NEBRASKA ADMINISTRATIVE CODE

Title 128 - Department of Environmental Quality

Chapter 14 - PERMIT CONDITIONS

001 This Chapter establishes provisions for hazardous waste permits (as required by Chapter 12) with respect to standard conditions applicable to all permits, general facility conditions, specific facility conditions, recordkeeping and reporting requirements for monitoring results, schedules of compliance, and restrictive covenants for disposal permits.

001.01 All permit conditions shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be stated in the permit.

002 Standard conditions applicable to all permits.

002.01 The permittee must comply with all conditions and restrictions placed upon the permit, except that the permittee need not comply with the conditions of the permit to the extent and for the duration such non-compliance is authorized in an Emergency permit as described in Chapter 12, 001.04B. Any permit non-compliance constitutes a violation of the State Act and is grounds for enforcement action; for permit termination, revocation and reissuance or modification; or for denial of a permit renewal.

002.02 If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit prior to the expiration date of the permit in effect subject to the provisions in Chapter 15, 014.04.

002.03 It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

002.04 In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

002.05 The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-

up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

002.06 The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

002.07 The permit does not convey any property rights of any sort, or any exclusive privilege.

002.08 The permittee shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by the permit.

002.09 The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

002.09A Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

002.09B Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

002.09C Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

002.09D Sample or monitor at reasonable times, for the purposes of assuring permit compliance any substances or parameters at any location.

002.10 Monitoring and records.

002.10A Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

002.10B The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, the certification required by 40 CFR 264.73(b)(9), as incorporated by reference in Chapter 21, 005 and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample,

measurement, report or application. This period may be extended by request of the Director at any time. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

002.10C Records for monitoring information shall include:

002.10C1 The date, exact place, and time of sampling or measurements;

002.10C2 The individual(s) who performed the sampling or measurements;

002.10C3 The date(s) analyses were performed;

022.10C4 The individual(s) who performed the analyses;

002.10C5 The results of such analyses; and

002.10C6 The analytical techniques or methods used.

002.11 All applications, reports, or information submitted to the Director shall be signed and certified in accordance with Chapter 13, 011.

002.12 Reporting requirements.

002.12A Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

002.12B Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in Chapter 15, Section 012.02, until:

002.12B1 The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

002.12B2 The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or within 30 days of the date of submission of the letter in Section 002.12B1 of this Chapter, the permittee has not received notice from the Director of his or her

intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

002.12C Transfers. The permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as necessary.

002.12D Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit.

002.12E Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

002.12F Twenty-four hour reporting.

002.12F1 The permittee shall orally report any information concerning the release of any hazardous waste or instances of noncompliance which may endanger health or the environment within 24 hours from the time the permittee knows or should have known the circumstances.

002.12F2 The description of the occurrence and its cause shall include:

002.12F2(a) Name, address, and telephone number of the owner or operator, and of the facility;

002.12F2(b) Type of incident, name and quantity of the material(s) involved, the duration of the occurrence including exact dates and times; and extent of injuries (if any);

002.12F2(c) An assessment of actual or potential hazards to the environment and human health both inside the facility, and outside the facility (where applicable);

002.12F2(d) If the noncompliance has not been corrected, an estimate of the time it is expected to continue; and steps taken or planned to reduce, eliminate; and prevent reoccurrence of the non-compliance;

002.12F2(e) The estimated quantity and disposition of the recovered material that resulted from the incident.

002.12F3 A written submission shall also be provided within 5 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 of noncompliance including the exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the five day written notice requirement in favor of a written report within fifteen days.

002.13 Manifest discrepancy report. If a discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a letter report, including a copy of the manifest, to the Director. (see 40 CFR Part 264.72, as incorporated by reference in Chapter 21, 005).

002.14 Unmanifested waste report. This report must be submitted to the Director within fifteen days of receipt of unmanifested waste. (see 40 CFR Part 264.76, as incorporated by reference in Chapter 21, 005).

002.15 Biennial report. A biennial report must be submitted covering facility activities during odd numbered calendar years. (see 40 CFR Part 264.75, as incorporated by reference in Chapter 21, 005).

002.16 Other noncompliance. The permittee shall report all instances of noncompliance not reported under Sections 002.12D, 002.12E and 002.12F of this Chapter, at the time monitoring reports are submitted, or at least quarterly.

002.17 Other information. Where the permittee becomes aware that they failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, they shall promptly submit such facts or information.

002.18 Information repository. The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in Section 018.01 of Chapter 13. The information repository will be governed by the provisions in Sections 018.02 through 018.05 of Chapter 13.

003 Requirements for recording and reporting of monitoring results. All permits shall specify:

003.01 Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

003.02 Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

003.03 Applicable reporting requirements based upon the impact of the regulated activity and as specified in Chapters 7 and 21. Reporting shall be no less frequent than specified in the above regulations.

004 Establishing permit conditions.

004.01 In addition to conditions required in all permits (by Section 002 of this Chapter), the Director shall establish conditions, as required on a case-by-case basis, in permits under Chapter 15, 014 (duration of permits), Section 005 of this Chapter (schedules of compliance), and Section 003 of this Chapter (monitoring).

004.02 General facility conditions and specific facility conditions.

004.02A Each hazardous waste permit shall include permit conditions necessary to achieve compliance with the Act, including each of the applicable requirements of Chapters 7, 20, and 21. In satisfying this provision, the Director may incorporate applicable requirements of Chapter 7, 20, and 21 directly into the permit or establish other permit conditions that are based on the requirements of Chapters 7, 20, and 21.

004.02B Each permit issued under Title 128 shall contain terms and conditions as the Director determines necessary to protect human health and the environment.

004.03 An applicable requirement is a State statutory or regulatory requirement which becomes effective prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed by Chapter 15.

004.04 New or reissued permits, and to the extent allowed under Chapter 15, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this Section and Section 003 of this Chapter.

005 Schedule of compliance. The conditions and requirements of 40 CFR 270.33, pertaining to compliance schedules, are hereby adopted and incorporated herein.

006 The permit shall include a list of the wastes or classes of wastes which will be treated, stored, or disposed of at the facility, and a description of the processes to be used for treating, storing, and disposing of these hazardous wastes at the facility including the design capacities of each storage, treatment, and disposal unit. Except in the case of containers, the description must identify the particular wastes or classes of wastes which will be treated, stored, or disposed of in particular equipment or locations (e.g. "Halogenated organics may be stored in Tank A", and "Metal hydroxide sludges may be disposed of in landfill cells B, C, and D").

007 Restrictive covenant for disposal permit: Before allowing disposal operations to commence, the owner of the land to be used for disposal of hazardous wastes shall execute and file with the Department and the Register of Deeds of the county where such land is located the following Restrictive Covenants:

The undersigned (Owner) is the owner of the following described real estate:

These Restrictive Covenants are established upon the property.

1. The property will be used for the disposal of hazardous wastes.

2. (Insert regulations which govern operation of the site, which should be a matter of constructive notice to prospective purchasers during the operation of the facility.)

3. The future use of the property is restricted by applicable federal and state regulations governing hazardous waste disposal facilities, and any future use may not disturb the integrity of the final cover, liners or any other components of any containment system or the function of the monitoring systems of the facility, without the prior written approval of the Director of the Nebraska Department of Environmental Quality.

4. A map of the type, location and quantity of hazardous wastes disposed of within the property will be filed within 60 days of closure with the Register of Deeds and with the Director of the Nebraska Department of Environmental Quality.

5. These Restrictive Covenants shall run with the land and shall be binding upon and enforceable by the Owner, all persons claiming under the Owner and the Director of the Nebraska Department of Environmental Quality. These Restrictive Covenants may be terminated or modified, in writing, by the Owner only with the written and recorded consent of the Director of the Nebraska Department of Environmental Quality.

6. The enforcement of these Restrictive Covenants may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation or to recover damages.

7. The invalidation of any one of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof.

Dated_____, 20___ (COMPANY NAME) By:_____
President

STATE OF NEBRASKA
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by (name of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

_____ Notary Public

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

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