NEBRASKA ADMINISTRATIVE CODE

Title 128 - Department of Environmental Quality

Chapter 12 - PERMIT REQUIRED

001 Applicability.

001.01 A permit is required for the treatment, storage, or disposal of any hazardous waste identified or listed in Chapters 2 and 3. Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit.

001.02 A post-closure permit is required by owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR 265.115, as incorporated by reference in Chapter 22, 007) after January 26, 1983, unless they demonstrate closure by removal or decontamination as provided in Section 001.08 of this Chapter, or obtain an enforceable document in lieu of a post-closure permit, as provided under Section 001.09. If a post-closure permit is required, the permit must address the applicable requirements of Chapter 21. The denial of, or failure to, obtain a permit for the active life of a facility or unit does not affect the requirement to obtain a post-closure permit.

001.03 Specific exclusions. The following persons are not required to obtain a permit under these regulations:

001.03A Small quantity generators and large quantity generators who accumulate hazardous waste on-site for less than the time periods provided in Chapter 9, 008 and in Chapter 10, 004.02, respectively;

001.03B Farmers who dispose of hazardous waste pesticides from their own use on their own land, as provided in Chapter 10, 007;

001.03C Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations by Chapter 2, 008, 009, and 011 through 013 or Chapter 8;

001.03D Owners or operators of totally enclosed treatment facilities as defined in Chapter 1;

001.03E Owners or operators of an elementary neutralization unit or a wastewater treatment unit as defined in Chapter 1;

001.03F Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Chapter 10, 003 at a transfer facility for a period of 10 days or less; and

001.03G Persons combining absorbent material and waste in a container provided that these actions occur at the time waste is first placed in the container, and 40 CFR 264.17(b), 264.171, and 264.172 as incorporated by reference in Chapter 21, 002 and 009 are complied with.

001.03H Universal waste handlers and universal waste transporters managing the wastes described in Chapter 25. These handlers are subject to regulation under Chapter 25.

001.03I For the purposes of this Chapter and Chapter 15 (Permit Issuance):

001.03I(1) A component means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g. a pump seal, pump, kiln liner, kiln thermocouple).

001.03I(2) A facility or activity means any HWM facility or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA program).

001.03I(3) A functionally equivalent component means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

001.03I(4) A major facility means any RCRA facility or activity classified as such by the EPA Regional Administrator in conjunction with the Director.

001.03I(~~4~~5) Remedial Action Plan (RAP) means a special form of RCRA permit that a facility owner or operator may obtain instead of a permit issued under 40 CFR 270.3 through 270.66, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in Chapter 1 of this Title) at a remediation waste management site.

001.04 Special forms of permits.

001.04A Permits by rule.

001.04A1 The owner or operator of a POTW which accepts for treatment hazardous waste shall be deemed to have a hazardous waste treatment permit if the owner or operator:

001.04A1(a) Has an NPDES permit and complies with its permit conditions;

001.04A1(b) Maintains a written operating record on the wastes received, complies with Chapter 4 (Identification Number), Chapter 14, 002 (use of manifest and discrepancies), Chapter 14 (biennial report, unmanifested waste report) and for NPDES permits issued after November 8, 1984, 40 CFR 264.101 (corrective action for solid waste management units), as required by 40 CFR 270.60(c)(3); and

001.04A1(c) Meets local, State and Federal pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

001.04B Emergency permits. In the event the Director finds an imminent and substantial endangerment to human health or the environment, the Director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of hazardous waste. This emergency permit may be issued to a non-permitted facility or one whose existing permit does not cover the activity for which application for the emergency permit is made. This emergency permit:

001.04B1 May be oral or written. If oral, it shall be followed in 5 five days by a written emergency permit;

001.04B2 Shall not exceed 90 days in duration;

001.04B3 Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

001.04B4 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;

001.04B5 Shall be accompanied by a public notice which shall include:

001.04B5(a) Name and address of the Department;

001.04B5(b) Name and location of the permitted hazardous waste management facility;

001.04B5(c) A brief description of the wastes involved;

001.04B5(d) A brief description of the action authorized and reasons for authorizing it; and

001.04B5(e) Duration of the emergency permit; and

001.04B6 Shall incorporate, to the extent possible, and not inconsistent with the emergency situations, all applicable requirements of this Chapter, Chapter 7, 008 through 012, Chapters 13 through 15, and Chapter 21.

001.04C Incinerator permits. For the purposes of determining feasibility of compliance with the incinerator performance standard and determining adequate incinerator operating conditions in Chapter 21, the Director may establish requirements, give approvals or issue trial burn permits pursuant to the conditions and requirements of 40 CFR 270.62 which are hereby adopted and incorporated herein by reference.

001.04D Permits for Land Treatment demonstrations using the field test or laboratory analyses may be issued pursuant to the conditions and requirements of 40 CFR 270.63, which are hereby adopted and incorporated herein by reference.

001.04E Permits for Research, Development and Demonstration Facilities may be issued pursuant to the conditions and requirements of 40 CFR 270.65, which are hereby adopted and incorporated herein by reference.

001.04F Permits for Boilers and Industrial Furnaces burning hazardous waste may be issued pursuant to the conditions and requirements of 40 CFR 270.66, which are hereby adopted and incorporated herein by reference.

001.04G Remedial Action Plans (RAPs) are special forms of permits that are regulated under Section 004 of this Chapter.

001.05 Emergency response.

001.05A A person is not required to obtain a permit under these regulations for treatment or containment activities taken during immediate response to any of the following situations:

001.05A1 A discharge of a hazardous waste;

001.05A2 An imminent and substantial threat of a discharge of hazardous waste;

001.05A3 A discharge of a material which, when discharged, becomes a hazardous waste.

001.05B Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable permit requirements under these regulations.

001.06 After November 19, 1980, no person shall own or operate a hazardous waste treatment, storage, or disposal facility without first obtaining a permit from the Director except for existing hazardous waste treatment, storage or disposal facilities which have received interim status.

001.07 The Director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

001.08 Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under 40 CFR Part 265 standards, as incorporated by reference in Chapter 22, must obtain a post-closure permit unless they can demonstrate to the Director that the closure met the standards for closure by removal or decontamination as in 40 CFR 264.228, 264.280(e), or 264.258, as incorporated by reference in Chapter 21, Sections 011 through 013. The demonstration must be made in accordance with the conditions and requirements of 40 CFR 270.1(c)(5) and (6), which are hereby adopted and incorporated herein by reference.

001.09 Enforceable documents for post-closure care. At the discretion of the Director, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of 40 CFR 265.121, as incorporated by reference in Chapter 22, Section 007. “Enforceable document” means an order, a plan, or other document issued by EPA or by an authorized State under an authority that meets the requirements of 40 CFR 271.16(e), which are hereby adopted and incorporated herein by reference, including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.

002 Effect of a permit.

002.01 Compliance with a permit during its term constitutes compliance for purposes of enforcement of the State Act except for those requirements not included in the permit which:

002.01A Become effective by state or federal statute;

002.01B Are promulgated under Chapter 20, restricting the placement of hazardous wastes in or on the land;

002.01C Are promulgated under Chapter 21 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and

lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of Chapter 15 Class 1 permit modifications; or

002.01D Are promulgated under Chapter 22, Sections 019 through 021 limiting air emissions.

002.01E However, a permit may be modified, revoked and reissued, or terminated for cause during its term as set forth in Chapter 15, 012.

002.02 The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

002.03 The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Federal, State or local law or regulations.

003 Interim status.

003.01 Qualifying for interim status.

003.01A Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments under the State Act that render the facility subject to the requirement to have a permit under these regulations shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

003.01A1 Complied with the requirements of Chapter 4 pertaining to notification of hazardous waste activity; and

003.01A2 Complied with the requirements of Chapter 13, 001 and 005, governing the submission of a Part A application.

003.01B Failure to qualify for interim status. If the Director has reason to believe upon examination of a Part A application that it fails to meet the requirements of Chapter 13, 012 the owner or operator shall be notified in writing of the apparent deficiency. Such notice shall specify the grounds for the Director's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such notification and to explain or cure the alleged deficiency in the Part A application. If, after such notification and opportunity for response, the Director determines that the application is deficient, appropriate enforcement action may be taken.

003.01C Section 003.01A of this Chapter shall not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the hazardous waste facility has been previously terminated.

003.02 Operation during interim status.

003.02A During the interim status period the facility shall not:

003.02A1 Treat, store, or dispose of hazardous waste not specified in Part A of the permit application;
003.02A2 Employ processes not specified in Part A of the permit application; or

003.02A3 Exceed the design capacities specified in Part A of the permit application.

003.02B Interim status standards. During interim status, owners or operators shall comply with the Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities in Chapter 22.

003.03 Changes during interim status.

003.03A New hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) may be treated, stored, or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change, and the Director approves the change.

003.03B Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or the change is necessary to comply with Federal, State, or local requirements.

003.03C Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because:

003.03C1 It is necessary to prevent a threat to human health or the environment because of an emergency situation; or

003.03C2 The change is necessary to comply with a Federal, State, or local requirement.

003.03D Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (financial requirements) as incorporated by reference in Chapter 22, 008, until the new owner or operator has demonstrated to the Director compliance with the requirements of Subpart H. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that compliance with Subpart H is no longer necessary as of the date of the demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

003.03E Changes made in accordance with an interim status corrective action order issued by EPA under Section 3008(h) or other Federal authority, by an authorized State under comparable State authority, or by a court in a judicial action brought by EPA or by an authorized State. Changes under this section are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

003.03F Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A permit application on or before the date on which the unit becomes subject to the new requirements.

003.03G In no event shall changes be made to a facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new facility. Changes prohibited under this paragraph do not include changes:

003.03G1 Made solely for the purpose of complying with requirements of 40 CFR 265.193, as incorporated by reference in Chapter 22, 010 for tanks and ancillary equipment.

003.03G2 If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of Section 3004(o).

003.03G3 Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

003.03G4 Changes necessary to comply with an interim status corrective action order issued by EPA under Section 3008(h) or other Federal authority, by an authorized State under comparable State authority, or by a court in a judicial proceeding brought by EPA or an authorized State, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

003.03G5 To treat or store in containers, tanks or containment buildings, hazardous waste subject to land disposal restrictions imposed by Chapter 20 of this Title or RCRA section 3004, provided that such changes are made solely for the purpose of complying with Chapter 20 of this Title or RCRA section 3004.

003.03G6 Addition of newly regulated units under Section 003.03F of this chapter.

003.03G7 Changes during closure of a facility or a unit within a facility made in accordance with an approved closure plan.

003.03G8 Changes necessary to comply with standards under 40 CFR part 63, Subpart EEE-National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

003.04 Termination of interim status. Interim status terminates when:

003.04A Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under Section 004 of this Chapter, is made.

003.04B Interim status is terminated as provided in 40 CFR 270.10(e)(5) as incorporated by reference in Chapter 13, 005.

003.04C For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the State Act that render the facility subject to the requirement to have a hazardous waste permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

003.04C1 Submits a Part B application for a hazardous waste permit for such facility within 12 months of the date on which the facility first becomes subject to such permit requirement; and

003.04C2 Certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

003.04D For owners or operators of any land disposal unit that is granted authority to operate under Sections 003.03A through 003.03C, on the date 12 months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable ground water monitoring and financial responsibility requirements.

003.04E For owners or operators of each incinerator facility interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a hazardous waste permit for an incinerator facility by November 8, 1986.

003.04F For owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a RCRA permit for the facility by November 8, 1988.

004 Remedial Action Plans (RAPs)

004.01 The conditions and requirements of 40 CFR Part 270, Subpart H, 270.79 through 270.230, pertaining to remedial action plans, are hereby adopted and incorporated herein by reference.

005 The conditions and requirements of 40 CFR Part 270, Subpart I, 270.235, pertaining to integration with maximum achievable control technology (MACT) standards, are hereby adopted and incorporated herein by reference.

Enabling Legislation: Neb. Rev. Stat. §81-1505(13)

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