Title 129 – Department of Environmental Quality

Chapter 8 - OPERATING PERMIT CONTENT

001 Each Class I operating permit shall include the standard permit requirements in sections 002 through 013.

002 Emission limitations and standards. Each permit shall specify emission limitations and standards, including those operational requirements and limitations that assure compliance with all requirements applicable at the time of permit issuance.

002.01 The permit shall specify and reference the origin of, and authority for, each term or condition. In addition it shall identify any difference to the terms or conditions as compared to the applicable requirement upon which the term or condition is based.

002.02 Where an applicable requirement is more stringent than an applicable requirement specified in Chapter 26, both provisions shall be incorporated into the permit.

002.03 If an applicable implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance equivalent to that contained in the plan, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.

003 Permit duration.

003.01 Class I and Class II operating permits shall be issued for a fixed term not to exceed 5 years, except as provided below:

003.02 The Director may issue any Class I permit, except as limited in 003.04 and 003.05, for a duration that is less than the full allowable term under 003.01.

003.03 The term of a permit shall not be extended by modification beyond the maximum duration specified except that the conditions of an expiring permit shall continue until the effective date of a new permit in accordance with Chapter 12, provided that:

003.03A The permittee has submitted a timely application which has been deemed complete by the Department, and

003.03B The Director, through no fault of the permittee, does not issue a new permit with an effective date before the expiration date of the previous permit.

003.04 Class I permits for affected sources shall be issued for a fixed term of 5 years.

003.05 Class I permits for solid waste incineration units combusting municipal waste subject to a performance standard under Chapter 18 shall be issued for a period not to exceed 5 years.

004 Monitoring and related recordkeeping and reporting requirements.

004.01 Each Class I permit shall contain the following monitoring requirements:

004.01A All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods established in Chapter 31 or pursuant to any permit or order issued by the Director under this Title.

004.01B Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

004.01C As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods and quality assurance and control procedures.

004.02 Each Class I permit shall incorporate all applicable recordkeeping requirements and require, if necessary, the following:

004.02A Records of required monitoring information that include the following:

004.02A1 The date and place as defined in the permit, and time of sampling or measurements;

004.02A2 The date(s) analyses were performed;

004.02A3 The company or entity that performed the analyses;

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004.02A4 The analytical techniques or methods used;

004.02A5 The results of such analyses; and

004.02A6 The operating conditions existing at the time of sampling or measurement.

004.02B Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The permit may specify that records may be maintained in computerized form.

004.03 Each Class I permit shall incorporate all applicable reporting requirements and shall, at a minimum, require the following:

004.03A Submittal of reports of required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official in accordance with Chapter 7, section 008.

004.03B Reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permit shall require reporting of deviations as follows:

004.03B1 Any deviation resulting from emergency or upset conditions as defined in Chapter 11 shall be reported within two working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under said section;

004.03B2 Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable;

004.03B3 Any other deviations that are identified in the permit as requiring more frequent reporting than the permittee's semi-annual report shall be reported on the schedule specified in the permit.

004.03B4 All reports of deviations shall identify the probable cause of the deviations and any corrective actions or preventative measures taken.

004.04 Every report submitted under 004.03 shall be certified by a responsible official, except that a report of a deviation required under 004.03B must be submitted within ten days of the deviation. The report may be submitted initially without a certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the deviation.

005 Acid Rain Permit Condition ~~and Mercury Budget Permit~~

005.01 Acid Rain. Each Class I permit issued to an affected source shall include a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under the Act.

005.01A No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Title IV acid rain program developed under the Act, provided that such increases do not require a permit revision under any other applicable requirement.

005.01B No limit shall be placed on the number of allowances held by the source.

005.01C The allowances a source possesses shall not be a defense to noncompliance with any other applicable requirement.

005.01D Any allowance shall be accounted for according to procedures established in Chapter 26.

005.02 Reserved. ~~Mercury Budget Permit. Each mercury budget permit shall include the elements listed in sections 005.02A and 005.02B.~~

~~005.02A Each mercury budget permit will contain the identification of each mercury budget unit at the mercury budget source.~~

~~005.02B Each mercury budget permit will contain the standard requirements listed in 40 CFR 60.4106, as adopted by reference in Chapter 18, section 005.~~

~~005.02C Each mercury budget permit will be deemed to incorporate automatically the definitions of terms under 40 CFR 60.4102 and, upon recordation by the Administrator of the U.S. Environmental Protection Agency, under 40 CFR 60.4150 through 40 CFR 60.4162, every allocation,~~

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~~transfer, or deduction of a mercury allowance to or from the `compliance account of the mercury budget source covered by the permit.~~

~~005.02D The term of each mercury budget permit will be set to coincide with the mercury budget source's operating permit.~~

~~005.02E Revisions to the mercury budget permit will be made in accordance with regulations in Chapter 15.~~

006 Severability. Each Class I and Class II permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

007 General conditions. Each permit shall contain the following provisions:

007.01 The permittee must comply with all conditions of the Class I and Class II permit. Any permit noncompliance shall constitute a violation of the State Act and the Act, and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

007.02 It shall not be a defense for a permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

007.03 The permit may be modified; revoked, reopened, and reissued; or terminated for cause in accordance with this Title and Title 115, Rules of Practice and Procedure. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not supersede any permit condition.

007.04 The permit does not convey any property rights of any sort, or any exclusive privilege.

007.05 The permittee shall furnish to the Department, within the time specified by the Department, any information requested by the Department in writing to determine whether cause exists for modifying; revoking and reissuing; or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the the Department copies of records required to be kept in accordance with the permit or, for information claimed to be confidential, the permittee may furnish such

records along with a claim of confidentiality pursuant to Title 115 - Rules of Practice and Procedure.

007.06 The provisions of a permit issued under this Title supersede the provisions of any previously issued operating or construction permit.

008 Fees. Each Class I permit shall contain a provision to ensure that a major source of regulated pollutants pays fees to the Department consistent with Chapter 29.

009 Alternative operating scenarios. Each permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:

009.01 Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which the source is operating;

009.02 Must ensure that the terms and conditions of each alternative scenario meet all applicable requirements and the requirements of the permit; and

009.03 The permit shield, if requested, as described in 014 for all terms and conditions under each operating scenario.

010 Reopening for cause. Each permit shall include provisions specifying the conditions under which the permit will be reopened, revoked and reissued, or terminated, in accordance with Chapter 15, section 006.

011 Risk Management Plans. If the source is required to develop and register a risk management plan pursuant to section 112(r) of the Act and regulations adopted by the Council, the permit will specify that the permittee will comply with the requirement to register such a plan. The content of the risk management plan will not be incorporated as a permit term. The permit shall require:

011.01 Verification of plan preparation and submittal to the Department, the State Emergency Response Commission, and any Local Emergency Planning Committee; and

011.02 Annual certification in accordance with Chapter 7, 006.02I3 that the risk management plan is being properly implemented.

012 Compliance requirements. All Class I operating permits shall contain the following elements with respect to compliance:

012.01 Consistent with 004 above, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a Class I permit shall contain a certification by a responsible official that meets the requirements of Chapter 7, section 008.

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012.02 Inspection and entry requirements that require the permittee to allow the Department, EPA or an authorized representative, upon presentation of credentials and other documents, to:

012.02A Enter upon the permittee's premises at reasonable times where a source subject to a Class I operating permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

012.02B Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

012.02C Inspect at reasonable times any facilities, pollution control equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under the permit; and

012.02D Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

012.03 A schedule of compliance consistent with Chapter 7, section 006.02H.

012.04 Progress reports consistent with an applicable schedule of compliance in Chapter 7, section 006.02H to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Director. Such progress reports shall contain the following:

012.04A Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

012.04B An explanation of why any dates in the schedule of compliance were not met, or will not be met, and any preventive or corrective measures adopted.

012.05 Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

012.05A The frequency, not less than annually or such more frequent periods as specified in the applicable requirement or by the Department, of submissions of compliance certifications;

012.05B In accordance with 004 above, a means of monitoring the compliance of the source with its emissions limitations, standards and work practices;

012.05C A requirement that the compliance certification include the following:

012.05C1. The identification of each term or condition of the permit that is the basis of the certification;

012.05C2. The compliance status;

012.05C3. A determination of whether compliance was continuous or intermittent;

012.05C4. The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with 004 above; and

012.05C5. Such other facts as the Department may require to determine the compliance status of the source;

012.05D A requirement that all compliance certifications be submitted to the Administrator as well as to the Department; and

012.05E Such additional requirements as may be specified pursuant to this Title, the applicable Implementation Plan, or any permit issued under this Title.

013 The Director may place such conditions and restrictions upon a permit issued or renewed under this Title as he or she deems necessary to protect public health or the environment. Such conditions or restrictions may be placed upon the permit at the time it is issued, modified, or renewed. By way of example, and not of limitation, such conditions or restrictions may be new federal applicable requirements not yet adopted by the Council.

014 Permit Shield for Class I Permits.

014.01 If requested in the permit application, the permit shield provided in this section shall be included in the permit.

014.02 The permit shield shall provide that compliance with a permit during its term constitutes compliance with all applicable requirements identified pursuant to Chapter 7 of this Title as of the date of permit issuance, provided that:

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014.02A Such applicable requirements are included and specifically identified in the permit; or

014.02B The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination.

014.03 The permit shield does not affect:

014.03A The emergency provisions of Neb. Rev. Stat. §81-1507 of the State Act;

014.03B Liability for any violation of applicable requirements or applicable requirements under the Act prior to or at the time of permit issuance;

014.03C The applicable requirements of Chapter 26;

014.03D The authority of the Department or EPA to obtain information; or

014.03E Any other permit provisions, terms, or conditions, including, but not limited to, construction permits issued pursuant to Chapter 17 or permits issued pursuant to other State authorities and Titles.

014.04 A Class I permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

015 Each Class II operating permit shall include those requirements applicable to Class II sources and any additional requirements which the Director deems appropriate, including but not limited to, the following:

015.01 Emissions limitations and standards which are at least as stringent as any applicable requirement or other requirements contained in the State Implementation Plan.

015.02 Monitoring and related recordkeeping and reporting requirements.

015.03 Compliance certification, testing, monitoring, reporting, and recordkeeping requirements.

016 All terms and conditions in a Class I or Class II operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator of EPA and citizens under the Act except those terms and conditions which have been specifically designated as not federally enforceable under 017 below.

017 Each Class I permit shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.

018 If an applicable requirement provides for the trading of increases and decreases of emissions without a case-by-case approval of each emissions trade, and if requested by the applicant in its permit application, the Director shall
establish terms and conditions for the trading of such emissions increases and decreases within the permitted facility. Such terms and conditions shall include all terms required by this Title to determine compliance and must meet all terms specified in the applicable requirement which allows such trading.

019 If an applicant requests in its application, the Director shall establish terms and conditions in the permit allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Emissions from emissions units which are not quantifiable and for which there are no replicable procedures shall not be included in any trades. The permit shall also require compliance with all applicable requirements.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(2); 81-1505(12)(16)

Legal Citation: Title 129, Ch. 8, Nebraska Department of Environmental Quality

Changes proposed for July 2008 EQC are on pages 8-4 and 8-5.