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MEMORANDUM

TO: Environmental Quality Council

FROM: Steven M. Goans, P.E., Water Division Deputy Director 

DATE: October 7, 2016

RE: Title 119 - *Nebraska Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*
Explanatory Statement for November 15, 2016, EQC Hearing

SHORT DESCRIPTION:

The Water Division requests your approval to amend Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*. Title 119 implements those provisions of the Clean Water Act (CWA), as amended, 33 U.S.C. §1251 et seq., that regulate discharges of pollutants to waters of the state through the issuance of National Pollutant Discharge Elimination System (NPDES) permits.

NDEQ proposes to amend Title 119 in seven (7) areas:

1. Adopt federal streamlining revisions from 40 CFR Part 403 in the general pretreatment program in Chapter 26, Section 010.
2. Adopt revised construction stormwater effluent limitations guidelines (ELGs) from 40 CFR Part 450 in Chapter 27, Section 007.12.
3. Adopt requirements from 40 CFR Part 125, Subparts I and J, that minimize the adverse impacts of cooling water intake structures on aquatic life in Chapter 1, Section 003.02C.
4. Adopt language in Chapters 5 through 8 allowing for the electronic submittal of permit applications and reports.
5. Clarify the effluent sampling requirements for NPDES permit applications in Chapters 5 through 8.
6. Replace references to the 1990 Decennial Census in Chapter 1, Sections 059.01 and 064.01.
7. Adopt language including Limited Liability Companies (LLCs) as a recognized business organization in an NPDES permit application in Chapter 13, Section 002.04.

RATIONALE:

#1. Proposal to Adopt Federal Pretreatment Streamlining Regulations

The proposed amendments adopt provisions from EPA's pretreatment streamlining rule. 70 Fed. Reg. 60134 (October 14, 2005). The general pretreatment program requires industrial dischargers to use treatment techniques and management practices to reduce or eliminate the discharge of harmful pollutants to sanitary sewers. The streamlining regulations offer a number of regulatory flexibility and burden reduction options to both Industrial Users (IUs) and state or local Control Authorities without adversely affecting environmental protection. 'Control Authority' is EPA's term for the state agency that oversees the pretreatment program or the state delegated municipality that oversees a locally designated pretreatment program. Nebraska and four other states (Alabama, Connecticut, Mississippi and Vermont) do not delegate control authority to municipalities. If NDEQ chooses to delegate the pretreatment program to municipalities in the future, these amendments will be necessary.

#2. Proposal to Adopt Federal Revisions to Construction Stormwater Effluent Limitations Guidelines (ELGs)

The proposed amendments adopt two federal rulemakings regulating effluent in construction stormwater discharges. 79 Fed. Reg. 12661 (March 6, 2014) and 74 Fed. Reg. 62996 (December 1, 2009). As stormwater flows over a construction site, it picks up pollutants such as sediment, debris, motor fuel, oil, and other chemicals and transports them to nearby storm sewer systems or directly into rivers, lakes, or coastal waters. These pollutants, especially when transported from multiple sites in a watershed, can significantly impact water quality. The proposed revisions emphasize a best management practices approach that is more flexible than current numeric discharge limits.

#3. Proposal to Adopt Revised Federal Requirements for Cooling Water Intake Structures

The proposed amendments adopt federal revisions to 40 CFR 125, Subparts I and J, which regulate cooling water intake structures at power plants and industrial facilities. 79 Fed. Reg. 48300 (August 15, 2014). Cooling water intake structures can injure or kill aquatic life by heat, turbulence, or chemicals used to clean the cooling system. Larger organisms such as fish, turtles, and riverine or marine mammals may be killed when they are trapped against screens at the front of an intake structure. The revisions better regulate the design and operation of intake structures for both new and existing facilities. The compliance requirements vary by water source and volume of water withdrawn. The regulations allow for flexibility in how an individual facility meets best technology available (BTA) requirements.

#4. Proposal to Adopt Language Allowing for the Electronic Submittal of Permit Applications

The proposed revisions to parallel provisions in Chapters 5 through 8 continue NDEQ's progress toward increasing use of electronic or online permitting processes. NDEQ has already launched online permitting for general stormwater construction permits and four types of air quality construction permit applications. The proposed amendments would allow NDEQ to broaden its electronic permit application initiative to include NPDES permits.

#5. Proposal to Clarify the Effluent Sampling Requirements for NPDES Permit Applications

The proposed amendments adopt and incorporate by reference federal sampling requirements for the determination of effluent characteristics to be submitted as part of an NPDES permit application. The current requirements, now located in Chapters 5 through 8 in text proposed for deletion, reference various forms included in Appendices to Title 119. The proposed changes in Section 006 of Chapter 5 and Section 001 of Chapters 6, 7, and 8 replace agency forms as the source of this sampling requirement with the federal source regulations in 40 CFR Parts 122.1 (f), (g), (j), and (k), respectively. The change clarifies department authority to require sampling in this area and bases the requirement on an enforceable regulation rather than a department form.

#6. Proposal to Replace References to 1990 Decennial Census Results

Chapter 1, Sections 059.01 and 065.01 reference the 1990 Decennial Census in provisions which designate whether a given municipal separate storm sewer system (MS4) is regulated as a small, medium, or large MS4. The proposed revision references the 'latest' Decennial Census rather than a given year, thereby removing the need for future updating.

#7. Proposal to Include LLCs as a Recognized Business Organization in an NPDES Permit Application

Limited Liability Companies are a common form of business organization offering the legal protections of a corporation with the flexibility of a partnership or sole proprietorship. This business form offers particular benefits to small businesses. Recognizing the increasing use of this business form, NDEQ proposes to include it as an information item in NPDES permit applications. The relevant provision in Chapter 13, Section 002.04, also clarifies those persons who can sign an NPDES application.

ANALYSIS OF IMPACTS:

#1. Proposal to Adopt Federal Pretreatment Streamlining Regulations

The streamlining regulations primarily impact publicly owned treatment works (POTWs) with locally designated pretreatment programs. Since NDEQ – not local governments – is the control authority for the pretreatment program in Nebraska, these amendments will have no impact or cost to the Department. Since the amendments offer regulatory flexibility to industrial users and the potential to decrease their regulatory burden, the changes do not create new regulatory requirements for industries that discharge wastewater to a municipal collection and treatment system.

#2. Proposal to Adopt Federal Revisions to Construction Stormwater Effluent Limitations Guidelines (ELGs)

Construction stormwater ELGs impact construction projects of a given size or type. NPDES permits are required for construction activities that disturb one or more acres and discharges from smaller sites that are part of a larger common plan of development or sale. NDEQ has an existing construction stormwater regulatory and permitting program in Title 119. The major change between current requirements and proposed requirements is that the numeric discharge limit for turbidity in stormwater will be replaced by a best management practices approach emphasizing erosion prevention. This approach allows the permittee to tailor stormwater management efforts to site characteristics, is less rigid, and produces improved environmental outcomes.

#3. Proposal to Adopt Revised Federal Requirements for Cooling Water Intake Structures

Nebraska has five existing power generation facilities that are impacted by the new requirements for cooling water intake structures. These facilities are: Nebraska Public Power District (NPPD) Canaday Station, NPPD Cooper Nuclear Station, NPPD Gerald Gentleman Station, Omaha Public Power District (OPPD) Nebraska City Station, and OPPD North Omaha Station. Prior to a determination of its new regulatory obligations under these revisions, Cooper Nuclear Station will be evaluated for safety impacts associated with compliance. NPPD's Gerald Gentleman and Canaday Stations will likely be eligible for waivers from some portions of the rule. NDEQ is already working closely with both NPPD and OPPD to determine the new compliance obligations of these five facilities.

#4. Proposal to Adopt Language Allowing for the Electronic Submittal of Permit Applications

The use of electronic submittals impacts both NDEQ as the permit issuing authority and NPDES permit applicants. Electronic submittals allow applicants to prepare and NDEQ to process permit applications more efficiently and with fewer errors.

#5. Proposal to Clarify the Effluent Sampling Requirements for NPDES Permit Applications

The change impacts NPDES permit applicants, but does not change existing requirements or create new requirements because NDEQ is currently requiring this sampling as a condition of permit approval.

#6. Proposal to Replace References to 1990 Decennial Census Results

This amendment updates existing regulatory provisions and does not create new or additional requirements. As a result of the 2010 Census, Grand Island is now designated a 'Regulated Small MS4 – Urbanized Area'. In addition, Gretna remains a Small MS4, but is now included within the 'Urbanized Area' designation of the Omaha metro region. NDEQ has been working with these communities to meet the compliance requirements of their new MS4 designations.

#7. Proposal to Include LLCs as a Recognized Business Organization in an NPDES Permit Application

This change impacts LLCs which will now be able to identify their form of business organization on an NPDES permit application.

SECTION-BY-SECTION DESCRIPTION:

Chapter 1 – GENERAL; DEFINITIONS

SECTION	DESCRIPTION OF PROPOSED CHANGE
001	Remove outdated reference to the Clean Water Act.
003.01	Update reference to the CFR to latest version.
003.02 (current)	Remove unnecessary section relating to the physical location of incorporated material.
003.02 (proposed)	Add language to improve clarity and readability.
003.02A	Remove redundant language.
003.02B	Remove redundant language; remove unnecessary Federal Register citation now contained in the CFR version referenced in Section 003.01.
003.02C (current)	Remove adoption by reference provision for 40 CFR Part 257, the contents of which are already contained in Title 132 – <i>Integrated Solid Waste Management Regulations</i> ; renumber subsequent sections.
003.02C (proposed)	Remove redundant language; remove reference to an outdated publication that is now contained in the CFR version referenced in Section 003.01. The updated reference also adopts and incorporates §316(b) of the Clean Water Act (CWA), as codified in 40 CFR 125, Subparts I and J, which regulates the adverse impacts of cooling water intake structures.
003.02D – F	Remove redundant language.

SECTION	DESCRIPTION OF PROPOSED CHANGE
004 & 004.01	Correct spelling
006 & 007	Add "represents" for readability and clarity.
009	Add comma after "been"
011	Correct the title name for Title 117 - Nebraska Surface Water Quality Standards.
022	Add "means" for readability and clarity.
023	Correct spelling error.
025	Add "means" for readability and clarity.
027	Correct spelling and typographical errors.
028	Correct spelling error.
041	Remove "and/or" for readability and clarity.
042	Modify regulatory definition of "[e]ffluent limitation" to match the statutory definition in §81-1502(23) of the Nebraska Environmental Protection Act, <i>Neb. Rev. Stat. §81-1501, et seq.</i>
043	Modify regulatory definition of "[e]ffluent limitations guidelines" to match the federal definition in 40 CFR §401.11(j).
050	Add the title name for Title 126 – <i>Rules and Regulations Pertaining to Management of Waste.</i>
054	Correct definition for "Industrial user" to match the definition in 40 CFR 403.3(j).
059.01	Remove outdated reference to the 1990 Decennial Census and replace with reference to the "latest" Decennial Census.
063 (current)	Remove "Major Outfall" as a stand-alone definition as it is already defined in Section 061.
064.01 (proposed)	Remove outdated reference to the 1990 Decennial Census and replace with reference to the "latest" Decennial Census.
066	Add the word "Facility" to clarify what is meant by "Major".
069 (current)	Remove the "MS4" acronym as a stand-alone definition and add it to the definition of "Municipal Separate Storm Sewer" in Section 070.
069 (proposed)	Add the "MS4" acronym to the definition of "Municipal Separate Storm Sewer".
072	Correct grammatical error.
074	Add a reference to the definition for "New Source" applicable to Industrial Users.
076	Remove second sentence of the definition of "[n]oncontact cooling water" as it contained unnecessary language and acted as a second, unnumbered definition.
078	Remove duplicative citation to Clean Water Act Section 402
084	Add "means" for readability and clarity.
085	Modify regulatory definition of "[p]erson" to match the statutory definition in §81-1502(10) of the Nebraska Environmental Protection Act, <i>Neb. Rev. Stat. §81-1501, et seq.</i>
091 (current)	Remove separate acronym definition of "POTW Treatment Plant" and

SECTION	DESCRIPTION OF PROPOSED CHANGE
	which is already in the existing, full definition for "Publicly Owned Treatment Works" in Section 093 (proposed).
093	Replace "or" with parentheses around "POTW".
094	Add full definition of "Publicly Owned Treatment Works (POTW) Treatment Plant" from Section 091.
098	Replace "or" with parentheses around "SSO" in the definition of "Sanitary Sewer Overflow".
099	Modify regulatory definition of "[s]chedule of compliance" to match the statutory definition in §81-1502(24) of the Nebraska Environmental Protection Act, <i>Neb. Rev. Stat. §81-1501, et seq.</i>
109 (current)	Remove separate acronym definition for "Small MS4" to be included in Section 108 (proposed).
108 (proposed)	Add "Small MS4" acronym to full definition.
113 (current)	Remove separate acronym definition for "SSO" which is already contained in Section 098.
113 (proposed)	Modify definition of "[s]torm water discharge associated with industrial activity" to include "facility" as defined in Chapter 1, Section 046 and as referenced throughout Title 119; add reference to 40 CFR Part 401; define categories of facilities engaging in "industrial activity" in subsections below.
115	Replace "or" with parentheses around "TDS".
116	Add parentheses around "TSS" and amend definition.
118	Add federal definition for "Treatment Works Treating Domestic Sewage" from 40 CFR §122.2.
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 2 – PERMITS; WHEN REQUIRED

SECTION	DESCRIPTION OF PROPOSED CHANGE
002	Add reference to the requirements of 40 CFR 122.21(a) – Duty to apply.
002.07	Correct the title name for Title 130 - <i>Livestock Waste Control Regulations</i> .
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 5 – PERMIT APPLICATION - GENERAL REQUIREMENTS

SECTION	DESCRIPTION OF PROPOSED CHANGE
001	Add state analog to 40 CFR §122.21(a).
002	Add heading for "Time to Apply" to match 40 CFR §122.21(c).
003	Add language to match 40 CFR §122.21(b).
005	Update language to match 40 CFR §122.21(e).
006	Incorporate the application information requirements of 40 CFR §122.21(f) and allow the use of a standard application form provided by

SECTION	DESCRIPTION OF PROPOSED CHANGE
	the NDEQ Director.
006 (current)	Remove outdated provisions.
007-009	Remove outdated provisions related to cooling water intake structures which have been amended by the reference in Chapter 1, Section <u>003.03D</u> to 40 CFR §125. The incorporation by reference of 40 CFR §125 includes Subparts I (applicable to cooling water intake structures for new facilities) and J (applicable to the same structures for existing facilities).
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 6 – PERMIT APPLICATION – ADDITIONAL INFORMATION FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

SECTION	DESCRIPTION OF PROPOSED CHANGE
001	Incorporate the application information requirements of 40 CFR §122.21(g) and allow the use of a standard application form provided by the NDEQ Director. Remove all subsections after Section 001 which are now incorporated by the reference to 40 CFR §122.21(g).
002	Incorporate the application information requirements of 40 CFR §122.21(h) and allow the use of a standard application form provided by the NDEQ Director. Remove all subsections after Section 001 which are now incorporated by the reference to 40 CFR §122.21(h).
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 7 – PERMIT APPLICATION – ADDITIONAL INFORMATION FOR POTWs

SECTION	DESCRIPTION OF PROPOSED CHANGE
001	Incorporate the application information requirements of 40 CFR §122.21(j) and allow the use of a standard application form provided by the NDEQ Director.
002-005	Remove Sections <u>002</u> through <u>005</u> which are now incorporated by the reference to 40 CFR §122.21(j).
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 8 – PERMIT APPLICATION – ADDITIONAL INFORMATION FOR NEW SOURCES AND NEW DISCHARGES

SECTION	DESCRIPTION OF PROPOSED CHANGE
001	Incorporate the application information requirements of 40 CFR §122.21(k) and allow the use of a standard application form provided by the NDEQ Director. Remove all subsections after Section 001 which are now incorporated by the reference to 40 CFR §122.21(k).
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

SECTION	DESCRIPTION OF PROPOSED CHANGE
Legislation"	

Chapter 13 – APPLICATIONS; SIGNATORIES

SECTION	DESCRIPTION OF PROPOSED CHANGE
001	Correct the title name for Title 130 - Livestock Waste Control Regulations.
002	Add "NPDES" for clarity.
002.01A	Correct a typo in "function".
002.04	Add a signature requirement applicable to Limited Liability Company permit applicants.
003	Add heading for "Duly Authorized Representative" for consistency with the subsections of Section 003.
003 & 003.01	Underline section references.

Chapter 14 – PERMITS; TERMS AND CONDITIONS - GENERAL

SECTION	DESCRIPTION OF PROPOSED CHANGE
001.09B	Reword for consistency of language with the larger section.
001.09C	Reword for consistency of language with the larger section.
001.10B	Reword for consistency of language with the larger section.
001.10C4	Correct capitalization error.
001.11A	Correct capitalization error.
001.12F	Add "noncompliance" to the heading to better define the information that follows.
001.13A	Remove the paragraph title that is referenced and leave paragraph number to improve clarity.
001.13A1(b)	Remove the paragraph title that is referenced and leave paragraph number to improve clarity.
001.13A2(3), 001.13B, 001.14A	Correct internal references.
001.14A1(c)	Remove the paragraph title that is referenced and leave paragraph number to improve clarity; add missing paragraph reference to 001.12F2(b).
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 16 – PERMIT CONDITIONS; ADDITIONAL CASE-BY-CASE

SECTION	DESCRIPTION OF PROPOSED CHANGE
002.02	Correct punctuation and capitalization; remove the paragraph title that is referenced and leave paragraph number for clarity.
003	Add "the" for readability and clarity.
003.01	Replace "Clean Water Act" with CWA acronym which has been defined in preceding chapters and is used elsewhere in the Chapter 16.

SECTION	DESCRIPTION OF PROPOSED CHANGE
003.03, 003.03A, 003.03B, & 003.04	Replace numerical references to interim dates with text references.
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 26 – GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

SECTION	DESCRIPTION OF PROPOSED CHANGE
002	Add definition for "Approval Authority for the purposes of this chapter.
003.01 (proposed)	Correct internal reference to reflect section renumbering.
004.06A1	Add initial notification requirement to precede existing requirement for noncompliance reporting.
004.08	Correct typographical and capitalization mistakes; clarify regulatory terms.
005.02	Correct internal reference to reflect section renumbering.
006	Add clarifying language that new sources must make a request for the applicability of categorical standards prior to discharging.
008	Modify heading to clarify those facilities under the scope of the reporting requirements in Section 008.
008.02	Correct internal reference to reflect section renumbering.
008.03	Add clarifying language.
010	Move incorporation by reference of 40 CFR Part 403 from Chapter 27, Section 007.20 to proper location in Chapter 26, Section 010.
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.

Chapter 27 – EFFLUENT GUIDELINES AND STANDARDS

SECTION	DESCRIPTION OF PROPOSED CHANGE
007.12	Incorporate by reference the Construction and Development Point Source requirements of 40 CFR Part 450.
007.20 (current)	Move incorporation by reference of 40 CFR Part 403 from Chapter 27, Section 007.20 to proper location in Chapter 26, Section 010.
007.31	Replace unnecessary Federal Register citation which is now updated by the reference to the CFR in Chapter 1, Section 003.01.
007.44	Replace unnecessary Federal Register citation which is now updated by the reference to the CFR in Chapter 1, Section 003.01.
"Enabling Legislation"	Elaborate and clarify sources of state enabling legislation.