20.5.9 New Mexico Administrative Code (NMAC).

The financial assurance mechanism[s] used to demonstrate financial responsibility under 20.5.9 NMAC is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

B. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

[20.5.9.971 NMAC - Rp, 20 NMAC 5.9.971, 8/15/03]

20.5.9.972 FORM DOCUMENT FOR DRAWING ON FINANCIAL ASSURANCE MECHANISMS: The certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] storage tank should be paid in the amount of \$[insert: dollar amount].

[Signatures]

[Signatures]

Owner or Operator Claimant(s)

Attorney for

Attorney(s) for

Owner or Operator Claimant(s)

(Notary) Date

(Notary) Date]

[20.5.9.972 NMAC - Rp, 20 NMAC 5.9.972, 8/15/03]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 5 PETROLEUM STORAGE TANKS PART 10 ADMINISTRATIVE REVIEW

20.5.10.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[20.5.10.1 NMAC - Rp, 20 NMAC 5.10.100, 8/15/03]

20.5.10.2 SCOPE: This part applies to owners and operators of storage tanks as provided in 20.5.1. NMAC.

[20.5.10.2 NMAC - Rp, 20 NMAC 5.10.101, 8/15/03]

20.5.10.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, 74-4-1 through 74-4-14; the Ground Water Protection Act, NMSA 1978, 74-6B-1 through 74-6B-14; and the general provisions of the

Environmental Improvement Act, NMSA 1978, 74-1-1 through 74-1-15.

[20.5.10.3 NMAC - Rp, 20 NMAC 5.10.102, 8/15/03]

20.5.10.4 DURATION: Permanent.

[20.5.10.4 NMAC - Rp, 20 NMAC 5.10.103, 8/15/03]

20.5.10.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.10.5 NMAC - Rp, 20 NMAC 5.10.104, 8/15/03]

20.5.10.6 OBJECTIVE: The purpose of this part is to provide owners and operators a means of seeking review or reconsideration of decisions made by the department under 20.5 NMAC in regulating storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.10.6 NMAC - Rp, 20 NMAC 5.10.105, 8/15/03]

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

[20.5.10.7 NMAC - Rp, 20 NMAC 5.10.106, 8/15/03]

20.5.10.8 to 20.5.10.999 [RESERVED]

20.5.10.1000 INITIATION OF ADMINISTRATIVE REVIEW:

A. Except for appeals as provided for in 20.5.17 NMAC for compliance determinations and cost eligibility determinations, any owner or operator of a storage tank aggrieved by a decision made by the department pursuant to 20.5.1 through 20.5.16 NMAC may obtain review of the decision by either:

(1) Submitting to the department a written request for informal review pursuant to 20.5.10.1001 NMAC; or

(2) Submitting to the secretary or the secretary's designee a written request for review on written submittals pursuant to 20.5.10.1002 NMAC.

B. Any request for administrative review initiated pursuant to Subsection A of this section must be post-marked within 15 days of the date of the decision to be reviewed.

C. An owner or operator may request review on written submittals under 20.5.10.1002 NMAC without first requesting informal review under 20.5.10.1001 NMAC. If, however, an owner or operator first requests informal review under 20.5.10.1001 NMAC, the owner or operator thereafter may request

review on written submittals under 20.5.10.1002 NMAC of the determination made by the department pursuant to Subsection D of 20.5.10.1001 NMAC, provided that the request for review on written submittals under 20.5.10.1002 NMAC is postmarked within 15 days of the date of the determination made by the department pursuant to Subsection D of 20.5.10.1001 NMAC.

D. Review under this part does not stay the decision being reviewed, unless otherwise ordered by the secretary or secretary's designee, nor does it apply to or affect the secretary's authority to issue compliance orders or otherwise seek enforcement of these regulations, 20.5 NMAC, under the provisions of the Hazardous Waste Act or the Ground Water Protection Act.

[20.5.10.1000 - Rp, 20 NMAC 5.10.1000, 8/15/03]

20.5.10.1001 INFORMAL REVIEW:

A. Every request for informal review by an owner or operator shall be in writing and shall specify the grounds upon which the owner or operator objects to the decision to be reviewed. Every request for informal review shall be submitted to the department by the deadline set out in Subsections B and C of 20.5.10.1000 NMAC.

B. The department shall afford prompt opportunity for an informal conference at which the owner or operator may present the owner's or operator's views on the issues raised in the request for review and offer any supporting documentation or testimony. The department shall notify the owner or operator of the time, date and place of the informal conference.

C. If the decision to be reviewed was based on an inspection or field test performed or witnessed by an employee of the department, the member of department staff conducting the review must be someone other than the employee who conducted or witnessed the inspection or test.

D. After considering all written and oral views presented, the department shall affirm, modify or reverse the original decision and shall furnish the owner or operator with a written notification of its determination.

[20.5.10.1001 NMAC - Rp, 20 NMAC 5.10.1001, 8/15/03]

20.5.10.1002 REVIEW BY THE SECRETARY OR THE SECRETARY'S DESIGNEE ON WRITTEN SUBMITTALS:

A. Every request for review by the secretary or the secretary's designee on written submittals shall be in

writing and shall specify the grounds upon which the owner or operator objects to the decision to be reviewed. The request shall be accompanied by any and all written materials and argument which the owner or operator wishes the secretary or the secretary's designee to consider upon review. The request and all written materials and argument shall be submitted to the secretary or the secretary's designee by the deadline set out in Subsections B and C of 20.5.10.1000 NMAC.

B. Within 15 days after the filing of the owner or operator's request for review and submittal of all the owner or operator's supporting material, department staff shall provide to the secretary or the secretary's designee any and all written materials and argument in support of the position of department staff on the issues raised by the owner or operator.

C. For good cause shown, the secretary or the secretary's designee may permit either party (that is, either department staff or the owner or operator) additional time in which to submit the supporting written materials and argument allowed by subsections A and B of this section. Any extension of time to submit written submittals shall not include the authority to extend the time to file a request for review under this part.

D. The action of the secretary or the secretary's designee on the request for review shall be based on the written materials and argument submitted pursuant to this section unless the secretary or the secretary's designee schedules a hearing on the request for review as set forth below.

E. The secretary or the secretary's designee may exercise discretion in determining if there is significant public interest for a public hearing and, if so, may provide notice of the time and place of the hearing to the owner and operator, and may provide notice to interested persons other than the owner or operator and provide for public participation in the review process described in this section, as the secretary or the secretary's designee deems appropriate.

F. If the secretary chooses to hold a hearing as described in Subsection E of this section, the secretary shall hold the hearing within 60 days after receiving the written materials and argument described in Subsection A or after receiving the request for a hearing, whichever occurs last. In the event the department holds a hearing, the cost of the court reporter and transcript shall be paid by the party that requested the hearing. The hearing shall be conducted in accordance with 20.1.5 NMAC.

G. The action of the secretary or the secretary's designee on the request for review shall be by written order

and shall state the decision and the reason therefor. The secretary or the secretary's designee shall send a copy of the order to the owner or operator and furnish a copy to department staff promptly after the order is entered. This written order shall be the department's final action on the request for review. Any judicial review of this final order shall be as provided by applicable law. [20.5.10.1002 NMAC - Rp, 20 NMAC 5.10.1001 & 1002, 8/15/03]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 11 LENDER LIABILITY**

20.5.11.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[20.5.11.1 NMAC - Rp, 20 NMAC 5.11.100, 8/15/03]

20.5.11.2 SCOPE: This part applies to all storage tank systems in this state-except as provided in Subsections B and C of 20.5.1.2 NMAC.

[20.5.11.2 NMAC - Rp, 20 NMAC 5.11.101, 8/15/03]

20.5.11.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-1-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.11.3 NMAC - Rp, 20 NMAC 5.11.102, 8/15/03]

20.5.11.4 DURATION: Permanent.

[20.5.11.4 NMAC - Rp, 20 NMAC 5.11.103, 8/15/03]

20.5.11.5 EFFECTIVE DATE: August 15, 2003, unless later date is indicated in the bracketed note at the end of a section.

[20.5.11.5 NMAC - Rp, 20 NMAC 5.11.104, 8/15/03]

20.5.11.6 OBJECTIVE: This part is adopted to limit the regulatory obligations of lending institutions and other persons who hold a security interest in a storage tank system, or in real estate con-

taining a storage tank, or that acquire a title or deed to a storage tank or a facility or property on which a storage tank is located. [20.5.11.6 NMAC - Rp, 20 NMAC 5.11.105, 8/15/03]

20.5.11.7 DEFINITIONS: The definitions in 20.5.1 NMAC apply to this part. In addition, when used in this part, the following terms shall have the meanings given below:

A. "Storage tank technical standards," as used in this part, refers to the requirements of 20.5.4, 20.5.5, 20.5.6 and 20.5.8 NMAC and 20.5.7.700 through 20.5.7.702 NMAC.

B. Petroleum production, refining, and marketing.

(1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in 20.5.1.7 NMAC) as well as the production of petroleum products from purchased materials.

(2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

C. "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

D. A "holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who

holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

E. A "borrower," "debtor," or "obligor" is a person whose petroleum storage tank or storage tank system or facility or property on which the petroleum storage tank or storage tank system is located is encumbered by a security interest. These terms may be used interchangeably.

F. "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum storage tank or storage tank system or in the facility or property on which a petroleum storage tank or storage tank system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a storage tank or storage tank system or in the facility or property on which the storage tank or storage tank system is located, for the purpose of securing a loan or other obligation.

(2) "Primarily to protect a security interest," as used in this part, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

G. "Operation" means, for purposes of this part, the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system.

[20.5.11.7 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]

20.5.11.8 to 20.5.11.1099
[RESERVED]

20.5.11.1100 PARTICIPATION IN MANAGEMENT: The term "participating in the management of a storage tank or storage tank system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the storage tank or storage tank system, as defined herein.

A. Actions that are participation in management.

(1) Participation in the management of a storage tank or storage tank system means, for purposes of this part, actual participation by the holder in the management or control of decisionmaking related to the operation of a storage tank or storage tank system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control storage tank or storage tank system operations. A holder is participating in the management of the storage tank or storage tank system only if the holder either:

(a) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the storage tank or storage tank system, such that the holder has undertaken responsibility for all or substantially all of the management of the storage tank or storage tank system; or

(b) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in 20.5 NMAC.

B. Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the storage tank or storage tank system or facility or

property on which the storage tank or storage tank system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the storage tank or storage tank system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this part. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(a) Policing the security interest or loan.

(i) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section. Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the storage tank or storage tank system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(ii) Policing activities also include undertaking by the holder of storage tank environmental compliance actions and voluntary environmental

actions taken in compliance with 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section and 20.5.11.1102 NMAC. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of a storage tank or storage tank system, storage tank upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system.

(b) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section. For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

C. Foreclosure on a storage tank or storage tank system or facility or property on which a storage tank or storage tank system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(a) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subpart, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access

to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in Subsection A of this section) prior to or after foreclosure.

(b) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner a storage tank or storage tank system or facility or property on which the storage or storage tank system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or may employ the means specified in Paragraph (2) of Subsection C of this section. A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as provided in Paragraph (2) of Subsection C of this section, is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), a storage tank or storage tank system or facil-

ity or property on which the storage tank or storage tank system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the storage tank or storage tank system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this part.

(a) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the storage tank or storage system or facility or property on which the storage tank or storage tank system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. For purposes of this provision, the 12-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the 12-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located. In the case of foreclosure on an AST or AST system or facility or property on which an AST or AST system is located,

no 12 month period may begin to run until August 15, 2003.

(b) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the storage tank or storage tank system or the facility or property on which the storage or storage system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured storage or storage system or facility or property on which the storage or storage system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the storage or storage tank system or facility or property on which the storage tank or storage tank system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the storage or storage system or facility or property on which the storage tank or storage tank system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an storage or storage system or facility or property on which the storage tank or storage tank system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located), and corrective action costs incurred under 20.5.7 or 20.5.12 NMAC or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's

obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

(ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located received at any time after six months following foreclosure, as defined in Subsection C of this section. A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the storage tank or storage tank system, storage tank facility and property on which the storage tank or storage tank system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located. In the case of foreclosure on an AST or AST system or facility or property on which an AST or AST system is located, no six month period may begin to run until August 15, 2003

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located when undertaking actions under 20.5 NMAC, provided that the holder does not otherwise participate in the man-

agement or daily operation of the storage tank or storage tank system as provided in Subsection A of this section and in 20.5.11.1102 NMAC. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of a storage tank system, storage tank upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system.

[20.5.11.1100 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]

20.5.11.1101 OWNERSHIP OF A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED: A holder is not an "owner" of a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located for purposes of compliance with the storage tank technical standards as defined in Subsection A of 20.5.11.7 NMAC, the corrective action requirements under 20.5.7 and 20.5.12 NMAC, and the financial responsibility requirements under 20.5.9 NMAC, provided the person:

A. does not participate in the management of the storage tank or storage tank system as defined in 20.5.11.1100 NMAC; and

B. does not engage in petroleum production, refining, and marketing, as defined in 20.5.11.7 NMAC.

[20.5.11.1101 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]

20.5.11.1102 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM:

A. Operating a storage tank or storage tank system prior to foreclosure. A holder, prior to foreclosure, as defined in Subsection C of 20.5.11.1100 NMAC, is not an "operator" of a petroleum storage tank or storage tank system for purposes of compliance with the storage tank technical standards as defined in 20.5.11.7 NMAC, the corrective action requirements under 20.5.7 and 20.5.12 NMAC, and the financial responsibility requirements under 20.5.9 NMAC, provided that the holder is not in control of or does not have responsibility for the daily operation of the storage

tank or storage tank system.

B. Operating a storage tank or storage tank system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in Subsection C of 20.5.11.1100 NMAC, acquires a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located.

(1) A holder is not an "operator" of a petroleum storage tank or storage tank system for purposes of compliance with 20.5 NMAC if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the storage tank or storage tank system, and who can be held responsible for compliance with applicable requirements of 20.5 NMAC.

(2) If another operator does not exist, as provided for under Paragraph (1) of Subsection B of this section, a holder is not an "operator" of the storage tank or storage tank system, for purposes of compliance with the storage tank technical standards as defined in 20.5.11.7 NMAC, the corrective action requirements under 20.5.7 and 20.5.12 NMAC, and the storage tank financial responsibility requirements under 20.5.9 NMAC, provided that the holder:

(a) empties all of its known storage tanks and storage tank systems within 60 calendar days after foreclosure or, in the case of ASTs, within 60 calendar days after August 15, 2003, whichever is later, or another reasonable time period specified by the department, so that, in the case of both USTs and ASTs, no more than two and a half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST; and

(b) empties those storage tanks and storage tank systems that are discovered after foreclosure within 60 calendar days after discovery or, in the case of ASTs, within 60 calendar days after August 15, 2003, whichever is later, or another reasonable time period specified by the department, so that, in the case of both ASTs and USTs, no more than two and a half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST.

(3) If another operator does not exist, as provided for under Paragraph (1) of

Subsection B of this section, in addition to satisfying the conditions under Paragraph (2) of Subsection B of this section, the holder shall either:

(a) permanently close the storage tank or storage tank system in accordance with 20.5.8.801 through 20.5.8.804 NMAC, except Subsection B of 20.5.8.802 NMAC; or

(b) temporarily close the storage tank or storage tank system in accordance with the following applicable provisions of 20.5.8.800 NMAC:

(i) continue operation and maintenance of corrosion protection in accordance with 20.5.5.501 NMAC;

(ii) report suspected releases to the department; and

(iii) conduct a site assessment in accordance with Subsection A of 20.5.8.802 NMAC if the storage tank system is temporarily closed for more than 12 months and the storage tank system does not meet either the performance standards in 20.5.4.400 and 20.5.4.401 NMAC for new storage tank systems or, for AST systems, the upgrading requirements in 20.5.4.405 NMAC, except that the spill and overfill equipment requirements do not have to be met. The holder shall report any suspected releases to the department. For purposes of this provision as it affects USTs, the 12-month period begins to run from the date on which the UST system is emptied and secured under Paragraph (2) of Subsection B of this section. For purposes of this provision as it affects ASTs, the 12-month period begins to run from August 15, 2003, or from the date on which the AST system is emptied and secured under Paragraph (2) of Subsection B of this section, whichever is later.

(4) The storage tank system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. Once a subsequent purchaser acquires marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, the purchaser shall decide whether to operate or close the storage tank or storage tank system in accordance with applicable requirements in 20.5 NMAC.

[20.5.11.1102 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION**

CHAPTER 5 P E T R O L E U M STORAGE TANKS PART 12 C O R R E C T I V E ACTION FOR STORAGE TANK SYSTEMS CONTAINING PETROLEUM PRODUCTS

20.5.12.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.12.1 NMAC - Rp, 20 NMAC 5.12.100, 8/15/03]

20.5.12.2 SCOPE: This part applies to owners and operators of petroleum storage tanks as defined in 20.5.1 NMAC. If the owner and operator of a petroleum storage tank are separate person, 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 non-compliance.
[20.5.12.2 NMAC - Rp, 20 NMAC 5.12.101, 8/15/03]

20.5.12.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14; the Ground Water Protection Act, NMSA 1978, sections 74-6B-1 through 74-6B-14; the Water Quality Act, NMSA 1978, sections 74-6-1 through 74-6-17; and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.
[20.5.12.3 NMAC - Rp, 20 NMAC 5.12.102, 8/15/03]

20.5.12.4 D U R A T I O N : Permanent.
[20.5.12.4 NMAC - Rp, 20 NMAC 5.12.103, 8/15/03]

20.5.12.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.12.5 NMAC - Rp, 20 NMAC 5.12.104, 8/15/03]

20.5.12.6 OBJECTIVE: The purpose of this part is to provide for corrective action at sites contaminated by releases from petroleum storage tank systems and to protect the public health, safety and welfare and the environment of the state.
[20.5.12.6 NMAC - Rp, 20 NMAC 5.12.105, 8/15/03]

20.5.12.7 DEFINITIONS: The definitions in 20.5.1 NMAC apply to this part.
[20.5.12.7 NMAC - Rp, 20 NMAC

5.12.1201, 8/15/03]

20.5.12.8 to 20.5.12.1199 [RESERVED]

20.5.12.1200 GENERAL:

A. Owners and operators of petroleum storage tank systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

B. Upon confirmation of a release pursuant to 20.5.7 NMAC or identification and reporting of a release in any other manner, owners and operators of petroleum storage tank systems shall comply with the requirements of this part if the release:

- (1) is of unknown volume or is greater in volume than 25 gallons; or
- (2) is of any size and the owner or operator is directed by the department to comply with this part.

C. Owners and operators shall mail or deliver all written notices and reports required to be submitted to the department to the following address or a district office if approved by the department: Petroleum Storage Tank Bureau, New Mexico Environment Department, 2044 Galisteo Street, Santa Fe, New Mexico 87504.

D. Owners and operators shall comply with any site-specific timeline or deadline that is issued or approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been issued or approved, the following time line shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC unless another event is specified in these regulations.

Default Corrective Action Timeline

Deadline, in days from report date, as defined above:	Action or Deliverable Due
0	Report release or report confirmation of suspected release
3	72-Hour Report
14	14-Day Report
60	Submit NAPL Assessment
60	Initiate interim removal of contaminated soil
60	Preliminary Investigation Report
120	Secondary Investigation Report
150	Tier One Evaluation Report
180	Tier Two Evaluation Report
210	Tier Three Evaluation Report
When monitored natural attenuation is used:	
510	Monitored Natural Attenuation (MNA) Plan
570	Implementation of MNA
935	First Annual MNA Monitoring Report
935	Annual Evaluation of MNA Report
When other remediation is used:	
510	Conceptual Remediation Plan
540	Final Remediation Plan
600	Implementation of Remediation
690	First Quarterly Monitoring Report
965	Annual Evaluation of Remediation System Report

E. All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance with this part. The designation of such a representative shall not affect the department's right to seek compliance at any time from any owner or operator and shall not relieve owners or operators of any legal liabilities or responsibilities they may have under this part or otherwise under the law.

F. Except for 20.5.12.1203, 20.5.12.1204 and 20.5.12.1205 NMAC, owners and operators shall submit to the department written workplans for all required correc-

tive action under this part. Workplans may be submitted in stages to reflect the sequence or types of corrective action required by 20.5.12 NMAC at the site, but all required workplans shall be submitted to and approved by the department in writing for technical adequacy before the corrective action is commenced.

G. Unless otherwise approved, all corrective action shall be performed by a qualified firm as specified in 20.5.16 NMAC and, when required in 20.5 NMAC, a professional engineer as defined in 20.5.1.7 NMAC.

(1) All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to 29 CFR 1910 governing worker health and safety.

(2) Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

H. Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

I. Owners and operators shall construct all monitoring wells in accordance with the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved, unless other specifications are previously approved in writing by the department.

J. Owners and operators shall clearly mark and secure monitoring wells to prevent unauthorized access and tampering. Owners and operators shall close or abandon all wells in accordance with the requirements of any law and the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

[20.5.12.1200 NMAC - Rp, 20 NMAC 5.12.1200, 8/15/03].

20.5.12.1201 [RESERVED]

20.5.12.1202 CRITERIA FOR TIER ONE, TIER TWO AND TIER THREE EVALUATIONS:

A. The department and owners and operators shall use these criteria for tier one, tier two and tier three evaluations as described in 20.5.12.1213, 20.5.12.1215 and 20.5.12.1217 NMAC, and the bureau's Guidelines for Corrective Action.

(1) Owners and operators shall develop a conceptual site exposure scenario to identify all current and potential future receptors, direct and indirect pathways, routes of exposure, and complete and incomplete exposure pathways, and to

ensure that sufficient data is available to evaluate sites in accordance with this part.

(2) For all complete pathways, owners and operators shall calculate target concentrations for the relevant exposure media (air, soil, surface water, groundwater) using the following components: intake equations, fate and transport models and parameters, target risk goals, physical and chemical property parameters, toxicity parameters and exposure factors, as set forth in Chapter Four of the bureau's Guidelines for Corrective Action or as otherwise approved by the department. For specific procedures to calculate the target concentrations, refer to the bureau's Guidelines for Corrective Action.

(3) Using conservative default assumptions for the components listed in Paragraph (2) of this subsection, the department has developed tier one risk-based screening levels (RBSLs) for contaminants of concern (COCs) in soil. The tables of RBSLs for contaminants of concern appear in the bureau's Guidelines for Corrective Action and are incorporated by reference. Owners and operators shall compare representative site concentrations to tier one levels in accordance with 20.5.12.1213 NMAC and determine whether a tier two or a tier three evaluation in accordance with 20.5.12.1215 and 20.5.12.1217 NMAC is necessary.

(4) The tier two and tier three evaluations shall consider site-specific measurements or estimates for saturated hydraulic conductivity (cm/sec), groundwater gradient, soil bulk density (g/cc), soil gradation, soil moisture content (percent by volume), effective porosity, and fraction organic carbon content (percent), and other parameters if required by the department. Owners and operators shall compare representative site concentrations to the tier two site specific target concentrations (SSTLs) in accordance with 20.5.12.1215 NMAC.

(5) In no case will the department approve "No Further Action" status for a release if, for the target concentration for any contaminant of concern originating from the release or any route of exposure:

(a) the individual carcinogenic risk exceeds 0.00001; or

(b) the hazard quotient exceeds one.

(6) Owners and operators shall determine RBSLs using residential land use unless the owner or operator can demonstrate that the current and the reasonable future land use is or will likely be commercial or industrial and, therefore, that the assumption of commercial or industrial land use is equally protective of public health, safety and welfare and the environment.

(7) Target surface water concentration criteria shall be as provided in

20.6.2, 20.7.10 and 20.5.12.1233 NMAC.

(8) Target groundwater concentration criteria shall be as provided in 20.6.2 and 20.5.12.1233 NMAC, and, for domestic water supplies, as provided in 20.7.10 NMAC.

(9) Target concentrations for air, soil and water shall also take into account other factors including vegetation effects, sensitive environmental receptors, and nuisance considerations as required by this part.

B. Owners and operators shall obtain department concurrence with the results of and the procedures used for the tiered evaluations before a remediation plan is approved by the department, before a petition to the WQCC for a variance granting alternative abatement standards is forwarded by the secretary to the WQCC, or before "No Further Action" status is approved by the department.

[20.5.12.1202 NMAC - Rp, 20 NMAC 5.12.1202, 8/15/03]

20.5.12.1203 MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:

A. Upon reporting of a release or reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC, owners and operators of the storage tank system shall immediately prevent any further release from the storage tank system by whatever means necessary, including removing product from the storage tank system or any part of the storage tank system that is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the storage tank system from service in accordance with 20.5.8 NMAC.

B. Owners and operators shall inform the department in accordance with 20.5.7.700 NMAC of any release and action taken to mitigate immediate damage from the release.

[20.5.12.1203 NMAC - Rp, 20 NMAC 5.12.1203, 8/15/03]

20.5.12.1204 MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:

A. Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of the reporting of a release or reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC, unless a different timeline is set forth elsewhere in this section or unless otherwise directed or approved by the department.

B. Owners and operators shall identify the location and details of construction of all private water supply wells, using readily accessible public records, within a 1,000 foot radius and all public water supply wells within a one mile

radius of the storage tank system and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to ensure that these water supplies do not become contaminated.

C. Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all downstream water supplies likely to be affected by the release.

D. If the release has already contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of the reporting of a spill or release or the reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

E. Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether petroleum products or vapors are present.

F. Owners and operators shall complete an investigation to determine whether potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

(1) This investigation shall include testing for vapors using the following:

(a) a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of petroleum

hydrocarbon vapors and

(b) a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful petroleum hydrocarbon vapors.

(2) In the event owners and operators discover actual or potentially explosive levels of petroleum hydrocarbon vapors or potentially harmful petroleum hydrocarbon vapors reading greater than five whole units above ambient concentrations or greater than 20 percent of the lower explosive limit (LEL) in any structure in the vicinity of the release site, owners and operators shall confirm and, if necessary, take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing petroleum hydrocarbon vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

(a) Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of potentially explosive or harmful petroleum hydrocarbon vapors in the affected structures weekly for the first month and monthly thereafter unless a different monitoring schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(b) Within 30 days after the vapor mitigation system has been in operation for three months, owners and operators shall submit to the department a written summary report containing the monitoring results. The department may direct the owner and operator to modify the vapor mitigation system as necessary to reduce petroleum hydrocarbon vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

(3) Owners and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

(a) levels of potentially explosive petroleum hydrocarbon vapors are less than 20 percent LEL and

(b) levels of potentially harmful petroleum hydrocarbon vapors are less than or equal to five whole instrument units above ambient levels in any structure in the

vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(4) When operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed. If during this period the levels exceed those set forth in Subparagraphs (a) and (b) of Paragraph (3) of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

G. Owners and operators shall remove any exposed petroleum products related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case later than 72 hours after the confirmation or other identification of the release.

[20.5.12.1204 NMAC - Rp, 20 NMAC 5.12.1204, 8/15/03]

20.5.12.1205 MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:

A. Owners and operators shall make an oral report to the department summarizing the abatement procedures undertaken and the results of action taken under 20.5.12.1203 and 20.5.12.1204 NMAC within 72 hours of the reporting of a release or reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC.

B. Owners and operators shall submit a written report to the department within 14 days along with the written notice required under 20.5.7 NMAC. This report shall summarize all the work performed pursuant to 20.5.12.1203 and 20.5.12.1204 NMAC and shall include the following information:

(1) a map based on a United States Geologic Survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to Subsection A of 20.5.12.1204 NMAC. Owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;

(2) information about any water supplies known or suspected to have been contaminated by the release;

(3) most likely direction of groundwater flow;

(4) a site plan map showing locations of underground utilities;

(5) information about underground utilities gathered in accordance with

Subsection E of 20.5.12.1204 NMAC;

(6) soil borings, logs, and details of construction of all wells, if available;

(7) description of any actions taken to abate adverse effects;

(8) data from vapor monitoring performed in the vicinity of the site;

(9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;

(10) description of fire and safety hazards resulting from the release and actions taken to abate such hazards;

(11) description of current and past ownership of the property, storage tank systems, the substance stored in the system, age of tank and history of any tank removals;

(12) present land use, within 1,000 feet of the site; and

(13) records of tightness tests, repairs to the storage tank system, release detection and monitoring results.

[20.5.12.1205 NMAC - Rp, 20 NMAC 5.12.1205, 8/15/03]

20.5.12.1206 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:

A. Except for the 72-hour vapor check, owners and operators shall notify the department at least four days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

B. Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or abandonment of any wells.

C. Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the nature of the known or suspected contaminants and the methods outlined in the bureau's Guidelines for Corrective Action in effect at the time the workplan for sampling was approved.

[20.5.12.1206 NMAC - Rp, 20 NMAC 5.12.1206, 8/15/03]

20.5.12.1207 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:

A. Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL on surface water, in any excavation pit, or in any well. Owners and operators shall submit the assessment to the department in accordance with a timeline approved or issued by the department or the timeline in Subsection D of

20.5.12.1200 NMAC.

B. The department may direct or approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved or issued by the department or the timeline in Subsection D of Section 20.5.12.1200 NMAC.

C. Owners and operators shall remove NAPL in a manner that minimizes the spread of contamination into uncontaminated media.

D. Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state fire marshal or other local authority, state hazardous waste regulations (20.4.1 NMAC), and any other applicable laws or regulations.

E. Owners and operators shall report recovery and disposal of NAPL to the department in the format outlined in the bureau's Guidelines for Corrective Action in effect at the time the workplan for such recovery and disposal was approved. [20.5.12.1207 NMAC - Rp, 20 NMAC 5.12.1207, 8/15/03]

20.5.12.1208 INTERIM REMOVAL OF CONTAMINATED SOIL:

A. Owners and operators shall remediate contaminated soil in accordance with 20.5.12.1202, 20.5.12.1213, 20.5.12.1215, 20.5.12.1217, 20.5.12.1219 and 20.5.12.1227 NMAC, unless directed or approved by the department to remove and treat contaminated soil in accordance with this section.

(1) The department may direct or approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

(2) Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC.

(3) The department shall approve the vertical and horizontal extent of soil to be excavated.

B. When treating or temporarily storing soil on site, owners and operators shall:

(1) For treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to

groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) For temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) Handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or the environment.

C. When contaminated soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

D. Remediation shall be considered complete when the requirements in 20.5.12.1233 NMAC are met.

E. In accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil. The report shall conform to the bureau's Guidelines for Corrective Action.

(1) The report shall describe the soil removal action and its effectiveness, including volumes removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action.

[20.5.12.1208 NMAC - Rp, 20 NMAC 5.12.1208, 8/15/03]

20.5.12.1209 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION:

A. A preliminary investigation is not required when owners and operators can demonstrate that groundwater has not been contaminated and one of the following two conditions apply:

(1) the release is remediated within 72 hours in accordance with this part; or

(2) the release is permanently contained within the UST excavation area or the AST containment system.

B. Owners and operators shall conduct a preliminary investigation in accordance with this subsection and under a timeline approved or issued by the department or the timeline in Subsection D of 20.5.12.1200 NMAC. The preliminary investigation shall determine the following for use in development of a site conceptual exposure scenario and the tier one evaluation:

(1) if not previously identified and reported under 20.5.12.1205 NMAC, the source of contamination, the contaminants of concern, the media of concern, current receptors, potential future receptors, current and anticipated future use of property, complete and incomplete exposure pathways, and routes of exposure;

(2) the horizontal and vertical extent and magnitude of soil contamination in the vadose zone;

(a) Conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings to the water table or, with approval from the department, to a depth of 50 feet below the depth at which measured levels of contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units.

(b) Advance at least four additional soil borings to characterize the release within property boundaries by soil sample points. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the storage tank system is located, owners and operators shall advance soil borings at locations within ten feet of the boundary of the property on which the storage tank system is located.

(c) Assess and record at five-foot intervals field estimates of concentrations of petroleum hydrocarbons in the soil borings and select and prepare samples for laboratory analysis in accordance with the procedures contained in the bureau's Guidelines for Corrective Action in effect when the workplan was approved.

(d) Gather field data for soil classification, determining and recording color,

grain size, texture, description of lithification, plasticity and clay content.

(e) From samples taken from an uncontaminated area of the vadose zone, determine in the laboratory soil bulk density (g/cc), soil moisture content (percent by volume), and effective porosity, and fraction organic carbon content (percent by volume).

(f) Record the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.1.7 NMAC.

(3) whether groundwater or surface water has been contaminated above standards or whether a significant potential for groundwater or surface water contamination is present;

(a) determine whether the release has contaminated groundwater by installing at least three groundwater monitoring wells at locations where the results of the soil boring survey conducted pursuant to this section indicate that groundwater may be contaminated, unless otherwise approved by the department.

(i) owners and operators shall place three of the monitoring wells to form a triangle;

(ii) owners and operators shall install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in accordance with the initial incident report and other relevant information.

(iii) owners and operators shall install at least one of the other monitoring wells in the anticipated down-gradient direction from the area of highest contamination.

(iv) owners and operators shall construct wells in accordance with the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

(v) owners and operators shall survey the wells to United States Geological Survey standards or equivalent, as described in the bureau's Guidelines for Corrective Action and using a licensed surveyor, unless otherwise directed or approved by the department;

(b) determine the approximate direction and gradient of groundwater flow.

(c) inspect all monitoring wells for the presence of NAPL using gasoline-finding paste, an electronic interface probe, a clear bailer or other method approved by the department. If NAPL is present in any well, owners and operators shall measure the apparent thickness of the layer, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.12.1207 NMAC; and

(d) sample each monitoring well and analyze the sample for contaminants of concern and in accordance with the bureau's

Guidelines for Corrective Action in effect at the time the workplan was approved.

(4) whether immediate mitigation procedures are warranted; and

(5) whether other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.12.1204 NMAC, which owners and operators shall determine by:

(a) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.12.1204 NMAC;

(b) checking for the presence of vapors in accordance with 20.5.12.1204 and 20.5.12.1209 NMAC; and

(c) identifying all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release.

C. If the horizontal and vertical extent of contamination extend beyond the boundaries of the property where the release originated, owners and operators shall conduct a secondary investigation in accordance with 20.5.12.1211 NMAC.

D. When the horizontal and vertical extent and magnitude of contamination from the release have been characterized, owners and operators shall perform a tier one evaluation as outlined in 20.5.12.1202 and 20.5.12.1212 NMAC. [20.5.12.1209 NMAC - Rp, 20 NMAC 5.12.1209, 8/15/03]

20.5.12.1210 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:

A. Owners and operators shall submit a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.1.7 NMAC in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC. The report shall include the information gathered under 20.5.12.1203, 20.5.12.1204, 20.5.12.1205 and 20.5.12.1209 NMAC and shall conform to the requirements of the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The department shall review the report and notify owners and operators of any inadequacies in the report within 90 days. Owners and operators shall, in accordance with a timeline issued or

approved by the department or the time line in Subsection D of 20.5.12.1200 NMAC, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the Minimum Site Assessment, Preliminary Investigation Report format as described in the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved, the owner and operator shall be determined not to have conducted a minimum site assessment for the purposes of NMSA 1978, Section 74-6B-8.B(1)(c). The department's failure to review or to comment on this report shall not relieve the owner and operator of their responsibilities under this part or the law.

D. Owners and operators shall comply with the requirements of any local government which has designated a wellhead/source water protection area that includes the area of the release.

E. Owners and operators shall provide notice that includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all property owners within the horizontal extent of contamination.
[20.5.12.1210 NMAC - Rp, 20 NMAC 5.12.1210, 8/15/03]

20.5.12.1211 SECONDARY INVESTIGATION:

A. Owners and operators shall perform a secondary investigation in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC when the owner, operator or the department makes at least one of the following determinations about the site:

(1) the owner or operator has not defined the horizontal and vertical extent and magnitude of contamination in all media; or

(2) the release otherwise threatens public health, safety and welfare or the environment.

B. The secondary investigation shall determine the following:

(1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;

(2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;

(3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;

(4) characteristics, extent, estimated volume and thickness of NAPL;

(5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;

(6) rate and direction of contami-

nant migration;

(7) hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity. The department may require field verification of estimates made from literature;

(8) whether the aquifer is perched;

(9) whether the aquifer is confined or unconfined; and

(10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.

[20.5.12.1211 NMAC - Rp, 20 NMAC 5.12.1211, 8/15/03]

20.5.12.1212 SECONDARY INVESTIGATION REPORT:

A. Owners and operators shall submit a written report of the secondary investigation to the department in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC. The report shall include all information gathered under 20.5.12.1211 NMAC and shall conform to the requirements of the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The department shall review the report and notify owners and operators of any inadequacies in the report within 90 days. Owners and operators shall, in accordance with a timeline issued or approved by the department or the time line in Subsection D of 20.5.12.1200 NMAC, correct the report and resubmit it to the department for review and written approval. If the revised report does not meet the requirements of 20.5.12.1211 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve the owner and operator of their responsibilities under this part or the law.

D. Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all property owners within the horizontal extent of contamination who were not previously notified in accordance with 20.5.12.1210 NMAC.

[20.5.12.1212 NMAC - Rp, 20 NMAC 5.12.1212, 8/15/03]

20.5.12.1213 MINIMUM SITE ASSESSMENT, TIER ONE EVALUATION:

A. A tier one evaluation is required when owners and operators can demonstrate that groundwater has not been contaminated. The tier one evaluation is intended to determine whether soil contamination poses a threat to groundwater in the future.

B. When the horizontal and vertical extent and magnitude of the contamination from the release has been fully characterized in all media, owners and operators shall perform a tier one evaluation as described below and in the bureau's Guidelines for Corrective Action:

(1) Develop a site conceptual exposure scenario using data collected in accordance with 20.5.12.1202, 20.5.12.1205, 20.5.12.1209 and 20.5.12.1211 NMAC following the procedures outlined in the bureau's Guidelines for Corrective Action.

(2) For each receptor and each complete pathway identified in the site conceptual exposure scenario:

(a) determine representative concentrations of contaminants of concern in soil samples from the preliminary and secondary investigations, in accordance with the bureau's Guidelines for Corrective Action, and compare these concentrations to risk-based screening levels (RBSLs), or

(b) compare concentrations of contaminants of concern in water samples to the applicable state WQCC and EIB water quality standards.

C. When representative concentrations of any contaminant of concern equal or exceed any RBSL for any exposure pathway, owners and operators shall perform a tier two evaluation unless otherwise directed by the department.

D. When concentrations are less than RBSLs and all requirements of 20.5.12.1233 NMAC have been met, owners and operators are eligible for "No Further Action" status for the release.

[20.5.12.1213 NMAC - Rp, 20 NMAC 5.12.1213, 8/15/03]

20.5.12.1214 MINIMUM SITE ASSESSMENT, TIER ONE EVALUATION REPORT:

A. Owners and operators shall submit a written report of the tier one evaluation in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC. The report shall conform to the requirements of the bureau's Guidelines for Corrective Action in effect at the time of workplan was approved.

B. Owners and operators shall attach a statement signed by an author-

ized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The department shall review the report and notify owners and operators of any inadequacies in the report within 90 days. Owners and operators shall, within 14 days of such notice of inadequacy, correct the report and resubmit it to the department for review and written approval. The department's failure to review or to comment on this report shall not relieve the owner and operator of their responsibilities under this part or the law.

[20.5.12.1214 NMAC - Rp, 20 NMAC 5.12.1214, 8/15/03]

20.5.12.1215 TIER TWO EVALUATION:

A. Owners and operators shall perform a tier two evaluation to determine site specific target levels (SSTLs) for soil for any complete exposure pathway where contaminants of concern exceed any RBSL, as described below and in the Guidelines for Corrective Action:

(1) Owners and operators shall modify the site conceptual exposure scenario as appropriate, using information obtained in the secondary investigation,

(2) For each receptor and complete pathway identified in the site conceptual exposure scenario:

(a) Compare representative concentration of contaminants of concern in soil samples from the preliminary and secondary investigations to SSTLs in soil;

(b) Compare concentrations of contaminants of concern in water samples from the preliminary and secondary investigations to the applicable WQCC and EIB water quality standards.

B. When representative concentrations of contaminants of concern equal or exceed any SSTL in soil for any complete exposure pathway, owners and operators shall remediate soil to the SSTLs in accordance with 20.5.12.1226 or 20.5.12.1233 NMAC or, if directed by the department, perform a tier three evaluation.

C. When concentrations of contaminants of concern equal or exceed any WQCC or EIB standard in ground or surface water, owners and operators shall remediate water to that standard in accordance with 20.5.12.1226 or 20.5.12.1233 NMAC.

D. When representative concentrations of all contaminants of concern are less than SSTLs and applicable WQCC or EIB standards and all requirements of 20.5.12.1234 NMAC have been met, the owner and operator are eligible for "No Further Action" status for the release.

E. When sufficient data are available, and concentrations of contaminants of concern equal or exceed any WQCC standard in groundwater, owners and operators may petition the WQCC for consideration of a variance approving alternative abatement standards in accordance with 20.5.12.1237 NMAC.

[20.5.12.1215 NMAC - Rp, 20 NMAC 5.12.1215, 8/15/03]

20.5.12.1216 TIER TWO EVALUATION REPORT:

A. Owners and operators shall submit a written report of the tier two evaluation to the department in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200. The report shall conform to the requirements of 20.5.12.1202 and 20.5.12.1215 NMAC and the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The department shall review the report and notify owners and operators in writing of any inadequacies in the report within 90 days. Owners and operators shall, in accordance with a timeline issued or approved by the department or the time line in Subsection D of 20.5.12.1200 NMAC, address the inadequacies identified and resubmit the report to the department for review and written approval. The department's failure to review or to comment on this report shall not relieve the owner and operator of their responsibilities under this part or the law.

[20.5.12.1216 NMAC - Rp, 20 NMAC 5.12.1216, 8/15/03]

20.5.12.1217 TIER THREE EVALUATION:

A. In certain cases, including but not limited to complex hydrogeology or sensitive ecological receptors, the department may require a tier three evaluation, in place of or in addition to a tier two evaluation. Owners and operators shall perform the tier three evaluation in accordance with 20.5.12.1202 NMAC and the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

B. When representative concentrations exceed any SSTL determined in accordance with this section or exceed any WQCC or EIB standard for any contaminant of concern, owners and operators shall remediate the site to the SSTLs in soil and WQCC and EIB standards in

groundwater and surface water. Owners and operators may petition the WQCC for consideration of a variance approving alternative abatement standards for groundwater in accordance with 20.5.12.1237 NMAC.

C. If representative concentrations do not exceed any SSTL for any contaminant of concern and groundwater and surface water are not contaminated in excess of WQCC and EIB, owners and operators may request "No Further Action" status in accordance with 20.5.12.1234 NMAC.

[20.5.12.1217 NMAC - Rp, 20 NMAC 5.12.1217, 8/15/03]

20.5.12.1218 TIER THREE EVALUATION REPORT:

A. Owners and operators shall submit a written report of the tier three evaluation to the department in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC. The report shall conform to the requirements of 20.5.12.1202 and 20.5.12.1217 NMAC and the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The department shall review the report and notify owners and operators of any inadequacies in the report within 90 days. Owners and operators shall, in accordance with a timeline issued or approved by the department or the time line in Subsection D of 20.5.12.1200 NMAC, correct the report and resubmit it to the department for review and written approval. The department's failure to review or to comment on the report shall not relieve the owner and operator of their responsibilities under this part or the law.

[20.5.12.1218 NMAC - Rp, 20 NMAC 5.12.1218, 8/15/03]

20.5.12.1219 C O R R E C T I V E ACTION REQUIREMENTS FOR TOTAL PETROLEUM HYDROCARBONS (TPH): In addition to comparing representative soil concentrations for all contaminants of concern to risk-based screening levels (RBSLs) and site-specific target levels (SSTLs) and concentrations in groundwater and surface water to applicable WQCC and EIB standards, in accordance with 20.5.12.1202, 20.5.12.1213, 20.5.12.1215 and 20.5.12.1217 NMAC, owners and operators shall mitigate, remediate, or remove TPH contamination in soil and groundwater,

when directed by the department based upon a determination by the department that the TPH contamination adversely affects public health, safety and welfare or the environment.

[20.5.12.1219 NMAC - Rp, 20 NMAC 5.12.1219, 8/15/03]

20.5.12.1220 MONITORED NATURAL ATTENUATION:

A. When directed or approved by the department, owners and operators shall submit a plan for monitored natural attenuation to the department if any of the following conditions have been identified at the site:

(1) concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water; or

(2) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. Owners and operators shall submit the monitored natural attenuation plan in accordance with the bureau's Guidelines for Corrective Action and in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC.

C. The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) cross sections showing the source contaminant mass in relation to the groundwater contamination;

(3) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(5) a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;

(6) the justification for selecting the designated monitoring wells;

(7) the recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;

(8) an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(9) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment; and

(10) public notice; and

(a) Owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release. The first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department. The second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified Affidavits of Publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted.

(b) The notice shall contain the information specified in this section and in the bureau's Guidelines for Corrective Action including the following:

(i) a statement that a monitored natural attenuation plan has been submitted to the department proposing actions to monitor natural attenuation of a release of petroleum products;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered within twenty one (21) days of the publication of the second notice, to the Petroleum Storage Tank Bureau, New Mexico Environment Department, 2044

Galisteo Street, Santa Fe, New Mexico 87504, or a district office if approved by the department, and to the Secretary of the Environment Department.

(c) Within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners.

(d) Owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan. The notice shall contain the information specified in this subsection and the bureau's Guidelines for Corrective Action and shall be at least 8.5 inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the monitored natural attenuation plan is approved and implemented. Public comments must be received by the department within 21 days of the date of the second publication of the public notice.

(11) other requirements as directed by the department.

[20.5.12.1220 NMAC - N, 8/15/03]

20.5.12.1221 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:

A. Within 60 days of receipt of the monitored natural attenuation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department must notify the owner and operator within 30 days of such a postponement, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a monitored natural attenuation plan and impose reasonable conditions.

C. If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and

provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the monitored natural attenuation plan for more than 60 days as required in Subsection A of this section until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest should be held within 60 days of determining there is significant public interest.

[20.5.12.1221 NMAC - N, 8/15/03]

20.5.12.1222 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:

A. Owners and operators shall implement the approved monitored natural attenuation plan in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC.

B. Owners and operators shall monitor the contamination until the natural attenuation is determined to be complete pursuant to this part unless otherwise approved by the department; [20.5.12.1222 NMAC - N, 8/15/03]

20.5.12.1223 REPORTS ON THE MONITORED NATURAL ATTENUATION:

A. Owners and operators shall submit written reports to the department on the progress of the contamination decay by monitored natural attenuation. The reports shall be submitted annually unless otherwise directed or approved by the department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(3) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(4) tabulation of the current and historical results of all water quality analyses and water elevation data;

(5) graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;

(6) data evaluation and interpretation, and recommendations; and

(7) other information required by the department.

B. Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.12.1223 NMAC - N, 8/15/03]

20.5.12.1224 ANNUAL EVALUATION OF MONITORED NATURAL ATTENUATION:

A. Owners and operators shall evaluate the effectiveness of the monitored natural attenuation approach at the end of each year of monitoring and submit the evaluation to the department for review.

B. When the department determines that the approach is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing monitored natural attenuation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section.

[20.5.12.1224 NMAC - N, 8/15/03]

20.5.12.1225 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:

A. Owners and operators may petition the department to approve a modification of the monitored natural attenuation plan for good cause.

B. A monitored natural attenuation plan may only be modified if the modification is approved by the department and if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public notice requirements of 20.5.12.1220 NMAC.

[20.5.12.1225 NMAC - N, 8/15/03]

20.5.12.1226 COMPLETION OF MONITORED NATURAL ATTENUATION:

A. Natural attenuation shall be considered complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) the following EIB standard for methyl tertiary butyl ether has been met in groundwater and surface water: methyl tertiary butyl ether (MTBE), dissolved concentration: 0.1 mg/L;

(3) all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards have been achieved.

(a) The applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department.

(b) For verification that soil has reached target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, unless otherwise approved by the department.

(4) corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.12.1219 NMAC have been met; and

(5) any other conditions which threatened public health, safety and welfare or the environment have been abated.

B. If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

C. If any of the target concentrations set forth or determined in accordance with this part are not met, owners and operators may request a determination by the department of technical infeasibility, may petition the New Mexico water quality control commission for a variance approving an alternative abatement standard, or may request approval by the department of a demonstration of equivalent protection, in accordance with 20.5.12.1237 NMAC, for the MTBE standard in Subsection A of this section.

D. Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

E. Following department approval, and with 30 days notice unless otherwise approved by the department, owners and operators shall properly abandon wells that are no longer needed for monitoring, in accordance with law and using methods described in the bureau's Guidelines for Corrective Action which were in effect at the time the workplan was approved.

[20.5.12.1226 NMAC - N, 8/15/03]

20.5.12.1227 REMEDIATION

PLAN:

A. When directed or approved by the department, owners and operators shall submit both a conceptual and a final remediation plan to the department if any of the following conditions have been identified at the site:

(1) a thickness of greater than one-eighth inch of NAPL is present on the surface of the water, including in any excavation pit, or in any well;

(2) contaminant saturated soil is present;

(3) concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water;

(4) total petroleum hydrocarbons in soil meet the criteria outlined in 20.5.12.1219 NMAC; or

(5) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. All remediation plans shall include but not be limited to methods to mitigate, remove or otherwise remediate the source areas.

C. Owners and operators shall submit the conceptual remediation plan in accordance with the bureau's Guidelines for Corrective Action and in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC.

(1) The intent of the conceptual remediation plan is to provide a written description of all of the methodologies proposed and demonstrate how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

(2) The content of the conceptual remediation plan, at a minimum and as appropriate, shall include:

(a) the recommended approach to remediation and justification for the recommendation;

(b) a clear description of the goals of remediation and the target concentrations to be met in each medium;

(c) a narrative description of the proposed methodologies including a comparative economic analysis and time lines for achieving goals of remediation;

(d) a cost estimate of implementation including installation, operation and maintenance, and monitoring;

(e) a schematic diagram of the proposed remediation system and a narrative description of its operation;

(f) a plan view, to scale, of the site showing locations of the proposed equipment in relation to the site's physical features and contaminant plumes; and

(g) a description of how the approach will achieve target concentrations and other goals of remediation; and

(h) a description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected. This may include but is not limited to pilot testing and evaluation of contaminant plume dynamics.

D. Following department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved and shall submit three copies of the final remediation plan to the department in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC.

E. The design and engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall be the responsibility of a professional engineer as defined in 20.5.1.7 NMAC. All plans and drawings required pursuant to this section, unless otherwise approved by the department, shall be signed and sealed by a professional engineer.

F. In order to eliminate the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shut down of the entire system. Integral components include but are not limited to pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

G. All final remediation plans shall, at a minimum, include all of the following:

(1) goals of remediation and target concentrations to be achieved in each medium;

(2) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(3) a cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future

receptors;

(4) an implementation schedule;

(5) a schedule for remediation of the source areas, for protection of receptors identified in Paragraph (1) of this subsection, and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(6) a design and schedule for a system optimization that meets the requirements of 20.5.12.1231 NMAC;

(7) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(8) copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water National Pollution Discharge Elimination System (NPDES) permit;

(9) public notice;

(a) Owners and operators shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release. The first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department. The second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to the department, and owners and operators shall submit two certified Affidavits of Publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted.

(b) The notice shall contain the information specified in this section and in the bureau's Guidelines for Corrective Action including the following:

(i) a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of petroleum products;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that

public comments on the plan must be delivered, within twenty one (21) days of the publication of the second notice, to the Petroleum Storage Tank Bureau, New Mexico Environment Department, 2044 Galisteo Street, Santa Fe, New Mexico 87504, or a district office if approved by the department, and to the secretary of the environment department.

(c) Within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners.

(d) Owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan. The notice shall contain the information specified in this subsection and the bureau's Guidelines for Corrective Action and shall be at least 8.5 inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented. Public comments must be received by the department within 21 days of the date of the second publication of the public notice.

(10) for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

(11) other requirements as directed by the department.

H. In addition to the requirements of Subsection F of this section, all final remediation plans which include mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall include all of the following:

(1) unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

(2) process and instrumentation diagrams;

(3) mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

(4) details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;

(5) equipment and parts list and

specifications including a spare parts list, performance requirements, maintenance requirements and schedule;

(6) electric power requirements including a one-line diagram and schematics;

(7) operation and maintenance commitments and schedules for all facets of the remediation system; and

(8) all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:

(a) trenching and protection from traffic;

(b) concrete repair and replacement;

(c) protection of equipment from weather and vandalism;

(d) restoration of property; and

(e) location and protection of underground utilities.

[20.5.12.1227 NMAC - Rp, 20 NMAC 5.12.1220, 8/15/03]

20.5.12.1228 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:

A. Within 60 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the remediation plan must be postponed due to significant comments from the public, the department must notify the owner and operator within 30 days of such a postponement, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a final remediation plan and impose reasonable conditions.

C. If the department determines that the final remediation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public

hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan for more than 60 days as required in Subsection A of this section until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest should be held within 60 days of determining there is significant public interest.

[20.5.12.1228 NMAC - Rp, 20 NMAC 5.12.1221, 8/15/03]

20.5.12.1229 IMPLEMENTATION OF FINAL REMEDIATION PLAN:

A. Owners and operators shall implement the approved, final remediation plan in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.12.1200 NMAC. When applicable, owners and operators shall employ a professional engineer to ensure conformance with the final remediation plan including installation, commissioning and operation of the system.

B. When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

(1) conformance with the final remediation plan including installation, commissioning and operation of the system shall be performed under the supervision of a professional engineer;

(2) owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part unless otherwise approved by the department; and

(3) owners and operators shall report all interruptions of the remediation system of greater than 72 hours to the department.

C. Owners and operators shall obtain written approval prior to implementing any change to the department-approved engineering design.

D. Following installation and start-up of remediation system with electrical or mechanical components, engineered fill, pinning, shoring or slope stability analysis, owners and operators shall submit "as-built" drawings signed and sealed by the project professional engineer showing:

(1) any deviations from the drawings and specifications included in the final remediation plan;

(2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, and contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams.

(3) an inventory of purchased equipment including serial number and pur-

chase price.

[20.5.12.1229 NMAC - Rp, 20 NMAC 5.12.1222, 8/15/03]

20.5.12.1230 Q U A R T E R L Y REPORTS ON THE REMEDIATION:

A. Owners and operators shall submit written reports to the department on the operation of the remediation system. The reports shall be quarterly unless otherwise approved by the department and shall document all work performed during the preceding interval and shall include the following information, as appropriate:

(1) tabulation of the current and historical results of all water quality analyses and water elevation data in accordance with the requirements of the bureau's Guidelines for Corrective Action;

(2) evaluation of the performance and efficiency of each aspect of the remediation;

(a) This evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified firm or, when required, a professional engineer.

(b) Owners and operators shall submit evidence that the performance of the remediation meets the operating standards outlined in the final remediation plan.

(3) calculations verifying that the schedule is being met for source removal, protection of actual and potential receptors, and achievement of target concentrations. Owners and operators shall determine quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants and shall provide the supporting calculations and documentation;

(4) records of system operation, including details, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next quarter;

(5) the amount of NAPL recovered, both cumulative and quarterly, and details of its disposal;

(6) effluent vapor concentrations over time;

(7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and

(8) other information required by the department.

B. Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.12.1230 NMAC - Rp, 20 NMAC 5.12.1223, 8/15/03]

20.5.12.1231 ANNUAL EVALUATION OF REMEDIATION:

A. Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

B. When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare and the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.12.1233 NMAC commences.

[20.5.12.1231 NMAC - Rp, 20 NMAC 5.12.1224, 8/15/03]

20.5.12.1232 MODIFICATION OF FINAL REMEDIATION PLAN:

A. Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

B. A remediation plan may only be modified if the modification is approved by the department, complies with applicable regulations, and provides adequate protection of public health, safety and welfare and the environment, and the owner and operator comply with the public notice requirements of 20.5.12.1227 NMAC.

[20.5.12.1232 NMAC - Rp, 20 NMAC 5.12.1225, 8/15/03]

20.5.12.1233 COMPLETION OF REMEDIATION:

A. Remediation shall be considered complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) the following EIB standard for methyl tertiary butyl ether has been met in groundwater and surface water: Methyl tertiary butyl ether (MTBE), dissolved concentration: 0.1 mg/L;

(3) all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards have been achieved.

(a) All electrical and mechanical components of the remediation system shall remain shut down for the monitoring period described in this subsection.

(b) The department shall approve the designation of certain monitoring wells as compliance wells. The applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department.

(c) For verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, unless otherwise approved by the department.

(4) corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.12.1219 NMAC have been met; and

(5) any other conditions which threatened public health, safety and welfare or the environment have been abated or remediated.

B. If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

C. Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

D. If any of the target concentrations set forth or determined in accordance with this part are not met, owners and operators may request a determination by the department of technical infeasibility, may petition the New Mexico Water Quality Control Commission for a variance approving an alternative abatement standard, or may request approval by the department of a demonstration of equivalent protection, in accordance with 20.5.12.1237 NMAC, for the MTBE standard in Subsection A of this section.

E. Termination of remediation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

F. Following department approval, and with 30 days notice unless otherwise approved by the department, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon wells that are no longer needed for

remediation or monitoring, in accordance with law and using methods described in the bureau's Guidelines for Corrective Action which were in effect at the time the work-plan was approved.

[20.5.12.1233 NMAC - Rp, 20 NMAC 5.12.1226, 8/15/03]

20.5.12.1234 NO FURTHER ACTION STATUS:

A. Owners and operators shall receive approval of a request for "No Further Action" status for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is less than or equal to WQCC and EIB standards, and where there had been groundwater contamination related to the release, the applicable standards have been achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to applicable RBSLs or SSTLs; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

B. Owners and operators shall receive approval of a request for "No Further Action" status for the release when subsurface water does not meet the definition of "subsurface water" in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

C. When all of the requirements of Subsection A are not met, owners and operators may seek to:

(1) demonstrate technical infeasibility to the satisfaction of the department and in accordance with 20.5.12.1235 NMAC; or

(2) receive approval of a variance for an alternative abatement standard from the WQCC for any of its groundwater standards and meet all WQCC variance conditions.

D. Any of the following may result in a reversal of "No Further Action" status:

(1) new information becomes available or circumstances arise indicating that an unacceptable threat to public health, safety and welfare or the environment exists; or

(2) change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from

commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.12.1234 NMAC - Rp, 20 NMAC 5.12.1227, 8/15/03]

20.5.12.1235 DEMONSTRATION OF TECHNICAL INFEASIBILITY:

A. When owners and operators are unable to fully meet the target concentrations or other remediation criteria set forth in the final remediation plan or an approved modification of the plan, using cost-benefit justifiable technologies, and the concentrations of contaminants of concern are greater than the target concentrations and less than two times those target concentrations, owners and operators may propose to the department that compliance with the final remediation plan and all revised remediation plans is technically infeasible. Owners and operators shall make the demonstration of technical infeasibility in accordance with Subsection E of 20.6.2.4103 NMAC and this section.

B. Owners and operators may demonstrate technical infeasibility by a statistically valid extrapolation of the decrease in concentration of any of the contaminants of concern over a 20-year period, such that projected future reductions during that time would be less than 20 percent of the concentration of the contaminant of concern at the time the infeasibility proposal is prepared.

C. Owners and operators may demonstrate a statistically valid decrease with a minimum of eight consecutive quarters of monitoring, unless otherwise approved by the department, using the arithmetic mean sample result for each contaminant of concern in each compliance well. In no event shall technical infeasibility be considered unless the contamination level at the time of the proposal is less than or equal to two times the standard for that contaminant.

D. Electrical and mechanical components of the remediation system shall remain shut down for the monitoring period described in Subsection C of this section.

E. A qualified laboratory shall perform all sample analyses upon which technical infeasibility is to be determined.

[20.5.12.1235 NMAC - Rp, 20 NMAC 5.12.1228, 8/15/03]

20.5.12.1236 REQUEST FOR EXTENSION OF TIME:

A. For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The request shall specify the reason for the request, all actions taken to

comply with the deadline and the period of time for which the extension is requested.

B. The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

C. Lack of diligence or failure of owners and operators to comply with these regulations shall be grounds for denying a request for an extension of time.

[20.5.12.1236 NMAC - Rp, 20 NMAC 5.12.1229, 8/15/03]

20.5.12.1237 DEMONSTRATION OF EQUIVALENT PROTECTION:

A. Except for the granting of a variance from WQCC standards by the WQCC and the approval of technical infeasibility by the department, the department may approve or disapprove, based upon the information provided, a demonstration of equivalent protection to any provision of this part whenever it is found by a preponderance of the evidence that the methods, technologies, operations and procedures used by owners and operators will, in fact, protect public health, safety and welfare and the environment to a degree which is equal to or greater than that which is provided by this part.

B. Except as expressly prohibited in Subsection A of this section, owners and operators may seek to demonstrate protection of public health, safety and welfare and the environment equivalent to that provided by any provision of this part by filing a written request with the department. The request shall include:

(1) the names and addresses of the owner and operator of the storage tank system which caused the release;

(2) the address or a description of the property at which the release occurred;

(3) the specific provision of 20.5.12 NMAC for which an owner or operator wishes to demonstrate equivalent protection;

(4) a description of the proposed methodologies, technologies, operations or procedures and a demonstration of how and why they will protect public health, safety and welfare and the environment to a degree which is equal to or greater than that which is provided by 20.5.12 NMAC; and

(5) supporting documentation, data, and other pertinent information including technical, hydrogeological and engineering information as is deemed necessary by the department to review the request.

C. Owners and operators may petition the WQCC for a variance to its groundwater quality standards in accordance with Subsection F of 20.6.2.4103

NMAC and 20.1.3 NMAC. Owners and operators shall file the request for variance with the secretary and provide a copy to the Petroleum Storage Tank Bureau. Owners and operators shall prepare the petition in accordance with the bureau's Guidelines for Corrective Action. Review, approval, disapproval and other procedural requirements for any variance under this section shall conform with the requirements of Subsection F of 20.6.2.4103 NMAC and applicable laws.

D. The department may approve all or part of any demonstration of equivalent protection. If a demonstration is not approved in whole or in part, owners and operators may obtain a review of the decision in accordance with the administrative review provisions in 20.5.10 NMAC.

E. The department may disapprove all or part of any demonstration of equivalent protection or may approve the demonstration with conditions or impose conditions on or withdraw an existing approval when new information becomes available or circumstances change such that an unacceptable threat to public health, safety and welfare or the environment exists.

[20.5.12.1237 NMAC - Rp, 20 NMAC 5.12.1230, 8/15/03]

20.5.12.1238 to 20.5.12.1299 [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 P E T R O L E U M STORAGE TANKS
PART 13 C O R R E C T I V E ACTION FOR UST SYSTEMS CONTAINING OTHER REGULATED SUBSTANCES**

20.5.13.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.13.1 NMAC - Rp, 20 NMAC 5.13.100, 8/15/03]

20.5.13.2 SCOPE: This part applies to owners and operators of hazardous substance UST systems as defined in 20.5.1 NMAC. If the owner and operator of an UST system 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 non-compliance.
[20.5.13.2 NMAC - Rp, 20 NMAC

5.13.101, 8/15/03]

20.5.13.3 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; the Ground Water Protection Act, NMSA 1978, sections 74-6B-1 through 74-6B-14; the Water Quality Act, NMSA 1978, sections 74-6-1 through 74-6-17; and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-4-154.
[20.5.13.3 NMAC - Rp, 20 NMAC 5.13.102, 8/15/03]

20.5.13.4 DURATION: Permanent.
[20.5.13.4 NMAC - Rp, 20 NMAC 5.13.103, 8/15/03]

20.5.13.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.13.5 NMAC - Rp, 20 NMAC 5.13.104, 8/15/03]

20.5.13.6 OBJECTIVE: The purpose of this part is to provide for corrective action at sites contaminated by releases from hazardous substance UST systems and to protect the public health, safety and welfare and the environment of the state.
[20.5.13.6 NMAC - Rp, 20 NMAC 5.13.105, 8/15/03]

20.5.13.7 DEFINITIONS: The definitions in 20.5.1 apply to this part.
[20.5.13.7 NMAC - Rp, 20 NMAC 5.13.1301, 8/15/03]

20.5.13.8 to 20.5.13.1299 [RESERVED]

20.5.13.1300 GENERAL:
A. Owners and operators of hazardous substance UST systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

B. Upon confirmation of a release pursuant to 20.5.7.700 NMAC or identification and reporting of a release in any other manner, owners and operators of hazardous substance UST systems shall comply with the requirements of this part if the release:

- (1) is of unknown volume or is greater in volume than 25 gallons; or
- (2) is of any size and the owner or operator is directed by the department to comply with this part.

C. Owners and operators shall mail or deliver all written notices and reports required to be submitted to the department to the following address or a district office if approved by the department: Petroleum Storage Tank Bureau, New Mexico Environment Department, 2044 Galisteo Street, Santa Fe, New Mexico 87504.

D. Owners and operators shall comply with any site-specific timeline or deadline that is issued or approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been issued or approved, the following time line shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC unless another event is specified in these regulations.

Default Corrective Action Timeline		Action or Deliverable Due:
Deadline, in days from report:		
0	suspected release	Report release or report confirmation of
3		72-Hour Report
14		14-Day Report
60		Submit NAPL Assessment
60		Initiate Interim Removal of
	Contaminated Soil	
60		Preliminary Investigation Report
120		Secondary Investigation Report
	When monitored natural attenuation is used:	
510		Monitored Natural Attenuation (MNA)
	Plan	
570		Implementation of MNA
935		First Annual MNA Monitoring Report
935		Annual Evaluation of MNA Report

When other remediation is used:

510	Conceptual Remediation Plan
540	Final Remediation Plan
600	Implementation of Remediation
690	First Quarterly Monitoring Report
965	Annual Evaluation of Remediation

System Report

E. All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance with this part. The designation of such a representative shall not affect the department's right to seek compliance at any time from the owner or the operator or both. The designation of a representative is intended to facilitate compliance with this part and shall not relieve the owner and operator of their legal liabilities or responsibilities under this part.

F. Except for 20.5.13.1302, 20.5.13.1303 and 20.5.13.1304 NMAC, owners and operators shall submit to the department written workplans for all required corrective action under this part. Workplans may be submitted in stages to reflect the sequence or types of corrective action required by 20.5.13 NMAC at the site, but all required workplans shall be submitted to and approved by the department in writing for technical adequacy before the corrective action is commenced.

G. Unless otherwise approved, all corrective action shall be performed by a qualified firm as specified in 20.5.16 NMAC and, when required in 20.5 NMAC, a professional engineer as defined in 20.5.1.7 NMAC.

(1) All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to 29 CFR 1910 governing worker health and safety.

(2) Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

H. Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

I. Owners and operators shall construct all monitoring wells in accordance with the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved, unless other specifications are previously approved in writing by the department.

J. Owners and operators shall clearly mark and secure monitoring wells to prevent unauthorized access and tampering. Owners and operators shall close or abandon all wells in accordance with the requirements of any law and the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

K. If a release constitutes a hazardous substance incident under the provisions of the Hazardous Waste Act relating to hazardous substance incidents, those provisions may apply in addition to this part.

[20.5.13.1300 NMAC - Rp, 20 NMAC.5.13.1300, 8/15/03]

20.5.13.1301 [RESERVED]

20.5.13.1302 MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:

A. Upon reporting of a release or reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC, owners and operators of the UST system shall immediately prevent any further release from the UST system by whatever means necessary, including removing product from the UST system or any part of the UST system that is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the UST system from service in accordance with 20.5.8 NMAC.

B. Owners and operators shall inform the department in accordance with 20.5.7.700 NMAC of any release and action taken to mitigate immediate damage from the release.

[20.5.13.1302 NMAC - Rp, 20 NMAC 5.13.1302, 8/15/03]

20.5.13.1303 MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:

A. Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of the reporting of a release or reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC, unless a different timeline is set forth elsewhere in this section or unless otherwise directed or approved by the department.

B. Owners and operators shall identify the location and details of construction of all private water supply wells, using readily accessible public records, within a 1,000 foot radius and all public water supply wells within a one mile radius of the UST system and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to ensure that these water sup-

plies do not become contaminated.

C. Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all downstream water supplies likely to be affected by the release.

D. If the release has already contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of the reporting of a spill or release or the reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

E. Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether NAPL or vapors are present.

F. Owners and operators shall complete an investigation to determine whether potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

(1) This investigation shall include testing for vapors using the following:

(a) a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of vapors; and

(b) a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful vapors.

(2) In the event owners and operators discover actual or potentially explosive levels of vapors or potentially harmful vapors reading greater than five whole units above ambient concentrations or greater than 20 percent of the lower explosive limit (LEL) in any structure in the vicinity of the release site, owners and operators shall confirm and, if necessary, take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

(a) Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of potentially explosive or harmful vapors in the affected structures weekly for the first month and monthly thereafter unless a different monitoring schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(b) Within 30 days after the vapor mitigation system has been in operation for three months, owners and operators shall submit to the department a written summary report containing the monitoring results. The department may direct owners and operators to modify the vapor mitigation system as necessary to reduce vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

(3) Owners and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

(a) levels of potentially explosive vapors are less than 20 percent LEL; and

(b) levels of potentially harmful vapors are less than or equal to five whole instrument units above ambient levels in any structure in the vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(4) When operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed. If during this period the levels exceed those set forth in Subparagraphs (a) and (b) of Paragraph (3)

of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

G. Owners and operators shall remove any exposed hazardous substances related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case later than 72 hours after the confirmation or other identification of the release.

[20.5.13.1303 NMAC - Rp, 20 NMAC 5.13.1303, 8/15/03]

20.5.13.1304 MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:

A. Owners and operators shall make an oral report summarizing the abatement procedures undertaken and the results of action taken under 20.5.13.1302 and 20.5.13.1303 within 72 hours of the reporting of a release or reporting of the confirmation of a suspected release pursuant to 20.5.7 NMAC.

B. Owners and operators shall submit a written report to the department within 14 days along with the written notice required under 20.5.7 NMAC. This report shall summarize all the work performed pursuant to 20.5.13.1302 and 20.5.13.1303 NMAC and shall include the following information:

(1) a map based on a United States Geologic Survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to Subsection B of 20.5.13.1303 NMAC. Owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;

(2) information about any water supplies known or suspected to have been contaminated by the release;

(3) most likely direction of groundwater flow;

(4) a site plan map showing locations of underground utilities;

(5) information about underground utilities gathered in accordance with Subsection E of 20.5.13.1303 NMAC;

(6) soil borings, logs, and details of construction of all wells, if available;

(7) description of any actions taken to abate adverse effects;

(8) data from vapor monitoring performed in the vicinity of the site;

(9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;

(10) description of fire and safety

hazards resulting from the release and actions taken to abate such hazards;

(11) description of current and past ownership of the property, UST systems, the substance stored in the system, age of tank and history of any tank removals;

(12) present land use, within 1,000 feet of the site; and

(13) records of tightness tests, repairs to the UST system, release detection and monitoring results.

[20.5.13.1304 NMAC - Rp, 20 NMAC 5.13.1304, 8/15/03]

20.5.13.1305 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:

A. Except for the 72-hour vapor check, owners and operators shall notify the department at least four (4) days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

B. Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or abandonment of any wells.

C. Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the nature of the known or suspected contaminants and the methods outlined in the bureau's Guidelines for Corrective Action in effect at the time the workplan for sampling was approved.

[20.5.13.1305 NMAC - N, 8/15/03]

20.5.13.1306 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:

A. Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL in surface water, in any excavation pit, or in any well. Owners and operators shall submit the assessment to the department in accordance with a timeline approved or issued by the department or the timeline in Subsection D of 20.5.12.1200 NMAC.

B. The department may direct or approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved or issued by the department or the timeline in Subsection D of Section 20.5.13.1300 NMAC.

C. Owners and operators shall remove NAPL in a manner that mini-

mizes the spread of contamination into uncontaminated media.

D. Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state Fire Marshall or other local authority, state hazardous waste regulations 20.4.1 NMAC, and any other applicable laws or regulations.

E. Owners and operators shall report recovery and disposal of NAPL to the department in the format outlined in the bureau's Guidelines for Corrective Action in effect at the time the workplan for such recovery and disposal was approved. [20.5.13.1306 NMAC - N, 8/15/03]

20.5.13.1307 INTERIM REMOVAL OF CONTAMINATED SOIL:

A. Owners and operators shall remediate contaminated soil in accordance with 20.5.13.1318 and 20.5.13.1325 NMAC, unless directed or approved by the department to remove and treat contaminated soil in accordance with this section.

(1) The department may direct or approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

(2) Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC.

(3) The department shall approve the vertical and horizontal extent of soil to be excavated.

B. When treating or temporarily storing soil on site, owners and operators shall:

(1) for treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) for temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or the environment.

C. When contaminated

soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid or hazardous waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

D. Remediation shall be considered complete when the requirements in 20.5.13.1325 NMAC are met.

E. In accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil. The report shall conform to the bureau's Guidelines for Corrective Action.

(1) The report shall describe the soil removal action and its effectiveness, including volumes removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action. [20.5.13.1307 NMAC - N, 8/15/03]

20.5.13.1308 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION:

A. A preliminary investigation is not required when owners and operators can demonstrate that groundwater has not been contaminated and one of the following two conditions apply:

(1) the release is remediated within 72 hours in accordance with this part; or

(2) the release is permanently contained within the excavation area.

B. Owners and operators shall conduct a preliminary investigation in accordance with this subsection and under a timeline approved or issued by the department or the timeline in Subsection D of 20.5.13.1300 NMAC. The preliminary investigation shall determine the following:

(1) if not previously identified and reported under 20.5.13.1304 NMAC, the source of contamination, the contaminants of concern, the media of concern, all current receptors, all potential future receptors, current and anticipated future use of property, complete and incomplete exposure pathways, and routes of exposure;

(2) the horizontal and vertical extent and magnitude of soil contamination in the vadose zone;

(a) Conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings to the water table or, with approval from the department, to a depth of fifty feet below the depth at which measured levels of contaminants in soil are no longer detectable by laboratory analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units;

(b) Advance at least four additional soil borings to characterize the release within property boundaries by soil sample points. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the UST system is located, owners and operators shall advance soil borings at locations within 10 feet of the boundary of the property on which the UST system is located;

(c) Assess and record at five-foot intervals field estimates of concentrations of contaminants in the soil borings and select and prepare samples for laboratory analysis in accordance with the procedures contained in the bureau's Guidelines for Corrective Action in effect when the workplan was approved; and

(d) Gather field data for soil classification, determining and recording color, grain size, texture, description of lithification, plasticity and clay content.

(e) From samples taken from an uncontaminated area of the vadose zone, determine in the laboratory soil bulk density (g/cc), soil moisture content (percent by volume), and effective porosity, and fraction organic carbon content (percent by volume).

(f) Record the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.1.7 NMAC;

(3) whether groundwater or surface water has been contaminated above standards or whether a significant potential for groundwater or surface water contamination is present;

(a) Determine whether the release has contaminated groundwater by installing at least three groundwater monitoring wells at locations where the results of the soil bor-

ing survey conducted pursuant to this section indicate that groundwater may be contaminated, unless otherwise approved by the department;

(i) owners and operators shall place three of the monitoring wells to form a triangle ;

(ii) owners and operators shall install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in accordance with the initial incident report and other relevant information;

(iii) owners and operators shall install at least one of the other monitoring wells in the anticipated down-gradient direction from the area of highest contamination; and

(iv) owners and operators shall construct wells in accordance with the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

(v) owners and operators shall survey the wells to United States Geological Survey standards or equivalent, as described in the bureau's Guidelines for Corrective Action and using a licensed surveyor, unless otherwise directed or approved by the department;

(b) Determine the approximate direction and gradient of groundwater flow;

(c) Inspect all monitoring wells for the presence of NAPL using an electronic interface probe, a clear bailer or other method approved by the department. If NAPL is present in any well, owners and operators shall measure the apparent thickness of the layer, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.13.1306 NMAC; and

(d) Sample each monitoring well and analyze the sample for contaminants of concern and in accordance with the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

(4) whether immediate mitigation procedures are warranted; and

(5) whether other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.13.1303 NMAC, which owners and operators shall determine by:

(a) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.13.1303 NMAC;

(b) checking for the presence of vapors in accordance with 20.5.13.1303 and 20.5.13.1308 NMAC; and

(c) identifying all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release.

[20.5.13.1308 NMAC - Rp, 20

NMAC.5.13.1305, 8/15/03]

20.5.13.1309 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:

A. Owners and operators shall submit a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.1.7 NMAC in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC. The report shall include the information gathered under 20.5.13.1302, 20.5.13.1303, 20.5.13.1304 and 20.5.13.1308 NMAC and shall conform to the requirements of the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The department shall review the report and notify owners and operators of any inadequacies in the report within 90 days. Owners and operators shall, in accordance with a timeline issued or approved by the department or the time line in Subsection D of 20.5.13.1300 NMAC, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the Minimum Site Assessment, Preliminary Investigation Report format as described in the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved, owners and operators shall be determined not to have conducted a minimum site assessment for the purposes of NMSA 1978, Section 74-6B-8.B(1)(c). The department's failure to review or to comment on this report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

D. Owners and operators shall comply with the requirements of any local government which has designated a wellhead/source water protection area that includes the area of the release.

E. Owners and operators shall provide notice that includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all property owners within the horizontal extent of contamination.

[20.5.13.1309 NMAC - Rp, 20 NMAC.5.13.1306, 8/15/03]

20.5.13.1310 SECONDARY INVESTIGATION:

A. Owners and operators shall perform a secondary investigation in

accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC when the owner, operator or the department makes at least one of the following determinations about the site:

(1) the owner or operator has not defined the horizontal and vertical extent and magnitude of contamination in all media; or

(2) the release otherwise threatens public health, safety and welfare or the environment.

B. The secondary investigation shall determine the following:

(1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;

(2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;

(3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;

(4) characteristics, extent, estimated volume and thickness of NAPL;

(5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;

(6) rate and direction of contaminant migration;

(7) hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity. The department may require field verification of estimates made from literature.

(8) whether the aquifer is perched;

(9) whether the aquifer is confined or unconfined; and

(10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.

[20.5.13.1310 NMAC - Rp, 20 NMAC.5.13.1308, 8/15/03]

20.5.13.1311 SECONDARY INVESTIGATION REPORT:

A. Owners and operators shall submit a written report of the secondary investigation to the department in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC. The report shall include all information gathered under 20.5.13.1310 NMAC and shall conform to the requirements of the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or opera-

to attesting to the veracity of the information submitted in the report and attached documents.

C. The department shall review the report and notify owners and operators of any inadequacies in the report within 90 days. Owners and operators shall, in accordance with a timeline issued or approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not meet the requirements of 20.5.13.1310 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

D. Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all property owners within the horizontal extent of contamination who were not previously notified in accordance with 20.5.13.1309 NMAC.

[20.5.13.1311 NMAC - Rp, 20 NMAC.5.13.1309, 8/15/03]

20.5.13.1312 MONITORED NATURAL ATTENUATION:

A. When directed or approved by the department, owners and operators shall submit a plan for remediation by monitored natural attenuation to the department if any of the following conditions have been identified at the site:

(1) concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; and

(2) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. Owners and operators shall submit the monitored natural attenuation plan in accordance with the bureau's Guidelines for Corrective Action and in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC.

C. The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing

all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) cross sections showing the source contaminant mass in relation to the groundwater contamination;

(3) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(5) a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;

(6) justification for selecting the designated monitoring wells;

(7) recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;

(8) an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(9) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(10) public notice;

(a) Owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release. The first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department. The second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified Affidavits of Publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted;

(b) The notice shall contain the information specified in this section and in the bureau's Guidelines for Corrective Action, including the following:

(i) a statement that a monitored natural attenuation plan has been submitted to the department proposing actions to monitor natural attenuation of a release of hazardous substances;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered within 21 days of the publication of the second notice, to the Petroleum Storage Tank Bureau, New Mexico Environment Department, 2044 Galisteo Street, Santa Fe, New Mexico 87504, or a district office if approved by the department, and to the secretary of the environment department;

(c) Within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners; and

(d) Owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan. The notice shall contain the information specified in this subsection and the bureau's Guidelines for Corrective Action and shall be at least 8.5 inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the monitored natural attenuation plan is approved and implemented. Public comments must be received by the department within 21 days of the date of the second publication of the public notice; and

(11) other requirements as directed by the department.

[20.5.13.1312 NMAC - N, 8/15/03]

20.5.13.1313 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:

A. Within 60 days of receipt of the monitored natural attenuation plan and after the public comment period has ended, the department shall review the plan and shall approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department must notify owners and operators of such a postponement, and may

extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a monitored natural attenuation plan and impose reasonable conditions.

C. If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the monitored natural attenuation plan for more than 60 days as required in Subsection A of this section until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest should be held within 60 days of determining there is significant public interest.

[20.5.13.1313 NMAC - N, 8/15/03]

20.5.13.1314 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:

A. Owners and operators shall implement the approved monitored natural attenuation plan in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC.

B. Owners and operators shall monitor the contamination until the natural attenuation is determined to be complete pursuant to this part unless otherwise approved by the department;

[20.5.13.1314 NMAC - N, 8/15/03]

20.5.13.1315 REPORTS ON THE MONITORED NATURAL ATTENUATION:

A. Owners and operators shall submit written reports to the department on the progress of the contamination decay by monitored natural attenuation. The reports shall be submitted annually unless otherwise directed or approved by the department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(3) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(4) tabulation of the current and historical results of all water quality analyses and water elevation data;

(5) graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;

(6) data evaluation and interpretation, and recommendations; and

(7) other information required by the department.

B. Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.13.1315 NMAC - N, 8/15/03]

20.5.13.1316 ANNUAL EVALUATION OF MONITORED NATURAL ATTENUATION:

A. Owners and operators shall evaluate the effectiveness of the monitored natural attenuation approach at the end of each year of monitoring and submit the evaluation to the department for review.

B. When the department determines that the approach is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, the owner or operator shall propose a change in the existing monitored natural attenuation plan within 30 days of the department's determination of ineffectiveness, or propose an alternative approach to remediation under 20.5.13.1319 NMAC. Within 30 days of the department's approval, the owner or operator shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section.

[20.5.13.1316 NMAC - N, 8/15/03]

20.5.13.1317 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:

A. Owners and operators may petition the department to approve a

modification of the monitored natural attenuation plan for good cause.

B. A monitored natural attenuation plan may only be modified if the modification is approved by the department and if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public notice requirements of 20.5.13.1312 NMAC.

[20.5.13.1317 NMAC - N, 8/15/03]

20.5.13.1318 COMPLETION OF MONITORED NATURAL ATTENUATION:

A. Natural attenuation shall be considered complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) all applicable standards for soil and in groundwater and surface water have been achieved. The applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department; and

(3) any other conditions which threatened public health, safety and welfare or the environment have been abated.

B. If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

C. If any of the standards set forth or determined in accordance with this part are not met, the owner or operator may request a determination by the department of technical infeasibility in accordance with 20.5.13.1327 NMAC, may petition the New Mexico water quality control commission for a variance approving an alternative abatement standard, or may request approval by the department of a demonstration of equivalent protection in accordance with 20.5.13.1329 NMAC.

D. Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

E. Following department approval, and with 30 days notice unless otherwise approved by the department, owners and operators shall properly abandon wells that are no longer needed for monitoring, in accordance with law and using methods described in the bureau's Guidelines for Corrective Action which were in effect at the time the workplan was approved.

[20.5.13.1318 NMAC - N, 8/15/03]

20.5.13.1319 REMEDIATION PLAN:

A. When directed or approved by the department, owners and operators shall submit both a conceptual and a final remediation plan to the department if any of the following conditions have been identified at the site:

(1) a thickness of greater than one-eighth inch of NAPL is present in the water, including in any excavation pit, or in any well;

(2) contaminant saturated soil is present;

(3) concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; or

(4) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. All remediation plans shall include methods to mitigate, remove or otherwise remediate the source areas.

C. Owners and operators shall submit the conceptual remediation plan in accordance with the bureau's Guidelines for Corrective Action and in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC.

(1) The intent of the conceptual remediation plan is to provide a written description of all of the methodologies proposed and demonstrate how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

(2) The content of the conceptual remediation plan, at a minimum and as appropriate, shall include:

(a) the recommended approach to remediation and justification for the recommendation;

(b) a clear description of the goals of remediation and the target concentrations to be met in each medium;

(c) a narrative description of the proposed methodologies including a comparative economic analysis and time lines for achieving goals of remediation;

(d) a cost estimate of implementation including installation, operation and maintenance, and monitoring;

(e) a schematic diagram of the proposed remediation system and a narrative description of its operation;

(f) a plan view, to scale, of the site showing locations of the proposed equip-

ment in relation to the site's physical features and contaminant plumes;

(g) a description of how the approach will achieve target concentrations and other goals of remediation; and

(h) a description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected. This may include but is not limited to pilot testing and evaluation of contaminant plume dynamics.

D. Following department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved and shall submit three copies of the final remediation plan to the department in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC.

E. The design and engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall be the responsibility of a professional engineer as defined in 20.5.1.7 NMAC. All plans and drawings required pursuant to this section, unless otherwise approved by the department, shall be signed and sealed by a professional engineer.

F. In order to eliminate the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shut down of the entire system. Integral components include but are not limited to pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

G. All final remediation plans shall, at a minimum, include all of the following:

(1) goals of remediation and target concentrations to be achieved in each medium;

(2) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing USTs, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(3) a cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) an implementation schedule;

(5) a schedule for remediation of the source areas, for protection of receptors identified in Paragraph (1) of this subsection, and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(6) a design and schedule for system optimization that meets the requirements of 20.5.13.1323 NMAC;

(7) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(8) copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water National Pollution Discharge Elimination System (NPDES) permit;

(9) public notice;

(a) The owner or operator shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release. The first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department. The second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to the department, and owners and operators shall submit two certified Affidavits of Publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted.

(b) The notice shall contain the information specified in this section and in the bureau's Guidelines for Corrective Action including the following:

(i) a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of hazardous substances;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered, within 21 days of the publication of

the second notice, to the Petroleum Storage Tank Bureau, New Mexico Environment Department, 2044 Galisteo Street, Santa Fe, New Mexico 87504, or a district office if approved by the department, and to the secretary of the environment department.

(c) Within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners.

(d) Owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan. The notice shall contain the information specified in this subsection and the bureau's Guidelines for Corrective Action and shall be at least 8.5 inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented. Public comments must be received by the department within 21 days of the date of the second publication of the public notice.

(10) for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

(11) other requirements as directed by the department.

H. In addition to the requirements of Subsection E of this section, all final remediation plans which include mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall include all of the following:

(1) unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

(2) process and instrumentation diagrams;

(3) mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

(4) details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;

(5) equipment and parts list and specifications including a spare parts list, performance requirements, maintenance requirements and schedule;

(6) electric power requirements including a one-line diagram and schematics;

(7) operation and maintenance commitments and schedules for all facets of the remediation system; and

(8) all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:

(a) trenching and protection from traffic;

(b) concrete repair and replacement;

(c) protection of equipment from weather and vandalism;

(d) restoration of property; and

(e) location and protection of underground utilities.

[20.5.13.1319 NMAC - Rp, 20 NMAC.5.13.1310, 8/15/03]

20.5.13.1320 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:

A. Within 60 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the remediation plan must be postponed due to significant comments from the public, the department must notify the owner and operator of such a postponement within 30 days, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a final remediation plan and impose reasonable conditions.

C. If the department determines that the final remediation plan is inadequate, the owner or operator shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan

until after a public hearing or meeting is held. Any public hearing or meeting that is held due to significant public interest should be held within 60 days of determining there is significant public interest.

[20.5.13.1320 NMAC - Rp, 20 NMAC 5.13.1312, 8/15/03]

20.5.13.1321 IMPLEMENTATION OF FINAL REMEDIATION PLAN:

A. Owners and operators shall implement the approved, final remediation plan in accordance with a timeline issued or approved by the department or the timeline in Subsection D of 20.5.13.1300 NMAC. When applicable, owners and operators shall employ a professional engineer to ensure conformance with the final remediation plan, including installation, commissioning and operation of the system.

B. When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

(1) conformance with the final remediation plan including installation, commissioning and operation of the system shall be performed under the supervision of a professional engineer;

(2) owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part, unless otherwise approved by the department; and

(3) owners and operators shall report all interruptions of the remediation system of greater than 72 hours to the department.

C. Owners and operators shall obtain written approval prior to implementing any change to the department-approved engineering design.

D. Following installation and start-up of a remediation system with electrical or mechanical components, engineered fill, pinning, shoring or slope stability analysis, the owner or operator shall submit "as-built" drawings signed and sealed by the project professional engineer showing:

(1) any deviations from the drawings and specifications included in the final remediation plan;

(2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams; and

(3) an inventory of purchased equipment including serial number and purchase price.

[20.5.13.1321 NMAC - Rp, 20 NMAC 5.13.1313, 8/15/03]

20.5.13.1322 Q U A R T E R L Y

REPORTS ON THE REMEDIATION:

A. Owners and operators shall submit written reports to the department on the operation of the remediation system. The reports shall be quarterly unless otherwise approved by the department and shall document all work performed during the preceding interval and shall include the following information, as appropriate:

(1) tabulation of the current and historical results of all water quality analyses and water elevation data in accordance with the requirements of the bureau's Guidelines for Corrective Action;

(2) evaluation of the performance and efficiency of each aspect of the remediation;

(a) This evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified firm or, when required, a professional engineer.

(b) Owners and operators shall submit evidence that the performance of the remediation meets the operating standards outlined in the final remediation plan.

(3) calculations verifying that the schedule is being met for source removal, protection of actual and potential receptors, and achievement of target concentrations. The owner or operator shall determine quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants and shall provide the supporting calculations and documentation;

(4) records of system operation, including details, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next quarter;

(5) the amount of NAPL recovered, both cumulative and quarterly, and details of its disposal;

(6) effluent vapor concentrations over time;

(7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and

(8) other information required by the department.

B. Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.13.1322 NMAC - Rp, 20 NMAC 5.13.1314, 8/15/03]

20.5.13.1323 ANNUAL EVALUATION OF REMEDIATION:

A. Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

B. When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.13.1325 NMAC commences.

[20.5.13.1323 NMAC - Rp, 20 NMAC 5.13.1315, 8/15/03]

20.5.13.1324 MODIFICATION OF FINAL REMEDIATION PLAN:

A. Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

B. A remediation plan may only be modified if the modification is approved by the department, complies with applicable regulations, and provides adequate protection of public health, safety and welfare and the environment, and the owners and operators comply with the public notice requirements of 20.5.13.1319 NMAC.

[20.5.13.1324 NMAC - Rp, 20 NMAC 5.13.1316, 8/15/03]

20.5.13.1325 COMPLETION OF REMEDIATION:

A. Remediation will be considered complete when all of the following criteria are met:

(1) No layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells.

(2) All applicable standards for soil, groundwater and surface water have been achieved.

(a) All electrical and mechanical components of the remediation system shall remain shut down for the monitoring period described in this subsection.

(b) The department shall approve the designation of certain monitoring wells as compliance wells. The applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by

the department.

(c) For verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, unless otherwise approved by the department.

(3) Any other conditions which threatened public health, safety and welfare or the environment have been remediated.

B. If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

C. Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

D. If any of the target concentrations set forth or determined in accordance with this part are not met, owners and operators may request a determination by the department of technical infeasibility in accordance with 20.5.13.1327 NMAC, may petition the New Mexico Water Quality Control Commission for a variance approving an alternative abatement standard, or may request approval by the department of a demonstration of equivalent protection in accordance with 20.5.13.1329 NMAC.

E. Termination of remediation in accordance with this section does not relieve owners and operators of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

F. Following department approval, and with 30 days notice unless otherwise approved by the department, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon wells that are no longer needed for remediation or monitoring, in accordance with law and using methods described in the bureau's Guidelines for Corrective Action in effect at the time the workplan was approved.

[20.5.13.1325 NMAC - Rp, 20 NMAC 5.13.1317, 8/15/03]

20.5.13.1326 NO FURTHER ACTION STATUS:

A. Owners and operators shall receive approval of a request for "No Further Action" status for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is

less than or equal to WQCC and EIB standards, and where there had been groundwater contaminatin related to the release, the applicable standards have been achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to applicable standards; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

B. Owners and operators shall receive approval of a request for "No Further Action" status for the release when subsurface water does not meet the definition of "subsurface water" in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

C. When all of the requirements of Subsection A are not met, owners and operators may seek to:

(1) demonstrate technical infeasibility to the satisfaction of the department and in accordance with 20.5.13.1327 NMAC; or

(2) receive approval of a variance for an alternative abatement standard from the WQCC for any of its groundwater standards and meet all WQCC variance conditions.

D. Any of the following may result in a reversal of "No Further Action" status:

(1) new information becomes available or circumstances arise indicating that an unacceptable threat to public health, safety and welfare or the environment exists; or

(2) change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.13.1326 NMAC - Rp, 20 NMAC 5.13.1318, 8/15/03]

20.5.13.1327 DEMONSTRATION OF TECHNICAL INFEASIBILITY:

A. When owners and operators are unable to fully meet the target concentrations or other remediation criteria set forth in the final remediation plan or an approved modification of the plan, using cost-benefit justifiable technologies, and the concentrations of contaminants of concern are greater than the target concentrations

and less than two times those target concentrations, owners and operators may propose to the department that compliance with the final remediation plan and all revised remediation plans is technically infeasible. Owners and operators shall make the demonstration of technical infeasibility in accordance with Subsection E of 20.6.2.4103 NMAC and this section.

B. Owners and operators may demonstrate technical infeasibility by a statistically valid extrapolation of the decrease in concentration of any of the contaminants of concern over a 20-year period, such that projected future reductions during that time would be less than 20 percent of the concentration of the contaminant of concern at the time the infeasibility proposal is prepared.

C. Owner and operators may demonstrate a statistically valid decrease with a minimum of eight consecutive quarters of monitoring, unless otherwise approved by the department, using the arithmetic mean sample result for each contaminant of concern in each compliance well. In no event shall technical infeasibility be considered unless the contamination level at the time of the proposal is less than or equal to two times the standard for that contaminant.

D. Electrical and mechanical components of the remediation system shall remain shut down for the monitoring period described in Subsection C of this section.

E. A qualified laboratory shall perform all sample analyses upon which technical infeasibility is to be determined.

[20.5.13.1327 NMAC - N, 8/15/03]

20.5.13.1328 REQUEST FOR EXTENSION OF TIME:

A. For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The request for an extension of time shall specify the reason for the request, the actions taken to comply with the deadline and the period of time for which the extension is requested.

B. The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

C. Lack of diligence or failure of owners and operators to comply with this part shall be grounds for denying a request for an extension of time.

[20.5.13.1328 NMAC - Rp, 20 NMAC 5.13.1319, 8/15/03]

20.5.13.1329 DEMONSTRATION

OF EQUIVALENT PROTECTION:

A. Unless a variance from WQCC standards or approval of technical infeasibility is required, the department may approve or disapprove, based upon the information provided, a demonstration of equivalent protection to any provision of this part whenever it is found by a preponderance of the evidence that the methods, technologies, operations and procedures used by the owner or operator will, in fact, protect public health, safety and welfare and the environment to a degree which is equal to or greater than that which is provided by this part.

B. Except as expressly prohibited in Subsection A of this section, owners and operators may seek to demonstrate protection of public health, safety and welfare and the environment equivalent to that provided by any provision of this part by filing a written request with the department. The request shall include:

(1) the names and addresses of the owner and operator of the UST system which caused the release;

(2) the address or a description of the property at which the release occurred;

(3) the specific provision of this part for which an owner or operator wishes to demonstrate equivalent protection;

(4) a description of the proposed methodologies, technologies, operations or procedures and a demonstration of how and why they will protect public health, safety and welfare and the environment to a degree which is equal to or greater than that which is provided by this part; and

(5) supporting documentation, data, and other pertinent information including technical, hydrogeological and engineering information as is deemed necessary by the department to review the request.

C. Owners and operators may petition the WQCC for a variance to its groundwater quality standards in accordance with Subsection F of 20.6.2.4103 NMAC and 20.1.3 NMAC. Owners and operators shall file the request for variance with the secretary and provide a copy to the Petroleum Storage Tank Bureau. Owners and operators shall prepare the petition in accordance with the bureau's Guidelines for Corrective Action and 20.6.2.4103 NMAC. Review, approval, disapproval and other procedural requirements for any variance under this section shall conform with the requirements of Subsection F of 20.6.2.4103 NMAC and applicable laws.

D. The department may approve all or part of any demonstration of equivalent protection. If the demonstration is not approved in whole or in part, the owner or operator may obtain a review of the decision in accordance with the admin-

istrative review provisions in 20.5.10 NMAC.

E. The department may disapprove all or part of any demonstration of equivalent protection or may approve the demonstration with conditions. The department may also impose conditions on or withdraw an existing approval when new information becomes available or circumstances change such that an unacceptable threat to public health, safety and welfare or the environment exists.

[20.5.13.1329 NMAC - Rp, 20 NMAC.5 13.1320, 8/15/03]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 5 P E T R O L E U M STORAGE TANKS PART 14 CERTIFICATION OF TANK INSTALLERS

20.5.14.1 ISSUING AGENCY:
New Mexico Environmental Improvement Board.

[20.5.14.1 NMAC - Rp, 20 NMAC 5.14.100, 8/15/03]

20.5.14.2 SCOPE: This part applies to persons installing and repairing storage tank systems.

[20.5.14.2 NMAC - Rp, 20 NMAC 5.14.101, 8/15/03]

20.5.14.3 S T A T U T O R Y
AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.14.3 NMAC - Rp, 20 NMAC 5.14.102, 8/15/03]

20.5.14.4 D U R A T I O N :
Permanent.

[20.5.14.4 NMAC - Rp, 20 NMAC 5.14.103, 8/15/03]

20.5.14.5 EFFECTIVE DATE:
August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.14.5 NMAC - Rp, 20 NMAC 5.14.104, 8/15/03]

20.5.14.6 OBJECTIVE: The purpose of this part is to provide for the regulation of persons installing and repairing storage tank systems which contain regulated

substances in order to assure that storage tank systems are being installed and repaired in a manner which will not encourage or facilitate leaking, and which will protect the public health, safety and welfare and the environment of the state.

[20.5.14.6 NMAC - Rp, 20 NMAC 5.14.105, 8/15/03]

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

[20.5.14.7 NMAC - Rp, 20 NMAC 5.14.1400, 8/15/03]

20.5.14.8 to 20.5.14.1400
[RESERVED]

20.5.14.1401 GENERAL REQUIREMENTS FOR UST SYSTEMS:

A. Beginning September 16, 1989, no person may install or repair UST systems in this state unless the person is, or employs, an individual who has been certified by the department to install and repair UST systems. This provision requires certification of the individual who exercises supervisory control over the installation or repair work, whether as an officer or employee of the UST system owner or operator performing its own installations and repairs or as an officer or employee of the contracting company agreeing to perform the installation or repair for the owner or operator. Exceptions to this requirement for a certified installer include:

(1) internal lining of a tank through the application of such materials as epoxy resins;

(2) installation or repair of cathodic protection systems;

(3) any other installation or repair specifically approved in advance in writing by the department as an exception to the requirement for a certified tank installer;

(4) an applicant for UST installer certification pursuant to Subsection C of 20.5.14.1406 NMAC;

(5) normal maintenance excluded from the definition of repair; and

(6) work on line or tank leak detection systems performed by technicians approved in advance in writing by the department. The department will approve technicians if they demonstrate that they are trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training.

B. Beginning September 16, 1989, no contracting company may install or repair an UST system in this state unless it has in its employ a certified installer who will control and supervise a given installation or repair and who will be physically present on-site at the critical

junctures in the installation or repair.

C. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation or repair.

D. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Act, NMSA 1978, sections 60-13-1 through 60-13-59.

E. The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

F. The department may deny an application or renewal and may suspend or revoke a certificate pursuant to the Parental Responsibility Act, NMSA 1978, sections 40-5A-1 through 40-5A-13. [20.5.14.1401 NMAC - Rp, 20 NMAC 5.14.1401, 8/15/03]

20.5.14.1402 GENERAL REQUIREMENTS FOR AST SYSTEMS:

A. Beginning August 15, 2004, no person may install or repair AST systems in this state unless the person is, or employs, an individual who has been certified by the department to install and repair AST systems. This provision requires certification of the individual who exercises supervisory control over the installation or repair work, whether as an officer or employee of the AST system owner or operator performing its own installations and repairs or as an officer or employee of the contracting company agreeing to perform the installation or repair for the owner or operator. Exceptions to this requirement for a certified installer include:

(1) internal lining of a tank through the application of such materials as epoxy resins;

(2) installation or repair of cathodic protection systems;

(3) any other installation or repair specifically approved in advance in writing by the department as an exception to the requirement for a certified tank installer;

(4) an applicant for AST installer certification pursuant to Subsection C of 20.5.14.1406 NMAC;

(5) normal maintenance excluded from the definition of repair; and

(6) work on line or tank leak detection systems performed by technicians approved in advance in writing by the department. The department will approve technicians if they demonstrate that they are trained to work on line or tank leak detec-

tion systems by the manufacturer of the systems, or other equivalent training.

B. Beginning August 15, 2004, no contracting company may install or repair an AST system in this state unless it has in its employ a certified installer who will control and supervise a given installation or repair and who will be physically present on-site at the critical junctures in the installation or repair.

C. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation or repair.

D. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Act, NMSA 1978, sections 60-13-1 through 60-13-59.

E. The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

F. The department may deny an application or renewal and may suspend or revoke a certificate pursuant to the Parental Responsibility Act, NMSA 1978, sections 40-5A-1 through 40-5A-13. [20.5.14.1402 NMAC - N, 8/15/03]

20.5.14.1403 INDIVIDUAL CERTIFICATION - UST SYSTEMS:

A. Except as provided in Subsection C of this section, an applicant for an individual's UST certificate shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50.00. At a minimum the application shall contain the following information:

(a) applicant's name, permanent address and telephone number;

(b) applicant's business address and any business name used by the applicant, with the business address, telephone number and facsimile transmission number;

(c) applicant's date of birth;

(d) applicant's social security number;

(e) construction industries division license number and name of license holder under which applicant is working;

(f) whether the construction industries division license in Subparagraph (e) of Paragraph (1) of this subsection has ever been suspended or revoked. If so, an explanation of the circumstances of the sus-

pension or revocation;

(g) the supervisor's name, business name, address and telephone number with whom the applicant apprenticed as a tank installer;

(h) a description of the number of years of experience the applicant has as a tank installer (specify USTs and ASTs);

(i) a description of the types and number of tanks the applicant has installed (specify USTs and ASTs);

(j) a description of the types and number of piping systems the applicant has installed, modified or repaired (specify USTs and ASTs); and

(k) whether applicant owes child support in New Mexico or another state;

(2) the applicant shall be an individual and at least eighteen years of age;

(3) the applicant need not, for purposes of this part, be a resident of the state;

(4) the applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section;

(5) the applicant shall meet the experience requirements of 20.5.1405 NMAC;

(6) the applicant shall pass the on-site examination for which 20.5.14.1406 NMAC provides;

(7) the applicant shall provide the department with evidence that the applicant has passed a New Mexico UST installer's test administered by an approved certification educator. For purposes of this section, the International Code Council is an approved certification educator;

(8) as an alternative to the test required in paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses will not be approved for the requirement in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New

Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements; and

(9) a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date or nature or other considerations, is not directly relevant to the applicant's competence to install or repair UST systems.

C. UST installers who were either certified individuals - UST Level A or UST Level B shall comply with the following:

(1) Installers who were certified individuals - UST Level A prior to August 15, 2003, shall remain certified, and need not comply again with the requirements of this section, but shall comply with the renewal requirements of 20.5.14.1408 NMAC.

(2) Installers who were certified individuals - UST Level B prior to August 15, 2003 may do work for which a certified installer is not required, pursuant to 20.4.1401 NMAC. If a certified individual - UST Level B wants to become a certified installer - UST, the individual shall comply with the requirements of Subsection A of this section, with the exception of Paragraphs (7) and (8), on or before the expiration of his UST Level B certificate.

[20.5.14.1403 NMAC - Rp, 20 NMAC 5.1402, 8/15/03]

[The department provides a form that may be used to apply for certification.]

20.5.14.1404 INDIVIDUAL CERTIFICATION - AST SYSTEMS:

A. An applicant for an individual's AST certificate shall meet all of the following requirements in order to receive certification from the department:

(1) the applicant shall file an application with the department with the information required in Paragraph (1) of Subsection A of 20.5.14.1403 NMAC, accompanied by a nonrefundable fee of \$50.00;

(2) the applicant shall be an individual and at least 18 years of age;

(3) the applicant need not, for purposes of this part, be a resident of the state;

(4) the applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupa-

tional license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section;

(5) the applicant shall meet the experience requirements of 20.5.1405 NMAC;

(6) the applicant shall pass the on-site examination for which section 20.5.14.1406 NMAC provides. Installation of a self-contained, concrete-encased or self-contained, skid-mounted AST system is not an AST system installation for purposes of this requirement;

(7) the applicant shall provide the department with evidence that the applicant has passed a New Mexico AST installer's test administered by an approved certification educator. For purposes of this section, the International Code Council is an approved certification educator;

(8) As an alternative to the test required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses will not be approved for the requirement in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements; and

(9) a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date or nature or other considerations, is not directly relevant to the applicant's competence to install or repair AST systems.

[20.5.14.1404 NMAC - Rp, 20 NMAC 5.1403, 8/15/03]

[The department provides a form that may be used to apply for certification.]

20.5.14.1405 EXPERIENCE REQUIREMENTS:

A. To qualify for individ-

ual certification under 20.5.14.1403 or 1404 NMAC, an applicant shall demonstrate that the applicant has had one year, within the three years immediately prior to making the application, of field experience in the installation or repair of the type of storage tank systems for which the applicant is applying for certification or, with the approval of the department, closely related work.

B. An engineering degree or a license to practice engineering may substitute for six months of the experience required by Subsection A of this section.

[20.5.14.1405 NMAC - Rp, 20 NMAC 5.14.1403, 8/15/03]

20.5.14.1406 ON-SITE EXAMINATION:

A. To qualify for individual certification under Sections 20.5.14.1403 or 1404 NMAC, an applicant shall pass an on-site examination consisting of a successful installation of the applicable type of storage tank system in the presence of a designated employee of the department. The applicant shall complete each aspect of the installation successfully in order to pass the examination, including use of proper materials, proper assembly of materials, and proper testing of the tank and piping at the appropriate times during the installation.

B. An applicant may request an on-site examination for UST or AST certification any time within 180 days of the date of submission of the application provided for in Paragraph (1) of Subsection A of 20.5.14.1403 or Paragraph (1) of Subsection A of 20.5.14.1404 NMAC and accompany the request with a nonrefundable \$300 fee. The applicant shall notify the department of the date and the site of the on-site examination 30 days prior to the examination. For good cause shown, the department may, in its sole discretion, grant an applicant one 180-day extension of the time period during which the applicant must take the on-site examination. The department shall not grant more than one extension. If the applicant does not schedule an on-site examination within these time periods, the applicant shall file a new application for certification and comply with all the application requirements in 20.5.14.1403 or 1404 NMAC (as applicable).

C. The applicant shall be responsible, subject to approval by department staff, for identifying a satisfactory site and date(s) for the on-site examination. The applicant is also responsible for ensuring that all necessary equipment and appropriate materials necessary for the installation are on site. Use of inappropriate materials shall constitute failure of the examination. As long as a department staff member responsible for assessing the on-site exam is present, the applicant may perform the

activities involved in the exam even though the applicant is not a certified installer.

D. The installation shall be assessed by the department employee present at the examination who will present his findings to the department, with a recommendation as to whether or not the applicant passed the on-site examination. The department will make the determination as to the success of the installation and notify the applicant by mail within 30 days of completion of the installation. If the applicant did not pass the examination, the department shall inform the applicant that the applicant may retake the examination upon payment of a nonrefundable \$300.00 fee and upon such conditions as the department may impose to ensure that the applicant is prepared to perform a more successful installation. If the applicant does not retake the examination within 180 days of being notified that the applicant did not pass the examination or if the applicant fails the on-site examination a second time, the applicant shall file a new application for certification with the department if the applicant desires to become a certified installer.

E. The department employee may stop an on-site examination if the employee determines that the installation being conducted constitutes a threat to public health, safety or welfare or the environment. If the examiner stops the installation, his findings shall be presented to the department with a "do not pass" recommendation. The department shall notify the applicant of its decision as provided in Subsection D of this section.

[20.5.14.1406 NMAC - Rp, 20 NMAC 5.14.1405, 8/15/03]

20.5.14.1407 DENIAL OF CERTIFICATES: An applicant shall be afforded an opportunity for a hearing before the secretary under 20.5.14.1412 NMAC, in any instance afforded pursuant to these regulations and to the Uniform Licensing Act, NMSA 1978, sections 61-1-1 through 61-1-33.

[20.5.14.1407 NMAC - Rp, 20 NMAC 5.14.1411, 8/15/03]

20.5.14.1408 RENEWAL OF CERTIFICATES:

A. Certificates issued under 20.5.14.1403 and 1404 NMAC shall be renewed every four years, except that certificates issued prior to August 15, 2003, shall expire on the expiration date of the certificate, and an installer's initial certificate issued after August 15, 2003, shall expire September 16 of the fourth calendar year after it was issued. Certificates should be renewed prior to their expiration but may be renewed up to three months after the date of expiration upon payment of a late fee in

addition to the renewal fee and the meeting of the requirements for renewal set forth below. Certificates which have not been renewed within this time period will be considered lapsed and invalid and applications for renewal will not be accepted after the close of the period. Any installer whose certification has lapsed as provided in this Subsection shall submit an application for a new certificate under 20.5.14.1403 and/or 20.5.14.1404 NMAC and comply with the requirements thereof.

B. At least 30 days before the expiration date of a certificate, the department shall mail a renewal application reminder to the installer, at the installer's address of record with the department. It is the duty and responsibility of the installer to timely renew the certificate whether or not an application reminder has been received from the department.

C. To qualify for renewal, a UST certified individual or installer shall:

(1) file an application with the department with the information required in Paragraphs (1) and (9) of Subsection A of 20.5.14.1403 NMAC, accompanied by a nonrefundable \$50.00 fee, together with a \$25.00 late fee if the renewal application is filed after, but within three months of, the date of expiration; and

(2) demonstrate that the installer has completed at least two UST system installations, modifications, or repairs in New Mexico during the four-year period preceding the renewal application (or a shorter period if the initial certificate was issued for less than four years under subsection A of this section) or passed a written test approved pursuant to 20.5.14.1403 NMAC.

D. To qualify for renewal, an AST certified installer shall:

(1) file an application with the department with the information required in Paragraphs (1) and (9) of Subsection A of 20.5.14.1403 NMAC, accompanied by a nonrefundable \$50.00 fee, together with a \$25.00 late fee if the renewal application is filed after, but within three months of, the date of expiration; and

(2) demonstrate that the installer has completed at least two AST system installations, modifications or repairs in New Mexico during the four-year period preceding the renewal application (or a shorter period if the initial certificate was issued for less than four years under Subsection A of 20.5.14.1408 NMAC) or passed a written test approved pursuant to 20.5.14.1404 NMAC.

E. An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.14.1412 NMAC, in the event the department contemplates withholding

renewal for any cause other than failure to pay the required renewal fee.

F. For purposes of this section, "demonstrate" means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified installer's on-site, physical, hands-on participation in critical junctures of a particular installation, modification or repair.

[20.5.14.1408 NMAC - Rp, 20 NMAC 5.14.1412, 8/15/03]

[The department provides a form that may be used to apply for renewal of certification.]

20.5.14.1409 INSTALLER DUTIES AND OBLIGATIONS:

A. A contracting company shall not agree to perform installation or repair services unless it is or has in its employ one or more certified installers who will exercise responsible supervisory control over any installation or repair it undertakes, who will, at a minimum, be physically present on-site at all critical junctures in the installation or repair, give notice as required by these regulations, and who is competent to perform the particular installation or repair involved.

B. A certified individual shall exercise responsible, supervisory control over any installation or repair undertaken and shall, at a minimum, be physically on-site at all critical junctures in the installation or repair and give notice as required by these regulations, 20.5 NMAC.

C. A certified installer shall have adequate knowledge of appropriate materials, technical requirements and installation or repair procedures for any storage tank system the installer undertakes to install or repair. A certified installer shall not perform any installation or repair or affix his signature or certification number to any installation or repair for which the installer lacks competence.

D. A certified installer shall not certify to an owner or operator of a storage tank system that an installation or repair is complete unless the installation or repair complies with the New Mexico Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14, and the petroleum storage tank regulations promulgated pursuant to the Act, 20.5 NMAC. Where the installation or repair is being performed for an owner or operator on a contract basis, both the certified individual and the certified contractor for whom the individual works are responsible for the accuracy of the representations made.

E. Certified installers have a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.7 NMAC, detected at

a site or the surrounding area by the installer or persons working under his supervisory control, as required by 20.5.7 NMAC.

F. Certified installers shall not perform any installation, modification, repair or removal without providing notice as required by the provisions of 20.5 NMAC, except for emergency repairs as described in 20.5.5 NMAC and defined in 20.5.1 NMAC. Certified installers shall not perform any activity described as a critical juncture in 20.5.5 NMAC, without providing the 24-hour notice required by that part, except for emergency repairs.

G. Certified installers shall comply with all of the provisions of the Petroleum Storage Tank Regulations, 20.5 NMAC.

[20.5.14.1409 NMAC - Rp, 20 NMAC 5.14.1413, 8/15/03]

20.5.14.1410 COMPLAINTS:

A. When the department receives a signed written complaint from any person which indicates an apparent violation of applicable law by a certified installer, a copy of the complaint will be provided to the certificate holder along with a letter from the department specifying the statute, regulation, order or license alleged to be violated. The letter will include a reasonable description of the acts or practices alleged to be in violation of applicable law. A copy of the department's letter will be provided to the complainant.

B. The installer may, but need not, file a response to the complaint with the department. After reviewing the complaint together with any other matter in the certificate holder's record, the department will determine whether further action is to be taken.

[20.5.14.1410 NMAC - Rp, 20 NMAC 5.14.1415, 8/15/03]

20.5.14.1411 INVESTIGATIONS, ENFORCEMENT, PENALTIES:

A. The department may undertake such investigations and take such actions as it deems necessary to ensure compliance with the provisions of this part, including the issuance of compliance orders and the commencement of civil actions under the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14. The department may also initiate proceedings to revoke an installer's certificate under NMSA 1978, Section 74-4-4.4C and 20.5.14.1412 NMAC. The department may revoke the certificate for an installer upon grounds that the installer:

(1) exercised fraud, misrepresentation or deception in obtaining the certification;

(2) exhibited gross incompetence in the installation or repair of a storage tank

system; or

(3) was derelict in the performance of a duty as a certified tank installer (including repeated failure to provide notice, as required in 20.5.14.1409 NMAC).

B. Persons violating the provisions of this part may be subject to the imposition of penalties under the Hazardous Waste Act.

[20.5.14.1411 NMAC - Rp, 20 NMAC 5.14.1416, 8/15/03]

20.5.14.1412 D E P A R T M E N T
ACTIONS AGAINST CERTIFICATES:

A. When the department contemplates denying an application or revoking a certificate, it shall serve upon the applicant or certificate holder a written notice of contemplated action as required by the Uniform Licensing Act, NMSA 1978, sections 61-1-1 through 61-1-33.

B. If the applicant or the certificate holder does not mail a request for a hearing within the time and in the manner required by the Uniform Licensing Act, NMSA 1978, section 61-1-4, the department may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

C. If a hearing is requested in accordance with the provisions of this section, the secretary shall, within 20 days of receipt of such request, notify the requestor of the time and place of hearing, the name or names of the person or persons who will conduct the hearing for the secretary and the statutes and regulations authorizing the secretary to take the contemplated action, which hearing shall be held not more than 60 nor less than 15 days from the date of service of such notice. Hearings under this section shall be conducted in accordance with the provisions of the Uniform Licensing Act, NMSA 1978, sections 61-1-1 through 61-1-33.

D. If the department revokes a certificate pursuant to this section, the certificate holder may not re-apply for a minimum of two years for certification for the type of installer certification revoked (either UST installer certification pursuant to 20.5.14.1403 NMAC or AST installer certification pursuant to 20.5.14.1404 NMAC). However, if the certificate holder is certified for another type of installer certification, it shall not be affected by the revocation of the certificate for the other type of installer certification.

[20.5.14.1412 NMAC - Rp, 20 NMAC 5.14.1417, 8/15/03]

20.5.14.1413-1499 [RESERVED]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION**

**CHAPTER 5 P E T R O L E U M
STORAGE TANKS**

**PART 15 C O R R E C T I V E
ACTION FUND USE AND EXPENDI-
TURES**

20.5.15.1 ISSUING AGENCY:
New Mexico Environmental Improvement
Board.

[20.5.15.1 NMAC - Rp, 20 NMAC
5.15.100, 8/15/03]

20.5.15.2 SCOPE: This part
applies to owners and operators of storage
tanks as provided in 20.5.1 NMAC and to
the use of the Corrective Action Fund. If
the owner and the operator of a storage tank
are separate persons, only one person is
required to comply with the requirements of
this part; however, both parties are liable in
the event of noncompliance.

[20.5.15.2 NMAC - Rp, 20 NMAC
5.15.101, 8/15/03]

20.5.15.3 S T A T U T O R Y
AUTHORITY: This part is promulgated
pursuant to the provisions of the Ground
Water Protection Act, NMSA 1978, sections
74-6B-1 through 74-6B-14, and the general
provisions of the Environmental
Improvement Act, NMSA 1978, sections
74-1-1 through 74-1-15.

[20.5.15.3 NMAC - Rp, 20 NMAC
5.15.102, 8/15/03]

20.5.15.4 D U R A T I O N :
Permanent.

[20.5.15.4 NMAC - Rp, 20 NMAC
5.15.103, 8/15/03]

20.5.15.5 EFFECTIVE DATE:
August 15, 2003, unless a later date is indi-
cated in the bracketed history note at the
end of a section.

[20.5.15.5 NMAC - Rp, 20 NMAC
5.15.104, 8/15/03]

20.5.15.6 OBJECTIVE: The pur-
poses of this part are (1) to establish priori-
ties for the use of the corrective action fund
at sites contaminated by releases of regulat-
ed substances from storage tanks and (2) to
specify procedures for administering the
fund in conjunction with the procedures set
forth in 20.5.17 NMAC, adopted by the
New Mexico environment department.

[20.5.15.6 NMAC - Rp, 20
NMAC.5.15.105, 8/15/03]

20.5.15.7 DEFINITIONS: The
definitions in 20.5.1 NMAC and the Ground
Water Protection Act apply to this part. In
the case of conflict, the definitions in the
Ground Water Protection Act shall apply to
this part.

[20.5.15.7 NMAC - Rp, 20 NMAC
5.15.106, 8/15/03]

20.5.15.8 to 20.5.1499 [RESERVED]

20.5.15.1500 PERMISSIBLE FUND
EXPENDITURES: The department shall
make expenditures from the fund that are
necessary to take emergency corrective
action, to investigate releases and undertake
other corrective action in accordance with
the priorities established in this part, to
make payments to or on behalf of owners
and operators as provided in 20.5.17
NMAC, to pay for the department's reason-
able costs of administering the fund, to pay
for the department's costs associated with
the recovery of expenditures from the fund
pursuant to NMSA 1978, Section 74-6B-8,
including related legal costs, and to pay the
state's share of federal Leaking
Underground Storage Tank Trust Fund
cleanup costs as required by the federal
Resource Conservation and Recovery Act.
The department shall keep records of the
expenditures made from the fund and shall
make those records available to the interim
legislative finance committee upon request.

[20.5.15.1500 NMAC - Rp, 20 NMAC
5.15.1500, 8/15/03]

20.5.15.1501 C O R R E C T I V E
ACTION BY OWNERS AND OPERA-
TORS: Owners and operators shall take
corrective action in accordance with 20.5.7
NMAC and 20.5.12 or 20.5.13 NMAC, and
the department shall make payments to or
on behalf of owners and operators in accor-
dance with NMSA 1978, Section 74-6B-13
and the provisions of 20.5.17 NMAC.

[20.5.15.1501 NMAC - Rp, 20 NMAC
5.15.1501, 8/15/03]

20.5.15.1502 C O R R E C T I V E
ACTION BY THE DEPARTMENT:

A. When the owners and
operators are unknown, unable or unwilling
to take corrective action as described in
20.5.15.1501 NMAC, the department may
take corrective action using the fund.

B. When the department
takes corrective action at sites as described
in Subsection A of this section, it shall do so
in accordance with the provisions of
20.5.15.1503 NMAC.

C. The department may
recover the costs of corrective action taken
under Subsection A from the owner or oper-
ator, unless the owner or operator demon-

strates compliance as required by NMSA 1978, Section 74-6B-8 and the provisions of 20.5.17 NMAC.

D. Owners and operators at sites where the department has taken corrective action under this section shall assume responsibility for and control of the corrective action when required or permitted by the department.

[20.5.15.1502 NMAC - Rp, 20 NMAC 5.15.1502, 8/15/03]

20.5.15.1503 SITE PRIORITIZATION:

A. The department shall assign a rank to all sites contaminated by releases from storage tanks using the LST Ranking System, as defined in 20.5.1.7 NMAC, and shall classify sites as being first, second or third priority sites. A site's priority shall be based on a minimum site assessment, as defined in 20.5.1.7 NMAC, or other available information that documents an effect or potential effect of the release on public health, safety and welfare or the environment. The department may rerank and reclassify as warranted, based on facts affecting public health, safety and welfare and the environment.

(1) A first priority site is a site where the release of a regulated substance from a storage tank system has created an actual or imminent hazard to public health, safety and welfare or the environment such that the following corrective action is required:

(a) water supply protection or replacement pursuant to Subsection C or D of 20.5.12.1204 and 20.5.13.1303 NMAC;

(b) mitigation of toxic or explosive or potentially toxic or explosive vapors pursuant to Subsection F of 20.5.12.1204 and 20.5.13.1303 NMAC; or

(c) other corrective action as required to protect public health, safety and welfare or the environment from hazards caused by the release pursuant to Subsection G of 20.5.12.1204 and 20.5.13.1303 NMAC.

(2) A second priority site is a site where the release of a regulated substance from a storage tank system has created a source of environmental contamination such that the following corrective action is required:

(a) containment and removal of non-aqueous phase liquid pursuant to 20.5.12.1207 and 20.5.13.1306 NMAC; or

(b) treatment of contaminant saturated soils pursuant to 20.5.12.1208 and 20.5.13.1307 NMAC.

(3) A third priority site is a site which is not first or second priority and where corrective action is required by 20.5.12 or 20.5.13 NMAC.

B. When the department

approves corrective action other than minimum site assessments, it shall approve corrective action at sites in order of rank and shall approve priority one sites first, priority two sites after priority one sites, and priority three sites after priority one and priority two sites, except that the department may approve emergency corrective action at any time.

[20.5.15.1503 NMAC - Rp, 20 NMAC 5.15.1503, 8/15/03]

20.5.15.1504 ORDER OF PAYMENTS IN CASE OF INSUFFICIENT FUNDS

A. If, after the department has determined that the owner or operator is in substantial compliance, the department determines that the fund budget or the fund balance is insufficient to cover the amount requested for payment, the department shall promptly notify the owner or operator. Payment for eligible costs shall occur when sufficient amounts are available in the fund budget or the fund, subject to the provisions of this section.

B. If the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.17.501 NMAC but the fund remains an approved financial responsibility mechanism under 20.5.9.911 NMAC, the department shall pay applications for payment for approved corrective action in order of priority as established in accordance with this part from the funds available, so long as funds are available.

C. Applications for sites of equal score based on the priorities established in this part shall be paid in order of date of receipt of complete applications for payment. For applications for sites of equal score with the same date of receipt, the earliest date on which a corrective action was taken as evidenced by the date of the earliest invoice included in the application, shall determine the order of payment.

D. When the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.17.501 NMAC and the fund is no longer an approved financial responsibility mechanism, the department shall make payments according to priority rank as established in this part and in the following percentages, so long as funds are available:

(1) 100 percent of all reasonable and necessary eligible costs incurred to complete a minimum site assessment in excess of the deductible;

(2) 100 percent of all reasonable and necessary eligible costs incurred to conduct a secondary investigation in accordance with 20.5.12.1211 or 20.5.13.1310 NMAC;

(3) in the case of reasonable and

necessary costs incurred to complete corrective action other than the minimum site assessment and secondary investigation, according to the following formulae:

(a) for owners or operators of two or fewer facilities used for retail gasoline sales and whose facilities have less than 40,000 gallons combined total of product dispensed monthly, averaged over the last two years of operation: first priority Leaking Storage Tank (LST) ranked sites: 100 percent; second priority LST ranked sites: 95 percent; third priority LST ranked sites: 90 percent;

(b) for sites owned or operated by other owners or operators: 100 percent for first priority LST ranked sites. The percentage of payment for second and third priority LST ranked sites shall be based on the ending quarterly unobligated balance of the fund proportional to the amount of each application for payment received in that quarter for these sites. The quarters end on June 30, September 30, December 31 and March 31. The percentage of payment equals the unobligated fund balance on the last day of the quarter divided by the dollar amount of reasonable and necessary eligible costs of applications for payment received in the quarter, not to exceed 100 percent. For purposes of this subparagraph, "unobligated balance" or "unobligated fund balance" means corrective action fund equity less all known or anticipated liabilities against the fund.

(4) Payment for remaining eligible costs shall be made pursuant to Subsection E of this section.

E. When the fund is reestablished as an approved financial responsibility mechanism, payment shall be made for the balance of the eligible costs previously submitted but not paid under provisions of this section. These payments shall be made in the order in which sites were ranked by the department, in accordance with this part, as funds become available.

F. The department's determinations under this section concerning the availability of funds shall be final and not subject to appeal.

[20.5.15.1504 NMAC - N, 8/15/03]

20.5.15.1505 RESERVED MONEY:

A. The department shall establish a reserve of \$1,000,000 in the fund for the costs of taking emergency corrective action. The department may make expenditures from this reserve during the fiscal year and replenish the reserve at the beginning of the next fiscal year.

B. Money that is reserved pursuant to Subsection A of this section may be expended by the department only for corrective action necessary when an emer-

agency threat to public health, safety and welfare or the environment is determined by the department to exist.
[20.5.15.1505 NMAC - Rp, 20 NMAC 5.15.1504, 8/15/03]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 16 QUALIFICATION
OF PERSONS PERFORMING COR-
RECTIVE ACTION**

20.5.16.1 ISSUING AGENCY:
New Mexico Environmental Improvement Board.

[20.5.16.1 NMAC - Rp, 20 NMAC 5.16.1600, 8/15/03]

20.5.16.2 SCOPE: This part applies to all persons performing corrective action on behalf of storage tank owners, operators or the state under 20.5 NMAC.

[20.5.16.2 NMAC - Rp, 20 NMAC 5.16.1601, 8/15/03]

20.5.16.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the provisions of the Ground Water Protection Act, NMSA 1978, sections 74-6B-1 through 74-6B-14; the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14; and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.

[20.5.16.3 NMAC - Rp, 20 NMAC 5.16.1602, 8/15/03]

20.5.16.4 D U R A T I O N : Permanent.

[20.5.16.4 NMAC - Rp, 20 NMAC 5.16.1603, 8/15/03]

20.5.16.5 EFFECTIVE DATE: August 15, 2003, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.16.5 NMAC - Rp, 20 NMAC 5.16.1604, 8/15/03]

20.5.16.6 OBJECTIVE: The objective of this part is to establish rules for the qualification of firms for conducting corrective action on sites where releases from storage tanks have caused contamination.

[20.5.16.6 NMAC - Rp, 20 NMAC 5.16.1605, 8/15/03]

20.5.16.7 DEFINITIONS:

A. The definitions in 20.5.1 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act control.

B. For purposes of this part, the term "firm" shall be synonymous with the term "person," as defined.

[20.5.16.7 NMAC - Rp, 20 NMAC 5.16.1606, 8/15/03]

20.5.16.8 to 20.5.16.1606
[RESERVED]

20.5.16.1607 P A Y M E N T S : Payments from the corrective action fund may be made only for corrective action conducted by firms qualified by the department to perform such work pursuant to this part.

[20.5.16.1607 NMAC - Rp, 20 NMAC 5.16.1607, 8/15/03]

20.5.16.1608 [RESERVED]

20.5.16.1609 QUALIFICATION OF FIRMS:

A. Except as provided in Subsections B and C of this section, firms shall be evaluated for qualification by the department to conduct corrective action for each workplan submitted. Firms shall be qualified upon approval of the following:

(1) the subject workplan;

(2) a current statement of qualifications of the firm's authorized representative, the individual with direct, responsible, supervisory control of the approved workplan; and

(3) if the involvement of a professional engineer is required for the work to be undertaken under the workplan, a current statement of qualifications of the professional engineer that complies with 20.5.16.1610 NMAC.

B. When initial response or initial abatement is required at a site, firms may be qualified prior to commencement of work by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.12 or 20.5.13 NMAC, for the professional engineer. Written statements of qualifications shall be submitted to the department with the report on initial abatement required by Subsection B of 20.5.12.1205 or 20.5.13.1304 NMAC.

C. When remediation is required at a site, selection of a remediation proposal in accordance with the competitive selection process described in 20.5.17.300 and 20.5.17.301 NMAC qualifies the successful firm to conduct corrective action within the scope of work defined by the proposal, except as provided in

20.5.16.1611 NMAC. A firm may be tentatively qualified prior to submitting a proposal under 20.5.17.300 by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.12 or 20.5.13 NMAC, for the professional engineer. Firms tentatively qualified under this subsection will be deemed qualified firms for purposes of 20.5.17 NMAC until such time as 20.5.17 NMAC is amended to permit the evaluation of proposals from firms not yet qualified under this part.

D. Statements of qualifications shall include:

(1) the authorized representative's name and status as sole proprietor, officer, partner, employee or subcontractor of the firm;

(2) education relevant to the nature of the work to be performed;

(3) experience relevant to the nature of the work to be performed; and

(4) licenses and certifications required for the work to be performed.

E. While the required education and experience for the authorized representative may vary with the work to be performed, the following may be considered minimums: A baccalaureate degree in science or engineering and at least two years applicable experience in the investigation and remediation of unsaturated and saturated zone contamination, or five years supervised experience in investigation or remediation of unsaturated and saturated zone contamination.

F. Firms performing corrective action must maintain their qualification at all stages of work in order for the costs of that work to be eligible for payment.

G. This part is in addition to and not in lieu of any other licensing and registration requirements of the Construction Industries Act, NMSA 1978, sections 60-13-1 through 60-13-59.

H. This part does not relieve contractors or owners or operators of their obligations and liabilities under applicable local, state, and federal laws and regulations.

[20.5.16.1609 NMAC - Rp, 20 NMAC 5.16.1609, 8/15/03]

20.5.16.1610 R E Q U I R E M E N T S FOR PROFESSIONAL ENGINEERS: If the involvement of a professional engineer is required for the corrective action being conducted, the firm's qualification requirements shall include licensure by the New Mexico State Board of Licensure for Professional Engineers and Surveyors in the discipline of engineering appropriate to the corrective action. This requirement may be met by demonstrating that the firm has on

staff or available by contract a professional engineer licensed in the appropriate discipline.
[20.5.16.1610 NMAC - Rp, 20 NMAC 5.16.1610, 8/15/03]

20.5.16.1611 ADVERSE DETERMINATIONS ON REQUESTS TO QUALIFY FIRMS:

A. In reviewing a firm's qualifications to perform corrective action, the department shall consider the nature of the work to be performed under the submitted workplan. Except as provided in Subsections B and C of this section, the department's determination on a request to qualify a firm for a workplan involving remediation shall be consistent with the department's selection of the firm's proposal for remediation under 20.5.17 NMAC, if applicable.

B. Failure of a qualified firm to complete work described in one or more approved workplans to the satisfaction of the department may be taken into consideration when the firm's qualifications are reviewed by the department for purposes of future workplans.

C. In the case of a remediation plan, the failure of a qualified firm to complete work described in an approved workplan to the satisfaction of the department may result in a determination by the department that further work by the firm is not eligible for payment or that a new remediation proposal or workplan, or both, is required.

D. Nothing in this part is intended to affect the rights or obligations of the department or its contractors in any suspension or debarment proceedings undertaken by the department under the Procurement Code, NMSA 1978, sections 13-1-28 through 13-1-199. Suspension or debarment under the Procurement Code will be considered, however, in the department's determination on a firm's qualifications under this part.
[20.5.16.1611 NMAC - N, 8/15/03]

20.5.16.1612 APPEALING ADVERSE DETERMINATIONS:

A. A firm whose request for qualification under this part is denied may obtain review of the decision by either:

(1) submitting to the department a written request for informal review pursuant to 20.5.16.1613 NMAC; or

(2) submitting to the secretary or the secretary's designee a written request for review on written submittals pursuant to 20.5.16.1614 NMAC.

B. Any request for administrative review initiated under Subsection A of this section must be postmarked within 15 days of the date of the decision to be

reviewed.

C. A firm may request review on written submittals under 20.5.16.1614 NMAC without first requesting informal review under 20.5.16.1613 NMAC. If, however, the firm first requests informal review under 20.5.16.1613 NMAC, the firm thereafter may request review on written submittals under 20.5.16.1614 NMAC of the determination made by the department pursuant to Subsection D of 20.5.1613 NMAC, provided that the request for review on written submittals under 20.5.16.1614 NMAC is postmarked within 15 days of the date of the determination made by the department pursuant to Subsection D of 20.5.16.1613 NMAC.

D. Review under this part does not stay the decision being reviewed nor does it apply to or affect the secretary's authority to issue compliance orders or otherwise seek enforcement of any of the provisions of 20.5 NMAC.

[20.5.16.1612 NMAC - N, 8/15/03]

20.5.16.1613 INFORMAL REVIEW:

A. Every request for informal review by a firm shall be in writing and shall specify the grounds upon which the firm objects to the decision to be reviewed. Every request for informal review shall be submitted to the department by the deadline set out in Subsections B and C of 20.5.16.1612 NMAC.

B. The department shall afford prompt opportunity for an informal conference at which the firm may present the firm's views on the issues raised in the request for review and offer any supporting documentation or testimony. The department shall notify the firm of the time, date and place of the informal conference.

C. The member of department staff conducting the review must be someone other than the employee who made the original decision not to qualify the firm to perform corrective action under this part.

D. After considering all written and oral views presented, the department shall affirm, modify or reverse the original decision and shall furnish the firm with a written notification of its determination.

[20.5.16.1613 NMAC - N, 8/15/03]

20.5.16.1614 REVIEW BY THE SECRETARY OR THE SECRETARY'S DESIGNEE ON WRITTEN SUBMITTALS:

A. Every request for review by the secretary or the secretary's designee on written submittals shall be in writing and shall specify the grounds upon which the firm objects to the decision to be

reviewed. The request shall be accompanied by any and all written materials and argument which the firm wishes the secretary or the secretary's designee to consider upon review. The request and all written materials and argument shall be submitted to the secretary or the secretary's designee by the deadline set out in Subsections B and C of 20.5.16.1612 NMAC.

B. Within 15 days of the filing of the firm's request for review and submittal of all the firm's supporting material, department staff shall provide to the secretary or the secretary's designee any and all written materials and argument in support of the position of department staff on the issues raised by the firm.

C. For good cause shown, the secretary or the secretary's designee may permit either party (that is, either department staff or the firm) additional time in which to submit the supporting written materials and argument allowed by Subsections A and B of this section. Any extension of time to submit written submittals shall not include the authority to extend the time to file a request for review under this part.

D. The action of the secretary or the secretary's designee on the request for review shall be based on the written materials and argument submitted pursuant to this section unless the secretary or the secretary's designee schedules a hearing on the request for review as set forth below.

E. The secretary or the secretary's designee may exercise discretion in whether to grant a hearing requested by the firm seeking review. If the secretary exercises the discretion to hold a hearing, the secretary shall provide notice of the time and place of the hearing to the firm making the request.

F. If the secretary chooses to hold a hearing as described in Subsection E of this section, the secretary shall hold the hearing within 60 days after receiving the written materials and argument described in Subsection A or after receiving the request for a hearing, whichever occurs last. In the event the department holds a hearing, the cost of the court reporter and transcript shall be paid by the party that requested the hearing. The hearing shall be conducted in accordance with 20.1.5 NMAC.

G. The action of the secretary or the secretary's designee on the request for review shall be by written order and shall state the decision and the reason therefor. The secretary or the secretary's designee shall send a copy of the order to the firm and furnish a copy to department staff promptly after the order is entered. This written order shall be the department's final action on the request for review. Any

judicial review of this final order shall be as provided by applicable law.

[20.5.10.1614 NMAC - N, 8/15/03]

**NEW MEXICO
DEPARTMENT OF GAME AND FISH**

This is an amendment to 19.31.8 NMAC Sections 14 and 25

19.31.8.14 ANTELOPE (2003-2004):

A. Antelope hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open areas or AMU's, shall be as indicated below. The director may change or cancel all hunts on military lands to accommodate closures on those lands; provided the season length and bag limit shall remain the same as assigned on original hunt code.

(1) Oct. 4 - 5, ANT-1-101, 200, MB, 3, 5, 9, 10, 11, 12 - 18, 20.

(2) Sept. 13 - 14, ANT-1-102, 35, MB, 19: Stallion range of WSMR.

(3) Sept. 20 - 21, ANT-1-103, 300, MB, 6, 23 - 27, 31 - 34, 36 - 40, 43.

(4) Sept. 27 - 28, ANT-1-104, 75, F-IM, selected ranches in SE area (youth only, must provide hunter education certification number on application).

(5) Aug. 23 - 25, ANT-1-105, 300, MB, 41, 42, 44 - 49, 53 - 58.

(6) Sept. 13 - 14, ANT-1-106, 10, MB, 29: McGregor range (military only, must be full time active military and proof of military status must accompany application).

B. Antelope hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open AMU's, shall be as indicated below:

(1) Aug. 23 - 31, ANT-2-101, 10, MB, 3, 5, 10.

(2) Aug. 23 - 31, ANT-2-102, 6, MB, 9.

(3) Aug. 23 - 31, ANT-2-103, 15, MB, 12.

(4) Aug. 23 - 31, ANT-2-104, 30, MB, 13.

(5) Aug. 23 - 31, ANT-2-105, 25, MB, 16.

(6) Aug. 23 - 31, ANT-2-106, 30, MB, 20.

(7) Aug. 23 - 27, ANT-2-107, 200, MB, 6, 23 - 27, 30 - 34, 36 - 40, 43.

(8) Aug. 9 - 13, ANT-2-108, 100, MB, 42, 44 - 49, 53 - 58.

~~(9) Aug. 23-31, ANT-2-109 2, MB, 17~~

C. Antelope hunts for muzzleloaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open areas or AMU's, shall be as indicated below:

(1) Sept. 13 - 14, ANT-3-101, 50, MB, 29.

(2) Sept. 13 - 14, ANT-3-103, 10, MB, 29: McGregor range (youth only, must provide hunter education certification number on application).

(3) Aug. 16 - 19, ANT-3-104, 175, MB, 52: portion west of the Rio Grande.

D. Antelope hunts for handicapped hunters, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open AMU's, shall be listed below:

(1) Aug. 2 - 3, ANT-4-101, 2, MB, 9.

(2) Aug. 2 - 3, ANT-4-102, 2, MB, 12.

(3) Aug. 2 - 3, ANT-4-103, 5, MB, 13.

(4) Aug. 2 - 3, ANT-4-104, 2, MB, 16.

(5) Aug. 2 - 3, ANT-4-105, 2, MB, 20.

(6) Aug. 2 - 4, ANT-4-106, 45, MB, 3, 5, 6, 10, 23-28, 31-34, 36-39, and 43.

(7) Aug. 2 - 3, ANT-4-107, 25, MB, 42, 44 - 49, 53 - 58.

E. The director may cancel portions of any antelope hunt or set a bag limit of any one antelope if summer surveys indicate the need for such action. The director may allot up to 6,000 private land antelope licenses for use on those ranches whose owners, manager, or lessees sign a hunting agreement with the department.

F. Private land antelope hunt dates shall be as indicated below, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and AMU's open:

(1) Sept. 20 - 21, ANT-1-701, unlimited, F-IM, selected ranches in AMU's 1, 2, 3, 5, 6, 7, 8, 10, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43.

(2) Sept. 27 - 28, ANT-1-702, unlimited, F-IM, selected ranches in AMU's 1, 2, 3, 5, 6, 7, 8, 10, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43.

(3) Sept. 20 - 22, ANT-1-703, unlimited, MB, 41, 42, 44, 45, 46, 47, 48, 49, 53 - 58.

G. Bow and mobility-impaired antelope hunters shall not be allowed in any AMU or portion thereof that has been administratively closed by the director to hunting.

[19.31.8.14 NMAC - Rp 19.31.8.14 NMAC, 4-1-2003; A, 4-30-2003; A, 7-31-2003]

19.31.8.25 ANTELOPE (2004-2005):

A. Antelope hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open areas or AMU's, shall be as indicated below. The director may change or cancel all hunts on military lands to accommodate closures on those lands; provided the season length and bag limit shall remain the same as assigned on original hunt code.

(1) Oct. 2 - 3, ANT-1-101, 200, MB, 3, 5, 9, 10, 11, 12 - 18, 20.

- (2) Sept. 11 - 12, ANT-1-102, 35, MB, 19: Stallion range of WSMR.
- (3) Sept. 18 - 19, ANT-1-103, 300, MB, 6, 23 - 27, 31 - 34, 36 - 40, 43.
- (4) Sept. 25- 26, ANT-1-104, 75, F-IM, selected ranches in SE area (youth only, must provide hunter education certification number on application).
- (5) Aug. 21 - 23, ANT-1-105, 300, MB, 41, 42, 44 - 49, 53 - 58.
- (6) Sept. 11 - 12, ANT-1-106, 10, MB, 29:McGregor range (military only, must be full time active military and proof of military status must accompany application).

B. Antelope hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open AMU's, shall be as indicated below:

- (1) Aug. 21 - 29, ANT-2-101, 200, MB, 3, 5, 10.
- (2) Aug. 21 - 29, ANT-2-102, 6, MB, 9.
- (3) Aug. 21 - 29, ANT-2-103, 15, MB, 12.
- (4) Aug. 21 - 29, ANT-2-104, 30, MB, 13.
- (5) Aug. 21 - 29, ANT-2-105, 25, MB, 16.
- (6) Aug. 21 - 29, ANT-2-106, 30, MB, 20.
- (7) Aug. 21 - 25, ANT-2-107, 200, MB, 6, 23 - 27, 30 - 34, 36 - 40, 43.
- (8) Aug. 7 - 11, ANT-2-108, 100, MB, 42, 44 - 49, 53 - 58.
- (9) Aug. 21-29, ANT-2-109, 2, MB, 17

C. Antelope hunts for muzzleloaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open areas or AMU's, shall be as indicated below:

- (1) Sept. 11 - 12, ANT-3-101, 50, MB, 29.
- (2) Sept. 11 - 12, ANT-3-102, 10, MB, 29: McGregor range (youth only, must provide hunter education certification number on application).
- (3) Aug. 21 - 24, ANT-3-103, 175, MB, 52: portion west of the Rio Grande.

D. Antelope hunts for handicapped hunters, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open AMU's, shall be listed below:

- (1) Aug. 7 - 8, ANT-4-101, 2, MB, 9.
- (2) Aug. 7 - 8, ANT-4-102, 2, MB, 12.
- (3) Aug. 7 - 8, ANT-4-103, 5, MB, 13.
- (4) Aug. 7 - 8, ANT-4-104, 2, MB, 16.
- (5) Aug. 7 - 8, ANT-4-105, 5, MB, 18.
- (6) Aug. 7 - 8, ANT-4-106, 2, MB, 20.
- (7) Aug. 7 - 9, ANT-4-107, 45, MB, 3, 5, 6, 10, 23-28, 31-34, 36-39, and 43.
- (8) Aug. 7 - 8, ANT-4-108, 25, MB, 42, 44 - 49, 53 - 58.

E. The director may cancel portions of any antelope hunt or set a bag limit of any one antelope if summer surveys indicate the need for such action. The director may allot up to 6,000 private land antelope licenses for use on those ranches whose owners, manager, or lessees sign a hunting agreement with the department.

F. Private land antelope hunt dates shall be as indicated below, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and AMU's open:

- (1) Sept. 18 - 19 ANT-1-701, unlimited, F-IM, selected ranches in AMU's 1, 2, 3, 5, 6, 7, 8, 10, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43.
- (2) Sept. 25 - 26, ANT-1-702, unlimited, F-IM, selected ranches in AMU's 1, 2, 3, 5, 6, 7, 8, 10, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43.
- (3) Sept. 18 - 20, ANT-1-703, unlimited, MB, 41, 42, 44, 45, 46, 47, 48, 49, 53 - 58.

G. Bow and mobility-impaired antelope hunters shall not be allowed in any AMU or portion thereof that has been administratively closed by the director to rifle hunting.

[19.31.8.25 NMAC – Rp 19.31.8.25 NMAC, 4-1-2003; A, 7-31-2003]

<p>NEW MEXICO REGULATION AND LICENSING DEPARTMENT MANUFACTURED HOUSING DIVISION</p> <p>This is an amendment to 14.12.2 NMAC section 25, effective 8/11/03:</p> <p>14.12.2.25 FEES:</p> <p>A. Fees shall not be refunded.</p> <p>B. Examination fee is Fifty Dollars (\$50.00).</p> <p>C. Annual license fees:</p> <p>(1) Manufacturer I: Five Hundred</p>	<p>Dollars (\$500.00).</p> <p>(2) Manufacturer II-Re-furbisher: Four Hundred Dollars (\$400.00).</p> <p>(3) Dealer: Two Hundred Dollars (\$200.00).</p> <p>(4) Installer and Repairman: [One Hundred Dollars (\$100.00)] <u>Two Hundred Dollars (\$200.00)</u>.</p> <p>(5) Salesperson: Fifty Dollars (\$50.00).</p> <p>(6) Broker: Two Hundred Dollars (\$200.00).</p> <p>(7) Associate Broker: Fifty Dollars (\$50.00).</p> <p>D. Inspection or Re-inspection fee(s): [Forty Five Dollars (\$45.00)] <u>Sixty Five Dollars (\$65.00)</u>.</p> <p>E. Permits: [Forty Five</p>	<p>Dollars (\$45.00)] <u>Sixty Five Dollars (\$65.00)</u>.</p> <p>F. Transfer of Salesperson's License: Twenty-five Dollars (\$25.00).</p> <p>G. Re-issuance of qualifying party certificate from one business to another: Twenty-five Dollars (\$25.00).</p> <p>H. Manufacturer II-Re-furbisher Inspection Permit: One Hundred and Twenty Dollars (\$120.00).</p> <p>I. Contractors and journeyman licensed by the Construction Industries Division performing work on manufactured homes shall be registered with the Manufactured Housing Division (MHD) and pay an annual registration fee of [(\$25.00)] <u>two hundred dollars (\$200.00)</u></p>
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per licensee and post with MHD an installer's or repairman's consumer protection bond, pursuant to Section 14.12.2.31 NMAC.

J. Addition of a qualifying party to an existing license: Twenty-five Dollars (\$25.00).

K. Bad or returned checks:

(1) An additional charge of \$20.00 shall be made for any check, which fails to clear or is returned for any reason.

(2) Such returned checks shall cause any license issued, renewed or test scheduled as the result of such payment to be immediately suspended until proper payment in full is received.

L. Consumer Complaint inspections: [~~Forty Five Dollars (\$45.00)~~] Sixty Five Dollars (\$65.00) for each inspection. Inspections shall be paid by the installer/repairman, dealer, manufacturer or broker, as appropriate.

M. Temporary Dealer's Display License: Twenty-five Dollars (\$25.00).

N. Pre-owned label: Forty Dollars (\$40.00).

O. Change of a licensee's name, address or license status: Twenty-five Dollars (\$25.00).

P. Inspection Fee for removal of a "Prohibited Sales Notice" by the Division: Sixty Dollars (\$60.00).

Q. Requested inspection: [~~Forty Five Dollars (\$45.00)~~] Sixty Five Dollars (\$65.00).

R. Manufacturer's supervision or compliance monitoring, pursuant to an amount approved by HUD.

[14.12.2.25 NMAC – Rp, 14 NMAC 12.2.25, 9-14-00; A, 8-11-03]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2003

Volume XIV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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