Title 129 – Department of Environmental Quality

Chapter 7 - OPERATING PERMITS - APPLICATION

001 Duty to Apply. The owner or operator of any source required to obtain a Class I or Class II operating permit shall submit a timely and complete application in accordance with this chapter.

002 Timely Application.

002.01 Sources that are required to obtain a Class I operating permit shall file applications in accordance with the following schedule:

002.01A For the purpose of early submission of applications and processing of permits, the Department shall create and maintain an early permit application registry. The registry will be open for the first three months after the effective date of this Title under State law. Sources may request to be placed on the registry on a first come first serve basis as of the date the request is received by the Department. If necessary, the Department will complete the registry with additional sources. These additional sources will be notified of their placement on the registry. Sources on this registry shall file a complete application with the Department within twelve months of the date on which the registry is closed, but not later than March 30, 1995.

002.01B All other existing sources not on the registry shall file an application by November 17, 1996.

002.02 A source that becomes subject to the Class I operating permit program at any time following the effective date of these regulations shall file an application within 12 months of the date on which the source first becomes operational or otherwise subject to the Title V program.

002.03 A source that is required to meet the requirements under Chapters 27 or 28, or to have a permit under a preconstruction review program under Chapters 17 or 19, shall file a complete application for a Class I or Class II operating permit, if so required, or a permit revision within 12 months after the source begins operation. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

002.04 Sources that are required to obtain a Class II operating permit shall file applications by December 15, 1994, or within twelve months of the date on which

the source first becomes operational or otherwise subject to the requirement to obtain a permit.

002.05 A source issued an operating permit before November 1, 1993, may continue to operate as provided in the existing permit provided that the source has submitted a timely and complete application, until either of the following occurs:

002.05A The operating permit is terminated.

002.05B The Director issues or denies a Class I or Class II permit to the source.

002.06 For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration or such longer time as may be approved by the Director after notice to the permittee that ensures that the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.

002.07 Applications for initial phase II acid rain permits shall be submitted:

002.07A by January 1, 1996 for sulfur dioxide, and

002.07B by January 1, 1998, for oxides of nitrogen.

~~002.08 Sources required to participate in the federal Mercury Budget Trading Program must submit a complete mercury budget permit application by the later of July 1, 2008 or 18 months before the date on which the mercury budget unit commences operation. After initial issuance of a mercury budget permit, the source will submit a complete mercury budget permit renewal application at the same time it submits its renewal application for its operating permit, in accordance with Chapter 7, 002.06.~~

003 Complete Application for Class I and Class II Permits.

003.01 An application will be deemed complete if it provides all the information required and is sufficient to evaluate the subject source and its application and to determine all applicable requirements. For purposes of this chapter only, applicable requirements include applicable requirements under the Act. The application shall be certified by a responsible official for the source.

003.02 The Department shall determine if the application is complete within 60 days after receipt of the application. If the Department determines that the application is not complete and additional information is necessary to evaluate or take final action on the application, the Department may request such information in writing and set a reasonable deadline for a response. The Department may

determine that an application is complete, but later determine that additional information is needed to evaluate or take final action on the application.

003.03 If the Department does not determine that the application is not complete, the application is automatically deemed to be complete 60 days after it was received by the Department. Nothing in this section shall prohibit the Department from requesting additional information that is necessary to evaluate or take final action on the application or release the applicant from providing such information.

003.04 A source which has submitted a timely and complete application may continue to operate without a permit from the date the application is determined to be complete until final action on the application is taken, provided that the applicant submits any requested additional information by the deadline established by the Department.

004 Confidential Information for Class I and Class II Permits. A source which has submitted information to the Department under a claim of confidentiality pursuant to Title 115, Rules of Practice and Procedure, may be required by the Department to submit a copy of such information to the EPA. Confidential information must be submitted separately. The permit application, compliance plan, schedule of compliance, monitoring reports, certification, and issued permits shall be available to the public. Emissions data shall not be entitled to confidential protection.

005 Duty to Supplement or Correct Application for Class I and Class II Permits. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

006 Class I permits - Standard Application Form and Required Information.

006.01 The owner or operator of a source required to obtain a Class I operating permit shall submit an application on standard forms available from the Department.

006.02 The applicant is required to include the following information on the standardized application form or in attachments:

006.02A Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact. If the company is located on leased property, the name of the property owner shall be provided.

006.02B A description of the source's processes and products (by Standard Industrial Classification Code as published by the Executive Office of the President's Office of Management and Budget, and Source Classification Code as published by EPA's Office of Air Quality Planning and Standards) including any associated with an alternate scenario identified by the source.

006.02C The following emission-related information for each emissions unit:

006.02C1 All emissions, both actual and potential, of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are specifically exempted from listing these units in the application. The Department shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule. This information shall be provided for each operating scenario identified by the source.

006.02C2 Identification and description of all points of emissions described in 006.02C1 above in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

006.02C3 Emissions rate in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method or alternative method as approved by the Director.

006.02C4 The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules.

006.02C5 Identification and description of air pollution control equipment and compliance monitoring devices or activities.

006.02C6 Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the Class I source.

006.02C7 Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Chapter 16).

006.02C8 Calculations on which the information in the above paragraphs is based.

006.02C9 The applicant shall indicate any emission points at the facility for which the applicant intends to request coverage under a general permit.

006.02D The following air pollution control requirements:

006.02D1 Citation and description of all applicable requirements, and

006.02D2 Description of or reference to any applicable test method for determining compliance with each applicable requirement.

006.02E Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or this Title or to determine the applicability of such requirements.

006.02F An explanation of any proposed exemptions from otherwise applicable requirements.

006.02G Additional information as determined to be necessary by the permitting authority to define alternate operating scenarios identified by the source or to define permit terms and conditions related to modifications which do not require a permit revision.

006.02H A compliance plan for all Class I sources that contains all of the following:

006.02H1 A description of the compliance status of the source with respect to all applicable requirements.

006.02H2 A description as follows:

006.02H2(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

006.02H2(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis;

006.02H2(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

006.02H3 A compliance schedule as follows:

006.02H3(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

006.02H3(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner
applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;

006.02H3(c) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in non-compliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

006.02H4 A schedule for submission of certified progress reports no less frequently than every 6 months for sources
required to have a schedule of compliance to remedy a violation.

006.02H5 The compliance plan content requirements specified in these paragraphs shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

006.02I Requirements for compliance certification, including the following:

006.02I1 A certification of compliance with all applicable requirements by a responsible official consistent with section 008 of this Chapter.

006.02I2 A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

006.02I3 A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department in any permit; and

006.02I4 A statement indicating the source's compliance status with any applicable compliance assurance or periodic monitoring and compliance certification requirements of this Title.

006.02J The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by Chapter 26.

006.02K The source may request the permit shield described in Chapter 8, 014.

006.03 The Director may develop a list of insignificant activities exempted from the requirements of sections 006.02 of this Chapter and 002 of Chapter 6. The list shall be made available by the Department and updated as necessary. The Director may consider the following criteria in developing the list of insignificant activities:

006.03A Support activities (e.g., janitorial, cafeteria or laundry) may be listed as insignificant if they are not themselves marketed or traded, and do not use equipment or materials of a size or nature that are themselves subject to an applicable requirement under the Act or this title;

006.03B Activities or emission units which can be determined to result in air contaminant emissions less than those specified in Chapter 5, section 001.02 based on size, capacity or an expectation of incidental usage (e.g., back-up generators) may be determined to be insignificant. The Director may consider standard industrial practices and the results of rulemaking efforts under the Act in establishing such thresholds;

006.03C Laboratory and research and development (R & D) activities may be listed as insignificant activities only if conducted in the nonprocess areas of the facility. If the principal activity of a site is laboratory services or R & D activities for other locations or under contract, such activities cannot be insignificant;

006.03E AP-42 emission factors or comparable data may be considered when determining insignificant use or storage thresholds. For hazardous air pollutants, the Director may consider any de minimis emission level established by the EPA under §112(g) of the Act or a storage or use level established in any federal or state standard.

006.04 The list of insignificant activities shall describe classes of activities that may be excluded from the permit application or only listed with a limited amount of support data. The list must specify the following:

006.04A The applicant must provide all such information necessary to determine if a specific activity, piece of equipment or group of items is subject to an applicable requirement under the Act or this title, if requested; and

006.04B The inclusion of an activity, emission unit or specific use or storage of a regulated pollutant on the list does not absolve an applicant from any applicable requirements under the Act or this title to which such an activity or emission unit is otherwise subject.

007 Class II permits - Standard Application Form and Required Information.

007.01 Identifying information, including company name and address, and plant name and address, if different, owner's name and address, and telephone number, and names of plant site manager or contact.

007.02 A description of the source's processes and products, including Standard Industrial Codes.

007.03 Emissions-related information, including:

007.03A Emissions of regulated pollutants emitted from any emission unit;

007.03B Identification and description of all emissions units;

007.03C Emissions rate, both actual and potential, in tpy;

007.03D The following information if needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;

007.03E Identification and description of air pollution control equipment and compliance monitoring devices or activities;

007.03F Limitations on source operation affecting emissions, including physical or operational limitations on potential to emit.

007.04 Specific information that may be necessary to implement and enforce any applicable requirement.

007.05 An explanation of any proposed exemption from an applicable requirement.

007.06 Additional information determined to be necessary by the Department to define permit terms and conditions.

007.07 Insignificant activities listed for exclusion in the permit application pursuant to sections 006.03 and 006.04 of this chapter shall be treated as specified by those sections.

008 Certification for Class I and Class II Permits. Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

009 The Department shall approve or disapprove a completed application for a Class I source, and shall issue or deny the permit within 18 months after the date of receipt thereof. This requirement does not apply to sources submitting applications under the provisions of Section 002.01 of this Chapter.

010 Applications for construction or modification under Chapter 19 relating to the Prevention of Significant Deterioration of Air Quality, and for any plan requirements for nonattainment areas, shall be given a priority.

011 The Department shall prepare a statement that sets forth the legal and factual basis for the draft Class I permit conditions, including references to the applicable statutory and regulatory provisions. This statement shall accompany the draft permit sent to EPA, and be made available to any person who requests it.

012 The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Chapters 17 or 19.

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

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