

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 118 REPORTING AND INVESTIGATION OF SUSPECTED AND CONFIRMED RELEASES

20.5.118.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.118.1 NMAC - N, 07/24/2018]

20.5.118.2 SCOPE: This part applies to owners and operators of storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are 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.
[20.5.118.2 NMAC - N, 07/24/2018]

20.5.118.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17, NMSA 1978.
[20.5.118.3 NMAC - N, 07/24/2018]

20.5.118.4 DURATION: Permanent.
[20.5.118.4 NMAC - N, 07/24/2018]

20.5.118.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.118.5 NMAC - N, 07/24/2018]

20.5.118.6 OBJECTIVE: The purpose of 20.5.118 NMAC is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to ensure that suspected and confirmed releases from storage tank systems are promptly reported and investigated and that corrective action is promptly initiated.
[20.5.118.6 NMAC - N, 07/24/2018]

20.5.118.7 DEFINITIONS: The definitions in 20.5.101 NMAC apply to this part.
[20.5.118.7 NMAC - N, 07/24/2018]

20.5.118.8 to 20.5.118.1799 [RESERVED]

20.5.118.1800 REPORTING OF SPILL OR RELEASE:

A. Owners, operators, certified installers, certified junior installers, and testers shall give notice of any suspected or confirmed release from a storage tank system pursuant to 20.5.118.1801 or 20.5.118.1802 NMAC, or any spill or any other relevant emergency situation to the department by telephone within 24 hours. The owner, operator, certified installer, certified junior installer, or tester giving the notice shall provide the following items of information to the best of the owner's, operator's, certified installer's, certified junior installer's, or tester's knowledge:

- (1) the name, address, and telephone number of the agent in charge of the site at which the storage tank system is located, as well as the name, address and telephone number of the owner and the operator of the storage tank system;
- (2) the name, address, facility ID number, and owner ID number of the site at which the storage tank system is located, as listed on the tank registration certificate, and the location of the storage tank system on that site;
- (3) the date, time, location and duration of the spill, release or suspected release;
- (4) the source and cause of the spill, release or suspected release;
- (5) the storage tank system description;
- (6) a description of the spill, release or suspected release, including its chemical composition;

- (7) the estimated volume of the spill, release or suspected release; and
- (8) any actions taken to mitigate immediate damage from the spill, release or suspected

release.

B. Owners and operators shall provide a seven-day report describing the spill, release or suspected release and any investigation or follow-up action to the department within seven 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 this section and provide any appropriate amendments to the information contained in the prior oral notification.

C. The department shall determine whether a release is a confirmed release based on the 24-hour and seven-day reports prepared in accordance with this section, 20.5.118.1801 NMAC and 20.5.18.1802 NMAC, monitoring results, system checks, the investigation performed in accordance with 20.5.18.1801 NMAC, and any other information available to the department. The department shall provide a written determination that a release is a confirmed release to all affected owners and operators, and shall state the basis for the determination.

[20.5.118.1800 NMAC - N, 07/24/2018]

[To provide notice to the department under Subsection A of this section, telephone the department staff person currently on duty. The petroleum storage tank bureau's pages on the department website provide the phone number and an optional incident reporting form.]

20.5.118.1801 SUSPECTED RELEASES:

A. Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions, which are considered suspected releases, to the department within 24 hours, in accordance with 20.5.118.1800 NMAC, and follow the procedures in Subsection B of this section:

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

(2) unusual operating conditions such as, but not limited to, no flow of product, slow flow of product, the erratic function of product dispensing equipment, the sudden loss of a regulated substance from the storage tank system, an unexplained presence of water in the storage tank system, the presence of a regulated substance in containment sumps or in the annular or interstitial space of secondarily contained tanks or piping, or interstitial sensor alarm conditions, unless after an investigation:

(a) the storage tank system equipment or component is determined not to have released regulated substances into the environment;

(b) all defective storage tank system equipment or components are immediately repaired or replaced; and

(c) for secondarily contained storage tank systems, except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(3) monitoring or test results, including investigation of an alarm, that are anything other than a "pass" or "normal" result from any release detection method in 20.5.108 NMAC and 20.5.111 NMAC, or that indicate a release may have occurred unless:

(a) the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring is performed which does not indicate that a release has occurred;

(b) the leak is contained in the secondary containment; and
(i) except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(ii) all defective storage tank system equipment or components are immediately repaired or replaced.

(c) the investigation determines no release has occurred;

(d) in the case of statistical inventory reconciliation, described in 20.5.108 NMAC, inconclusive or failed monthly results are overturned by the third-party vendor within 24 hours of the receipt of the report from the vendor; or

(e) the alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling or dispensing from the tank during release detection testing).

(4) failing results from continuous monitoring or periodic testing of spill prevention equipment and containment sumps; or

(5) other evidence of failure or deterioration such as but not limited to holes, cracks, or corrosion in the storage tank system.

B. Owners and operators shall investigate all suspected releases of regulated substances within seven days of discovery of the suspected release. Owners and operators shall conduct appropriate storage tank system testing, site check or another procedure, with prior approval by the department of the procedure.

(1) System test. Owners and operators shall conduct appropriate system tests approved by the department according to the requirements for tightness testing for USTs in 20.5.108.804 NMAC and in Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC, and for ASTs in 20.5.111.1101 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC, or as appropriate, secondary containment testing described in 20.5.107 NMAC or 20.5.110 NMAC.

(a) The test must determine whether:

- (i) a leak exists in any portion of the tank or piping that has the potential to contain a regulated substance;
- (ii) a breach of the inner or outer wall of the secondary containment has occurred; or
- (iii) the integrity of the tank system is compromised such that a release has occurred.

(b) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade or close the storage tank system. In addition, owners and operators must begin corrective action in accordance with 20.5.119 NMAC if test results for the storage tank system indicate that a release has occurred.

(c) Further investigation is not required if test results for the storage tank system do not show a leak exists and if environmental contamination is not the basis for suspecting a release.

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

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

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

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

(3) In the case of a suspected release indicated by statistical inventory reconciliation, after following the process outlined in 20.5.108.809.C NMAC, owners and operators shall conduct appropriate system tests or site checks approved by the department.

C. In the event of a suspected release, the secretary may take any action necessary, including suspension of the use of a storage tank system and requiring additional testing or other actions to investigate whether a release has occurred.

D. Owners and operators who do not demonstrate that a release has not occurred within 30 days of the reporting of a suspected release, or another timeframe approved by the department, shall be subject to the requirements of 20.5.118.1802 NMAC and the requirements of 20.5.119 NMAC or 20.5.120 NMAC for confirmed releases.

E. Owners and operators shall report to the department in writing all results of the storage tank system test, site check or other procedure approved by the department in accordance with this part. Any report submitted in accordance with this section shall contain, at a minimum, the information required in Subsection A of 20.5.118.1800 NMAC.

[20.5.118.1801 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

20.5.118.1802 CONFIRMED RELEASES:

A. Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions to the department within 24 hours, in accordance with 20.5.118.1800 NMAC:

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

- (2) evidence of released regulated substances at the storage tank site including, but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water; and
- (3) evidence of released regulated substances in soils, including, but not limited to:
 - (a) any soil analytical results that indicate the presence of total petroleum hydrocarbons at concentrations equal to or exceeding 100 parts per million;
 - (b) any petroleum hydrocarbon vapor field screening results that exceed 100 whole instrument units; or
 - (c) significant visible staining or obvious petroleum odors.

B. If a release is confirmed, the secretary may take any action necessary, including suspension of the use of a storage tank system, until the owner or operator identifies and stops the release.

C. Owners and operators of storage tank systems shall address confirmed releases in accordance with 20.5.119 and 20.5.120 NMAC, and shall empty the storage tank and close the storage tank system in accordance with 20.5.115 NMAC until the storage tank system is repaired or replaced so that the release will not recur. [20.5.118.1802 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

20.5.118.1803 SPILLS AND OVERFILLS:

A. Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow, and report the spill or overflow to the department within 24 hours in accordance with 20.5.118.1800 NMAC except as provided in Subsection C of this section, and begin corrective action in accordance with 20.5.119 and 20.5.120 NMAC in the following cases:

(1) any spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons, that causes a sheen on nearby surface water, or that creates a vapor hazard pursuant to 20.5.119.1902 NMAC; and

(2) any 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), and 40 CFR part 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 within another reasonable time period which has been established by the department.

C. Pursuant to 40 CFR parts 302.7 and 355.40, owners and operators shall also immediately report a release of a hazardous substance equal to or in excess of its reportable quantity 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.

[20.5.118.1803 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

HISTORY OF 20.5.118 NMAC:

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

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

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

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

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 7/16/03), repealed 6/15/09.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 6/15/09), repealed 7/24/18.

Other History:

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

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

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 7/16/03) was replaced by 20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 6/15/09.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 6/15/09) was reformatted, renumbered, and replaced by 20.5.118 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 7/24/18.