

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

TITLE 119

RULES AND REGULATIONS PERTAINING TO THE ISSUANCE OF PERMITS UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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GOVERNOR

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TITLE 119 – RULES AND REGULATIONS PERTAINING TO THE ISSUANCE OF PERMITS  
UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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### Title 119 - Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System

#### CHAPTER 1 – GENERAL; DEFINITIONS

001 Scope and Purpose. These regulations are promulgated in implementation of the National Pollutant Discharge Elimination System (NPDES) created by the Clean Water Act, 33 U.S.C. 1251 et seq.

002 Adoption and incorporation by reference.

002.01 The references to 40 CFR contained in this Title are to the Code of Federal Regulations published by the U.S. Government Printing Office, revised as of July 1, 2019, unless otherwise noted.

002.02 The following regulations are adopted and incorporated by reference and shall apply except as more expressly provided in this Title.

002.02A 40 CFR part 136 Guidelines establishing test procedures for the analysis of pollutants.

002.02B 40 CFR part 122 EPA administered permit program: The National Pollutant Discharge Elimination System.

002.02C 40 CFR part 125 Criteria and standards for the National Pollutant Discharge Elimination System.

002.02D 40 CFR part 129 Toxic Pollutant Effluent Standards.

002.02E 40 CFR part 133 Secondary Treatment Regulations.

002.02F 40 CFR Part 403 General Pretreatment Regulations for Existing and New Sources of Pollution

002.02G 40 CFR Chapter I, Subchapter N.

002.02H 40 CFR part 503 Standards for the use or disposal of sewage sludge.

003 Definitions. Unless specified elsewhere in this Title, the definitions at 40 CFR parts 122.2, 122.26 (b), 401.11, and 403.3 are hereby adopted and incorporated by reference.

004 The following terms are defined at Neb. Rev. Stat. §81-1502: Council, Department, Director, Person, and Waters of the State.

005 "7-day average" represents the arithmetic mean of pollutant parameter values for samples collected in a period of seven consecutive days.

006 "30-day average" represents the arithmetic mean of pollutant parameter values of samples

collected in a period of 30 consecutive days.

007 "Applicable standards and limitations" means all State and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or related activity is subject under state and federal law, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, pretreatment standards, groundwater standards, land application standards, and standards for sewage sludge use or disposal.008 "Applicable water quality standards" means the Nebraska Water Quality Standards in effect under Nebraska law for both surface water and groundwater of the state. Such standards are codified in the Nebraska Administrative Code at Title 117 - Nebraska Surface Water Quality Standards and at Title 118 - Ground Water Quality Standards and Use Classification.

009 "Biological monitoring" means the determination of the effect on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (1) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical and biological characteristics of the effluent, and (2) at appropriate frequencies and locations.

010 "Biosolids" means treated domestic sewage sludge that meets the requirements of 40 CFR Part 503 for land application, surface disposal, incineration, or disposal in a municipal solid waste landfill.

011 "Blowdown" means the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice.

012 "CBOD" means the five-day measure of the pollutant parameter carbonaceous biochemical oxygen demand (CBOD 5).

013 "Construction permit" means the permit required by Title 123 - Rules and Regulations for Design, Operation and Maintenance of Wastewater Treatment Works.

014 "Effluent" means wastewater, excluding sludge, discharging from a wastewater treatment works and/or cooling equipment, a boiler, or any manmade device that discharges or has the potential to discharge.

015 "Facilities or equipment" means buildings, structures, process or production equipment or machinery which forms a permanent part of the new source and which will be used in its operation, provided such facilities or equipment are of such value as to represent a substantial commitment to construct.

016 "Influent" means water or a water solution containing dissolved or suspended compounds or elements entering any device that discharges or has the potential to discharge as a point source.

017 "Land Application" is defined as the controlled application of effluent onto the land surface to achieve a designed degree of treatment through natural physical, chemical and biological processes within the plant-soil-water matrix.

018 "Major Municipal Wastewater Treatment Facility" means a municipal wastewater

treatment facility that has a design flow of 1 MGD (million gallons per day) or greater or a service population of 10,000 or greater.

019 "Minor facility" means any NPDES facility not classified as a "Major facility".

020 "Minor Municipal Wastewater Treatment Facility" means a municipal wastewater treatment facility that has a design flow of less than 1 MGD (million gallons per day) or a service population of less than 10,000

020 "Noncompliance report form" means a form prepared by the Department for the use of the permittee to indicate non-compliance with applicable effluent limitations and standards, or permit requirements.

021 "Noncontact cooling water" means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

022 "Nonpoint source" means a discharge of pollutants from other than a point source.

024 "Passive Discharge" means a discharge from a POTW that occurs in the absence of an affirmative action and is not authorized by the NPDES permit (e.g. discharges due to a leaking valve, discharges from an overflow structure) and / or is a discharge from an overflow structure not designed as part of the POTW (e.g. discharges resulting from lagoon berm/dike breaches).

025 "Percent removal" means a percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the 30-day average values of the raw wastewater influent pollutant concentrations to the facility and the 30-day average values of the effluent pollutant concentrations for a given time period.

026 "Process wastewater pollutants" means pollutants present in process wastewater.

027 "Restricted Public Access" refers to areas where public access can be controlled such as crop and pasture land.

028 "Sanitary Sewer Overflow (SSO)" means untreated or partially treated sewage overflows from a sanitary sewer collection system.

029 "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass, excluding economic loss caused by delays in production.

030 "Silvicultural point source" is defined at §122.27.

031 "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

032 "State Act" means the Nebraska Environmental Protection Act 81-1501 to 81-1532, as amended.

033 "Unrestricted Public Access" refers to areas where public access is not restricted such as parks and playgrounds.

034 "Wetlands" is defined in N.A.C. Title 117 – *Nebraska Surface Water Quality Standards*.

Enabling Legislation: Neb. Rev. Stat. §§ 81-1502; 81-1504(4); 81-1505(3), (4), (5), (6), (7), (8), (11), and (20).

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#### CHAPTER 2 - PERMITS; WHEN REQUIRED

001 Pursuant to Neb. Rev. Stat. §81-1506 (2)(a) and 40 CFR 121.21(a), as adopted herein, all persons discharging or proposing to discharge any pollutant from a point source into any waters of the state will obtain a state National Pollutant Discharge Elimination System permit in accordance with the requirements of this Title unless exempt under Section 002.

002 Except as more expressly provided in Title 115 – Rules of Practice and Procedure, procedures for issuing, modifying, revoking, reissuing or terminating permits will be in accordance with 40 CFR Part 124, subparts A and D which are adopted and incorporated by reference, and Part 122, as adopted herein.

003 The following do not require NPDES permits:

003.01 Those discharges in 40 CFR 122.3, as adopted herein;

003.02 Water, gas or other material which is injected into a well to facilitate production of oil and gas, or water derived in association with oil or gas production and disposal of in a well, if the well is used either to facilitate production or for disposal purposes and is approved by the Nebraska Oil and Gas Conservation Commission, complies with Title 122 - Rules and Regulations for Underground Injection and Mineral Production Wells, and it is determined by the Department that injection or disposal will not result in the degradation of ground or surface water resources;

003.03 Diversion, carriage, and exchange of water from or into streams, lakes, reservoirs, or conveyance structures, or storage of water in or release of water from lakes, reservoirs, or conveyance structures, in the exercise of water rights;

003.04 Discharge of water from single family household, or non-household systems of equivalent size, from non-recirculating geothermal heat pumps, if the discharge does not include chemical additives for cleaning or descaling and does not create a threat to public health or safety, a nuisance, or unlawful pollution of waters of the state;

003.05 Discharge from swimming pools, if the discharge from a swimming pool is discharged through permanent piping to a POTW and does not create a threat to public health or safety, result in pass through or interference to a POTW, a nuisance, or unlawful pollution of waters of the state;

003.06 Discharge from Agricultural tile drain systems to surface waters of the state; and

003.07 Application of water containing nutrients that is agronomically applied as a fertilizer, when the source of the water is not wastewater, cooling water or process water.

004 No permit is to be issued as provided in 40 CFR 122.4, as adopted herein, and also when:

004.01 Any discharge from a new source or new discharger if the discharge exceeds the

reserve treatment capacity at the POTW.

004.02 Any new or existing source subject to Pretreatment Standards. Any discharge from an industrial user which does not assure compliance with applicable pretreatment standards or requirements which will otherwise interfere with, pass through, or be incompatible with a POTW's treatment processes, including contamination of sewage sludge.

005 The Director may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable National Pretreatment Standards and requirements, where such contributions would cause the POTW to violate its NPDES permit, or where such contributions exceed the reserve treatment capacity of the POTW.

006 A new source or new discharger wishing requesting to discharge pollutants into waters of the state will file an NPDES application at the same time as application is made to the Department for a construction permit under NDEE Title 123 for a new source, not less than 180 days prior to commencement of discharge.

007 Permit applications for a limited liability company (LLC).will be signed by a member in a member-managed LLC; or by the manager in a manager-managed LLC as set out in the articles of organization.

008 Prior to the existence of any applicable standard referred to in 40 CFR 122.41, as adopted herein, in determining the terms and conditions of any issued permit the Director shall apply existing water quality standards, and any other requirements which the Director determines are necessary in order to achieve best practicable control technology, best available control technology, best conventional pollutant control technology, or new source performance standards whichever is appropriate, to carry out the provisions of State and Federal Law.

009 The discharge of any pollutant not identified and authorized by the NPDES permit or the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.

010 The permittee, in order to maintain compliance with its permit, shall control production and all discharges upon reduction, loss, or failure of the treatment facility until the facility is restored or an alternative method of treatment is provided. This applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

011 In a permit modification under these regulations, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit will remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any modification or revocation and reissuance proceeding, the permittee will comply with all conditions of the existing permit until a new final permit is reissued.

012 Continuation of expiring state permits.

012.01 When the State is the permit-issuing authority, the conditions of an expired permit continue in force until the effective date of a new permit if:

012.01A The permittee has submitted a timely application which is a complete application



for a new permit; and

012.01B 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 (for example, when issuance is impracticable due to time or resource constraints).

012.02 Effect. Permits continued under this section remain fully effective and enforceable.

012.03 Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired state permit the Director may choose to do any or all of the following:

012.03A Initiate enforcement action based upon the permit which has been continued;

012.03B Issue a notice of intent to deny the new permit. 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;

012.03C Issue a new permit with appropriate conditions; or

012.03D Take other actions authorized by these regulations.

Enabling Legislation: Neb. Rev. Stat. §§ 81-1504(11), (20); 81-1505(4), (11), (20); 81-1506 (1), (2)(a)(c)(d) and (e)

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#### Chapter 3 - NPDES REGULATIONS APPLICABLE TO STORM WATER DISCHARGES

001 The conditions and requirements of 40 CFR part 122.26 pertaining to Storm Water Discharges are hereby adopted and incorporated by this reference.

002 Permit Requirement

002.01 Storm water discharges, including those from industrial activity, large municipal separate storm sewer systems, and medium separate storm sewer systems, require NPDES coverage as promulgated at 40 CFR part 122.26 (a).

002.02 A small MS4 is subject to storm water regulation as promulgated at 40 CFR part 122.26 (a) (9) (i) and part 122.32.

003 Application deadlines. Any operator of a point source required to obtain a permit under this chapter that does not have an effective NPDES permit authorizing discharges from its storm water outfalls will submit an application in accordance with the deadlines promulgated at 40 CFR part 122.26 (e).

004 Petitions as described in 40 CFR part 122.26 (f) may be submitted in accordance with that part.

005 A Conditional exclusion for “no exposure” of industrial activities and materials to storm water is applicable in accordance with 40 CFR 136 part 122.26 (g).

Enabling Legislation: Neb. Rev. Stat. §81-1505

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#### Chapter 4 – LAND APPLICATION OF DOMESTIC EFFLUENT, LAND APPLICATION OF SINGLE PASS NONCONTACT COOLING WATER AND DISPOSAL OF DOMESTIC BIOSOLIDS

001 There will be two procedures designed to permit and authorize the land application of effluent and/or single pass noncontact cooling water and/or biosolids. Land application sites and/or effluent not meeting the requirements, limitations, prohibitions or conditions set forth in this chapter will not be permitted under Authorization by Rule but may still be eligible for a site specific permit or site specific language included in an NPDES permit for an individual wastewater treatment facility. Such a determination will be made by the Department. The two procedures necessary for these regulations are as follows:

001.01 Authorization by Rule. An NPDES permit allowing the land application of effluent and/or single pass noncontact cooling water and/or biosolids is hereby Authorized by Rule provided all of the requirements, conditions, limitations and prohibitions contained sections 002, 003, and 004 of this chapter or any other regulation contained in Title 119 pertaining to the land application itself, the land application site and the aforementioned land application materials are observed.

001.02 Application for Site Specific Land Application Authorization. If a land application site and/or the land application material cannot meet all of the requirements, conditions, limitations or prohibitions contained in sections. 002, 003, and 004 of this chapter or any other regulation contained in Title 119 pertaining to the land application itself, the applicant may submit an application for a site specific land application permit and / or site specific language to be placed in an NPDES permit for an individual wastewater treatment facility. The determination to approve the permit will be made by the Department on a case by case basis.

#### 002 Land Application of Effluent

002.01 Effluent used for land application shall be the final discharge from a domestic wastewater treatment facility. The discharge shall receive, at a minimum, treatment so that the limits and conditions set forth herein can be met.

#### 002.02

Land Application Site Requirements and Conditions for Restricted and Unrestricted Public Access Sites

002.02A Set Backs and Buffer Zones. The application area must be at least:

002.02A1 1000 feet away from any public drinking water well;

002.02A2 100 feet away from any private drinking water well; and

002.02A3 100 feet from any inhabited dwellings.

002.02A4 Additionally, land application cannot occur within or adjacent to residential areas.

002.02A5 Application of effluent cannot drain beyond the land application site boundaries.

002.02A6 Application of effluent, runoff or spray is not allowed on public roadways.

#### 002.02B Soil and Crop Criteria

002.02B1 Treated effluent will be land applied at an agronomic rate. Agronomic rate is defined as the application rate of nitrogen to meet the estimated nitrogen requirements of the crop being produced based on past or projected yields. In determining the agronomic rate, the permittee will consider the nitrogen content of the wastewater, available nitrogen in the soil, and the amount of nitrogen from commercial fertilizer. Any laboratory testing or other documentation regarding the determination of agronomic rate for the land application site will be retained by the permittee. Documentation will be made available immediately upon request to the Department.

002.02B2 Treated wastewater will not be applied to crops that are intended for distribution in their raw form for direct human consumption.

#### 002.02C Land Application Site Prohibitions

002.02C1 Land application is prohibited when the ground is frozen or saturated.

002.02C2 Land application sites will have a slope of 12% or less.

002.02C3 Surface runoff of effluent is prohibited. Land application will cease immediately if ponding or runoff occurs.

002.02C4 Land application sites will be free of perennial or intermittent streams, ponds, lakes or wetlands.

#### 002.02D Ground Water Criteria

002.02D1 There will be no impairment to the beneficial uses of ground water. Any substance introduced directly or indirectly by human activity will not be allowed to exceed the applicable standards for ground water as set forth in Title 118 - Ground Water Quality Standards and Use Classification.

002.02D2 The distance of land surface to the seasonal high groundwater level as specified either by a soil survey map or well logs, will be, at least 4 feet.

002.02D3 Where the potential for ground water contamination is a

concern, the Department may require ground water monitoring.

#### 002.02E Effluent Criteria

002.02E1 The total hydraulic application rate will be based on weekly local crop uptake values. The total hydraulic application rate will not exceed 2 inches per acre (54,304 gallons) per week.

002.02E2 Treated wastewater used for land application will comply with all numeric and narrative limits, conditions and requirements set forth herein.

002.02E3 The effluent will be monitored for the following parameters: pH, Total Kjeldahl Nitrogen, Nitrate as Nitrogen, Ammonia as Nitrogen, Total Dissolved Solids, Chloride, Phosphorous and Sodium Adsorption Ratio (SAR).

002.02F The permittee will maintain and retain logs containing the following information:

002.02F1 Each land application site will be identified in the log by the legal description. All information pertaining to that land application site will be identified as such.

002.02F2 The inches per acre per week of treated wastewater applied to each land application site. The beginning and ending date of the week will be noted in the log.

002.02F3 The results of the laboratory analysis for the parameters in Section 002.02E3 of this Chapter. A copy of the laboratory analysis will be attached to the log entry.

002.02F4 Any additional nitrogen applied to the land application site per irrigation season per year. The amount of nitrogen will be reported in tons per acre per year.

002.02F5 If additional nitrogen is applied to the application site, the source and amount from each source will be noted in the log.

002.02F6 The permittee will make these logs available for review upon request by the Department.

#### 002.02G Monitoring Frequency Requirements

002.02G1 The monitoring frequency for Restricted Public Access Sites will be, at a minimum, annually. The effluent will be sampled on the first day of land application.

002.02G2 The monitoring frequency for Unrestricted Public Access Sites will be, at a minimum, once during the first week of the initial land application (irrigation) event and once every month thereafter for all

parameters except flow.

002.03 Land Application Site Requirements and Conditions for Unrestricted Public Access Sites

002.03A The treated effluent will be disinfected prior to land application in an unrestricted public access area. If chlorine or a chlorine compound is used as the disinfection agent the treated effluent will be dechlorinated prior to land application.

002.03B Public access to the land application site will be prohibited during the actual land application event.

002.03C The permittee will provide signage located at the land application site(s) containing language prohibiting public access during a land application event and informing the public that effluent is used on the site(s).

002.03D Effluent that is land applied to unrestricted public access sites will not exceed limits for *E. coli* of 126 # / 100 ml for a monthly geometric mean and within a month, no more than 10% of the samples will exceed 400 CFU/100 mL. Invalid test results for *E. coli*, such as "too numerous to count" (TNTC), will not be accepted and the permittee will retest within 24 hours after obtaining invalid results. The Department will be notified within 24 hours of a TNTC or other invalid result. The results of the laboratory analysis will be recorded in the log. A copy of the laboratory analysis will be attached to the log entry.

003 Single Pass Noncontact Cooling Water

003.01 The requirements and conditions listed in sections 002.02A through 002.02F are all applicable to single pass noncontact cooling water.

003.01A The monitoring frequency for Restricted Public Access Sites will be, at a minimum, annually. The effluent will be sampled on the first day of land application.

003.01B Single pass noncontact cooling water used for land application will originate from either a well or a municipal water source and will not contain any additives placed in the water after entry into the cooling system.

004 Sewage sludge resulting from domestic, industrial, septic or pretreatment facilities treating compatible type pollutants (i.e. pollutants such as BOD, TSS, ammonia) may be land applied by a facility in accordance to this chapter and their NPDES or Facility pretreatment permit.

004.01 The director will consider any relevant technical guidance in establishing terms and conditions necessary to protect human health and the environment, including but not limited to the conditions and requirements of 40 CFR part 503 pertaining to Standards For The Use Or Disposal of Sewage Sludge (40 CFR part 503) and/or to the conditions and requirements of 40 CFR part 257 pertaining to Criteria For Classification Of Solid Waste Disposal Facilities And Practices these Federal regulations (40 CFR part 257) are hereby adopted and incorporated by reference.

004.02 The Department may prevent the land application of sewage sludge for any

reasonable cause including a facility failing to follow the site restrictions and management practices specified 40 CFR part 503, 40 CFR part 257 and/or section 002.02A and 002.02B of this chapter.

004.03 Sewage Sludge records will be kept for a minimum of 5 years or as specified in 40 CFR part 503 or 40 CFR part 257.

Enabling Legislation: Neb. Rev. Stat. §81-1505(8).

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#### CHAPTER 5 – EFFLUENT GUIDELINES AND STANDARDS

001 Regulations promulgated in this chapter prescribe effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards for new and existing sources. Point sources of discharges of pollutants are required to comply with these regulations, where applicable, and permits issued by the department will be conditioned upon compliance with the applicable effluent guidelines and standards.

002 Test procedures for analysis of pollutants. The conditions and requirements of 40 CFR part 136 pertaining to the Guidelines Establishing Test Procedures for the Analysis of Pollutants are hereby adopted and incorporated by this reference.

003 Criteria and standards for determining fundamentally different factors. The conditions and requirements of 40 CFR part 125, Subpart D pertaining to Criteria and Standards for Determining Fundamentally Different Factors is adopted and incorporated by this reference.

004 Thermal discharges and cooling water intake structures. All of 40 CFR part 125, Subparts H and I pertaining to criteria for determining alternative effluent limitations and requirements applicable to cooling water intake structures are adopted and incorporated by this reference.

005 Toxic pollutant effluent standards. All of 40 CFR part 129 pertaining to Toxic Pollutant Effluent Standards are adopted and incorporated by this reference.

006 pH effluent limitations under continuous monitoring under 40 CFR part 401.17 are adopted and incorporated by this reference.

007 The Effluent Guidelines at 40 CFR Chapter I, Subchapter N are adopted by reference in Chapter 1 of this Title.

Enabling Legislation: Neb. Rev. Stat. §81-1505(3), (4), (5), (6), (7), (8), (11), and (20)



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#### CHAPTER 6 - ENVIRONMENTAL INFRASTRUCTURE SUSTAINABILITY EVALUATION

001 This chapter implements Neb. Rev. Stat. §81-1517 through §81-1520.

002 An application request for the affordability and sustainability evaluation will be submitted to the Director, on a form approved by the Department.

The appropriate application fee will be submitted with the application in the amount specified as follows:

003.01 A five thousand dollar (\$5,000) fee will be submitted for communities with a population greater than or equal to two thousand four hundred and fifty (2,450) people.

003.02 A four thousand dollar (\$4,000) fee will be submitted for communities with a population from one thousand fifty (1,050) but less than two thousand four hundred and fifty (2,450) people.

003.03 A three thousand dollar (\$3,000) fee will be submitted for communities with a population from six hundred twenty five (625) but less than one thousand fifty (1,050) people.

003.04 A two thousand dollar (\$2,000) fee will be submitted for communities with a population from three hundred fifty (350) but less than six hundred twenty five (625) people.

003.05 A one thousand dollar (\$1,000) fee will be submitted for communities with a population from two hundred thirty (230) but less than three hundred fifty (350) people.

003.06 A five hundred dollar (\$500) fee will be submitted for communities with a population from one hundred (100) but less than two hundred thirty (230) people.

003.07 A two hundred fifty dollar (\$250) fee will be submitted for communities with a population less than one hundred (100) people.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(33), 81-1505(11), 81-1517, 81-1518, 81-1519, and 81-1520