NEBRASKA ADMINISTRATIVE CODE

Title 132 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 2 - PERMITS: APPLICATION PROCEDURES: HEARINGS REQUIRED

001 Permit Required. No person shall construct or operate a solid waste management facility without a permit issued by the Department pursuant to this chapter unless otherwise provided in these regulations. Any person who is required to have a permit, including new applicants and permittees with expiring permits, shall complete, sign and submit an application to the Department as described in these regulations.

001.01 When a facility is owned by one person but is operated by another person, the owner and operator shall sign the permit application and the permit will be issued to all signatories to the application.

002 Exceptions.

002.01 Activities specified in this section shall be exempt from the permit requirements of this chapter, provided the wastes used in these activities are not mixed with other solid wastes and do not, as a result of handling or disposal, have the potential to cause contamination that may threaten human health or the environment. Activities exempt from the permit requirements that use sewage sludge in their processes shall not violate any requirements of applicable regulations promulgated pursuant to Section 405(d) of the Clean Water Act, as amended (33 U.S.C. 1251 et seq).

002.01A The use of fill for the purpose of erosion control, erosion repair, channel stabilization, landscaping, roadbed preparation or other land improvement;

002.01B The placement of tires in accordance with Chapter 14, posts, or ferrous objects for bank or blowout stabilization. Any bank stabilization must be done in accordance with Title 117 - Nebraska Surface Water Quality Standards and the Federal Clean Water Act (33 U.S.C. 1251 et seq);

002.01C The disposal or use of trees and brush, or the remaining material resulting from fires set for the purpose of destroying trees, brush and untreated wood;

002.01D The deposit of solid waste generated by an individual is disposed of on such individual's property if such property is outside the corporate limits of a municipality and the department determines that the county has not provided integrated solid waste management facilities for its residents;

002.01E The deposition of on-farm building demolition waste generated by an individual and disposed on location if such location is agricultural in nature;

002.01F Composting of only livestock wastes generated at their livestock operation and only when the operation is in compliance with Title 130 - Rules and Regulations Pertaining to Livestock Waste Control;

002.01G Solid waste compost sites which receive only yard wastes in quantities less than 20,000 cubic yards as received per year;

002.01H Solid waste compost sites which receive less than 20,000 cubic yards per year of material that consists of yard waste in combination with less than 1000 cubic yards of other materials;

002.01I Recycling centers or collection sites, as long as the following conditions are met:

002.01I1 Beginning January 1, 2013, and for every odd-numbered year thereafter, for each category of recyclable material, the amount of material resold or transferred offsite during the previous two calendar years must equal at least seventy-five percent (75%) by weight of the inventory of material present on January 1st of the previous odd-numbered year. This calculation must be made for each category of recyclable materials collected or processed at the recycling center or collection site.

002.01I1(a) Failure to resell or transfer offsite seventy-five percent (75%) of each category of recyclable material in two (2) calendar years shall be deemed speculative accumulation for the purposes of this chapter. A facility that speculatively accumulates recyclable materials is not exempt from the permit requirements of this chapter.

002.01I1(b) Written documentation that verifies seventy-five (75%) of each category of recyclable material was resold or transferred offsite within two (2) calendar years must be maintained at the recycling center or collection site.

002.01I2 Recyclable materials that are stored inside buildings or in other suitable containment capable of preventing releases to the environment, are not subject to the requirements of section 002.01I1 of this chapter;

002.01J Upon the permission of the director, the deposit of building demolition material resulting from the clean up from a natural disaster;

002.01K The use of source separated material in the manufacturing of other products;

002.01L Salvage operations which store, sort and sell metals and machinery suitable for reprocessing;

002.01M Land application of sludge from a waste water treatment plant where such activity is done in accordance with Title 119 - Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System; or

002.01N Waste tire processing facilities and collection sites.

003 Partial exception facilities.

003.01 Owners or operators of solid waste processing facilities as specified in 003.01A to 003.01E will be exempt from the permit requirements, but will be required to operate in accordance with section 003.02. Solid waste processing facilities that use sewage sludge in their processes shall not violate any requirements of applicable regulations promulgated pursuant to Section 405(d) of the Clean Water Act, as amended (33 U.S.C. 1251 et seq).

003.01A Solid waste compost sites that receive between 20,000 and 100,000 cubic yards per year of yard wastes only;

003.01B Solid waste compost sites that receive less than 1000 cubic yards per year of material;

003.01C Solid waste compost sites which receive between 1000 and 20,000 cubic yards per year of livestock waste other than that generated by the property owner;

003.01D Solid waste compost sites which receive between 20,000 and 100,000 cubic yards per year of material that consists of yard waste in combination with less than 1000 cubic yards of other materials; or

003.01E A solid waste transfer station receiving waste from vehicles other than those vehicles designed to compact solid waste.

003.02 Operations of all partial exception solid waste processing facilities listed in 003.01 shall be in accordance with the following criteria.

003.02A A solid waste processing facility shall be designed and operated at all times so as to not constitute a hazard, or a threat to human health or the environment.

003.02B The operation of any facility shall include effective litter control and disease vector control programs.

003.02C An owner or operator of any solid waste processing facility shall ensure that the unit does not violate any applicable requirements developed under Title 129 - Nebraska Air Quality Regulations.

003.02D Surface Water Requirements. A solid waste processing facility shall not:

003.02D1 Cause a discharge of pollutants into waters of the state, including wetlands, that violate any requirements of Title 119 - Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System.

003.02D2 Cause the discharge of a non-point source of pollution to waters of the State that violate any requirement of an area-wide or state-wide water quality management plan that has been approved under section 208 or 319 of the Clean Water Act, as amended (33 U.S.C. 1251 et seq).

003.02E An owner or operator shall not accept solid waste at the facility if the storage capacity has been reached. Solid waste shall only be stored in areas designated for storage.

004 Permit Procedures: Existing Solid Waste Management Facilities. The holder of a permit shall file for renewal as described in Section 012.

005 Local permit requirements. Local governing bodies may develop and enforce local ordinances, codes or rules and regulations on solid wastes disposal or processing equal to or more stringent than these rules and regulations. Nothing herein shall relieve the applicant from complying with any other applicable law, ordinance, code, or rule.

006 Permit Procedure: Solid Waste Management Facility. A person desiring a permit to operate a facility shall apply to the Department. The application shall be made part of the operating record. In the case of a solid waste disposal area, the required facility specifications shall be prepared by a professional engineer registered to practice in the State of Nebraska. Only those portions of the application for a construction and demolition waste disposal area which are specified in Chapter 5 shall be prepared by a professional engineer registered to practice in the State of Nebraska.

006.01 Contents of Application. All applicants for permits shall provide information set forth in these regulations, where applicable, and any additional information requested by the Department. Each application shall contain a certification that any information submitted is true, accurate, and complete. Each application shall include the following information at a minimum and shall include the non-refundable fee required by Chapter 9:

006.01A The activity or operation proposed by the applicant which requires a permit and a brief description of the nature of the applicant's business;

006.01B The owner and operator's name(s), address(es), telephone number(s), ownership status, and status as a federal, state, private, public, or other entity;

006.01C The legal description of the facility, and in the case of a solid waste disposal area, the legal description of the site boundaries;

006.01D The signatures required by 006.03 of this chapter;

006.01E Supporting documentation to the effect that a solid waste management facility is in compliance with the locational, construction/design, groundwater monitoring, and financial assurance requirements of these regulations;

006.01F An operational plan, and closure and post-closure plans prepared pursuant to these regulations;

006.01G Information demonstrating that the facility or operation will comply with all applicable requirements as well as ensure protection of public health and the environment; and

006.01H Documentation of local approval required by Neb. Rev. Stat. §13-1701 to §13-1714 or Neb. Rev.Stat. §13-2035, whichever is applicable.

006.03 Signatures: Applications. All permit applications and any supplemental application material submitted to the Department, as required by Section 001, shall be signed:

006.03A In the case of a corporation, by a principal executive officer of at least the level of vice-president;

006.03B In the case of a partnership or sole proprietorship, by a general partner or the sole proprietor, respectively; and

006.03C In the case of a municipal, state, federal, or other public facility, by either a principal executive officer or ranking elected official.

006.03D Any reports or correspondence relating to a permit may be signed by a duly authorized representative of the persons described in 006.03A to 006.03C of this chapter if: such representative is responsible for the overall operation of the activity or operation; the authorization is made in writing by the person designated in paragraphs 006.03A to 006.03C of this chapter; and the written authorization is submitted to the Department.

006.03D1 Any change in an authorization meeting the requirements of 006.03D of this chapter shall be submitted to the Department in writing prior to or together with any report to be signed by an authorized representative.

006.04 Additional Information Requests. Once an application has been received, the Department shall determine whether the application is administratively complete. The Department shall not issue a permit before receiving an administratively complete application, except for emergency permits.

006.04A If the application is not administratively complete, the Department shall notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of such additional information.

006.04A1 If such additional information is not received within one-hundred and eighty (180) days of the date of the Department notification, the application will be considered abandoned, and will not be reviewed further by the Department.

006.04B After all the necessary information has been received by the Department and the application is determined to be administratively complete, the Department shall issue public notice of its' intent to grant or deny an application for a permit within sixty (60) days.

006.04C An applicant shall not commence construction of a facility until the Department provides written notification that all requirements have been satisfied and further notifying such applicant that he or she may commence construction.

006.04C1 An applicant shall commence construction within eighteen (18) months after issuance of Departmental approval for commencement of construction.

007 General Conditions. The Department shall impose such conditions in a permit as may be necessary to accomplish the purposes of applicable laws and these regulations, and as may be necessary to ensure compliance with applicable laws, regulations, and standards. The following conditions apply to all permits.

007.01 Permits for a solid waste disposal area shall expire not more than five (5) years following the date of issuance as determined by the department. Permits for solid waste processing facilities shall expire not more than ten (10) years following the date of issuance as determined by the department. Permits may be renewed according to the provisions of Section 012 of this chapter.

007.02 A permittee shall meet any compliance schedule imposed under its permit and shall fulfill all reporting requirements of the permit.

007.03 The permittee shall maintain an operating record at the facility location or in an alternate location approved by the Department. The Director can set alternative schedules as deemed necessary for recordkeeping and notification requirements except

for the notification requirements in Chapter 7, Section 005.07D. The operating record shall contain all information required by these regulations including:

007.03A Any location restriction demonstration required by this Title;

007.03B Inspection records, training procedures, training documentation, and notification procedures required under Chapter 3, Section 004.06~~;~~ and Chapter 6, Section 004.05.

007.03C Gas monitoring results from monitoring and any remediation plans required under Chapter 3, Section 004.17C;

007.03D Any municipal solid waste landfill facility unit design documentation for placement of leachate or gas condensate in a municipal solid waste landfill facility unit as required under Chapter 3, Section 004.10;

007.03E Any demonstration, certification, finding, monitoring, testing, or analytical data required by Chapter 7;

007.03F Closure and post-closure care plans and any monitoring, testing, or analytical data as required by this Title;

007.03G Any cost estimates and financial assurance documentation required by Chapter 8;

007.03H Any information demonstrating compliance with the small landfill partial exemption under Chapter 3, Section 003.06; and

007.03I Permit application and facility operating permit.

007.04 The permittee shall notify the Department when the records described in 007.03 have been placed in or added to the operating record. Such notification may be one-time through the permit application process unless specifically required by these regulations or the Department.

007.04A The permittee shall notify the NDEQ, within five (5) working days of any planned or unplanned changes in the permitted facility or activities, which may result in noncompliance with permit requirements or the application. A written submission shall also be provided within ten (10) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period(s) of noncompliance, including exact dates and times; whether the noncompliance has been corrected, and if not, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the

noncompliance. If requested, NDEQ may waive the ten (10) days written notice requirement in favor of a written report within thirty (30) days.

007.05 For purposes of gas monitoring, required by Chapter 3, and ground water monitoring, required by Chapter 7, monitoring results shall be received by the Department within thirty (30) days of the end of each calendar quarter, along with copies of all required monitoring results.

007.06 The permittee shall furnish to the Department any information contained in the operating record upon request, or make the operating record available to the Department for inspection at all reasonable times.

007.07 A permittee shall retain all operating records for solid waste disposal areas until the end of the post-closure care period. A Permittee shall retain all operating records for solid waste processing facilities until the existing permit is renewed.

007.08 The contents of the application for all solid waste management facilities shall, upon permit issuance, become a condition of such permit.

007.09 A permittee shall allow full access to existing and available facility records, and shall allow Department inspectors entry and access, during reasonable hours, to any building, area, or place, for inspection purposes (except a building designed for and used exclusively as a private residence).

008 Transferability of Permit. Permits, except solid waste compost site permits, may be transferred only upon the Director's approval.

009 Issuance or Denial of a Permit.

009.01 Once an application is determined to be administratively complete and has been reviewed by the Department, the Director shall make a preliminary decision whether to issue or deny the permit. Such preliminary decision shall be publicly noticed as outlined in Section 011.

009.02 The Director shall not issue a permit unless the applicant submits adequate documentation that the facility will be developed, constructed, modified or operated so as to ensure compliance with all applicable laws, regulations, and standards, and so as to be protective of human health and the environment. The Director may deny a permit on any of the following grounds including, but not limited to:

009.02A The application does not meet the appropriate design criteria specified in these regulations;

009.02B Upon a request for renewal or transfer, the permittee has not complied with all terms, conditions, requirements, and schedules of compliance of the existing permit; or

009.02C In the case of a solid waste disposal area, such a facility is within three thousand three hundred (3300) feet of a residential area in a metropolitan class city.

009.02C1 For purposes of this section, "residential area" shall mean an area designated as residential under the zoning authority of the city.

009.03 If an application is denied, the department shall provide written rationale therefor to the applicant.

009.04 If the Director determines to deny the permit and the applicant wishes to contest the decision, the procedures of Title 115 and the Administrative Procedures Act shall be followed.

009.05 An applicant shall not commence construction until written permission to construct has been received from the Department after all necessary application review and public notice and participation has been completed. The permit will be issued after construction of the facility is complete and the applicant supplies documentation verifying that the facility was constructed in accordance with the application. In the case of solid waste disposal areas, this documentation shall be signed by a professional engineer registered in the State of Nebraska.

010 Modifying, Suspending, Revoking Permits.

010.01 Any permit issued by the Department, may be modified, suspended, or revoked, in whole or in part during its term for cause including, but not limited to:

010.01A A violation of any terms or conditions of the permit;

010.01B Obtaining a permit by misrepresentation of any relevant facts or failure to disclose fully all relevant facts;

010.01C Information indicating that the activity or operation poses a threat to human health and the environment; or

010.01D Upon request by the permittee, provided such request does not create a violation of any existing applicable requirements, standards, laws, or rules and regulations. Requests for modifications shall be reviewed according to the standards of Section 009.

010.01E A violation of these rules and regulations or the Environmental Protection Act or the Integrated Solid Waste Management Act.

010.02 In addition to the reasons specified in 010.01 of this chapter, causes for modification, but not revocation, shall include, but not be limited to:

010.02A Information received by the Director which was not available at the time the permit was issued, and which would have justified the application of different permit conditions at the time of issuance;

010.02B A change in the standards or regulations on which the permit was based; or

010.02C A determination made by the Director that good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control and for which there is no reasonable available remedy.

010.03 Permit modifications shall not be used to extend the term of a permit.

010.04 Permits which are modified, suspended, or revoked are subject to the public participation procedures of Section 011, except minor modifications as follows. The Director may approve a minor modification of an application if he or she finds that the public health and welfare will not be endangered. The following minor modifications to an application are subject to departmental approval but do not require public notice or hearing:

010.04A Correction of typographical errors;

010.04B Change of name, address, or telephone number of persons or agencies identified in the application;

010.04C Administrative or informational changes;

010.04D Changes in procedures for maintaining operating records;

010.04E Changes to provide for more frequent monitoring, reporting, sampling, or maintenance;

010.04F Request for a compliance date extension if such date is not more than one hundred twenty days after the date specified in the approved permit;

010.04G Adjustments to the cost estimates or the financial assurance instrument for inflation;

010.04H Changes in the closure schedule for a unit or in the final closure schedule for the facility or an extension of the closure schedule;

010.04I Changes to the days or hours of operation if the hours of operation are within the period from 6:00 a.m. to 8:00 p.m.;

010.04J Changes to the facility contingency plan;

010.04K Changes which improve sampling or analysis methods, procedures, or schedules;

010.04L Changes in quality control or quality assurance plans which will better ensure that the specifications for construction, closure, sampling, or analysis will be met;

010.04M Changes in the facility plan of operation which conform to guidance or rules approved by the Environmental Quality Council or provide more efficient waste handling or more effective waste screening; or

010.04N Replacement of an existing monitoring well with a new well if location is not changed.

011 Public Notice of Pending Permit Action

011.01 Public notice of every preliminary determination to issue, deny, transfer, modify, except for minor modifications described under Section 010.04 of this chapter, suspend, or revoke a permit shall contain the elements of 011.02 and shall be made by:

011.01A Submitting the notice as a news release and as a legal notice to the newspaper in the geographical area of the proposed activity or operation; and

011.01B Mailing the notice to the applicant, or permittee as applicable, any unit of local government having jurisdiction over the area where the activity or operation is proposed to be located, each state agency having any authority under state law with respect to the construction or operation of such activity and to any person, either upon request or whose names are on a Departmental mailing list to receive such public notices.

011.01C The legal notice, draft permit and administrative record shall be placed in a public repository in the affected geographical area to be served.

011.02 All public notices issued under these rules and regulations shall contain:

011.02A Name, address, and telephone number of the Department;

011.02B Name and address of the applicant;

011.02C A brief description of the applicant's proposed activities or operations;

011.02D A brief description of the procedures for final determinations, and means by which interested person or groups can participate in the process; or if applicable, a notice of the decision; and

011.02E The address and telephone number of the premises where interested persons may obtain further information.

011.03 Any person will have thirty (30) days from the date of the publication of the legal notice to:

011.03A Provide the Director with any written comments concerning the proposed facility for which the legal notice has been issued; or

011.03B Request a public hearing pursuant to Title 115.

011.04 After the public comment period and any public hearing, the Director shall publish notice of his or her decision. The applicant and other interested persons shall be notified of this decision.

011.05 Any aggrieved person wishing to contest the Director's decision may file a petition for a contested case within thirty (30) days of the Director's decision in accordance with the provisions of Title 115 of the Nebraska Administrative Code.

011.06 Any petition filed pursuant to 011.05 shall not act as a stay of permit.

012 Filing for Renewal: Expiring Permit.

012.01 Permits issued to solid waste disposal areas shall expire not more than five (5) years following the date of the issuance as determined by the department. Permits issued to solid waste processing facilities shall expire not more than ten (10) years following the date of issuance as determined by the department. Permits may be renewed if the permittee has complied with all applicable requirements.

012.02 Permit renewal requests shall be filed with the Department one hundred eighty (180) days prior to the permit expiration date and shall be reviewed according to procedures and standards of Section 009.

012.03 Prior to renewal, the permittee shall be in compliance with or have complied with all the terms, conditions, requirements, and schedules of compliance of the expiring permit.

012.04 Public notice and public participation procedures for renewal of the permit shall be those procedures specified for permits in Section 011 of this chapter.

013 Emergency Permit. In the event the Director finds an imminent and substantial endangerment to human health and the environment, the Director may issue a temporary emergency permit without notice and hearing. This emergency permit may also be issued to a non-permitted activity or operation or to one whose existing permit does not cover the authority for which the emergency permit is made. This emergency permit:

013.01 May be oral or written. If oral, it shall be followed within five (5) days by a written emergency permit;

013.02 Shall not last more than one hundred twenty (120) days but may be renewed for an additional sixty (60) days where the permittee can demonstrate that the circumstances justify such extension and that the permittee made good faith efforts to complete the permitted activity or operation within the one hundred twenty (120) days;

013.03 Shall clearly specify the wastes to be handled and the manner and location of their disposal; and

013.04 May be terminated by the Director at any time without process if the Director determines that termination is appropriate to protect human health and the environment.

014 Research, Development, and Demonstration Permits (RD&D).

014.01 Except as provided in Section 014.06 of this chapter, the Director may issue a research, development, and demonstration permit for a new municipal solid waste landfill (MSWLF) unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-centimeter depth of leachate on the liner:

014.01A The run-on control systems in Chapter 3, Section 003.04E1; and

014.01B The liquids restrictions in Chapter 3, Section 004.10A.

014.02 The Director may issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of Chapter 3, Sections 005.01A1 and 005.01B1, provided the MSWLF unit owner/operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 30-centimeters.

014.03 Any permit issued under this section must include such terms and conditions at least as protective as the criteria for municipal solid waste landfills to assure protection of human health and the environment. Such permits shall:

014.03A Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in Section 014.05 of this chapter;

014.03B Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous wastes which the Director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

014.03C Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the Director with respect to the operation of the facility;

014.03D Require the owner or operator of a MSWLF unit permitted under this section to submit an annual report to the Director showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the Director in the permit; and

014.03E Require compliance with all criteria in this Chapter, except as permitted under Section 014.

014.04 The Director may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the Director determines that the overall goals of the project are not being attained, including protection of human health or the environment.

014.05 Any permit issued under this section shall not exceed three years and each renewal of a permit may not exceed three years.

014.05A The total term for a permit for a project including renewals may not exceed twelve years; and

014.05B During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the Director determines necessary for permit renewal.

014.06 Small MSWLF units.

014.06A An owner or operator of a MSWLF unit operating under an exemption set forth in Chapter 3, Section 003.06 is not eligible for any deviation from Chapter 3, Section 003.04E1, and Chapter 3, Section 004.10A.

014.06B An owner or operator of a MSWLF unit that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for a deviation from Chapter 3, Section 005.01B1, except in accordance with Chapter 3, Section 005.01B3.

Enabling Legislation: Neb. Rev. Stat. §§ 13-2033; 13-2034; 13-2036; 13-2040; 13-2041; 81-1504; 81-1505; 81-1507

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