NEBRASKA ADMINISTRATIVE CODE

Title 128 - Department of Environmental Quality

Chapter 15 - PERMIT ISSUANCE; CHANGES; RENEWAL; TERMINATION; CLOSURES; DURATION

001 Except as more expressly provided herein, the procedures set forth in Title 115 - Rules of Practice and Procedure, Nebraska Department of Environmental Quality, shall apply to the following proceedings: Closure Plans; Post-Closure Plans; Post-Closure Permits; and, Operating Permits.

002 Preparation of a draft permit or denial of a hazardous waste facility permit.

002.01 Once an application is complete and any local approval obtained as required in Neb. Rev. Stat. §81-1521.08 through §81-1521.23, the Director shall issue a preliminary decision approving or denying the permit.

002.02 If the Director decides to prepare a draft permit, that draft permit shall contain the following information and follow the public notice and participation procedures outlined below:

002.02A ~~Facility standards.~~ Standards for treatment, storage and/or disposal and other permit conditions under Sections 001 and 002 of Chapter 14.

002.02B All conditions, compliance schedules, and monitoring requirements of Chapter 14.

002.03 If the Director issues a preliminary decision denying the draft permit, a notice of intent to deny the permit shall be issued. A notice of intent to deny the permit application shall follow the same procedures as any draft permit prepared under this Chapter.

003 Fact sheet.

003.01 A fact sheet shall be prepared for every draft permit for a major hazardous waste management facility or activity, as defined in Section 001.03I(4) of Chapter 12. Following the issuance of public notice of preparation of a draft permit, the Director shall send a fact sheet to the applicant and, on request, to any other person. A fact sheet shall be prepared for a hazardous waste facility which the Director determines involves widespread public interest or where major issues are raised with respect to the application described in the public notice. The fact sheet shall briefly specify the principal facts and significant factual, legal, methodological and policy questions considered in preparing the draft permit.

003.02 Each fact sheet shall contain:

003.02A A brief description of the type of facility or activity which is the subject of the draft permit;

003.02B The type and quantity of wastes which are proposed to be or are being treated, stored or disposed of;

003.02C Reasons why any requested variances or alternatives to required standards do or do not appear to be justified;

003.02D The statutory or regulatory provisions on which permit requirements are based;

003.02E A description of the procedures for the formulation of final determination, including the beginning and ending dates of the 45-day comment period, address where comments should be sent, procedures for requesting a public hearing, and any other procedures by which the public may participate; and

003.02F Name and telephone number of a person to contact for additional information.

004 Statement of basis. When a fact sheet is not prepared, a statement of basis will be prepared which shall briefly describe the conditions of the draft permit and the reasons for them, or in the case of a notice to deny a permit, the reasons supporting the preliminary decision. This statement shall be sent to the applicant and on request, to any other person.

005 Administrative record for draft permits.

005.01 The provisions of a draft permit shall be based on the administrative record defined in Section 005.02 of this Chapter.

005.02 The administrative record shall consist of the following:

005.02A The permit application, and any supporting data furnished by the applicant;

005.02B The draft permit or notice of intent to deny the application or to terminate the permit;

005.02C The statement of basis defined in Section 004 of this Chapter, or fact sheet defined in Section 003 of this Chapter;

005.02D All documents cited in the statement of basis or fact sheet; and

005.02E Other documents contained in the supporting file for the draft permit including all correspondence, memoranda, and meeting notes that are related to the development of the draft permit.

006 Public notice of permit actions and public comment period.

006.01 A public notice of a draft permit, intent to deny, and public hearings shall be issued by circulating the notice in the geographical area of the proposed facility through publication in a daily or weekly newspaper with general circulation, and by broadcasting over local radio stations; and mailed to the applicant, any other agency which the Director knows has issued or is required to issue a Underground Injection Control, Prevention of Significant Deterioration (or other permit under the Clean Air Act), National Pollutant Discharge Elimination System, Clean Water Act Section 404 or sludge management permit for the same facility or activity, any unit of local government having jurisdiction over the area where the facility is proposed to be located, each state agency having any authority under state law with respect to the construction or operation of such facility, and to any other person or group, either upon request or whose names are on a Department mailing list as defined in Section 006.01A, to receive public notices. Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, the State Historic Preservation Officer, and other appropriate authorities; including any affected States (Indian Tribes) and EPA shall also be mailed a copy of the notice. Any person otherwise entitled to receive notice may waive his or her rights to receive notice for any classes and categories of permit.

006.01A Department mailing list is a list developed by:

006.01A1 Including those who request in writing to be on the list;

006.01A2 Soliciting persons for “area lists” from participants in past proceedings in that area; and

006.01A3 Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

006.02 The Department shall notify all municipalities within ten miles of a proposed hazardous waste disposal area of the application together with the Director's decision to approve or deny by publication in a newspaper as provided in Section 006.01 of this Chapter.

006.03 Persons or groups will have 45 days from issuance of public notice to either provide the Director with any written comments concerning the proposed facility for which the public notice has been issued, or request a public hearing in writing or both. Such 45 day period may be extended by the Director. All comments shall be considered in making the final decision and shall be answered as provided in Section 009 of this Chapter.

006.04 If any information or public comment is received during the comment period which appears to raise substantial issues concerning a permit, the Director may formulate a new draft permit which supersedes the original draft permit and republish the public notice. If no substantial issues are raised, and the Director issues the permit, the Director shall prepare a written response to each submitted comment.

006.05 Content of the public notice. The public notice of an application shall contain:

006.05A Name, address and phone number of the agency processing the permit action and issuing the public notice;

006.05B The name and address of the permittee or permit applicant, and if different, of the facility or activity regulated by the permit;

006.05C A brief description of ~~each applicant's activities or operations~~ the business conducted at the facility or activity described in the permit application or the draft permit;

006.05D A statement of the preliminary determination to issue or deny a permit for the activity described in the application and that where applicable, a draft permit has been prepared;

006.05E A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

006.05F The address, phone number and name of the person from whom interested persons may obtain further information (including copies of the draft permit, statement of basis or fact sheet, and the application), and inspect and copy forms and related documents.

006.05G The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the public record.

006.06 In addition to the general public notice described in this Section, the applicant, any other agency which the Director knows has issued or is required to issue a Underground Injection Control, Prevention of Significant Deterioration (or other permit

under the Clean Air Act), National Pollutant Discharge Elimination System, Clean Water Act Section 404 or sludge management permit for the same facility or activity, Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, the State Historic preservation Officers, and other appropriate government authorities including any affected States (Indian Tribes) and the EPA shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

007 Public hearings; when required.

007.01 The applicant, any affected state, any affected interstate agency, the Regional Administrator of EPA, or any interested agency, person or group of persons may request or petition the Director, in writing, within the 45-day comment period of the public notice, with respect to the application, for a public hearing, if no hearing has already been scheduled, and state the nature of the issues to be raised in the hearing. ~~and all arguments and factual grounds supporting their position; and~~

007.01A The Director may hold an adjudicative hearing on the granting or denial of the permit if the Director determines that the circumstances justify it;

007.01B The Director shall hold an adjudicative hearing if it appears that the granting or denial of the permit interferes with or impairs or threatens to interfere with or impair the legal rights of the permit applicant or any person so that the situation falls within the Department's Title 115 - Rules of Practice and Procedure.

007.01C The Director may hold a public hearing if the comments, requests or petitions raise legal, policy or discretionary questions of general application not pertaining solely to a particular party and significant public interest exists with respect to the application; or

007.01D The Director shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within the 45 days public notice period.

007.02 Public notice of any hearing held shall be issued, circulated, and mailed in the same manner as public notice of pending issuance or denial of hazardous waste facility permit, as specified in Section 006 of this Chapter, and shall be so issued, circulated, and mailed at least 30 days prior to the public hearing. Whenever possible the Director shall schedule a hearing at a location convenient to the nearest population center to the proposed facility.

007.03 Content of public notice of hearing. In addition to the general public notice described in Section 006 of this Chapter, the public notice of hearing shall contain the following information:

007.03A Reference to the date of previous public notices relating to the permit;

007.03B Date, time, and place of hearing;

007.03C A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

007.03D A concise statement of the issues raised; and

007.03E A brief description of the permit term and conditions which have been contested and for which the hearing has been granted.

008 Issuance and effective date of the permit. After the close of the public comment period as provided in Section 006 of this Chapter, the Director shall issue a final permit decision. The Director shall notify the applicant of the decision to issue, deny, modify, revoke and reissue, or terminate a permit and shall specify the effective date of the permit.

009 Response to comments.

009.01 At the time that any final permit decision is issued, the Director shall issue a response to comments. This response shall:

009.01A Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

009.01B Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

009.02 The response to comments shall be available to the public.

010 Administrative record for final permits.

010.01 The Director shall base final permit decisions under Section 008 of this Chapter on the Administrative record defined in Section 010.02 of this Chapter.

010.02 The administrative record for the final permit shall consist of the administrative record for the draft permit and:

010.02A All comments received during the public comment period provided under Section 006 of this Chapter;

010.02B Any written materials submitted at a public hearing provided under Section 007 of this Chapter;

010.02C The response to comments required by Section 009 of this Chapter and any new material placed in the record under that Section; and

010.02D Other documents contained in the supporting file for the permit including all correspondence, memoranda, and meeting notes that are related to the development of the draft permit.

011 Permit transfer.

011.01 A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under 011.02 or 012.01C2 to identify the new permittee and incorporate such other requirements as may be necessary.

011.02 Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with 012.02. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 21, 008 (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that chapter. The new owner or operator must demonstrate compliance with the financial requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with the financial requirements, the Director shall notify the old owner or operator that he or she no longer needs to comply with financial requirements as of the date of demonstration.

011.03 A permit for a land disposal facility may not be transferred.

012 Modification, revocation and reissuance, or termination of permits.

012.01 A permit may be modified or revoked and reissued, or terminated under Section 015 of this chapter, either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 012.01 and 015 of this chapter. All requests shall be in writing and shall contain facts or reasons supporting the request. If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Class 1 and Class 2 modifications as defined in Section 012.02 of this chapter are not subject to the requirements of Section 012.01.

012.01A When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit,

receives a request for revocation and reissuance from any interested person or the permittee or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in 012.01B and 012.01C of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of 012.01D of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of 012.02.

012.01B Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

012.01B1 Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

012.01B2 Information. The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

012.01B3 New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

012.01B4 Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

012.01B5 Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Director under Section 014.03, the Director shall modify the permit as necessary to assure that the facility

continues to comply with the currently applicable requirements in Chapters 1 through 19 and 21 through 26.

012.01C Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

012.01C1 Cause exists for termination under Chapter 15, 015, and the Director determines that modification or revocation and reissuance is appropriate.

012.01C2 The Director has received notification of a proposed transfer of the permit.

012.01D Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

012.02 A permit may be modified at the request of the permittee in accordance with the following conditions and requirements:

012.02A Class 1 modifications. The permittee may put into effect Class 1 modifications listed in Appendix V under the following conditions:

012.02A1 Class 1 permit modifications identified in Appendix V by the footnote may be made only with the prior written approval of the Director.

012.02A2 The permittee must notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by Chapter 13, 012 and Chapter 12, 001.04C and 001.04D.

012.02A3 The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the Department in accordance with Chapter 15, 006.01. This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior Director approval, the notification must be made within 90 calendar days after the Director approves the request.

012.02A4 Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director must inform the permittee by certified mail that a Class 1 modification has been rejected,

explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

012.02A5 The permittee may elect to follow the procedures for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the Director of this decision in the notice required in 012.02B.

012.02B For Class 2 modifications, listed in Appendix V, the permittee must:

012.02B1 Submit a modification request to the Director that:

012.02B1(a) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

012.02B1(b) Identifies that the modification is a Class 2 modification;

012.02B1(c) Explains why the modification is needed; and

012.02B1(d) Provides the applicable information required by Chapter 13, 012 and Chapter 12, 001.04C and 001.04D.

012.02B2 Send a notice of the modification request to all persons on the facility mailing list maintained by the Department in accordance with Chapter 15, 006.01 and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

012.02B2(a) Announcement of a 60-day comment period, in accordance with 012.02B5, and the name and address of the Department contact to whom comments must be sent;

012.02B2(b) Announcement of the date, time, and place for a public meeting held in accordance with 012.02B4;

012.02B2(c) Name and telephone number of the permittee's contact person;

012.02B2(d) Name and telephone number of a Department contact person;

012.02B2(e) Location where copies of the modification request and any supporting documents can be viewed and copied; and

012.02B2(f) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department contact person."

012.02B3 Place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

012.02B4 Hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph 012.02B2 of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

012.02B5 Provide the public 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Department contact identified in the public notice.

012.02C For Class 2 modifications listed in Appendix V the Director must:

012.02C1 No later than 90 days after receipt of the notification request, unless extended in accordance with 012.02C2:

012.02C1(a) Approve the modification request, with or without changes, and modify the permit accordingly;

012.02C1(b) Deny the request because the modification request is incomplete or the requested modification does not comply with the appropriate requirements of Chapter 21 or other applicable requirements or the conditions of the modifications fail to protect human health and the environment.

012.02C1(c) Determine that the modification request must follow the procedures in 012.02K for Class 3 modifications for the reason that there is significant public concern about the proposed modification or the complex nature of the change requires the more extensive procedures of Class 3.

012.02C1(d) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, or

012.02C2 Notify the permittee no later than 90 days after receipt of the notification request if he or she extends the time period for making a decision under 012.02C1. The director shall make a decision no later than 120 days after receipt of the modification request.

012.02D For Class 2 modifications, if the Director fails to make one of the decisions specified in 012.02C1 of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal action by the Department. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 22. The Director may approve, with or without changes, or deny the modification request during the term of the temporary or automatic authorization of this section. Such action cancels the temporary or automatic authorization.

012.02E Within 7 days of the date of an automatic or temporary authorization under this section, the permittee must send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

012.02E1 The permittee has been authorized temporarily to conduct the activities described in the permit modification request, and

012.02E2 Unless the Director acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

012.02F If the permittee fails to notify the public by the date 50 days prior to the end of the temporary or automatic authorization, the effective date of the permanent authorization will be deferred for 50 days after the permittee notifies the public.

012.02G Except as provided in 012.02I of this section, if the Director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under this chapter. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 22.

012.02H In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Director must consider all written comments submitted to the Department during the public comment period and must respond in writing to all significant comments in his or her decision.

012.02I With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification.

012.02J The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the Director establishes a later date for commencing construction and informs the permittee in writing before day 60.

012.02K For Class 3 modifications listed in Appendix V of this section, the permittee must:

012.02K1 Submit a modification request to the Director that:

012.02K1(a) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

012.02K1(b) Identifies that the modification is a Class 3 modification;

012.02K1(c) Explains why the modification is needed; and

012.02K1(d) Provides the applicable information required by Chapter 13, 012 Chapter 12, 001.04C through 001.04F.

012.02K2 Send a notice of the modification request to all persons on the facility mailing list maintained by the Department in accordance with Chapter 15, 006.01 and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

012.02K2(a) Announcement of a 60-day comment period, and a name and address of a Department contact to whom comments must be sent;

012.02K2(b) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with 012.02K4;

012.02K2(c) Name and telephone number of the permittee's contact person;

012.02K2(d) Name and telephone number of a Department contact person;

012.02K2(e) Location where copies of the modification request and any supporting documents can be viewed and copied; and

012.02K2(f) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department contact person."

012.02K3 Place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

012.02K4 Hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph 012.02K2 of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

012.02K5 Provide the public at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Department contact identified in the notice.

012.02L For a Class 3 modification, after the conclusion of the 60-day comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of this chapter. In addition, the Director must consider and respond to all significant written comments received during the 60-day comment period.

012.02M Other modifications. In the case of modifications not explicitly listed in Appendix V, the permittee may submit a Class 3 modification request to the Department, or he or she may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Director with the necessary information to support the requested classification.

012.02N The Director shall make the determination described 012.02M of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications in Appendix V and the following criteria:

012.02N1 Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

012.02N2 Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

012.02N2(a) Common variations in the types and quantities of the wastes managed under the facility permit, or

012.02N2(b) Technological advancements, and;

012.02N2(c) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

012.02N3 Class 3 modifications substantially alter the facility or its operation.

012.02O Temporary authorization. Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

012.02O1 The permittee may request a temporary authorization for:

012.02O1(a) Any Class 2 modification meeting the criteria in 012.02O4(b) of this section, and

012.02O1(b) Any Class 3 modification that meets the criteria in 012.02O4(b)(1) or (2) of this section; or that meets the criteria in 012.02O4(b)(3) through (b)(5) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

012.02O2 The temporary authorization request must include:

012.02O2(a) A description of the activities to be conducted under the temporary authorization;

012.02O2(b) An explanation of why the temporary authorization is necessary; and

012.02O2(c) Sufficient information to ensure compliance with Chapter 21.

012.02O3 The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Department in accordance with Chapter 15, 006.01. This notification must be made within 7 days of submission of the authorization request.

012.02O4 The Director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Director must find:

012.02O4(a) The authorized activities are in compliance with the standards of Chapter 21.

012.02O4(b) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

012.02O4(b)(1) To facilitate timely implementation of closure or corrective action activities;

012.02O4(b)(2) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with Chapter 20.

012.02O4(b)(3) To prevent disruption of ongoing waste management activities;

012.02O4(b)(4) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

012.02O4(b)(5) To facilitate other changes to protect human health and the environment.

012.02O5 A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

012.02O5(a) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with 012.02C1(d) of this section, or

012.02O5(b) The Director determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the Class 3 modification procedures of this section are conducted.

012.02P Public notice and appeals of permit modification decisions.

012.02P1 The Director shall notify persons on the facility mailing list within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under Sections 012.02D or 012.02G.

012.02P2 The Director's decision to grant or deny a Class 2 or 3 permit modification request or an automatic authorization under this section may be appealed in accordance with Title 115 and Nebraska Revised Statute 81-1509.

012.02Q Newly regulated wastes and units.

012.02Q1 The permittee is authorized to continue to manage wastes listed or identified as hazardous under Chapter 3, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

012.02Q1(a) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

012.02Q1(b) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

012.02Q1(c) The permittee is in compliance with the applicable standards of Chapter 7 and Chapter 22;

012.02Q1(d) The permittee also submits a complete Class 2 or 3 modification request within 180 days of the effective date of the rule listing or identifying the waste, or subjecting the unit to Title 128 management standards;

012.02Q1(e) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of Chapter 22 of this chapter for groundwater monitoring and financial responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, he or she will lose authority to operate under this section.

012.02Q2 New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

012.02R Permit modification list. The Director must maintain a list of all approved permit modifications and must publish a notice once a year in a State-wide newspaper that an updated list is available for review.

012.02S Combustion facility changes to meet 40 CFR part 63 MACT standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix V, section L(9) of this Title.

012.02S1 Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, (see 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

012.02S2 If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at his or her discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

012.03 Permit modifications shall not be used to extend the term of a permit beyond the expiration date.

012.04 If the Director tentatively decides to modify or revoke and reissue a permit, under Sections 012.01 and 012.02K, he or she shall prepare a draft permit under Section 002 of this Chapter above incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

013 Expiration and renewal of permits.

013.01 If the permittee wishes to continue to treat, store or dispose of hazardous wastes after the expiration date of the hazardous waste permit, the permittee must file for reissuance of the existing permit at least 180 days prior to the expiration date of the permit.

013.02 A renewal application shall consist of the same information required in the original hazardous waste facility permit application, which can consist of a recertification of the original application, unless the Department requires additional information.

013.03 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 or expired permit.

013.04 Public notice and public participation procedures for renewal of the permit shall be those specified in this Chapter.

014 Duration of permits, expiration and continuation of permits.

014.01 Permits shall be effective for a term:

014.01A Not to exceed 5 years for commercial hazardous waste management facilities; and

014.01B Not to exceed 10 years for all other facilities.

014.02 The Director may issue any permit for a duration of less than the full allowable term under this section.

014.03 Each permit for a land disposal facility shall be reviewed by the Director five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 012.

014.04 The conditions of an expired permit continue in force until the effective date of a new permit if:

014.04A The permittee has submitted a timely application under the applicable sections of Chapters 13 and 14, which is a complete application for a new permit; and

014.04B The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

014.05 Permits continued under this Section remain fully effective and enforceable.

014.06 When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following:

014.06A Initiate enforcement action based upon the permit which has been continued;

014.06B Issue a notice of intent to deny the new permit under Chapter 15, 002.03. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

014.06C Issue a new permit under Chapter 15, with appropriate condition; or

014.06D Take other actions as authorized by these regulations.

015 Termination of permits. The permit may be terminated during its term or a renewal application may be denied in accordance with the conditions and requirements of 40 CFR 270.43, which are hereby adopted and incorporated herein by reference. If the Director tentatively decides to terminate a permit under this section, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 002 of this chapter.

016 Permit denial. The Director may, pursuant to the public notice and public participation procedures specified in Sections 006 and 007 of this Chapter, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

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

Legal Citation: Title 128, Chapter 15,
Nebraska Department of Environmental Quality