

NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 23 - PERMIT ISSUANCE; PROCEDURES FOR DECISION MAKING

001 Except as more expressly provided in Title 115 - Rules of Practice and Procedure, this chapter contains procedures for issuing, modifying, revoking, reissuing or termination permits.

002 Preparation of a draft permit or denial of a permit.

002.01 Once an application is complete, the Director shall issue a preliminary decision approving or denying the permit.

002.02 If the Director decides to prepare a draft permit, that draft permit shall contain the following information and follow the public notice and participation procedures outlined below:

002.02A Facility standards.

002.02B All conditions, compliance schedules, and monitoring requirements.

002.03 If the Director tentatively decides to deny the permit application, a notice of intent to deny the permit shall be issued. A notice of intent to deny the permit application shall follow the same procedures as any draft permit prepared under this Chapter.

002.04 All draft permits shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The director shall provide an opportunity for a public hearing, issue a final decision, and respond to significant comments.

003 Fact sheet.

003.01 A fact sheet shall be prepared for a major discharger or other discharge which the Director determines involves widespread public interest or where major issues are raised with respect to the application described in the public notice. The fact sheet shall briefly specify the principal facts and significant legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

003.02 Each fact sheet shall contain:

003.02A A brief description of the type of facility or activity which is the subject of the draft permit;

003.02B The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored or disposed of, injected, emitted, or discharged;

003.02C Reasons any requested variances or alternatives to required standards do or do not appear to be justified;

003.02D A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions on which permit requirements are based;

003.02E Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal.

003.02F When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:

003.02F1 Limitations to control toxic pollutants;

003.02F2 Limitations on internal waste streams;

003.02F3 Limitations on indicator pollutants;

003.02F4 Limitations set on a case-by-case basis;

003.02F5 Limitations to meet the criteria for permit issuance, or

003.02F6 Waivers from monitoring requirements granted under this chapter.

003.02G For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users.

003.02H When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application;

003.02I For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit;

003.02J A description of the procedures for reaching a final decision on the proposed permit action, including the beginning and ending dates of the 30-day comment period, address where comments should be sent, procedures for requesting a public hearing, and any

other procedures by which the public may participate;  
and;

003.02K Name and telephone number of a person to  
contact for additional information.

004 Statement of basis. When a fact sheet is not prepared, a  
statement of basis will be prepared which shall briefly describe  
the derivation of the conditions of the draft permit and the  
reasons for them, or in the case of a notice to deny or  
terminate a permit, the reasons supporting the tentative  
decision. This statement of basis shall be sent to the  
applicant and on request, to any other person.

005 Administrative record for draft permits.

005.01 The provisions of a draft permit shall be based on  
the administrative record defined in Section 005.02 of this  
Chapter.

005.02 The administrative record shall consist of the  
following:

005.02A The application, and any supporting data  
furnished by the applicant;

005.02B The draft permit or notice of intent to deny  
the application or to terminate the permit;

005.02C The statement of basis or fact sheet as  
defined 003.02 and 004 in this Chapter;

005.02D All documents cited in the statement of basis  
or fact sheet; and

005.02E Other documents contained in the supporting  
file for the draft permit including all  
correspondence, memoranda, and meeting notes that are  
related to the development of the draft permit.

006 Public notice of permit actions and public comment period.

006.01 Public notice of a draft permit, intent to deny, new source determination, and public hearings shall be issued by circulating the notice in the geographical area of the proposed discharge through publication in a daily or weekly newspaper with general circulation, and mailed to the applicant, and to any other person, agency, or group upon request or on a department mailing list to receive NPDES public notices.

006.02 Denial of a request for modification, revocation and reissuance, or termination as unjustified are not subject to public notice, comment, or hearing, but the requester shall receive a brief written response giving the reason for the decision.

006.03 Persons or groups will have 30 days from issuance of public notice to either provide the director with any written comments concerning the proposed discharge or action for which the public notice has been issued, or request a public hearing in writing, or both, unless such 30 day period is extended by the director.

006.04 If any information or public comment is received during the comment period which appears to raise substantial issues concerning a permit, the director may formulate a new draft permit which supersedes the original draft permit and republish the public notice. If no major issues are raised, and the director issues the permit, the director shall prepare a written response to each submitted comment.

006.05 Content of public notice. The public notice of a draft permit or tentative permit action shall contain:

006.05A Name, address, and phone number of the agency processing the permit;

006.05B Name and address of the permit applicant, and if different, of the facility or activity regulated by the permit

006.05C A brief description of the business conducted at the facility or activity described in the permit application;

006.05D Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

006.05E A general description of the location of existing or proposed discharge point and the name of the receiving water (if applicable) and the sludge use and disposal practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application;

006.05F The name of the POTW into which each discharge is made (if applicable) and whether such discharge is a new or existing discharge.

006.05F A brief description of the basis for the draft permit conditions and any variances or alternative less stringent effluent limitations;

006.05G A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

006.05H The address and telephone number of the premises at which interested persons may obtain

further information, request a copy of the fact sheet, and inspect and copy NPDES forms and related documents.

006.05I Any additional information considered necessary or proper.

006.06 Public comments and requests for public hearings. During the public comment period, any interested person may submit written comments on the draft permit or proposed permit action and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

006.07 Public hearings.

006.07A A public hearing shall be held when the director finds, on the basis of requests, there is a significant degree of public interest in a draft permit.

006.07B The director may also hold a public hearing at his or her discretion if the circumstances justify it.

006.07C Public notice of the hearing shall be given in the same manner as public notice of pending permit actions and shall be issued at least 30 days prior to the public hearing.

006.07D In addition to the general public notice described in 006.05 above, the public notice of hearing shall contain the following information:

006.07D(1) Reference to the date of previous public notices relating to the permit;

006.07D(2) Date, time, and place of hearing;

006.07D(3) A brief description of the nature and purpose of the hearing including the applicable rules and regulations; and

006.07D(4) A concise statement of the issues raised.

006.08 All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period.

007 Issuance and effective date. After the close of the public comment period on a draft permit, the director shall issue a final permit decision, notify the applicant and specify the effective date of the permit.

008 Response to comments. At the time that any final permit decision is issued, the director shall issue a response to comments, which shall be available to the public. This response shall:

008.01 Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

008.02 Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

009 The director or his or her designee shall base final permit decisions on the administrative record described in this section which shall consist of:

009.01 The administrative record for the tentative permit decision;

009.02 All comments received during the public comment period;

009.03 The tape or transcript of any hearings held;

009.04 Any written materials submitted at such a hearing;

009.05 Any response to comments prepared by the agency; and

009.06 The final permit or permit decision.

010 Any other state affected by the issuance of an NPDES permit or interstate agency having water quality control authority over the receiving waters shall be sent a copy of the public notice at the time of issuance thereof, and upon request, a fact sheet and a complete copy of the NPDES permit application and a copy of the draft permit. Such state shall be afforded within the 30 days after issuance of public notice the right to submit written comments or recommendations to the Director for the proposed discharge, or request a public hearing, which the Director may incorporate into the final determination or notify the affected state or interstate agency in writing, with a copy to be forwarded to the Regional Administrator. He or she shall state his or her reasons for not incorporating that state's or interstate agency's recommendations into final determination.

011 At the time of issuance of public notice, the Director shall transmit a copy of the public notice, and upon request, a copy of the fact sheet to the appropriate District Engineer of the Army Corps of Engineers of each application for an NPDES permit to discharge pollutants (other than minor discharges) into waters of the state unless such right of the District Engineer is waived for a particular class, type and size within any category of point sources or with respect to discharges to waters of the state or parts thereof. Such agreement or waiver

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of right shall become a part of the public record and a copy thereof shall be forwarded to the Regional Administrator. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit.

012 The Director shall mail copies of public notice (or upon specific request, copies of fact sheets) for applications for NPDES permits to any Federal, State, or local agency upon request, and provide such agencies with an opportunity to respond, comment, make recommendations or request a public hearing. Those agencies shall include the agency responsible for area wide waste treatment management plans pursuant to Section 208(b) of the Clean Water Act and the Agency responsible for the preparation of a State Water Quality Management Plan pursuant to any approved continuous planning process under Section 303(e) of the Clean Water Act.

013 The final decision to issue a permit may be reviewed by the district court in a proceeding instituted by filing a petition in error pursuant to Neb. Rev. Stat. §25-1901 and Neb. Rev. Stat. §84-917.

014 In accordance with Neb. Rev. Stat. §81-1507(3), any person who is denied a permit or had a permit revoked or modified may request a contested case under Chapter 7 of this title by filing a petition with the director within 30 days after receipt of notice of the permit decision.

Enabling Legislation: Neb. Rev. Stat. §81-1505

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