

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:

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002.0111 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.

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002.0111(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.

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002.0111(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.

002.0112 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 002.0111 of this chapter;

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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.

002.01O Compaction, autoclaving, temporary storage or other solid waste processing activities, unless otherwise required to obtain a permit under Chapter 6, Section 001, managed by a solid waste generator or association of generators, as long as the Director has not determined that the activity results or may result in land pollution and the following conditions are met:

002.01O1 If the solid waste generator is an association of generators, the association of generators is registered with the Secretary of State to transact business in Nebraska or has filed a written description of the association, its purpose, and membership with the Department; and

002.01O2 The generator or generators of the material have not released the solid waste from their direct control. The release of direct control has occurred when the generator or generators of the material have transferred the material to a solid waste processing or disposal facility, or have conveyed the material to a transporter; and

002.01O3 Beginning January 1, 2017, and for every year thereafter, the amount of material processed or transferred offsite during the previous calendar year must equal at least seventy-five percent (75%) by weight of the inventory of material present on January 1 of the previous year.

002.01O3(a) Failure to process or transfer offsite seventy-five percent (75%) of the material to be processed in one (1) calendar year shall be deemed speculative accumulation for the purposes of this chapter. A facility that speculatively accumulates material to be processed is not exempt from the permit requirements of this chapter.

002.01O3(b) Written documentation that verifies seventy-five (75%) of the material to be processed was processed or transferred offsite within one (1) calendar year must be maintained at the facility.

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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.

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

006.032A In the case of a corporation, by a principal executive officer of at least the level of vice-president;

006.032B In the case of a partnership or sole proprietorship, by a general partner or the sole proprietor, respectively; and

006.032C 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.~~

006.043 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.

006.043A 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.

006.043A1 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.

006.043B 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.

006.043C 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.

006.043C1 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).

~~006.03D~~007.10 Any reports or correspondence relating to a permit may be signed by a duly authorized representative of the persons described in ~~006.032A~~ to ~~006.032C~~ of this

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~~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 006.032A to 006.032C of this chapter; and the written authorization is submitted to the Department.~~

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~~006.03D1007.10A Any change in an authorization meeting the requirements of 006.03D007.10 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.~~

008 Transferability of Permit. 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 eD 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

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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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NEBRASKA ADMINISTRATIVE CODE

Title 132 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 3 - CRITERIA FOR MUNICIPAL SOLID WASTE DISPOSAL AREAS, DELISTED WASTE DISPOSAL AREAS, INDUSTRIAL WASTE DISPOSAL AREAS and LAND APPLICATION UNITS FOR REPEATED DISPOSAL OR TREATMENT OF SPECIAL WASTES

001 Applicability. The requirements of this chapter apply to all municipal solid waste disposal areas, delisted waste disposal areas, industrial waste disposal areas, and land application units for repeated disposal or treatment of special wastes required to obtain a permit pursuant to Chapter 2, 001.

001.01 In addition to the other requirements of these regulations for delisted waste disposal areas, the Department may place such conditions and restrictions upon a permit issued or renewed under these regulations as deemed necessary to protect public health or the environment.

002 Locational Criteria. New solid waste disposal areas and lateral expansions of existing solid waste disposal areas listed in 001 shall be located in accordance with the standards as described in this section. The application shall include documentation verifying that the solid waste disposal area complies with the following criteria.

002.01 A solid waste disposal area shall not be located in an area where the Department finds that the solid waste activities will have a detrimental effect on the waters of the state based on the following criteria:

002.01A Current and projected use of water resources in the potential zone of influence of the site;

002.01B Ground water elevation and proposed separation between the lowest point of the lowest cell and the predicted maximum water table elevation; areas having high ground water tables may be restricted to landfill operations which will maintain a safe vertical distance between deposited refuse and the maximum water table elevation;

002.01C Potential interrelationship of the local aquifers, and surface waters based on historical records or other sources of information; and

002.01D Background and initial quality of water resources in the potential zone of influence of the site.

002.02 The application shall include a description of the:

002.02A Soil and bedrock to a depth adequate to allow evaluation of the water quality protection provided by the soil and bedrock;

002.02B Potential for leachate generation, and of pollution of the waters of the state;

002.02C Ground water condition, including ground water flow below and adjacent to the proposed facility, with an appraisal of the effect of the facility on ground water and surface waters;

002.02D Name of and distance to nearby surface waters; and

002.02E Land use and population density of the proposed facility and of the area surrounding the facility within one mile of the facility boundaries.

002.03 No person shall locate a solid waste disposal area within one thousand (1,000) feet from the nearest edge of an existing right-of-way of any state, interstate or federal highway unless the active area is screened by natural objects, plantings, fences, or other appropriate means so as to not be visible from such highway.

002.04 Airport Proximity.

002.04A The owner or operator of a new or existing solid waste disposal area shall demonstrate that the solid waste disposal area does not pose a bird hazard to aircraft and include the demonstration in the permit application if the solid waste disposal area is located within:

002.04A1 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft; or

002.04A2 5,000 feet (1524 meters) of any airport runway end used by only piston-type aircraft.

002.04B An owner or operator who proposes to site a new solid waste disposal area or a lateral expansion of an existing solid waste disposal area within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration and include documentation of the notification in the permit application.

002.04C An owner or operator of an industrial waste disposal area shall be exempt from the provisions of 002.04A and 002.04B of this section.

002.04D For purposes of this section:

002.04D1 "Airport" shall mean a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

002.04D2 "Bird hazard" shall mean an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

002.05 Floodplains.

002.05A A new land application unit for repeated disposal or treatment of special wastes, municipal solid waste disposal area, or delisted waste disposal area, or a lateral or vertical expansion of these facilities, shall not be located in a 100-year flood plain.

002.05B An industrial waste disposal area, or a lateral or vertical expansion of these facilities, shall not be located in a 100-year flood plain, unless the owner or operator can demonstrate that the disposal area will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.

002.06 Wetlands. A new solid waste disposal area or lateral expansion shall not be located in wetlands.

002.07 Unstable areas. An owner or operator of a new solid waste disposal area, existing solid waste disposal area, or lateral expansion located in an unstable area shall demonstrate in the permit application that engineering measures have been incorporated into the facility's design to ensure that the integrity of the containment systems of a solid waste disposal area will not be disrupted.

002.07A An owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

002.07A1 On-site or local soil conditions that may result in significant differential settling;

002.07A2 On-site or local geologic or geomorphologic features; and

002.07A3 On-site or local human-made features or events, both surface and subsurface.

002.07A4 For purposes of this section,

002.07A4(a) "Unstable area" shall mean a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the facility structural components responsible for preventing releases from the facility. This term may include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

002.07A4(b) "Poor foundation conditions" shall mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

002.07A4(c) "Areas susceptible to mass movements" shall mean those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the solid waste disposal area, because of natural or human-induced events, results in the down slope transport of soil and rock material by means of gravitational influence.

002.07A4(c)(1) Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

002.07A4(d) "Karst terranes" shall mean areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

002.08 Fault area criteria for municipal solid waste disposal areas.

002.08A A new municipal solid waste disposal area or lateral expansion thereof, shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the Department that an alternative setback distance of less than 200 feet will:

002.08A1 Prevent damage to the structural integrity of the solid waste disposal area; and

002.08A2 Be protective of human health and the environment.

002.08B For purposes of this section:

002.08B1 "Fault" shall mean a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side;

002.08B2 "Displacement" shall mean the relative movement of any two sides of a fault measured in any direction; and

002.08B3 "Holocene" shall mean the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

002.09 Seismic impact zone criteria for municipal solid waste disposal areas.

002.09A An owner or operator shall not locate a new municipal solid waste disposal area or lateral expansion thereof, in a seismic impact zone unless the owner or operator demonstrates in the permit application that:

002.09A1 All containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

002.09B For purposes of this section:

002.09B1 "Seismic impact zone" shall mean an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull will exceed 0.10g in 250 years.

002.09B2 "Maximum horizontal acceleration in lithified earth material" shall mean the maximum horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

002.09B3 "Lithified earth material" shall mean all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments.

002.09B3(a) This term does not include human-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

003 Design Criteria. The construction and design of all solid waste disposal areas shall:

003.01 Be protective of human health and the environment;

003.02 Not result in pollution of the waters of the state; and

003.03 In the case of a new solid waste disposal area or a lateral expansion of an existing solid waste disposal area, the construction and design plans shall include the following:

003.03A A description of the sequence of earth materials at the proposed facility to a depth sufficient to assure the reliability of the facility design;

003.03B A schedule of construction and a construction quality assurance plan as described in 003.04C;

003.03C Data obtained from soil samples taken from the proposed facility site which describe the soil classification, grain size distribution, permeability, compatibility, and ion-exchange properties of the subsurface materials for those strata which are essential to the design of the facility; and

003.03D If exploration holes are drilled to obtain data, information showing the manner of plugging and sealing such holes.

003.04 The construction and design plans for a new or a lateral expansion of an existing solid waste disposal area shall also include the following documentation. Land application units for repeated disposal or treatment of special wastes shall be exempt from the following requirements of this section.

003.04A A liner designed and constructed according to one of the following designs:

003.04A1 With a composite liner consisting of two components: the upper component must consist of a minimum 30-mil flexible membrane liner (FML); and the lower component must consist of at least a two (2) foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil. thick. The FML must be installed in direct and uniform contact with the compacted soil component; or

003.04A2 In accordance with a design approved by the Department, alternate designs shall ensure that the concentration values listed in Appendix III will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the Department under 003.04D of this chapter. The Department shall consider the following factors when approving the design of liner systems:

003.04A2(a) The hydrogeologic characteristics of the facility and the surrounding land;

003.04A2(b) The climatic characteristics of the area;

003.04A2(c) The volume and type of waste to be deposited; and

003.04A2(d) The volume and physical and chemical characteristics of the leachate.

003.04A3 All required compacted soil components shall be constructed in lifts which do not exceed six (6) inches in thickness.

003.04A3(a) Uniform compaction of the lifts shall be assured through the use of appropriate equipment. Liners shall be supported by material of sufficient bearing strength to prevent subsidence and failure of any component. The bearing strength shall be documented through materials testing.

003.04B A leachate collection and treatment system shall be constructed where necessary to protect the waters of the state. Any required discharge permit shall be obtained from the Department. The leachate collection system shall be maintained as required by section 006.

003.04B1 Leachate collection systems shall be designed and constructed to maintain less than a 30-cm. depth of leachate over the liner.

003.04C A construction quality assurance plan for engineered containment systems and leachate collection systems shall be submitted with the application. The plan shall assure adequate construction and testing of the containment system components as called for in design specifications in the facility plan. The construction quality assurance plan shall be prepared and signed by a professional engineer registered in the State of Nebraska.

003.04D The relevant point of compliance noted in 003.04A2 of this chapter shall be located at the waste management unit boundary. The applicant may request the establishment of an alternate relevant point of compliance. The alternate relevant point of compliance shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the solid waste disposal area permittee. The Department will base the decision to approve or deny the applicant's request upon consideration of the following factors:

003.04D1 The hydrogeologic characteristics of the facility and the surrounding land;

003.04D2 The volume and physical and chemical characteristics of the leachate;

003.04D3 The quantity, quality and direction of flow of ground water;

003.04D4 The proximity and withdrawal rate of the ground water users;

003.04D5 The availability of alternative drinking supplies;

003.04D6 Method of operation as outlined in the operational plan;

003.04D7 The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

003.04D8 Public health, safety, and welfare effects; and

003.04D9 Practicable capability of the owner or operator.

003.04E Solid waste disposal area run-on/run-off control systems shall be designed, constructed and maintained to meet the following criteria:

003.04E1 A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five (25) year storm; and

003.04E2 A run-off control system from the active portion of the landfill to collect and control, at least, the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

003.04E3 Surface water courses and run-off shall be diverted from the solid waste disposal area by devices such as trenches, conduits and proper grading to minimize infiltration and erosion of cover material. The solid waste disposal area shall be constructed and graded so as to promote rapid surface water run-off without excessive erosion. Excessive erosion shall mean an erosion rate of five (5) tons per acre per year, or more.

003.04E4 Run-off from the active portion of the solid waste disposal area shall be handled in accordance with 004.08.

003.04E5 Regrading shall be done as required during construction and after completion to avoid ponding of precipitation and to maintain cover material integrity. On-site drainage structures and channels shall be designed for at least a twenty-four (24) hour, twenty-five (25) year storm.

003.04F Plans for the construction of a municipal solid waste disposal area shall include the location and design of the gas control and monitoring system and include vents, barriers, or other control measures.

003.05 In the case of a land application unit for repeated disposal or treatment of special waste, the construction and design plans, in addition to section 003.01 to 003.03, shall include the following:

003.05A Measures taken to protect the ground water;

003.05B A description of the system for collection, containment, treatment and/or use of all waters within the site confines, which shall include:

003.05B1 A monitoring program for surface run-off from the site shall be developed and implemented to determine the need and extent of containment facilities; or

003.05B2 A containment facility shall be designed to contain all site run-off from a twenty-four (24) hour twenty-five (25) year storm.

003.06 Small landfill partial exemption. Owners and operators of new municipal solid waste disposal areas, existing municipal solid waste disposal areas and lateral expansions at which less than twenty (20) tons of municipal solid waste is disposed of daily, based on an annual average, may be exempt from Section 003.04A, so long as there is no evidence of existing ground water contamination from the solid waste disposal area, and the solid waste disposal area serves:

003.06A A community that has no practicable waste management alternative and the municipal solid waste disposal area is located in an area that annually receives less than or equal to 25 inches of precipitation.

003.06A1 Owners and operators of new municipal solid waste disposal areas, existing solid waste disposal areas, and lateral expansions that meet the criteria of Sections 003.06 and 003.06A shall demonstrate compliance with each criteria by placing documentation in the operating record, and providing copies of such documentation to the Director.

003.06B If, at any time, owners and operators who have asserted the exemption of Section 003.06, have knowledge of ground water contamination resulting from such new municipal solid waste disposal area, existing solid waste disposal area or lateral expansion, such owner or operator shall notify the Director of such contamination, in writing, and thereafter shall comply with all of section 003 of these regulations for all areas previously exempt.

004 Operational Criteria. Operations of all solid waste disposal areas shall be in accordance with the approved operational plan and Chapter 2 requirements.

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

004.02 The operation of a solid waste disposal area shall include effective noise control and odor control programs.

004.03 Litter shall be controlled at solid waste disposal areas.

004.04 Disease vector control. An owner or operator of a solid waste disposal area shall prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

004.05 Air Criteria. An owner or operator of a solid waste disposal area shall ensure that the landfill unit does not violate any applicable requirements developed under Title 129 - Nebraska Air Quality Regulations. Measures shall be taken to control fugitive dust in accordance with Title 129 - Nebraska Air Quality Regulations during excavation, vehicle movement, placement of waste or covering deposits.

004.06 Procedures for Excluding the Receipt of Regulated Hazardous Waste or TSCA Regulated PCB Wastes. Owners or operators of solid waste disposal areas shall implement a program for detecting and preventing the acceptance or disposal of regulated hazardous wastes and TSCA regulated polychlorinated biphenyl (PCB) wastes. This program shall include, at a minimum:

004.06A Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes. Random inspections must be conducted on a minimum of one percent (1.0%) of the incoming loads per week or at least one load per week if less than one hundred (100) loads per week are received and processed;

004.06B Records of any inspections;

004.06C Training of facility personnel to recognize regulated hazardous wastes and PCB wastes; and

004.06D Notification to the Department if a regulated hazardous waste or PCB waste is discovered at the facility.

004.06E Any regulated hazardous or PCB waste identified must be removed and handled in accordance with procedures of the approved operating plan.

004.07 Access Requirements.

004.07A An owner or operator of a solid waste disposal area shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate, to protect human health and the environment.

004.07B Access roads to the site shall be maintained so as to be negotiable by vehicles.

004.07C Necessary measures shall be taken (supervision, placarding, fencing) to reduce trespassing.

004.07D The site shall be supervised to satisfy requirements of these rules and regulations; placarding or posting instructions shall be used as a supplement to on-site supervision.

004.07E Access to the site shall be permitted only during the hours when operating personnel are on the site.

004.07F All vehicular access points shall be equipped with gates that can be locked. Operating procedures shall be clearly listed on signs posted at the site entrance.

004.08 Surface Water Requirements. A solid waste disposal area shall not:

004.08A 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.

004.08B 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).

004.09 An owner or operator shall not accept solid waste at the facility if the disposal capacity has been reached. Solid waste shall only be placed in areas designated for disposal.

004.10 Liquids Restrictions.

004.10A Bulk or non-containerized liquid wastes shall not be placed in a solid waste disposal area unless:

004.10A1 The waste is household waste other than septic waste; or

004.10A2 The waste is leachate or gas condensate derived from the solid waste disposal area and the solid waste disposal area is designed with a composite liner and leachate collection system described in section 003.

004.10B Containers holding liquid waste may not be placed in a solid waste disposal area unless:

004.10B1 The container is a small container similar in size to that normally found in household waste;

004.10B2 The container is designed to hold liquids for use other than storage; or

004.10B3 The waste is household waste.

004.11 Any materials salvaged from the solid waste disposal area shall be removed daily or stored in a manner protective of the public health and environment.

004.12 The following activities shall be prohibited in conjunction with, or upon the site of a solid waste disposal area:

004.12A All scavenging operations;

004.12B All grazing or feeding of farm or domestic animals.

004.13 For any area where wastes will not be disposed for a period of one hundred eighty (180) days or longer, that area shall be covered with the required daily cover material and an additional twelve (12) inches of intermediate cover. Vegetative cover shall be established as soon as possible on these areas.

004.14 All completed areas of a solid waste disposal area shall be properly reclaimed with final cover pursuant to the requirements of Section 005 of these regulations.

004.15 On-site vegetation should be cleared only as necessary to conduct an efficient operation and to comply with these rules and regulations. Natural windbreaks, such as green belts, should be maintained where they will improve the appearance and operation of the disposal site.

004.16 Reasonable measures shall be taken to control dust during excavation, vehicle movement or covering deposits.

004.17 General operating requirements for municipal solid waste disposal areas and delisted waste disposal areas.

004.17A Litter Control Requirements.

004.17A1 Litter fences or other devices shall be used in the immediate vicinity of the working face or at other appropriate locations to control blowing litter.

004.17A2 At the end of each operating day, or more often as required, litter shall be removed from the fences and the grounds and incorporated into the working face. Alternatively, the litter may be containerized for disposal on the next operating day.

004.17A3 Wastes that are easily moved by wind shall be covered as necessary throughout the operating day to prevent their becoming airborne and scattered.

004.17B Cover material requirements.

004.17B1 Except as provided in 004.17B2 of this chapter, an owner or operator of a municipal solid waste disposal area shall cover waste with six (6) inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

004.17B2 Alternative materials of an alternative thickness may be approved by the Department if an owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

004.17B3 The Department may grant a temporary waiver from the requirements of 004.17B1 and 004.17B2 if an owner or operator demonstrates that there are extreme climatic conditions that make meeting such requirements impractical. All periods during which daily cover is not applied shall be entered in the operating record.

004.17B4 Owners and operators of delisted waste disposal areas shall cover deposited materials in the manner specified in the operational plan.

004.17B5 Owners and operators of industrial waste disposal areas shall cover deposited materials as needed to control disease vectors, fires, odors, blowing litter, fugitive dust, and scavenging.

004.17C Explosive Gases Control.

004.17C1 An owner or operator of a municipal solid waste disposal area shall ensure that:

004.17C1(a) The concentration of methane gas generated by the facility does not exceed twenty-five percent (25%) of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

004.17C1(b) The concentration of methane gas does not exceed the lower explosive limit for methane at the solid waste disposal area property boundary.

004.17C2 Owners or operators of a municipal solid waste disposal area shall implement a routine methane monitoring program to ensure that the standards of 004.17C1 of this chapter are met. The monitoring program shall be included in the facility's operational plan.

004.17C2(a) The type and frequency of monitoring shall be determined by the following factors:

004.17C2(a)(1) Soil conditions;

004.17C2(a)(2) The hydrogeologic conditions surrounding the facility;

004.17C2(a)(3) The hydraulic conditions surrounding the facility; and

004.17C2(a)(4) The location of facility structures and property boundaries.

004.17C2(b) The minimum frequency of monitoring shall be quarterly.

004.17C3 If methane gas levels exceeding the limits specified in 004.17C1 of this chapter are detected, an owner or operator shall:

004.17C3(a) Immediately take all necessary steps to ensure protection of human health;

004.17C3(a)(1) Immediately notify the Department;

004.17C3(b) Within seven (7) days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health;

004.17C3(c) Within sixty (60) days of detection: the owner or operator shall implement a remediation plan for the methane gas releases which describes the nature and extent of the problem and the proposed remedy. Any proposed remedy must protect human health and the environment. A copy of the plan shall be placed in the operating record. The owner or operator shall notify the Department that the plan has been implemented.

004.17C3(d) The Department may establish alternative schedules for compliance with 004.17C3(b) and 004.17C3(c) of this chapter.

004.17D Solid waste received at a municipal solid waste disposal area shall be deposited in the smallest practical area and shall occur at the toe of the slope and in a manner which controls windblown materials. Waste may be deposited at locations other than the toe of the slope if site conditions do not allow access to the toe or instances for depositing waste at locations other than the toe of the slope are in the operational plan.

004.17D1 Unloading shall be supervised.

004.17D2 Sufficient equipment and personnel shall be available to operate the solid waste disposal area according to the approved plan.

004.17D3 Arrangements shall be made for access to back up equipment within a reasonable time.

004.17D4 Leachate collections systems shall operate according to operational plan. Leachate shall be collected and transported to a waste water treatment facility or treated as indicated in Section 004.10A2.

004.17D5 Dead animals, carcasses, or parts thereof may be placed in a municipal solid waste disposal area, with the following exception:

004.17D5(a) Diseased animals shall be disposed pursuant to the requirements of Neb. Rev. Stat. §54-744.

004.18 The operational plan for a solid waste disposal area shall include a description of the methods of operations which comply with the requirements of 004.01 to 004.17. The operational plan shall also include:

004.18A A description of the days and hours of operations;

004.18B A description of the number and duties of employees;

004.18C A listing of sources and types of waste to be received; and an estimate of daily quantity of wastes to be received; origin of wastes to be received; and load inspection techniques;

004.18D Numbers, type and size of equipment on site as well as provisions for obtaining back up equipment, if necessary;

004.18E A contingency plan for addressing reasonably foreseeable events including, but not limited to, wet weather, high winds, frozen conditions, fires, or natural disaster;

004.18F A schedule of filling; methods and compaction of wastes; and a phased site development plan; and

004.18G The types and sources of daily, intermediate, and final cover to be used.

004.19 Additional operational requirements to be included in the operational plan for land application units for repeated disposal or treatment of special wastes shall include:

004.19A Methods of operation shall be described, including windrow, static pile or other method, and added to the operational plan;

004.19B If necessary, chemical analysis of the materials to be land applied; and

004.19C If determined necessary by the Department, provisions for at least annual laboratory analysis of underlying soils for leachate detection.

005 Closure criteria. Owners or operators of solid waste disposal areas shall close according to the approved closure plan, and shall install the final cover within six months of the last receipt of waste.

005.01 Those solid waste disposal areas, receiving waste after October 1, 1993, shall close all areas which have not received final cover, in accordance with the requirements of sections 005.01A to 005.01E below.

005.01A A final cover system shall be installed which shall be comprised of an erosion layer underlain by an infiltration layer as follows:

005.01A1 The infiltration layer shall be comprised of a minimum of eighteen (18) inches of earthen material that has a permeability less than or equal to the permeability of the bottom liner system or natural subsoil present, or a permeability no greater than 1×10^{-5} centimeters per second, measured at the site, whichever is less; and

005.01A2 The erosion layer shall consist of a minimum of eighteen (18) inches of earthen material that is capable of sustaining adequate vegetative cover.

005.01B The applicant may request an alternate final cover design that includes:

005.01B1 An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in 005.01A1 of this chapter.

005.01B2 An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in 005.01A2 of this chapter.

005.01B3 The Director may establish alternative requirements for the infiltration barrier in accordance with Section 005.01B1 of this chapter, after public review and comment, for any owners or operators of municipal solid waste landfills (MSWLF's) that dispose of twenty (20) tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this section must:

005.01B3(a) Consider the unique characteristics of small communities;

005.01B3(b) Take into account climatic and hydrogeologic conditions; and

005.01B3(c) Be protective of human health and the environment.

005.01C Final surface grades and side slopes of the closed solid waste disposal area shall prevent run-on and runoff from eroding or otherwise damaging the final cover.

005.01D Appropriate vegetative cover shall be established and maintained as soon as practical after final grading.

005.01E Unauthorized public access, vehicular traffic, and illegal dumping shall be prevented by the use of artificial barriers, natural barriers, or both, along with signs prohibiting such access.

005.02 Owners or operators of a land application unit for repeated disposal or treatment of special waste shall close in accordance with the approved closure plan as described in section 005.11.

005.03 Within 90 days following the installation of the final cover system, the owner or operator shall record a permanent notation on the deed to the disposal area property, or some other permanent property record or instrument that is normally examined during the title search and shall provide documentation to the Department that such notation or instrument has been recorded in the permanent records of the county Register of Deeds. A copy of this record and documentation shall be placed in the operating record. This notation or instrument must, in perpetuity, notify any potential purchaser of the following information:

005.03A The existence of a closed solid waste disposal area on the property;

005.03B The type, depth and location of the waste on the property, as well as the existence of any monitoring systems; and

005.03C Any restrictions on the use of the property which may be provided to protect the integrity of the final cover, liner, monitoring systems or any other components of the containment system.

005.04 The owner or operator of a permitted solid waste disposal area shall notify the Department, in writing, at least 180 days prior to the date the owner or operator expects to begin closure. ~~Such~~The owner or operator shall place a copy of this notice ~~shall also be placed~~ in the operating record.

005.05 The owner or operator of a solid waste disposal area shall begin implementation of the closure plan required in 005.10 and 005.11 of this rule within thirty (30) days after the date on which the facility receives the final volume of waste or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one year after the most recent receipt of wastes.

005.05A The owner or operator shall notify the Department, in writing, of the date of the receipt of the final volume of waste, the date of the initiation of closure, and the date of the installation of the final cover system, as applicable. The owner or operator shall place ~~C~~copies of these notices ~~shall also be placed~~ in the operating record.

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005.05B Extensions beyond the one-year deadline for beginning closure may be granted by the Director if the owner or operator demonstrates that the facility has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed solid waste disposal area.

005.06 The owner or operator of a solid waste disposal area shall complete closure activities in accordance with the closure plan within 180 days after the last receipt of waste. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will, due to circumstances beyond the operator's control, take longer than 180 days and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment from the unclosed solid waste disposal area.

005.07 Following the closure of a solid waste disposal area or any part of the area, the owner or operator shall submit Construction Quality Assurance documentation, a topographical survey showing final contours, and a certification to the Department signed by an independent professional engineer registered in the State of Nebraska verifying that closure has been completed in accordance with the approved closure plan. This closure documentation and certification shall also be placed in the operating record.

005.08 Owners or operators shall not implement modifications to the design or operation of a solid waste disposal area which results in modifications to the closure plan without prior approval of the Department.

005.09 No person shall excavate, disturb the final cover, or remove any deposited materials from any active or closed solid waste disposal area without having received prior approval from the Department. Requests for approval shall demonstrate that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health and the environment and shall include:

005.09A An operational plan identifying the planned activities and the area involved;

005.09B A survey identifying the lines and grades defining the limits of the proposed excavation both vertically and horizontally;

005.09C Estimated number of cubic yards and type of material to be excavated;

005.09D Location where excavated material is to be deposited;

005.09E Type of equipment to be used to transport material;

005.09F Estimated time required for excavation and disposal procedure; and

005.09G Provisions for closing the excavated or disturbed area.

005.10 Closure plan. Owners or operators of solid waste disposal areas shall prepare and submit a written closure plan that describes the steps necessary to close the solid waste disposal area in phases, or the entire area, whichever is applicable. This closure plan shall be part of the permit application. The closure plans shall include but not be limited to, a description of the methods of closure which comply with the requirements of 005 and the following:

005.10A A description of the final cover designed in accordance with the methods and procedures to be used to install the cover;

005.10B An estimate of the largest area of the solid waste disposal area ever requiring a final cover at any time during the active life of the solid waste disposal area;

005.10C An estimate of the maximum inventory of wastes ever on-site over the active life of the solid waste disposal area;

005.10D A schedule for the completion of all activities necessary to satisfy the closure criteria; and

005.10E Installation of any or all of the following, as required by the Department and not already present at the site: landfill gas control systems, leachate collection systems, and/or groundwater monitoring wells.

005.11 The owner or operator of a land application unit for repeated disposal or treatment of special waste shall prepare a written closure plan that describes the steps necessary to close the facility at any point during the active life of the facility. This closure plan and any revisions shall be placed in the operating record. The closure plans shall include, but are not limited to the following:

005.11A A description of the activities required to close the site in a manner protective of human health and the environment;

005.11B A description of the post-closure plans for the inactive site;

005.11C Methods or means for notifying facility users of the closure of the facility; and

005.11D A description of the location where all materials remaining at the site will be disposed, when applicable.

006 Post-closure criteria. The owners or operators of solid waste disposal areas shall provide for post-closure care for a period of thirty (30) years.

006.01 Post-closure care shall include, at a minimum, the performance and recording of each of the following activities in the operating record:

006.01A Annual inspection and maintenance of the cover to ensure integrity and effectiveness, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

006.01B Annual inspection and maintenance of access control structures and posted signs;

006.01C Maintenance and operation of any existing leachate collection system;

006.01D Maintenance and semiannual sampling and testing of any existing groundwater monitoring well, and maintenance and quarterly sampling of any landfill gas monitoring systems. Results of testing shall be reported to the Department, and placed in the operating record; and

006.01E Maintenance and operation of any other environmental control features which are included in the design and operation of the solid waste disposal area or required by the Department to protect human health and the environment.

006.02 Owners or operators of solid waste disposal areas shall submit a post-closure plan to the Department for approval. This post-closure plan and any revisions shall be placed in the operating record, with copies of any such revisions forwarded to the Department.

006.03 Post-closure plans required pursuant to 006.02 shall include annual maintenance and monitoring activities to be performed at a solid waste disposal area for the specified post-closure period after the approved completion of closure. The length of the post-closure period may be increased, if the Department determines that the lengthened period is necessary to protect human health and the environment. The length of the post-closure period may be reduced, if the Department determines that the reduced period is sufficient to protect human health and the environment.

006.04 A detailed written post-closure plan shall include, at a minimum, the following information:

006.04A A description of the monitoring and maintenance activities required in 006 for each solid waste disposal area and the frequency at which these activities will be performed;

006.04B Name, address, and telephone number of the person or office to contact about the closed solid waste disposal area during the post-closure period; and

006.04C A description of the planned uses of the property during the post-closure period and a description of the period of time during which access to the facility will be controlled. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems.

006.05 The owner or operator shall begin implementing the post-closure plan required in Section 006.02 immediately after final closure of the solid waste disposal area is completed and continue implementing the plan over the entire post-closure period.

006.06 Following the post-closure period of each solid waste disposal area, the owner or operator shall submit a certification to the Department signed by an independent professional engineer registered in the State of Nebraska verifying that post-closure care has been completed in accordance with the approved post-closure plan.

007 Required Maps and Drawings. The permit application for a solid waste disposal area shall include the following maps. When a structure described in 007.03 and 007.04 is not present at the site, a notation shall be made on the required map or drawing.

007.01 A topographic map or maps of any solid waste disposal area drawn to the scale of 200 feet to the inch or larger, containing 5-foot contour intervals where the relief exceeds 20 feet, and 2-foot contour intervals where the relief is 20 feet or less, and referred to a United States Geological Survey datum.

007.02 A topographic map indicating the proposed final contours and landscaping of completed solid waste disposal areas with a statement of the proposed final use of the site, if known.

007.03 Maps of the site, drawn to scale, indicating the location of:

007.03A Ground water monitoring wells and gas monitoring locations, if required;

007.03B Points of entrance to and exit from the facility and to and from the operating area of the facility;

007.03C Loading, dumping and any temporary storage areas;

007.03D Interior roads and ramps;

007.03E Devices for controlling litter;

007.03F Devices for controlling unauthorized access to the facility site;

007.03G Drainage facilities, structures, walls, cribbing, surface protection devices, and any other devices as are necessary to comply with applicable water quality standards;

007.03H Fire protection facilities;

007.03I Utilities to service the site;

007.03J Gas and oil wells;

007.03K High tension power lines;

007.03L Fuel transmission pipelines;

007.03M Salvage operations;

007.03N Fill area;

007.03O Borrow areas; and

007.03P Provisions for concealing a solid waste disposal area from public view.

007.04 Maps of the area within one-quarter mile of the boundaries of the site, drawn to scale, showing the location of:

007.04A Waterways and surface drains;

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007.04B Borings, wells, springs, and their surface elevations, and depths and elevations of water levels;

007.04C Field tile drains; and

007.04D Underground and surface mines, elevations of mine pools, and mine pool discharges.

Enabling Legislation: Neb. Rev. Stat. §§13-2034; 13-2036; 81-1504 (1), (2), (7), (11)-(13), (20); 81-1505; 81-1528 (7);

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NEBRASKA ADMINISTRATIVE CODE

Title 132 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 4 - CRITERIA FOR FOSSIL FUEL COMBUSTION ASH DISPOSAL AREAS

001 Applicability. The requirements of this chapter apply to all fossil fuel combustion ash disposal areas required to obtain a permit pursuant to Chapter 2, 001.

002 Locational Criteria. New fossil fuel combustion ash disposal areas and lateral expansions of existing fossil fuel combustion ash disposal areas shall be located in accordance with the standards as described in this section. The application shall include documentation verifying that the fossil fuel combustion ash disposal area complies with the following.

002.01 A fossil fuel combustion ash disposal area shall not be located in an area where the Department finds that the solid waste activities will have a detrimental effect on the waters of the state based on the following criteria:

002.01A Current and projected use of water resources in the potential zone of influence of the site;

002.01B Ground water elevation and proposed separation between the lowest point of the lowest cell and the predicted maximum water table elevation; areas having high ground water tables may be restricted to landfill operations which will maintain a safe vertical distance between deposited refuse and the maximum water table elevation;

002.01C Potential interrelationship of the local aquifers, and surface waters based on historical records or other sources of information; and

002.01D Background and initial quality of water resources in the potential zone of influence of the site.

002.02 The application shall include, a description of the:

002.02A Soil and bedrock to a depth adequate to allow evaluation of the water quality protection provided by the soil and bedrock;

002.02B Potential for leachate generation, and of pollution of the waters of the state;

002.02C Ground water condition, including ground water flow below and adjacent to the proposed facility, with an appraisal of the effect of the facility on ground water and surface waters;

002.02D Name of and distance to nearby surface waters; and

002.02E Land use and population density of the proposed facility and of the area surrounding the facility within one mile of the facility boundaries.

002.03 No person shall locate a fossil fuel combustion ash disposal area within one thousand (1,000) feet from the nearest edge of an existing right-of-way of any state, interstate or federal highway unless the active area is screened by natural objects, plantings, fences, or other appropriate means so as to not be visible from such highway.

002.04 Floodplains. A new fossil fuel combustion ash disposal area, or a lateral or vertical expansion of these facilities, shall not be located in a 100-year flood plain, unless the owner or operator can demonstrate that the disposal area will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.

002.05 Wetlands. A new fossil fuel combustion ash disposal area or lateral expansion shall not be located in wetlands.

002.06 Unstable areas. An owner or operator of a new fossil fuel combustion ash disposal area, existing fossil fuel combustion ash disposal area, or lateral expansion located in an unstable area shall demonstrate in the permit application that engineering measures have been incorporated into the facility's design to ensure that the integrity of the containment systems of a fossil fuel combustion ash disposal area will not be disrupted.

002.06A An owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

002.06A1 On-site or local soil conditions that may result in significant differential settling;

002.06A2 On-site or local geologic or geomorphologic features; and

002.06A3 On-site or local human-made features or events, both surface and subsurface.

002.06A4 For purposes of this section,

002.06A4(a) "Unstable area" shall mean a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the facility structural components responsible for preventing releases from the facility. This term may include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

002.06A4(b) "Poor foundation conditions" shall mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

002.06A4(c) "Areas susceptible to mass movements" shall mean those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the solid waste management facility, because of natural or human-induced events, results in the down slope transport of soil and rock material by means of gravitational influence.

002.06A4(c)(1) Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

002.06A4(d) "Karst terranes" shall mean areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

003 Design Criteria. The construction and design of all fossil fuel combustion ash disposal areas shall:

003.01 Be protective of human health and the environment;

003.02 Not result in pollution of the waters of the state; and

003.03 In the case of a new fossil fuel combustion ash disposal area or a lateral expansion of an existing fossil fuel combustion ash disposal area, the construction and design plans shall include the following:

003.03A A description of the sequence of earth materials at the proposed facility to a depth sufficient to assure the reliability of the facility design;

003.03B A schedule of construction and a construction quality assurance plan as described in 003.04C;

003.03C Data obtained from soil samples taken from the proposed facility site which describe the soil classification, grain size distribution, permeability, compatibility, and ion-exchange properties of the subsurface materials for those strata which are essential to the design of the facility; and

003.03D If exploration holes are drilled to obtain data, information showing the manner of plugging and sealing such holes.

003.04 The construction and design plans for all new or lateral expansions of an existing fossil fuel combustion ash disposal area shall also include the following documentation.

003.04A A liner designed and constructed according to one of the following designs:

003.04A1 With a composite liner consisting of two components: the upper component must consist of a minimum 30-mil flexible membrane liner (FML); and the lower component must consist of at least a two (2) foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil. thick. The FML must be installed in direct and uniform contact with the compacted soil component; or

003.04A2 In accordance with a design approved by the Department, alternate designs shall ensure that the concentration values listed in Appendix III will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the Department under 003.04D of this chapter. The Department shall consider the following factors when approving the design of liner systems:

003.04A2(a) The hydrogeologic characteristics of the facility and the surrounding land;

003.04A2(b) The climatic characteristics of the area;

003.04A2(c) The volume and type of fossil fuel combustion ash to be deposited; and

003.04A2(d) The volume and physical and chemical characteristics of the leachate.

003.04A3 All required compacted soil components shall be constructed in lifts which do not exceed six (6) inches in thickness.

003.04A3(a) Uniform compaction of the lifts shall be assured through the use of appropriate equipment. Liners shall be supported by material of sufficient bearing strength to prevent subsidence and failure of any component. The bearing strength shall be documented through materials testing.

003.04B A leachate collection and treatment system shall be constructed where necessary to protect the waters of the state. Any required discharge permit shall be obtained from the Department. The leachate collection system shall be maintained as required by section 006.

003.04B1 Leachate collection systems shall be designed and constructed to maintain less than a 30-cm. depth of leachate over the liner.

003.04C A construction quality assurance plan for engineered containment systems and leachate collection systems shall be submitted with the application. The plan shall assure adequate construction and testing of the containment system components as called for in design specifications in the facility plan. The construction quality assurance plan shall be prepared and signed by a professional engineer registered in the State of Nebraska.

003.04D The relevant point of compliance noted in 003.04A2 of this chapter shall be located at the waste management unit boundary. The applicant may request the establishment of an alternate relevant point of compliance. The alternate relevant point of compliance shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the fossil fuel combustion ash disposal area permittee. The Department will base the decision to approve or deny the applicant's request upon consideration of the following factors:

003.04D1 The hydrogeologic characteristics of the facility and the surrounding land;

003.04D2 The volume and physical and chemical characteristics of the leachate;

003.04D3 The quantity, quality and direction of flow of ground water;

003.04D4 The proximity and withdrawal rate of the ground water users;

003.04D5 The availability of alternative drinking supplies;

003.04D6 Method of operation as outlined in the operational plan;

003.04D7 The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

003.04D8 Public health, safety, and welfare effects; and

003.04D9 Practicable capability of the owner or operator.

003.04E Fossil fuel combustion ash disposal area run-on/run-off control systems shall be designed, constructed and maintained to meet the following criteria:

003.04E1 A run-on control system to prevent flow onto the active portion of the fossil fuel combustion ash disposal area during the peak discharge from a twenty-five (25) year storm; and

003.04E2 A run-off control system from the active portion of the fossil fuel combustion ash disposal area to collect and control, at least, the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

003.04E3 Surface water courses and run-off shall be diverted from the fossil fuel combustion ash disposal area by devices such as trenches, conduits and proper grading to minimize infiltration and erosion of cover material. The fossil fuel combustion ash disposal area shall be constructed and graded so as to promote rapid surface water run-off without excessive erosion.

003.04E4 Run-off from the active portion of the fossil fuel combustion ash disposal area shall be handled in accordance with 004.05.

003.04E5 Regrading shall be done as required during construction, after completion, and during the placement of fossil fuel combustion ash to avoid ponding of precipitation and to maintain cover material integrity. On-site drainage structures and channels shall be designed for at least a twenty-four (24) hour, twenty-five (25) year storm.

004 Operational Criteria. Operations of all fossil fuel combustion ash disposal areas shall be in accordance with the approved operational plan and Chapter 2 requirements.

004.01 A fossil fuel combustion ash disposal area shall be designed and operated at all times so as to not constitute a hazard, or a threat to human health or the environment.

004.02 A fossil fuel combustion ash disposal area shall only accept nonhazardous waste defined as fossil fuel combustion ash. All unacceptable waste shall be removed from the site daily.

004.03 An owner or operator of a fossil fuel combustion ash disposal area shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, supervision, or any other measures, as appropriate, to protect human health and the environment.

004.04 Access roads to the site shall be maintained so as to be negotiable by vehicles.

004.05 Surface Water Requirements. A fossil fuel combustion ash disposal area shall not:

004.05A 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.

004.05B 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).

004.06 An owner or operator shall not accept solid waste at the facility if the disposal capacity has been reached. Solid waste shall only be placed in areas designated for disposal.

004.07 Liquids Restrictions. Bulk or non-containerized liquid shall not be placed in a fossil fuel combustion ash disposal area unless:

004.07A The liquid is leachate derived from the fossil fuel combustion ash disposal area and the disposal area is designed with a composite liner and leachate collection system described in section 003.04;

004.07B The liquid is water used for dust control; or

004.07C The liquid is water used to facilitate the placement of the fossil fuel combustion ash in the disposal area.

004.08 Any materials salvaged from the fossil fuel combustion ash disposal area shall be removed daily or stored in a manner protective of the public health and environment.

004.09 All completed areas of a fossil fuel combustion ash disposal area shall be properly reclaimed with final cover pursuant to the requirements of section 005 of these regulations.

004.10 Measures shall be taken to control fugitive dust in accordance with Title 129 - Nebraska Air Quality Regulations during excavation, vehicle movement, placement of ash or covering deposits.

004.11 The operational plan for a fossil fuel combustion ash disposal area shall include a description of the methods of operations which comply with the requirements of 004.01 to 004.10. The operational plan shall also include:

004.11A A description of the days and hours of operations;

004.11B A listing of sources and types of fossil fuel combustion ash to be received; and an estimate of daily quantity to be received;

004.11C A contingency plan for addressing reasonably foreseeable events including, but not limited to, wet weather, high winds, or natural disaster; and

004.11D A schedule of filling; fossil fuel combustion ash placement methods; and a phased site development plan.

005 Closure criteria. Owners or operators of fossil fuel combustion ash disposal areas shall close according to the approved closure plan, and shall install the final cover within six (6) months of the last receipt of waste.

005.01 Owners or operators of fossil fuel combustion ash disposal areas shall close in the following manner:

005.01A The final cover shall consist of at least two (2) feet of earthen material capable of sustaining adequate vegetative cover.

005.01B Final grades and side slopes of the closed area shall prevent run-on and runoff from eroding or otherwise damaging the final cover.

005.01C Appropriate vegetative cover shall be established and maintained as soon as practical after final grading.

005.01D Unauthorized public access, vehicular traffic, and illegal dumping shall be prevented by the use of artificial barriers, natural barriers, or both, along with signs prohibiting such access.

005.02 The requirements of this section apply to all fossil fuel combustion ash disposal areas. Within 90 days following the installation of the final cover system, the owner or operator shall record a permanent notation on the deed to the disposal area property, or some other permanent property record or instrument that is normally examined during the title search and shall provide documentation to the Department that such notation or instrument has been recorded in the permanent records of the county Register of Deeds. A copy of this record and documentation shall be placed in the operating record. This notation or instrument must, in perpetuity, notify any potential purchaser of the following information:

005.02A The existence of a closed fossil fuel combustion ash disposal area on the property;

005.02B The type, depth and location of the fossil fuel combustion ash on the property, as well as the existence of any monitoring systems; and

005.02C Any restrictions on the use of the property which may be provided to protect the integrity of the final cover, liner, monitoring systems or any other components of the containment system.

005.03 The owner or operator of a fossil fuel combustion ash disposal area shall notify the Department, in writing, at least 180 days prior to the date the owner or operator expects to begin closure. ~~Such~~ The owner or operator shall place a copy of this notice ~~shall also be placed~~ in the operating record.

005.04 The owner or operator of a fossil fuel combustion ash disposal area shall begin implementation of the closure plan required in 005.09 of this rule within thirty (30) days after the date on which the permitted facility receives the final volume of waste. The owner or operator shall notify the Department, in writing, of the date of the receipt of the final volume of waste, the date of the initiation of closure, and the date of the installation of the final cover system, as applicable. The owner or operator shall place ~~C~~copies of these notices ~~shall also be placed~~ in the operating record.

005.05 The owner or operator of a fossil fuel combustion ash disposal area shall complete closure activities in accordance with the closure plan within 180 days after the last receipt of waste. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will, due to circumstances beyond the operator's control, take longer than 180 days and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment from the unclosed fossil fuel combustion ash disposal area.

005.06 Following the closure of a fossil fuel combustion ash disposal area or any part of the area, the owner or operator shall submit Construction Quality Assurance documentation, a topographical survey showing final contours, and a certification to the Department signed by an independent professional engineer registered in the State of Nebraska verifying that closure has been completed in accordance with the approved closure plan. This closure documentation and certification shall also be placed in the operating record.

005.07 Owners or operators shall not implement modifications to the design or operation of a fossil fuel combustion ash disposal area which results in modifications to the closure plan without prior approval of the Department.

005.08 No person shall excavate, disturb the final cover, or remove any deposited materials from any closed fossil fuel combustion ash disposal area without having received prior approval from the Department. Requests for approval shall demonstrate that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health and the environment and shall include:

005.08A An operational plan identifying the planned activities and the area involved;

005.08B A survey identifying the lines and grades defining the limits of the proposed excavation both vertically and horizontally;

005.08C Estimated number of cubic yards and type of material to be excavated;

005.08D Location where excavated material is to be deposited;

005.08E Type of equipment to be used to transport material;

005.08F Estimated time required for excavation and disposal procedure; and

005.08G Provisions for closing the excavated or disturbed area.

005.09 Closure Plan. Owners or operators of fossil fuel combustion ash disposal areas shall prepare and submit a written closure plan that describes the steps necessary to close the fossil fuel combustion ash disposal area in phases or the entire area, whichever is applicable. This closure plan shall be part of the permit application. The closure plans shall include, but not be limited to, a description of the methods of closure which comply with the requirements of Section 005 of this Chapter, and the following:

005.09A A description of the final cover designed in accordance with the methods and procedures to be used to install the cover;

005.09B A description of the types and sources of final cover material to be used;

005.09C An estimate of the largest area of the solid waste disposal area ever requiring a final cover at any time during the active life of the solid waste disposal area;

005.09D An estimate of the maximum inventory of wastes ever on-site over the active life of the solid waste disposal area;

005.09E A schedule for the completion of all activities necessary to satisfy the closure criteria; and

005.09F Installation of any or all of the following, as required by the Department and not already present at the site: leachate collection systems and/or groundwater monitoring wells.

006 Post-closure criteria. The owners or operators of all fossil fuel combustion ash disposal areas shall provide for post-closure care for a period of five (5) years.

006.01 Post-closure care shall include, at a minimum, the performance and recording of each of the following activities in the operating record:

006.01A Annual inspection and maintenance of the cover to ensure integrity and effectiveness, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

006.01B Annual inspection and maintenance of access control structures and posted signs;

006.01C Maintenance and operation of any existing leachate collection system;

006.01D Maintenance and semiannual sampling and testing of any existing groundwater monitoring well systems. Results of testing shall be reported to the Department, and placed in the operating record; and

006.01E Maintenance and operation of any other environmental control features which are included in the design and operation of the fossil fuel combustion ash disposal area or required by the Department to protect human health and the environment.

006.02 Owners or operators of fossil fuel combustion ash disposal areas accepting waste after October 1, 1993, shall submit a post-closure plan to the Department for approval. This post-closure plan and any revisions shall be placed in the operating record, with copies of any such revisions forwarded to the Department.

006.03 Post-closure plans required pursuant to 006.02 shall include annual maintenance and monitoring activities to be performed at a fossil fuel combustion ash disposal area for the specified post-closure period after the approved completion of closure. The length of the post-closure period may be increased, if the Department determines that the lengthened period is necessary to protect human health and the environment. The length of the post-closure period may be reduced, if the Department determines that the reduced period is sufficient to protect human health and the environment.

006.04 A detailed written post-closure plan shall include, at a minimum, the following information:

006.04A A description of the monitoring and maintenance activities required in 006.01 for each fossil fuel combustion ash disposal area and the frequency at which these activities will be performed;

006.04B Name, address, and telephone number of the person or office to contact about the closed fossil fuel combustion ash disposal area during the post-closure period;

006.04C A description of the planned uses of the property during the post-closure period and a description of the period of time during which access to the facility will be controlled. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems.

006.05 The owner or operator shall begin implementing the post-closure plan required in Section 006.02 immediately after final closure of the solid waste disposal area is completed and continue implementing the plan over the entire post-closure period.

006.06 Following the post-closure period of each fossil fuel combustion ash disposal area, the owner or operator shall submit a certification to the Department signed by a professional engineer registered in the State of Nebraska verifying that post-closure care has been completed in accordance with the approved post-closure plan.

007 Required Maps and Drawings. The permit application for a fossil fuel combustion ash disposal area shall include the following maps and drawings. When a structure described in 007.03 and 007.04 is not present at the site, a notation shall be made on the required map or drawing.

007.01 A topographic map or maps of the fossil fuel combustion ash disposal area drawn to the scale of 200 feet to the inch or larger, containing 5-foot contour intervals where the relief exceeds 20 feet, and 2-foot contour intervals where the relief is 20 feet or less, and referred to a United States Geological Survey datum.

007.02 A topographic map indicating the proposed final contours and landscaping of completed fossil fuel combustion ash disposal areas with a statement of the proposed final use of the site, if known.

007.03 Maps of the site, drawn to scale, indicating the location of:

007.03A Ground water monitoring well locations;

007.03B Points of entrance to and exit from the facility and to and from the operating area of the facility;

007.03C Loading, dumping and any temporary storage areas;

007.03D Interior roads and ramps;

007.03E Devices for controlling unauthorized access to the facility site;

007.03F Drainage facilities, structures, walls, cribbing, surface protection devices, and any other devices as are necessary to comply with applicable water quality standards;

007.03G Utilities to service the site;

007.03H Gas and oil wells;

007.03I High tension power lines;

007.03J Fuel transmission pipelines;

007.03K Salvage operations;

007.03L Fill area;

007.03M Borrow areas; and

007.03N Provisions for concealing a fossil fuel combustion ash disposal area from public view.

007.04 Maps of the area within one-quarter mile of the boundaries of the site, drawn to scale, showing the location of:

007.04A Waterways and surface drains;

007.04B Borings, wells, springs, and their surface elevations, and depths and elevations of water levels;

007.04C Field tile drains; and

007.04D Underground and surface mines, elevations of mine pools, and mine pool discharges.

Enabling Legislation: Neb. Rev. Stat. §§13-2034; 13-2036; 81-1504 (1), (2), (7), (11)-(13), (20); 81-1505; 81-1528 (7)

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NEBRASKA ADMINISTRATIVE CODE

Title 132 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 5 - CRITERIA FOR CONSTRUCTION AND DEMOLITION WASTE DISPOSAL AREAS

001 Applicability. The requirements of this chapter apply to all construction and demolition waste disposal areas required to have a permit pursuant to Chapter 2, 001.

002 Locational criteria. Construction and demolition waste disposal areas shall be located in accordance with the standards as described in this section. The application shall include documentation verifying that the solid waste disposal area complies with the following.

002.01 The vertical separation between the lowest point of the lowest cell and the predicted maximum water table elevation shall be sufficient to maintain a ten (10) foot vertical distance between deposited waste and the water table elevation based on reliable existing regional data, if available. A lesser separation distance may be approved by the Director provided the applicant shows good cause.

002.02 The application shall include a description of the land use and population density of the proposed facility and of the area surrounding the facility within one mile of the facility boundaries.

002.03 Floodplains. A construction and demolition waste disposal area or a lateral or vertical expansion of these facilities, shall not be located in a 100-year flood plain, unless the owner or operator can demonstrate that the disposal area will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.

002.04 Wetlands. A construction and demolition waste disposal area shall not be located in wetlands.

002.05 Unstable areas. An owner or operator of a construction and demolition waste disposal area located in an unstable area shall demonstrate in the permit application that engineering measures have been incorporated into the facility's design to ensure that the integrity of the final cover system of the construction and demolition waste disposal area will not be disrupted.

002.05A An owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

002.05A1 On-site or local soil conditions that may result in significant differential settling;

002.05A2 On-site or local geologic or geomorphologic features; and

002.05A3 On-site or local human-made features or events, both surface and subsurface.

002.05B For purposes of this section,

002.05B1 “Unstable area” shall mean a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the facility structural components responsible for preventing releases from the facility. This term may include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

002.05B2 “Poor foundation conditions” shall mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

002.05B3 “Areas susceptible to mass movements” shall mean those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the solid waste management facility, because of natural or human-induced events, results in the down slope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

002.05B4 “Karst terranes” shall mean areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

003 Design criteria. Construction and demolition waste disposal areas shall be designed, constructed and operated to:

003.01 Be protective of human health and the environment;

003.02 Not result in pollution of the waters of the state; and

003.03 Include run-on/run-off control systems which shall be designed, constructed and maintained to meet the following criteria:

003.03A Surface water courses and run-on shall be diverted from the construction and demolition waste disposal area by devices such as trenches, conduits and proper grading to minimize infiltration and erosion of cover material.

003.03B Surface water courses and run-off shall be diverted from the construction and demolition waste disposal area by devices such as trenches, conduits and proper grading to minimize infiltration and erosion of cover material. The construction and demolition waste disposal area shall be constructed and graded so as to promote rapid surface water run-off without excessive erosion. Excessive erosion shall mean an erosion rate of five (5) tons per acre per year, or more.

003.03C Run-off from the active portion of the construction and demolition waste disposal area shall be handled in accordance with section 004 of this Chapter.

003.03D Regrading shall be done as required during construction and after completion to avoid ponding of precipitation and to maintain cover material integrity. On-site drainage structures and channels shall be designed for at least a twenty-four (24) hour, twenty-five (25) year storm.

003.04 A construction and demolition waste disposal area application shall include a construction quality assurance plan for any engineered containment systems, which shall be submitted with the application. The plan shall assure adequate construction and testing of the containment system components as called for in design specifications in the facility plan, and shall include a schedule of construction. The construction quality assurance plan shall be prepared and signed by a professional engineer registered in the State of Nebraska.

004 Operational criteria. Operations of all construction and demolition waste disposal areas shall be in accordance with the approved operational plan and Chapter 2 requirements.

004.01 A construction and demolition waste disposal area shall only accept waste defined as construction and demolition waste. All unacceptable wastes shall be removed from the site daily.

004.02 A construction and demolition waste disposal area shall be operated at all times so as to not constitute a hazard, or a threat to human health or the environment.

004.03 The operation of a construction and demolition waste disposal area shall include litter control and disease vector prevention and control programs.

004.04 Air Criteria. Measures shall be taken to control fugitive dust in accordance with Title 129 - Nebraska Air Quality Regulations during excavation, vehicle movement, placement of construction and demolition waste or covering waste.

004.05 Access Requirements. An owner or operator of a construction and demolition waste disposal area shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate. All vehicular access points shall be equipped with gates that can be locked. All access control gates shall be locked during non-operating periods of the construction and demolition waste disposal area.

004.06 Surface Water Requirements. A construction and demolition waste disposal area shall not:

004.06A 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.

004.06B 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.

004.07 An owner or operator shall not accept construction and demolition waste at the facility if the disposal capacity has been reached. Construction and demolition waste shall only be placed in areas designated for disposal.

004.08 Any materials salvaged from the construction and demolition waste disposal area shall be stored in a manner protective of human health and environment and removed within a reasonable time period.

004.09 Cover requirements. Owners and operators of construction and demolition waste disposal areas shall periodically cover with a sufficient amount of earthen material to adequately control disease vectors, fires, and blowing litter.

004.10 All completed areas of a construction and demolition waste disposal area shall be properly reclaimed with final cover pursuant to the requirements of section 005 of this chapter.

004.11 The operational plan for a construction and demolition waste disposal area shall include:

004.11A A description of the days and hours of operations;

004.11B A description of the number and duties of employees;

004.11C Numbers, type and size of equipment on site as well as provisions for obtaining back up equipment, if necessary;

004.11D A contingency plan for addressing reasonably foreseeable events, including, but not limited to, wet weather, high winds, frozen conditions, fires or natural disasters; and

004.11E A schedule of filling and a phased site development plan.

005 Closure criteria. Owners and operators of construction and demolition waste disposal areas shall close according to the approved closure plan, and shall install the final cover within six (6) months of the last receipt of waste. Owners or operators of all construction and demolition waste disposal areas shall close in the following manner.

005.01 The final cover shall consist of at least three (3) feet of earthen material and be capable of sustaining adequate vegetative cover. Lesser depths of final cover may be approved by the Director provided the applicant can show that the lesser amount is sufficient to minimize infiltration, erosion, settlement and promote surface water run-off.

005.02 Final grades and side slopes of the closed area shall prevent run-on and run-off from eroding or otherwise damaging the final cover.

005.03 Appropriate vegetative cover shall be established and maintained as soon as practical after final grading.

005.04 Within 90 days following the installation of the final cover system, the owner or operator shall record a permanent notation on the deed to the disposal area property, or some other permanent property record or instrument that is normally examined during the title search and shall provide documentation to the Department that such notation or instrument has been recorded in the permanent records of the county Register of Deeds. A copy of this record and documentation shall be placed in the operating record. This notation or instrument must, in perpetuity, notify any potential purchaser of the following information:

005.04A The existence of a closed construction and demolition waste disposal area on the property;

005.04B The type, depth and location of the waste on the property, as well as the existence of any monitoring systems; and

005.04C Any restrictions on the use of the property which may be provided to protect the integrity of the final cover or any components of the containment system.

005.05 The owner or operator of a construction and demolition waste disposal area shall notify the Department, in writing, at least 180 days prior to the date the owner or operator expects to begin closure. The owner or operator shall place a copy of this notice in the operating record.

005.06 The owner or operator of a construction and demolition waste disposal area shall begin implementation of the closure plan required in section 005.11 of this rule within thirty (30) days after the date on which the facility receives the final volume of waste. The owner or operator shall notify the Department, in writing, of the date of the receipt of the final volume of waste, the date of the initiation of closure, and the date of the installation of the final cover system, as applicable. The owner or operator shall place copies of these notices in the operating record.

005.07 The owner or operator of a construction and demolition waste disposal area shall complete closure activities in accordance with the closure plan within 180 days after the last receipt of waste. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will, due to circumstances beyond the operator's control, take longer than 180 days and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment from the unclosed construction and demolition waste disposal area.

005.08 Following the closure of the construction and demolition waste disposal area or any part of the area, the owner or operator shall submit Construction Quality Assurance documentation, a topographical survey showing final contours, and a certification to the Department signed by an independent professional engineer registered in the State of Nebraska verifying that closure has been completed in accordance with the approved closure plan. This closure documentation and certification shall also be placed in the operating record.

005.09 Owners or operators shall not implement modifications to the design or operation of a construction and demolition waste disposal area which results in modifications to the closure plan without prior approval of the Department.

005.10 No person shall excavate, disturb the final cover, or remove any deposited materials from any active or closed construction and demolition waste disposal area without having received prior approval from the Department. Requests for approval shall demonstrate that disturbance of the final cover, or other components of the containment system, including any removal of waste, will not increase the potential threat to human health and the environment and shall include:

005.10A An operational plan identifying the planned activities and the area involved;

005.10B A survey identifying the lines and grades defining the limits of the proposed excavation both vertically and horizontally;

005.10C Estimated number of cubic yards and type of material to be excavated;

005.10D Location where excavated material is to be deposited;

005.10E Type of equipment to be used to transport material;

005.10F Estimated time required for excavation and disposal procedure; and

005.10G Provisions for closing the excavated or disturbed area.

005.11 Closure Plan. Owners and operators of all permitted construction and demolition waste disposal areas shall prepare and submit a written closure plan that describes the steps necessary to close the construction and demolition waste disposal area in phases, or the entire area, whichever is applicable. This closure plan shall be provided in the permit application. The closure plans shall include but not be limited to, a description of the methods of closure which comply with the requirements of 005.01 to 005.03 and the following:

005.11A A description of the final cover design including methods and procedures to install the final cover;

005.11B An estimate of the largest area of the construction and demolition waste disposal area ever requiring a final cover at any time during the active life of the construction and demolition waste disposal area;

005.11C An estimate of the maximum inventory of wastes ever on-site over the active life of the construction and demolition waste disposal area; and

005.11D A schedule for the completion of all activities necessary to satisfy the closure criteria.

006 Post-closure Criteria. The owners or operators of all construction and demolition waste disposal areas shall comply with post-closure rules and regulations for a period of five (5) years. The length of the post-closure period may be increased, if the Department determines that the lengthened period is necessary to protect human health and the environment. The length of the post-closure period may be reduced, if the Department determines that the reduced period is sufficient to protect human health and the environment.

006.01 Post-closure care shall include, at a minimum, the performance of each of the following activities:

006.01A Annual inspection and maintenance of the cover to ensure integrity and effectiveness, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

006.01B Annual inspection and maintenance of any access control structures and posted signs; and

006.01C Maintenance and operation of any environmental control features which are included in the design and operation of the construction and demolition waste disposal area or required by the Department to protect human health and the environment.

006.02 Post-closure plan. Each permit application shall include a post-closure plan. Any revisions shall be forwarded to the Department for approval. The post-closure plan shall include, but not be limited to the following:

006.02A A description of the monitoring and maintenance activities required in section 006.01 for each construction and demolition waste disposal area and the frequency at which these activities will be performed;

006.02B Name, address, and telephone number of the person or office to contact about the closed construction and demolition waste disposal area during the post-closure period; and

006.02C A description of the planned uses of the property during the post-closure period and a description of the period of time during which access to the facility will be controlled. Post-closure use of the property shall not disturb the integrity of the final cover, or any other components of the containment system.

006.03 The owner or operator shall begin implementing the post-closure plan required in this section immediately after final closure of the construction and demolition waste disposal area is completed and continue implementing the plan over the entire post-closure period.

007 Required Maps and Drawings. The permit application for a construction and demolition waste disposal area shall include the following maps and drawings, and shall be prepared by a professional engineer registered to practice in the State of Nebraska. When a structure described in 007.03 and 007.04 is not present at the site, a notation shall be made on the required map or drawing.

007.01 A topographic map or maps of the construction and demolition waste disposal area drawn to the scale of 200 feet to the inch or larger, containing 5-foot contour intervals where the relief exceeds 20 feet, and 2-foot contour intervals where the relief is 20 feet or less, and referred to a United States Geological Survey datum.

007.02 A topographic map indicating the proposed final contours and landscaping of completed solid waste disposal areas with a statement of the proposed final use of the site.

007.03 Maps of the site, drawn to scale, indicating the location or existence of the following items:

007.03A Points of entrance to and exit from the facility and to and from the operating area of the facility; devices for controlling unauthorized access to the facility site;

007.03B Loading, dumping and any temporary storage areas;

007.03C Interior roads and ramps;

007.03D Salvage operations;

007.03E Fill area;

007.03F Borrow areas;

007.03G Drainage facilities, structures, walls, cribbing, surface protection devices, and any other devices as are necessary to comply with applicable water quality standards; and

007.03H If present, the following: fire protection facilities, utilities to service the site, gas and oil wells, high tension power lines, and fuel transmission pipelines.

007.04 Maps of the area within one-quarter mile of the boundaries of the site, drawn to scale, showing the location of:

007.04A Waterways and surface drains;

007.04B Nearby surface waters;

007.04C Borings, wells, springs, and their surface elevations, and depths and elevations of water levels;

007.04D Field tile drains; and

007.04E Underground and surface mines, elevations of mine pools, and mine pool discharges.

Enabling Legislation: Neb. Rev. Stat. §§13-2034; 13-2036; 81-1504 (1),(2),(7),(11)-(13),(20); 81-1505; 81-1528 (7)

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NEBRASKA ADMINISTRATIVE CODE

Title 132 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 6 - CRITERIA FOR SOLID WASTE PROCESSING FACILITIES

001 Applicability. The requirements of this chapter apply to all solid waste transfer stations, materials recovery facilities, solid waste compost sites, and other solid waste processing facilities required to obtain a permit pursuant to Chapter 2, 001.

002 Locational criteria. New solid waste processing facilities and lateral expansions of existing solid waste processing facilities shall be located in accordance with the standards as described in this section. The application shall include documentation verifying that the solid waste processing facility complies with the following.

002.01 The application for a solid waste processing facility shall include a description of the:

002.01A Name of and distance to nearby surface waters; and

002.01B Land use and population density of the proposed facility and of the area surrounding the facility within one mile of the facility boundaries.

002.02 Wetlands. A new solid waste processing facility or lateral expansion shall not be located in wetlands.

002.03 The following locational criteria shall apply only to solid waste compost sites.

002.03A No person shall locate a solid waste compost site within one thousand (1,000) feet from the nearest edge of an existing right-of-way of any state, interstate or federal highway unless the active area is screened by natural objects, plantings, fences, or other appropriate means so as to not be visible from such highway.

002.03B Floodplains. A new solid waste compost site or a lateral expansion of these facilities, shall not be located in a 100-year flood plain.

002.03C A solid waste composting site shall not be located in an area where the Department finds that the solid waste activities will have a detrimental effect on the waters of the state based on the following criteria:

002.03C1 Current and projected use of water resources in the potential zone of influence of the site;

002.03C2 Ground water elevation and proposed separation between the lowest point of the lowest cell and the predicted maximum water table elevation;

002.03C3 Potential interrelationship of the local aquifers, and surface waters based on historical records or other sources of information; and

002.03C4 Background and initial quality of water resources in the potential zone of influence of the site.

002.03D The application shall also include a description of the:

002.03D1 Soil and bedrock to a depth adequate to allow evaluation of the water quality protection provided by the soil and bedrock;

002.03D2 Potential for leachate generation, and of pollution of the waters of the state; and

002.03D3 Ground water condition, including ground water flow below and adjacent to the proposed facility, with an appraisal of the effect of the facility on ground water and surface waters.

003 Design criteria. The construction and design of all solid waste processing facilities shall:

003.01 Be protective of human health and the environment;

003.02 Not result in pollution of the waters of the state; and

003.03 In the case of new or lateral expansions of existing solid waste processing facilities, the construction and design plans shall include the following documentation:

003.03A A description of the sequence of earth materials at the proposed facility to a depth sufficient to assure the reliability of the facility design;

003.03B A schedule of construction and a construction quality assurance plan;

003.03C Data obtained from soil samples taken from the proposed facility site which describe the soil classification, grain size distribution, permeability, compatibility, and ion-exchange properties of the subsurface materials for those strata which are essential to the design of the facility; and

003.03D If exploration holes are drilled to obtain data, information showing the manner of plugging and sealing such holes.

003.04 In the case of a solid waste compost site the construction and design plans shall also include the following:

003.04A Measures taken to protect the ground water;

003.04B A description of the system for collection, containment, treatment and/or use of all waters within the site confines, which shall include:

003.04B1 A monitoring program for surface run-off from the site shall be developed and implemented to determine the need and extent of containment facilities; or

003.04B2 A containment facility shall be designed to contain all site run-off from a twenty-four (24) hour twenty-five (25) year storm.

004 Operational criteria. Operations of all solid waste processing facilities shall be in accordance with the approved operational plan and Chapter 2 requirements.

004.01 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.

004.02 Litter shall be controlled at solid waste processing facilities.

004.03 Disease vector control. An owner or operator of a solid waste processing facility shall prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

004.04 Air Criteria. Measures shall be taken to control fugitive dust in accordance with Title 129 - Nebraska Air Quality Regulations during processing of solid waste.

004.05 Procedures for Excluding the Receipt of Regulated Hazardous Waste or TSCA Regulated PCB Wastes.

004.05A Owners or operators of a solid waste processing facility shall implement a program for detecting and preventing the acceptance or disposal of regulated hazardous wastes and TSCA regulated polychlorinated biphenyl (PCB) wastes. This program shall include, at a minimum:

004.05A1 Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes. Random inspections must be conducted on a minimum of one percent (1.0%) of the incoming loads per week or at least one (1) load per week if less than one hundred (100) loads per week are received and processed;

004.05A2 Records of any inspections;

004.05A3 Training of facility personnel to recognize regulated hazardous wastes and PCB wastes; and

004.05A4 Notification to the Department if a regulated hazardous waste or PCB waste is discovered at the facility.

004.05B Any regulated hazardous or PCB waste identified must be removed and handled in accordance with procedures of the approved operating plan.

004.06 Access Requirements.

004.06A An owner or operator of a solid waste processing facility shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate, to protect human health and the environment.

004.06B Access roads to the site shall be maintained so as to be negotiable by vehicles.

004.06C Necessary measures shall be taken (supervision, placarding, fencing) to reduce trespassing.

004.06D Solid waste processing facilities shall be supervised to satisfy requirements of these rules and regulations; placarding or posting instructions shall be used as a supplement to on-site supervision.

004.06E Access to the site shall be permitted only during the hours when operating personnel are on the site.

004.06F All vehicular access points shall be equipped with gates that can be locked or a Department-approved alternative. Operating procedures shall be clearly listed on signs posted at the site entrance.

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

004.07A 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.

004.07B 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.

004.08 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.

004.09 Modifications to facility equipment or operations shall be submitted to the Department for approval and placed into the current permit application, and entered into the operating record.

004.10 Unloading of solid waste at a facility shall be confined to designated areas. Solid waste shall be confined to unloading, loading, and handling areas only.

004.11 The operational plan for a solid waste processing facility shall include a description of the methods of operations which comply with the requirements of 004.01 to 004.10. The operational plan shall also include:

004.11A A description of the days and hours of operations;

004.11B A description of the number and duties of employees;

004.11C A listing of sources and types of waste to be received; and an estimate of daily quantity of wastes to be received; origin of wastes to be received; and load inspection techniques;

004.11D Numbers, type and size of equipment on site as well as provisions for obtaining back up equipment, if necessary; and

004.11E A contingency plan for addressing reasonably foreseeable events including, but not be limited to, wet weather, high winds, frozen conditions, fires, or natural disaster.

004.12 Additional operational requirements to be included in the operational plan for solid waste compost sites shall include:

004.12A Methods of operation shall be described, including windrow, static pile or other, and added to the operational plan;

004.12B If necessary, chemical analysis of the materials to be composted or land applied;

004.12C Provisions for the disposal of waste which is not part of the compost material; and

004.12D If determined necessary by the Department, provisions for at least annual laboratory analysis of underlying soils for leachate detection.

005 Closure criteria. Owners or operators of a solid waste processing facility shall close in accordance with the approved closure plan.

005.01 The owner or operator of a solid waste processing facility shall prepare a written closure plan that describes the steps necessary to close the facility at any point during

the active life of the facility. This closure plan shall be part of the permit application and any revisions shall be placed in the operating record. The closure plans shall include, but are not limited to the following:

005.01A A description of the activities required to close the site in a manner protective of human health and the environment;

005.01B A description of the post-closure plans for the inactive site;

005.01C Methods or means for notifying facility users of the closure of the facility; and

005.01D A description of the location where all materials remaining at the site will be disposed, when applicable.

005.02 The owner or operator of a permitted solid waste processing facility shall notify the Department, in writing, at least 180 days prior to the date the owner or operator expects to begin closure. ~~Such~~The owner or operator shall place a copy of this notice ~~shall also be placed~~ in the operating record.

005.03 The owner or operator of a solid waste processing facility area shall begin implementation of the closure plan required in 005.01 of this rule within thirty (30) days after the date on which the facility receives the final volume of waste. The owner or operator shall notify the Department, in writing, of the date of the receipt of the final volume of waste, the date of the initiation of closure, and completion of closure. The owner or operator shall place Copies of these notices ~~shall also be placed~~ in the operating record.

005.04 The owner or operator of a solid waste processing facility shall complete closure activities in accordance with the closure plan within 180 days after the last receipt of waste. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will, due to circumstances beyond the operator's control, take longer than 180 days and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment from the unclosed solid waste processing facility.

005.05 Owners or operators shall not implement modifications to the design or operation of a solid waste processing facility which results in modifications to the closure plan without prior approval of the Department.

006 Required Maps and Drawings. The permit application for a solid waste processing facility shall include the following maps. When a structure described in 006 is not present at the site, a notation shall be made on the required map or drawing.

006.01 Maps of the site, drawn to scale, indicating the location of:

006.01A Ground water monitoring wells and gas monitoring locations, if required;

006.01B Points of entrance to and exit from the facility and to and from the operating area of the facility;

006.01C Loading, dumping and any temporary storage areas;

006.01D Interior roads and ramps;

006.01E Devices for controlling litter;

006.01F Devices for controlling unauthorized access to the facility site;

006.01G Drainage facilities, structures, walls, cribbing, surface protection devices, and any other devices as are necessary to comply with applicable water quality standards;

006.01H Fire protection facilities;

006.01I Utilities to service the site;

006.01J Gas and oil wells;

006.01K High tension power lines; and

006.01L Fuel transmission pipelines.

006.02 Maps of the area within one-quarter mile of the boundaries of the site, drawn to scale, showing the location of:

006.02A Waterways and surface drains;

006.02B Borings, wells, springs, and their surface elevations, and depths and elevations of water levels;

006.02C Field tile drains; and

006.02D Underground and surface mines, elevations of mine pools, and mine pool discharges.

Enabling Legislation: Neb. Rev. Stat. §§13-2034; 13-2036; 81-1504 (1), (2), (7), (11)-(13), (20); 81-1505; 81-1528 (7)

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NEBRASKA ADMINISTRATIVE CODE

Title 132 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 8 - FINANCIAL ASSURANCE CRITERIA: SOLID WASTE MANAGEMENT FACILITIES

001 The requirements of this chapter are effective April 9, 1996, and are applicable to the owners or operators of all permitted solid waste management facilities except as provided in 001.01 and 001.02 below.

001.01 The requirements of this chapter do not apply to owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

001.02 No county, municipality, or agency shall be required to provide proof of financial responsibility to obtain or renew a permit for a solid waste processing facility.

002 Closure cost estimate. The owner or operator of a solid waste disposal area must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the solid waste disposal area requiring a final cover as required in these regulations at any time during the active life in accordance with the closure plan. The owner or operator must provide the Department with the estimate for approval and place a copy of the estimate in the operating record. If the solid waste disposal area is constructed in phases the closure plan must also provide a detailed written estimate, in current dollars, of the cost of hiring a third party to close each phase of the permitted area in accordance with the closure plan.

002.01 The cost estimate must equal the cost of closing the largest area of a solid waste disposal area requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

002.02 During the active life of a solid waste disposal area, the owner or operator must annually adjust the closure cost estimate for inflation by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross Domestic Product published by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

002.03 The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under Section 004 of this Chapter if changes to the closure plan or changes in the solid waste disposal area conditions increase the maximum cost of closure at any time during the remaining active life.

002.04 The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Section 004 of this Chapter if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the solid

waste disposal area. The owner or operator must provide the Department the justification for the reduction of the closure cost estimate for approval prior to reducing the amount of financial assurance and place a copy of the documentation in the operating record.

003 The owner or operator of a solid waste processing facility requiring a permit, shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the facility and properly dispose of all materials or wastes left at the site. This estimate shall be updated at the time of permit renewal, and shall include the cost of disposing of the most accumulated waste or materials that would ever be stored at the facility any one time.

004 Establishing financial assurance for closure. The owner or operator of each solid waste management facility must establish financial assurance for closure of the facility in compliance with 009. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements.

004.01 The Department will inspect a permitted solid waste management facility when notified by the owner or operator that the closure plan has been implemented and in the case of a solid waste disposal area, compliance with the deed notation and closure certification by a professional engineer as required in these regulations, has been demonstrated. If the inspection reveals that the approved closure plan has been properly effected, the Department shall authorize the release of the financial assurance requirement for closure of that solid waste management facility. If the inspection reveals the closure plan has not been properly implemented, the Department may retain all or part of the remaining financial assurance instrument.

005 Post-closure cost estimate. The owner or operator of a solid waste disposal area must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste disposal area in compliance with the post-closure plan. The post-closure cost estimate used to demonstrate financial assurance in Section 006 of this Chapter must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must provide the Department with the estimate for approval and place a copy in the operating record.

005.01 The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

005.02 During the active life of a solid waste disposal area and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross Domestic Product published by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

005.03 The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under Section 006 of this Chapter if changes to the post-closure plan or changes in the solid waste disposal area conditions increase the maximum cost of post-closure care.

005.04 The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under Section 006 of this Chapter if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must provide the Department the justification for the reduction of the post-closure cost estimate for approval prior to reducing the amount of financial assurance and place a copy of the documentation in the operating record.

006 Establishing financial assurance for post-closure. The owner or operator of each solid waste disposal area must establish, in a manner in accordance with 009, financial assurance for the costs of post-closure care as required under these regulations. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care.

006.01 Within one year of the end of the designated post-closure care period, the Department will make an inspection of a solid waste disposal area to determine if the approved post-closure plan has been properly implemented. If the inspection reveals that the post-closure plan has been properly implemented, the remaining amount of the financial assurance mechanism will be released. If the inspection reveals that the post-closure plan has not been properly implemented, the Department may retain all or part of the remaining financial assurance instrument or require an extension of the post-closure period.

007 Remedial action program cost estimate. An owner or operator of a solid waste disposal area required to undertake a remedial action program under Chapter 7, Section 006 must have a detailed written cost estimate, in current dollars, of the cost of hiring a third party to perform the remedial action in accordance with the program required under Chapter 7, Section 006. The remedial action cost estimate must account for the total costs of remedial action activities as described in the remedial action plan submitted to the Department in accordance with Title 118 - Groundwater Quality Standards and Use Classification, and for any other activities established as necessary by the Director for protection of human health and the environment for the entire remedial action period. The owner or operator must provide the Department with the estimate for approval and place a copy in the operating record.

007.01 The owner or operator must annually adjust the estimate for inflation until the remedial action program is completed as determined by the Department. The inflation factor is derived from the most recent annual Implicit Price Deflator for Gross Domestic Product published by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

007.02 The owner or operator must increase the remedial action cost estimate and the amount of financial assurance provided under Section 008 of this Chapter if changes in the remedial action program, or changes in the solid waste disposal area conditions increase the maximum costs of the remedial action.

007.03 The owner or operator may reduce the amount of the remedial action cost estimate and the amount of financial assurance provided under Section 008 of this Chapter if the cost estimate exceeds the maximum remaining costs of the remedial action. The owner or operator must provide the Department the justification for the reduction of the remedial action cost estimate for approval prior to reducing the amount of financial assurance and place a copy of the documentation in the operating record.

008 Establishing financial assurance for remedial action program. The owner or operator of each solid waste disposal area required to undertake a remedial action program under Chapter 7, 006 must establish, in a manner in accordance with 009, financial assurance for the most recent remedial action program submitted to the Department in accordance with Title 118 - Groundwater Quality Standards and Use Classification, and for any other activities established as necessary by the Director for protection of human health and the environment. The owner or operator must provide continuous coverage for remedial action until the remedial action program is completed as determined by the Department in accordance with Title 118 - Groundwater Quality Standards and Use Classification, and all other established requirements.

009 Allowable mechanisms. Allowable mechanisms used to demonstrate financial assurance under 010 to 018 must ensure that the funds necessary to meet the costs of closure, post-closure care, and remedial action for known releases will be available whenever they are needed. Any mechanism under 010, 011, 012 and, where applicable, 018 shall be made payable to or held in trust for the benefit of the State and shall be approved by the Department. Owners and operators must choose from the options specified in Sections 010 to 018 of this Chapter.

009.01 Incapacity of owners or operators, guarantors, or financial institutions. An owner or operator will be considered to be without financial assurance in the event of bankruptcy of the trustee, insurance company, financial institution, guarantor, or other issuer of any mechanism used to demonstrate financial assurance. The owner or operator must establish alternate financial assurance within sixty (60) days after such an event.

010 Trust Fund.

010.01 An owner or operator may satisfy the requirements of this chapter by establishing a trust fund which conforms to the requirements of this section. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State Agency. The owner or operator must provide the Department with an originally signed duplicate of the trust agreement that has been placed in the operating record.

010.02 Payments into the trust fund must be made annually by the owner or operator over the estimated life or over the remaining life of the solid waste disposal area, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the remedial action program in the case of remedial action for known releases. This period is referred to as the “pay-in period”.

010.02A Payments into the trust fund for an owner or operator of a construction and demolition waste disposal area must be made annually and the pay-in period shall not exceed 30 years.

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010.03 For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in Section 010.02 of this Chapter. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{(CE - CV)}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

010.04 For a trust fund used to demonstrate financial assurance for remedial action, the first payment into the fund must be at least equal to one-half of the current cost estimate for remedial action, divided by the number of years in the remedial action pay-in period as defined in Section 010.02 of this Chapter. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{(RB - CV)}{Y}$$

where RB is the most recent estimate of the required trust fund balance for remedial action (i.e., the total costs that will be incurred during the second half of the remedial action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

010.05 The initial payment into the trust fund must be made before the initial receipt of waste in the case of closure or post-closure care, or no later than 120 days after the remedial action workplan has been approved by the Department.

010.06 If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this chapter, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of 010, as applicable.

010.07 The owner or operator or other person authorized to conduct closure, post-closure care, or remedial action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if the Department determines sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or remedial action, and if justification and documentation of the cost is approved by the Department and a copy placed in the operating record. The Department will provide written notice to the owner or operator of the determination to withhold reimbursement and the reasons for the determination.

010.08 The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this chapter or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of 004, 006, and 008.

010.09 Discounting. If the owner or operator establishes a trust fund, the Department may allow discounting of closure cost estimates in 003, post-closure cost estimates in 005, and/or remedial action costs in 007 up to a rate of return for essentially risk free investments, net of inflation, under the following conditions:

010.09A The Department determines that the cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating;

010.09B The Department finds the facility in compliance with applicable and appropriate permit conditions;

010.09C The Department determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

010.09D Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining facility life.

011 Surety Bond Guaranteeing Payment or Performance.

011.01 The owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this section. An owner or operator may demonstrate financial assurance for remedial action by obtaining a performance bond which conforms to the requirements of this section. The bond must be effective before the initial receipt of waste in the case of a closure or post-closure care, or no later than 120 days after the remedial action workplan has been approved by the Department. The surety company issuing the bond, at a minimum, must be listed as an acceptable surety of federal bonds in Circular 570 of the United States Department of the Treasury and approved by the

Department. The owner or operator must provide the Department with an originally signed duplicate of the bond that has been placed in the operating record.

011.02 The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or remedial action cost estimate, whichever is applicable, except as provided in 019.

011.03 Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

011.04 Payments made under the terms of the bond will be paid by the surety directly to the Department.

011.05 Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the Department one-hundred and twenty (120) days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this chapter.

011.06 If the owner or operator fails to establish alternate financial assurance, as specified in this chapter, within ninety (90) days after the Department receives a notice of cancellation, the Director will notify the surety of the failure of the owner or operator to perform as guaranteed by the bond.

011.07 The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this chapter or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of 004, 006, and 008.

012 Letter of Credit.

012.01 An owner or operator may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section. The letter of credit must be effective before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the remedial action workplan has been approved by the Department. The owner or operator must provide the Department with an originally signed duplicate of the letter of credit that has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State Agency.

012.02 A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

012.03 The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or remedial action, whichever is applicable, except as provided in 010. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the Department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

012.04 If the owner or operator fails to establish alternate financial assurance, as specified in this chapter, within ninety (90) days after the Department receives a notice of cancellation, the Director will draw on the letter of credit.

012.05 The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this chapter or if the owner or operator is released from the requirements of 004, 006 or 008.

013 Insurance.

013.01 An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this section. The insurance must be effective before the initial receipt of waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. The owner or operator must provide the Department with an originally signed duplicate of the insurance policy that has been placed in the operating record.

013.01A An owner or operator using insurance as a financial assurance mechanism must disclose whether the insurer is a subsidiary or has a corporate, legal or financial affiliation with the owner or operator.

013.01A1 An owner or operator using insurance issued by a subsidiary or affiliate must provide a detailed description of the relationship between the owner or operator and insurer, and must demonstrate the owner or operator can satisfy the financial test criteria in 014.01.

013.01B An insurer issuing an insurance policy for a parent company or affiliate, or for a group of companies in the same industry, must meet the following qualifications:

013.01B1 The most recent A.M.Best rating must be at least A- (minus);

013.01B2 The insurer must be domiciled in the United States;

013.01B3 The most recent Report on Examination from the State Insurance Department from the insurer's State of Domicile must be satisfactory;

013.01B4 The insurer must have capital and surplus of at least \$100,000,000; and

013.01B5 The insurer must receive an unqualified opinion of their annual financial statements from an independent certified public accountant, with the potential exception for qualified opinions as follows. The Department may evaluate qualified opinions on a case-by-case basis and allow use of the insurer in cases where the Department determines the matters which form the basis for the qualification are insufficient to warrant disqualification of the insurer.

013.02 The closure or post-closure care insurance policy must guarantee that funds will be available to close the solid waste management facility whenever final closure occurs or to provide post-closure care for the solid waste management facility whenever the post-closure care period begins, whichever is applicable. If the owner or operator fails to properly implement the closure or post-closure plan, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

013.03 The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in 019. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

013.04 An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursement for closure or post-closure expenditures, whichever is applicable. Requests for reimbursements will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator must provide the Department the documentation of justification for reimbursement and place a copy of the documentation in the operating record.

013.05 Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

013.06 Each policy must contain a provision that a Certificate of Insurance verifying coverage will be provided to the Department on an annual basis.

013.07 The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for the failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the Department 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this chapter.

013.07A Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

013.07A1 The NDEQ Director deems the facility abandoned; or

013.07A2 The permit is terminated or revoked or a new permit is denied by the NDEQ Director; or

013.07A3 Closure is ordered by the NDEQ Director or U.S. district court or other court of competent jurisdiction; or

013.07A4 The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code; or

013.07A5 The owner or operator pays the premium due.

013.08 For insurance policies providing coverage for the post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five percent (85%) of the most recent investment rate or the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

013.09 The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this chapter, or if the owner or operator is no longer required to demonstrate financial responsibility, in accordance with the requirements of 004 or 006.

014 Corporate Financial Test. An owner or operator that satisfies the requirements of this section may demonstrate financial assurance up to the amount specified in this section:

014.01 Financial Component.

014.01A The owner or operator must satisfy one of the following three conditions:

014.01A1 A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa, as issued by Moody's; or

014.01A2 A ratio of less than 1.5 comparing total liabilities to net worth; or

014.01A3 A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

014.01B The tangible net worth of the owner or operator must be greater than:

014.01B1 The sum of the current closure, post-closure care, remedial action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million except as provided in 014.01B2.

014.01B2 \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and remedial action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Department.

014.01C The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, remedial action cost estimates and any other environmental obligations covered by a financial test as described in 014.03.

014.02 Recordkeeping and Reporting Requirements.

014.02A The owner or operator must provide the Department the following items and place a copy into the facility's operating record:

014.02A1 A letter signed by the owner's or operator's chief financial officer that:

014.02A1(a) Lists all current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under this chapter, cost estimates required for underground injection control facilities, if applicable, cost estimates required for petroleum underground storage tank facilities, if applicable, cost estimated required for PCB storage facilities, if applicable, and cost estimates required

for hazardous waste treatment, storage and disposal facilities, if applicable; and

014.02A1(b) Provides evidence demonstrating that the firm meets the conditions of either 014.01A1 or 014.01A2 or 014.01A3 and 014.01B and 014.01C.

014.02A2 A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Department may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Department deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Department does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirement of this chapter.

014.02A3 If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies 014.01A2 and 014.01A3 that are different from data in the audited financial statements referred to in 014.02A2 or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

014.02A4 If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in 014.01B2, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

014.02B An owner or operator must provide the Department the items specified in 014.02A and place a copy into the operating record, before the initial receipt of waste in the case of closure, and post-closure care, or no later than 120 days after the remedial action workplan has been approved by the Department.

014.02C After the initial placement of items specified in 014.02A in the operating record, the owner or operator must annually update the information, provide the Department the updated information, and place a copy into the operating record within ninety (90) days following the close of the owner or operator's fiscal year. The Department may provide up to an additional forty-five (45) days for an owner or operator who can demonstrate that ninety (90) days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in 014.02A.

014.02D The owner or operator is no longer required to submit the items specified in 014.02 or comply with the requirements of this section when:

014.02D1 The owner or operator substitutes alternate financial assurance as specified in this chapter that is not subject to these recordkeeping and reporting requirements: or

014.02D2 The owner or operator is released from the requirements of this chapter in accordance with 004, 006 and 008.

014.02E If the owner or operator no longer meets the requirements of Section 014.01, the owner or operator must, within 120 days following the close of the owner or operator's fiscal year, notify the Department that the owner or operator no longer meets the criteria of the financial test, obtain alternative financial assurance that meets the requirements of this chapter, provide the Department the required submissions for that assurance, and place a copy into the operating record.

014.02F The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 014.01, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in 014.02. If the Department finds that the owner or operator no longer meets the requirements of 014.01, the owner or operator must provide alternate financial assurance that meets the requirements of this chapter.

014.03 Calculations of Costs to be Assured. When calculating the current cost estimates for closure, post-closure care, remedial action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this section, the owner or operator must include cost estimates required for municipal solid waste management facilities under this part, as

well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with underground injection control facilities, petroleum underground storage tank facilities, PCB storage facilities, and hazardous waste treatment, storage and disposal facilities.

015 Local Government Financial Test. An owner or operator that meet the criteria of a local government as identified in Section 017 of this Chapter, and satisfies the requirements of 015.01 through 015.03, may demonstrate financial assurance up to the amount specified in 015.04:

015.01 Financial component.

015.01A The owner or operator must satisfy 015.01A1 or 015.01A2 as applicable:

015.01A1 If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

015.01A2 The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

015.01A2(a) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

015.01A2(b) A ratio of annual debt service to total expenditures less than or equal to 0.20.

015.01B The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

015.01C A local government is not eligible to assure its obligations under this section if it:

015.01C1 Is currently in default on any outstanding general obligation bonds; or

015.01C2 Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

015.01C3 Operated at a deficit equal to five percent (5%) or more of total annual revenue in each of the past two (2) fiscal years; or

015.01C4 Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under 015.01B. However, the Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems the qualification insufficient to warrant disallowance of use of the test.

015.01D The following terms used in this section are defined as follows:

015.01D1 "Deficit" equals total annual revenues minus total annual expenditures;

015.01D2 "Total Revenues" include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

015.01D3 "Total Expenditures" include all expenditures excluding capital outlays and debt repayment;

015.01D4 "Cash Plus Marketable Securities" is all the cash plus marketable securities held by the local government on the last day of the fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions: and

015.01D5 "Debt Service" is the amount of principal and interest due on a loan in a given time period, typically the current year.

15.02 Public notice component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to remedial action costs must be placed in the CAFR not later than 120 days after the remedial action workplan has been approved by the Department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be provided to the Department, and placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or

budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

015.03 Recordkeeping and Reporting Requirements.

015.03A The local government owner or operator must provide the Department the following items and place a copy into the facility's operating record:

015.03A1 A letter signed by the local government's chief financial officer that:

015.03A1(a) Lists all the current cost estimates covered by a financial test, as described in 015.04;

015.03A1(b) Provides evidence and certifies that the local government meets the conditions of 015.01A, 015.01B and 015.01C; and

015.03A1(c) Certifies that the local government meets the conditions of 015.02 and 015.04.

015.03A2 The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

015.03A3 A report to the local government from the local government's independent, certified public accountant (CPA) or an appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by 015.01A2, if applicable, and the requirements of 015.01B, 015.01C3 and 015.01C4. The CPA or State agency's report should state the procedures performed and the CPA or State agency's finding; and

015.03A4 A copy of the comprehensive annual financial report (CAFR) used to comply with 015.02 or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

015.03B The items required in 015.03A must be provided to the Department and a copy placed in the facility operating record as follows:

015.03B1 In the case of closure and post-closure care, prior to the initial receipt of waste at the facility, or

015.03B2 In the case of remedial action, not later than 120 days after the remedial action workplan has been approved by the Department.

015.03C After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and provide to the Department the updated information and place a copy into the operating record within 180 days following the close of the owner or operator's fiscal year.

015.03D The local government owner or operator is no longer required to meet the requirement of 015.03 when:

015.03D1 The owner or operator substitutes alternate financial assurance as specified in this chapter; or

015.03D2 The owner or operator is released from the requirements of this chapter in accordance with 004, 006, and 008.

015.03E A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, notify the Department that the owner or operator no longer meets the criteria of the financial test, obtain alternative financial assurance that meets the requirement of this chapter, provide the Department the required submissions for that assurance, and place a copy into the operating record.

015.03F The Department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with this chapter.

015.04 Calculation of Costs to be Assured. The portion of the closure, post-closure and remedial actions costs for which an owner or operator can assure under this section is determined as follows:

015.04A If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and remedial action costs that equal up to forty-three percent (43%) of the local government's total annual revenue.

015.04B If the local government assures other environmental obligations through a financial test, including those associated with underground injection

control facilities, petroleum underground storage tank facilities, PCB storage facilities, and hazardous waste treatment, storage and disposal facilities, it must add those costs to the closure, post-closure, and remedial action costs it seeks to assure under this section. The total that may be assured must not exceed forty-three percent (43%) of the local government's total annual revenue.

015.04C The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in 015.04A and 015.04B.

016 Corporate Guarantee.

016.01 An owner or operator may meet the requirements of this chapter by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 014 and must comply with the terms of the guarantee. A certified copy of the guarantee must be provided to the Department and a copy placed into the facility's operating record along with the copies of the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

016.02 The guarantee must be effective and all required submissions provided to the Department and a copy placed into the operating record before the initial receipt of waste in the case of closure and post-closure care, or in the case of remedial action no later than 120 days after the remedial action workplan has been approved by the Department.

016.03 The terms of the guarantee must provide that:

016.03A If the owner or operator fails to perform closure, post-closure care, and/or remedial action of a facility covered by the guarantee, the guarantor will:

016.03A1 Perform, or pay a third party to perform, closure, post-closure care, and/or remedial action as required (performance guarantee); or

016.03A2 Establish a fully funded trust fund as specified in 010 in the name of the owner or operator (payment guarantee).

016.03B The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this chapter

unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

016.03C If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Department, provide alternate financial assurance to the Department and place evidence of that alternate financial assurance in the facility operating record. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days of the cancellation notice, submit alternative assurance, to the Department and place evidence of the alternate assurance in the facility operating record.

016.04 If a corporate guarantor no longer meets the requirements of 014.01, the owner or operator must, within ninety (90) days, provide alternate assurance to the Department and, place evidence of the alternate assurance in the facility operating record. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance to the Department within the next thirty (30) days.

016.05 The owner or operator is no longer required to meet the requirements of this section when:

016.05A The owner or operator substitutes alternate financial assurance as specified in this chapter; or

016.05B The owner or operator is released from the requirements of this chapter in accordance with 004, 006, or 008.

017 Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure, post-closure and remedial action, as required by 004, 006, and 008, by obtaining a written guarantee provided by a local government. A Local government must be a general purpose primary government, a legally separate and fiscally independent entity, and must have clear responsibility for meeting their own financial commitments. Enterprise funds, joint ventures, agencies, coalitions, special districts, and other such government units, are not eligible to use the local government financial test or guarantee as a separate government entity; however the individual local government partners in these government units or the overseeing general purpose government in the case of the enterprise fund are eligible to provide a local government guarantee. The guarantor must meet the requirements of the local government financial test in 015, and must comply with the terms of a written guarantee.

017.01 Terms of the written guarantee. The guarantee must be effective and all required submissions provided to the Department and a copy placed in the operating

record before the initial receipt of waste in the case of closure, post-closure care, or no later than 120 days after the remedial action workplan has been approved by the Department. The guarantee must provide that:

017.01A If the owner or operator fails to perform closure, post-closure care, and/or remedial action of a facility covered by the guarantee, the guarantor will:

017.01A1 Perform, or pay a third party to perform, closure, post-closure care, and/or remedial action as required (performance guarantee); or

017.01A2 Establish a fully funded trust fund as specified in 010 in the name of the owner or operator (payment guarantee).

017.01B The guarantee will remain in force as long as the owner or operator must comply with the applicable financial assurance requirements of this chapter unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

017.01C If the guarantor sends notice of cancellation, the owner or operator must, within ninety (90) days following the receipt of the cancellation notice by the owner or operator and the Department, provide alternate financial assurance to the Department and place evidence of that alternate financial assurance in the facility operating record. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide to the Department alternate assurance within 120 days following the guarantor's notice of cancellation and place evidence of the alternate assurance in the facility operating record.

017.02 Recordkeeping and reporting.

017.02A The owner or operator must provide a certified copy of the guarantee along with the items required in 015.03 to the Department and place a copy into the facility's operating record before the initial receipt of waste in the case of closure, post-closure care, or no later than 120 days after the remedial action workplan has been approved by the Department.

017.02B The owner or operator is no longer required to maintain the items specified in 017.02 when:

017.02B1 The owner or operator substitutes alternate financial assurance as specified in this chapter; or

017.02B2 The owner or operator is released from the requirements of this chapter in accordance with 004, 006, or 008.

017.02C If the local government guarantor no longer meets the requirements of Section 015, the owner or operator must, within ninety (90) days, provide alternate assurance to the Department, and place evidence of the alternate assurance in the facility operating record. If the owner or operator fails to obtain alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance to the Department within the next thirty (30) days, and place evidence of the alternate assurance in the facility operating record.

018 State-Approved Mechanism. An owner or operator may satisfy the requirements of this chapter by obtaining any other mechanism that meets the criteria specified in 009, and that is approved by the Department.

019 Use of Multiple Financial Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure and remedial action, as required in 004, 006 and 008, by establishing more than one financial mechanism per solid waste management facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Section 010 to 018 of this Chapter, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or remedial action, may be provided by a combination of mechanisms, rather than a single mechanism.

020 The language of the mechanisms listed in 010 to 018 must ensure that the instruments satisfy the following criteria:

020.01 The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care and remedial action for known releases when needed;

020.02 The financial assurance mechanism must ensure that funds will be available to the Department in a timely fashion when needed;

020.03 The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedial action workplan has been approved by the Department, and must be maintained until the owner or operator is released from the financial assurance requirements under 002 to 007.

020.04 The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

021 Forfeiture. If the owner or operator of a solid waste management facility fails to properly implement the applicable closure or post-closure plan or remedial action program, or does not comply with a directive from the Department to implement the applicable closure or post-closure

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plan, or remedial action program, or the Department deems the solid waste management facility abandoned, the Department shall declare all or any appropriate part of the financial assurance as forfeited. For purposes of this chapter, abandonment shall mean the failure to initiate closure within thirty (30) days after receipt of the final volume of waste.

022 In the event a determination to forfeit financial assurance is made, the Department shall:

022.01 Send written notification by certified mail, return receipt requested, to the owner or operator and the surety, escrow agent, or other person responsible for financial assurance of the Department's determination to forfeit all or part of the financial assurance and the reasons for the forfeiture, including a finding of amount to be forfeited;

022.02 The owner or operator may request a hearing on the issue of whether the financial assurance, or part thereof, shall be forfeited in accordance with the procedures specified in Neb. Rev. Stat. §81-1507 (1)(2) and the Department's Title 115 - Rules of Practice and Procedure.

Enabling Legislation: Neb. Rev. Stat. §§13-2034; 81-1505(1)(13)(21); 81-1528(7)

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NEBRASKA ADMINISTRATIVE CODE

Title 132 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL QUALITY

Chapter 9 - PERMIT APPLICATION FEES

001 Scope. This chapter shall apply to:

001.01 Any application by any person for a permit to:

001.01A Operate a solid waste management facility for which a permit is required pursuant to the Integrated Solid Waste Management Act, Sections 13-2001 through 13-2043 Revised Statutes of Nebraska, 1992; or

001.01B Operate a facility governed by the Nebraska Environmental Protection Act, Sections 81-1501 through 81-1533, Reissue Revised Statutes of Nebraska, 1943.

001.02 Any major modification to the design or operation of any of the permitted facilities of Section 001.01 above.

002 For the purposes of this chapter, "major modification" shall mean changes to any permitted facility which require Department review, approval, and public notice, and include, but are not limited to, changes in facility design, liners, leachate collection systems, ground water monitoring systems, gas collection systems, final closure plans, operational plans, and any increase in design capacity of a solid waste disposal area.

003 Fee schedule. Non-refundable fees in the following amounts shall be paid in full and shall accompany an application for a permit to operate a facility or for renewal of a permit or for a major modification to any permitted facility:

	Initial	Major Modification	Renewal	Initial Application for Existing Facility
Municipal Solid Waste Disposal Area	\$15,000	\$ 7,500	\$ 750	\$1,500
Construction Demolition Disposal Area	1,500	500	250	150
Fossil Fuel Combustion Ash Disposal Area	2,500	1,250	300	250
Delisted Waste Disposal Area	45,000	22,250	2,250	4,500

Industrial Waste Disposal Area	3,100	1,500	350	310
Solid Waste Compost Site	3,100	1,500	350	310
Materials Recovery Facility	1,500	500	250	150
Solid Waste Transfer Station	500	250	150	50
Other Solid Waste <u>Processing Facility</u>	750	375	100	75
Land Application Unit for Repeated Disposal or Treatment of Special Waste	3,100	1,500	350	310

004 Fees for Multiple Facilities on Same Location. For facilities which are located on the same premises, fees shall be equal to the highest fee required for any type of facility plus 20% of the initial fee for each of the remaining facilities. This same method shall be used for fees required for major modifications to facilities on the same premises.

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

Legal Citation: Title 132, Ch. 9, Nebraska Department of Environmental Quality

NEBRASKA ADMINISTRATIVE CODE

Title 132 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 14 – Waste Tires

001 Disposal of waste tires. Land disposal of recyclable waste tires in any form is prohibited.

001.01 For purposes of this Title, nonrecyclable tire means a press-on solid tire, a solid pneumatic shaped tire, or a foam pneumatic tire and may be land disposed at a permitted landfill.

001.02 No person shall accumulate more than five hundred (500) passenger tire equivalents (PTE) of waste tires for more than one (1) year; except:

001.02A Waste Tire Processor or Recycler. A waste tire processor or recycler may accumulate more than five hundred (500) PTE in a calendar year for the purpose of reusing, recycling or shipping the waste tires out of state. However, the amount of tire material reused, recycled or shipped out of state must equal at least seventy-five percent (75 %) by weight of such material accumulated by January 1st of that calendar year. Failure to reuse, recycle or ship out of state seventy-five percent (75%) of such material in one (1) calendar year shall be deemed speculative accumulation or disposal and is prohibited. Written documentation that verifies seventy-five percent (75%) of waste tire material was reused, recycled or shipped out of state within one (1) calendar year rests with the person accumulating the waste tires.

001.02B Tire Retailer. A tire retailer may accumulate more than five hundred (500) PTE of waste tires for less than one (1) year for the purpose of transporting the waste tires offsite for reuse, recycling, or shipment out of state.

001.02C Permitted Solid Waste Disposal Area. A permitted solid waste disposal area may accumulate more than five hundred (500) PTE of waste tires for less than one (1) year for the purpose of transporting the waste tires offsite for reuse, recycling, or shipment out of state.

001.02D Other Collector. Any person may accumulate more than five hundred (500) PTE of waste tires for the purpose of transporting the waste tires offsite for reuse, recycling, or shipment out of state provided the waste tire material is accumulated in no more than two (2) containers for less than one (1) year.

002 Any person storing or accumulating any number of waste tires must:

002.01 Provide measures to minimize risks to public health and welfare caused by disease-carrying insects and rodents;

002.02 Locate the waste tire accumulation outside all wetlands;

002.03 Comply with the State Fire Marshal regulations, Title 153, Nebraska State Fire Code Regulations, concerning waste tire management.

003 Waste tires are not considered disposed if they are:

003.01 Beneficially reused in accordance with Section 006 of this chapter;

003.02 Processed into crumb rubber form and reused or recycled in manufactured products such as, but not limited to, products used for schools, playgrounds, and residential, lawn, and garden applications; or for use as rubber modified asphalt for road construction;

003.03 Used as tire-derived fuel in accordance with a permit issued under Title 129, Nebraska Air Quality Regulations;

003.04 Retreaded;

003.05 Processed into chip or shred form and used as drainage media in landfill construction or septic drain fields;

003.06 Used as raw material in steel making;

003.07 Processed into chip or shred form and used as alternative daily cover in a landfill in accordance with Chapter 3, 004.17B2;

003.08 Processed into chip or shred form for a civil engineering project if such project is designed and constructed by an engineer registered in compliance with the Engineers and Architects Regulation Act and prior approval for such project is obtained from the Department by the waste tire processor and the end user. The use of chips and/or shreds in civil engineering projects shall conform to the Material Characterization Test Methods and Construction Practices as contained within the American Society for Testing and Materials (ASTM) Standard Practice for Use of Scrap Tires in Civil Engineering Applications, D 6270-98, as incorporated herein by reference. Departmental approval is not necessary for chipped or shredded tire projects involving three thousand five hundred (3,500) or less PTE of waste tires if the Department receives notification of the project at least thirty (30) days prior to any construction of such project. The notification shall contain the following:

003.08A Name and address of the waste tire processor and end user;

003.08B Location of the project; and

003.08C A description of the type of the project, the number of PTE of waste tires to be used, and any additional information the Department determines is necessary.

003.09 Accumulated in accordance with Section 001 of this chapter.

004 On or after September 1, 2003, placing or causing the placement or disposal of waste tires in any form into the waters of the state is prohibited except for use as specified in Section 006 of this chapter. Compliance with the provisions of Section 006 of this chapter is not an exemption from other local, state or federal requirements.

005 Any person who accumulates waste tires in violation of Section 001 of this chapter and that accumulation is the subject of abatement or cleanup, shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid by the Department of Environmental Quality.

006 Beneficial reuse of waste tires. Beneficial reuse shall mean waste tires used for agricultural purposes as defined in Chapter 1; as fish habitat; as blowout stabilization; tire mats for bank stabilization; or burned for energy recovery.

006.01 The following are standards and criteria for specific approved beneficial reuse of waste tires:

006.01A Stream bank, lake bank and culvert outlet mats using whole waste tire mats, constructed as follows:

006.01A1 The whole waste tires shall be placed in a single layer, with waste tires bonded together with a non-corrodible connector;

006.01A2 The whole waste tires shall all be drilled or punctured with at least one (1.0) inch diameter hole(s) to allow outflow of air to prevent flotation. The whole waste tires shall be oriented in the mat such that the hole(s) prevent flotation during submerged conditions;

006.01A3 The bonded whole waste tire mat shall be anchored with cable of at least 0.5 inches in diameter;

006.01A4 The cables shall then be fastened to buried anchors made of treated timbers or concrete, at least every 50 feet along the top and sides and at the rate of one (1) anchor per one thousand square feet (1,000 ft²) of the waste tire mat face and at the rate of one (1) anchor per one hundred fifty square feet (150 ft²) of waste tire mat resting on the bottom of the stream, lake or culvert channel;

006.01A5 The whole waste tire mat should extend four (4) to six (6) feet into the stream channel, lake bottom or culvert channel bottom and shall

be vertically entrenched at least one (1) tire width in the bottoms to avoid undercutting;

006.01A6 The outermost row in the flow bottom(s) shall be filled with rocks or concrete debris sized to remain in place when subjected to the velocities of the design storm;

006.01A7 Vegetation shall be planted in and around the whole waste tire mat; rows within the waste tire mat that are too wet for vegetation establishment shall be filled with rocks or concrete debris sized to remain in place under the velocities of the design storm;

006.01A8 Each whole waste tire mat shall be shown to be stable when subjected to the velocity of the design flow(s) by standard hydraulic equations, which utilize verifiable hydraulic constants.

006.01B Stream bank, lake bank and culvert outlet mats using processed waste tire mats, which meet the following criteria:

006.01B1 Processed waste tire mats are not appropriate in flowing water with velocity greater than five (5) feet per second unless they are shown to be stable under velocities of flow greater than five (5) feet per second. All flow velocities shall be determined by applicable standard hydraulic equations utilizing verifiable hydraulic constants;

006.01B2 Processed waste tire mats shall be placed in a single layer and connected with non-corrodible connectors;

006.01B3 The processed waste tire mat shall be anchored to the bank along the top, toe and upstream and downstream ends of the waste tire mat;

006.01B4 The processed waste tire mat should extend four to six feet out into the channel bottom.

006.01C Blowout Stabilization. Waste tires used for blowout stabilization must be designed using the following criteria:

006.01C1 The stabilized area of the blowout must have one single layer of relatively uniform thickness ranging from a passenger tire to a truck tire. The waste tires must be arranged in a random pattern that does not allow wind to find a straight-line path through the tires. Waste tires shall not be placed inside other waste tires and tires with rims, cut tires or inner tubes shall not be used;

006.01C2 Mulching and seeding is required and may be completed prior to or after the placement of waste tires. An appropriate seed mix and seed rate shall be drilled or broadcast over the site to establish vegetative growth;

006.01C3 The edges of the blowout must be sloped to a ratio of 2:1 (horizontal to vertical) or flatter;

006.01C4 The landowner must consult with the Nebraska Game and Parks Commission (NGPC) regarding possible populations of threatened or endangered species in the area and obtain consent from NGPC before the project begins.

006.01C5 As of January 1, 2011, tires may not be placed into blowouts that are larger than 1/2 (one-half) acre in area.

006.01D The use of waste tires for fish habitat must be in accordance with the requirements of the Nebraska Game and Parks Commission and the U.S. Army Corps of Engineers.

007 Waste tire hauler permit. Any person, business, or other entity engaged in the business of picking up, hauling, and transporting waste tires for accumulation, processing, or recycling shall obtain a permit from the department before engaging in such activity.

007.01 Exceptions.

007.021A A transporter of new or used tires to the manufacturer for warranty adjustments;

007.021B A tire retailer engaged in hauling their own tires;

007.021C An owner or operator of a permitted municipal solid waste disposal area who is not in the business of hauling waste tires;

007.021D A farmer or rancher or other person hauling their own waste tires they generate for uses allowed by these regulations.

008 Submittal. Applicants shall submit an original application to the Lincoln office of the Nebraska Department of Environmental Quality, Waste Management Section. Applicants shall retain a copy of the application for their records.

009 All permit applications and any supplemental application material submitted to the Department, as required in Section 008 of this chapter, shall be signed:

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

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

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

010 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:

010.01 Permits for waste tire haulers shall expire not more than one (1) year following the date of issuance as determined by the Department.

010.02 A permittee shall fulfill all reporting requirements of the permit; and

010.023 A permittee shall comply with all other applicable local, state, and federal requirements; and

010.034 A permittee shall allow full access to existing and available records, and shall allow Department inspectors entry and access, during reasonable hours, to any building, area, or place, for inspection purposes; and

010.045 A permittee must, upon request, provide proof of operating under a valid permit issued by the Department.

011 The permit application for a waste tire hauler shall include, but not be limited to, the following information:

011.01 A description of the geographical area the waste tire hauler will serve or is currently serving;

011.02 A description of where the waste tires will be or are currently collected and delivered or deposited; and

011.03 An estimate of the quantity and type of waste tires that will be transported quarterly.

012 Annual Report: Waste Tire Hauler. A permittee shall submit for each permit an annual report containing the information required by this section. The annual report shall cover activities for a designated twelve-month (12) period that will be established as a general permit condition. Records shall be kept at the location in which waste tire business is conducted or permittee must notify the Department of an alternate location.

012.01 Annual Report Criteria . A permittee shall file an annual report including, but not limited to, the following criteria:

012.01A The permittee name, address, and permit number;

012.01B The name, address and telephone number of the owner(s) and/or operator(s); and

012.01C The name and location of the business/individual where the waste tires were collected. Specify the annual quantity or weight and type of waste tires collected at each location; and

012.01D The name and location of the business/individual where the waste tires were delivered. Specify the annual quantity or weight and type of waste tires delivered to each location.

013 Grounds for Permit Denial.

013.01 The Director may deny a permit on any of the following grounds:

013.01A The permit application does not comply or assure compliance with the applicable requirements of local, state, and federal laws and rules and regulations;

013.01B Making any false statement, representation or certification in the application, record, report, plan or any other document required by the department;

013.01C Upon a request for renewal, the permittee has not complied with all terms, conditions, requirements, and schedules of compliance of the existing permit;

013.01D The applicant, partner, officer, or majority shareholder has violated other permits, rules and regulations or other laws of the State of Nebraska.

013.02 Any person who is denied a permit may request a hearing in accordance with Neb. Rev. Stat. § 81-1507 and Title 115 – Rules of Practice and Procedure.

014 Modifying, Suspending, Revoking Permits.

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

014.01A A violation of any terms or conditions of the permit or these rules and regulations;

014.01B Obtaining a permit by misrepresentation of any relevant facts or failure to disclose fully all relevant facts;

014.01C Information indicating that the activity or operation poses a threat to human health and the environment;

014.01D A change in the standards or regulations on which the permit was based;

014.01E Upon request by the permittee.

015 Modification Required. A modification to the existing permit must be completed by the permittee and provided to the Department for approval within thirty (30) days of any changes to their permitted operations.

016 Filing for Renewal: Expiring Permit.

016.01 Permits shall expire not more than one (1) year following the date of the issuance as determined by the Department.

016.02 All permit renewal requests must be accompanied with an annual report of the previous year's activities in accordance with Section 012.

017 Financial Assurance Required. A permitted tire hauler shall establish financial assurance by obtaining one or more of the financial assurance mechanisms approved by the Department under Chapter 8, Sections 011, 012 and 018. The amount of financial assurance required as a condition to obtaining a permit shall be based on the following:

017.01 Waste tire hauler. A permitted waste tire hauler that does not collect, recycle or process waste tires shall establish financial assurance in an amount equal to:

017.01A Five thousand dollars (\$5,000.00) for any permitted hauler that picks up, hauls, or transports one hundred thousand (100,000) PTE or less of waste tires per year; or

017.01B Ten thousand dollars (\$10,000.00) for any permitted hauler that picks up, hauls, or transports more than one hundred thousand (100,000) PTE of waste tires per year.

017.02 Waste tire hauler that collects, accumulates, recycles or processes. A permitted waste tire hauler that hauls waste tires and collects, accumulates, recycles or processes waste tires shall establish financial assurance in an amount equal to one dollar and twenty-five cents (\$1.25) per passenger tire equivalent for the maximum amount of passenger tire equivalents of waste tire material, except crumb rubber, accumulated on the site of collection, recycling or processing at any one time.

018 Financial Assurance. Tire haulers must establish financial assurance in accordance with Sections 018017.01 and 018017.02 and provide continuous coverage until released from the financial assurance requirements. The instruments shall satisfy the following criteria:

018.01 The financial assurance mechanism must ensure that funds will be available to the Department in a timely fashion when needed;

018.02 The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

019 Forfeiture. The Director shall declare all or any appropriate part of financial assurance for any permit as forfeited if he or she determines that:

019.01 The owner or operator has violated any of the terms or conditions of its permit and/or financial assurance including damages caused by improper disposal of waste tires.

020 In the event a determination to forfeit financial assurance is made, Chapter 8, 022 provisions will be in effect.

Enabling Legislation: Neb. Rev. Stat. §§ 13-2033; 13-2034; 13-2036; 13-2039; 81-1504(10), (13); 81-1505(21); 81-15, 159.02; 81.15, 160

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