

NEBRASKA ADMINISTRATIVE CODE

Title 129 – Department of Environmental Quality

Chapter 17 – CONSTRUCTION PERMITS - WHEN REQUIRED

001 Except as provided under section 014 of this chapter or Chapter 19 or 42 of Title 129, no person shall cause the construction, reconstruction, or modification at any of the following without first having obtained a construction permit from the Department in the manner prescribed by this Chapter:

001.01 Any stationary source or emission unit, such that there is a net increase in potential emissions at the stationary source equal to or exceeding the following levels:

001.01A Fifteen (15) tons/year of PM<sub>10</sub> emissions.

001.01B Ten (10) tons/year of PM<sub>2.5</sub> emissions.

001.01C Forty (40) tons/year of sulfur dioxide (SO<sub>2</sub>) or sulfur trioxide (SO<sub>3</sub>), or any combination of the two.

001.01D Forty (40) tons/year of oxides of nitrogen (calculated as NO<sub>2</sub>).

001.01E Forty (40) tons/year of volatile organic compounds (VOC).

001.01F ~~001.01EF~~ Fifty (50) tons/year of carbon monoxide (CO).

001.01G Six-tenths (0.6) tons/year of lead.

001.01H Two and one-half (2.5) tons/year of any hazardous air pollutant or an aggregate of ten (10) tons/year of any hazardous air pollutants, including all associated fugitive emissions (see Chapter 27, section 003).

001.02 When determining applicability under section 001.01 above, sources in the following source categories must include fugitive emissions:

001.02A Coal cleaning plants (with thermal dryers);

001.02B Kraft pulp mills;

001.02C Portland cement plants;

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- 001.02D Primary zinc smelters;
- 001.02E Iron and steel mills;
- 001.02F Primary aluminum ore reduction plants;
- 001.02G Primary copper smelters;
- 001.02H Municipal incinerators capable of charging more than 250 tons of refuse per day;
- 001.02I Hydrofluoric, sulfuric, or nitric acid plants;
- 001.02J Petroleum refineries;
- 001.02K Lime plants;
- 001.02L Phosphate rock processing plants;
- 001.02M Coke oven batteries;
- 001.02N Sulfur recovery plants;
- 001.02O Carbon black plants (furnace process);
- 001.02P Primary lead smelters;
- 001.02Q Fuel conversion plants;
- 001.02R Sintering plants;
- 001.02S Secondary metal production plants;
- 001.02T Chemical process plants\_– The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140;
- 001.02U Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hours (250 MMBtu/hr) heat input;
- 001.02V Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- 001.02W Taconite ore processing plants;
- 001.02X Glass fiber processing plants;

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001.02Y Charcoal production plants;

001.02Z Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour (250 MMBtu) heat input;

001.02AA Any other stationary source category which is being regulated by a standard promulgated under Section 111 or 112 of the Act as of August 7, 1980.

001.03 Any incinerator used for refuse disposal or for the processing of salvageable materials except refuse incinerators located on residential premises containing five or less dwelling units used only for the disposal of residential waste generated on the said property.

002 The standards which would have been imposed under a construction permit are applicable to those sources who have failed to obtain a permit to the same extent as if a permit had been obtained.

003 The owner or operator of any source required to obtain a construction permit or requesting permit applicability under this Chapter, or submitting a significant permit revision, shall submit an application on forms provided by the Department.

003.01 Application Fee. Each application for a construction permit shall be accompanied by a non-refundable fee. The amount of the fee will be based on the amount of pollutants (including fugitive emissions) the entire source will directly emit or have the potential to emit, as follows:

Directly Emit or Have Potential to Emit:	Fee
Less than 50 tons per year of any listed air pollutant; or Less than 2.5 tons per year of any single HAP; or Less than 10 tons per year of any combination of HAPs	\$250
50 tons or more but less than 100 tons per year of any listed air pollutant; or 2.5 tons or more but less than 10 tons per year of any single HAPs; or 10 tons or more but less than 25 tons per year of any combination of HAPs	\$1,500
100 tons or more per year of any listed air pollutant; or 10 tons or more per year of any single HAP; or 25 tons or more per year of any combination of HAPs	\$3,000

003.02 Listed air pollutants for application fee purposes include PM<sub>10</sub>, SO<sub>2</sub> or SO<sub>3</sub> or any combination of the two, NO<sub>x</sub>, VOC, and CO.

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004 An application will be deemed complete if it provides all the information required and is sufficient to evaluate the subject source and to determine all applicable requirements. The application shall be certified by a responsible official for the source.

005 If the Department determines that the application is not complete and additional information is necessary to evaluate or take final action on the application, the Department may request such information in writing and set a reasonable deadline for a response.

006 Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

007 The Department shall require in the application information as necessary to determine if the new or modified source will interfere directly or indirectly with the attainment or maintenance of National Primary and Secondary Ambient Air Quality Standards, or violate any portion of an existing control strategy.

008 If an air quality impact analysis is deemed necessary by the Director as a part of a construction permit application, concentrations of pollutants that may be expected to occur in the vicinity of a source or combination of sources will be determined by use of an air pollution dispersion model acceptable to the Director. Meteorological and operating conditions that may occur that will produce the greatest concentrations of the pollutants emitted shall be used in evaluating the effect of the source(s) on air quality.

009 Disapproval of Application for Permits.

009.01 If it is determined by the Director that emissions resulting from the operation of a source to be constructed or modified will violate any portion of these rules and regulations, violate any applicable federal air quality regulation, or interfere with attainment or maintenance of a National Ambient Air Quality Standard, no permit will be granted until necessary changes are made in the plans and specifications to obviate the objections to issuance.

009.02 A construction permit will not be issued for any major source or major modification when such source or modification would cause or contribute to a violation of a national ambient air quality standard by exceeding, at a minimum, the following significant levels at any locality that does not or would not meet the applicable national standard:

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Pollutant	Averaging period				
	Annual	24 hour	8 hour	3 hour	1 hour
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>	---	25 ug/m <sup>3</sup>	---
PM <sub>10</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>	---	---	---
PM <sub>2.5</sub>	<del>0.3</del> ug/m <sup>3</sup>	<del>1.2</del> ug/m <sup>3</sup>	---	---	---
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>	---	---	---	---
CO	---	---	0.5 mg/m <sup>3</sup>	---	2 mg/m <sup>3</sup>

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010 Issuance of permits. The Director shall publish notice of intent to approve or disapprove the application in accordance with the procedures of Chapter 14.

011 Approval, by issuance of a permit for any construction, reconstruction, or modification, does not relieve the owner or operator from the responsibility to comply with the applicable portions of the Implementation Plan control strategy. The permittee must comply with all conditions of the construction permit. Any permit noncompliance shall constitute a violation of the State Act and the Act, and is grounds for enforcement action or permit revocation.

012 If construction, reconstruction, or modification of the source is not commenced within eighteen (18) months, the construction permit shall lapse except upon a showing by the permittee that the complexity of the construction, reconstruction, or modification requires additional time.

013 Additional Requirements for Construction or Modification of Sources in Nonattainment Areas.

013.01 No permit to construct or modify will be issued for a proposed major source or a major modification if the source is located or is to be located in an area that is nonattainment for a pollutant for which the source or modification is major unless it is determined that:

013.01A By the time the facility is to commence operation, total allowable emissions from the same source or existing sources in the same nonattainment area, from new sources which are not major emitting facilities, and from existing sources allowed under the Implementation Plan prior to the application for such permit to construct or modify represent a net decrease in emissions and show reasonable further progress toward attainment and maintenance of the ambient air quality standards, and provided that any emissions reductions required as a precondition of the issuance of a permit shall be federally enforceable before such permit is issued.

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013.01B The proposed source is required to comply with the lowest achievable emission rate; and

013.01C The owner or operator of the proposed new or modified source has demonstrated that all other major stationary sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the State subject to emissions limitations are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards.

013.01D The proposed source is in compliance with requirements established under the Implementation Plan and the State shall not issue a permit if the Administrator has determined that the applicable Implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified.

013.01E The source has completed an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

013.02 The requirements of section 013.01A [above](#) for emission reductions from existing sources in the vicinity of proposed new sources or modifications shall be determined on a case-by-case basis. The offset baseline shall be the actual emissions of the source from which offset credit is obtained.

013.03 The following shall apply to emission offsets:

013.03A If the emissions limit under these regulations allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

013.03B For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The Director will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

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013.03C Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production less than one year prior to the date of permit application, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source;

013.03D No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds [exempted in the definition of "Volatile Organic Compound" in Chapter 1 of this Title listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds". \(42 FR 35314, July 8, 1977\)](#);

013.03E The procedures set out in 40 CFR Part 51, Appendix S, Section IV.D, relating to the permissible location of offsetting emissions, shall be followed, unless the Director determines that an equally stringent or more stringent procedure is appropriate.

013.03F Credit for an emissions reduction can be claimed to the extent that the Director has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or in demonstrating attainment or reasonable further progress.

013.03G Emission reductions otherwise required by this Title shall not be creditable as emissions reductions for purposes of any offset.

013.04 The provisions of [section 013 of this Chapter](#) do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

013.04A Coal cleaning plants (with thermal dryers);

013.04B Kraft pulp mills;

013.04C Portland cement plants;

013.04D Primarily zinc smelters;

013.04E Iron and steel mills;

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- 013.04F Primary aluminum ore reduction plants;
- 013.04G Primary copper smelters;
- 013.04H Municipal incinerators capable of charging more than 250 tons of refuse per day;
- 013.04I Hydrofluoric, sulfuric, or nitric acid plants;
- 013.04J Petroleum refineries;
- 013.04K Lime plants;
- 013.04L Phosphate rock processing plants;
- 013.04M Coke oven batteries;
- 013.04N Sulfur recovery plants;
- 013.04O Carbon black plants (furnace process);
- 013.04P Primary lead smelters;
- 013.04Q Fuel conversion plants;
- 013.04R Sintering plants;
- 013.04S Secondary metal production plants;
- 013.04T Chemical process plants; The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140;;
- 013.04U Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hours (250 MMBtu/hr) heat input;
- 013.04V Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- 013.04W Taconite ore processing plants;
- 013.04X Glass fiber processing plants;
- 013.04Y Charcoal production plants;

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013.04Z Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour 250 MMBtu/hr heat input;

013.04AA Any other stationary source category which is being regulated by a standard promulgated under Section 111 or 112 of the Act as of August 7, 1980.

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013.05 At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

014 Any source not required to obtain a construction permit pursuant to section 001 above may request a construction permit to be issued in the manner prescribed by sections 002 through 013 above for the following purposes:

014.01 Establishing enforceable limits to avoid otherwise applicable requirements under the provisions of Title 129.

014.02 Revising existing construction permits to incorporate significant permit revisions as defined in Chapter 15.

014.03 Establishing a PAL pursuant to the provisions of Chapter 19 of Title 129. The construction permit used to establish a PAL must include the information and conditions listed in Chapter 19, section 011.06.

014.04 Establishing a Best Available Retrofit Technology (BART) permit or other permit required to reduce visibility impairment in a Class I Federal area pursuant to the provisions of Chapter 43.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(2); 81-1505(12); 81-1505.06.

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