

NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL

TITLE 120  
RULES ON 401(1)(A) CERTIFICATION

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RULES AND REGULATIONS PERTAINING TO  
CERTIFICATION BY THE STATE OF NEBRASKA  
DEPARTMENT OF ENVIRONMENTAL CONTROL

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## Title 120 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL

### Chapter 1 - DEFINITIONS

001 "Applicant" means a person on whose behalf an application is made for certification by the Department pursuant to section 401 of the federal Clean Water Act, 33 U.S.C. §1251 et seq., of activities requiring a federal license or permit which may result in a discharge into navigable waters.

002 "Department" means the Nebraska Department of Environmental Control.

003 "Director" means the director of the Department of Environmental Control.

004 "Fill material" means a particular discharge as defined in 33 C.F.R. §323.2(k) (1985) as refined by the Memorandum of Agreement Between the Assistant Administrators for External Affairs and Water, U.S. Environmental Protection Agency, and the Assistant Secretary of the Army for Civil Works Concerning Regulations of Discharge of Solid Waste Under the Clean Water Act, published in 51 Federal Register 8871-73, March 14, 1986. This Agreement is attached at Appendix I.

005 "Navigable waters" means all navigable "waters of the United States including the territorial seas,"; and includes, but is not limited to: (1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term "wetlands" as used in this regulation shall include those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas; the term "adjacent" means bordering, contiguous or neighboring; (2) tributaries of navigable waters of the United States, including adjacent wetlands; (3) interstate waters, including wetlands; and (4) all other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats, and wetlands, the use, degradation or destruction of which affect interstate commerce including but not limited to: (i) Intrastate lakes, rivers, streams and wetlands which are utilized by interstate travelers for recreational or other purposes; and (ii) intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and (iii) intrastate lakes, rivers, streams and wetlands which are utilized for industrial purposes by industries in interstate commerce.

006 "Person" means any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality or other governmental subdivision, public agency,

officer or governing or managing body of any municipality, governmental subdivision, public agency or any other legal entity.

007 "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

Legal Citation: Title 120, Ch. 1, Nebraska Department of Environmental Control

## Title 120 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL

### Chapter 2 - CERTIFICATION

001 The Department shall provide certification pursuant to section 401 of the federal Clean Water Act, 33 U.S.C. 1251 et seq., to an applicant for a federally issued and administered permit or license for the construction or operation of facilities which may result in a discharge into navigable waters if the discharge will not violate Title 117, Nebraska Administrative Code (NAC), Nebraska Water Quality Standards for Surface Waters of the State.

002 Certification provided under this Chapter may specify any special conditions necessary to assure that the applicant for a federal license or permit will comply with 001.

003 Final certification or denial thereof shall be accomplished no later than one year after filing of the application with the Department.

004 Certification may be withdrawn by the department when it is determined that there is no longer reasonable assurance that there will be compliance with the applicable provisions of Title 117, (NAC), Nebraska Water Quality Standards for Surface Waters of the State.

004.01 Notification shall be given to the applicant by certified mail, return receipt requested, of the intent to withdraw certification and the reason therefor. The withdrawal shall become effective unless the applicant requests in writing a hearing before the director no later than ten days after the date the notice is received.

004.02 If a hearing is held, procedure shall be governed by Title 115, (NAC), Rules and Practice and Procedure of the Department, Chapter 16-55, Contested Cases. The Sole issue to be determined is whether there is still reasonable assurance that there will be compliance with Title 117, (NAC), Nebraska Water Quality Standards for Surface Waters of the State.

004.03 If the applicant does not make a timely request for a hearing before the director, or if, after hearing, the director determines that certification shall be withdrawn, notice of this or her decision shall be given within five days thereof by certified mail, return receipt requested, to the applicant and the Federal agency to whom certification had originally been made for an operating license or permit.

Enabling Legislation: Neb. Rev. Stat. §81-1505(2)(e)

Legal Citation: Title 120, Ch. 2, Nebraska Department of Environmental Control

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Chapter 3 - PUBLIC NOTICE

001 In the case of individual permits under section 404 of the federal Clean Water Act, the Department's notice of filing shall be issued jointly with the Corps of Engineers.

002 In all other cases involving certification, the director shall, within thirty days of review of a completed application for certification, publish notice of the filing and recommended approval or denial.

002.01 The notice shall include:

002.01A The name and address of the applicant;

002.01B A description of the applicant's proposed action;

002.01C Purpose of the action proposed;

002.01D The basis which may be used in determining if certification is to be given;

002.01E Where a person may write to request a public hearing; and

002.01F The legal basis for certification, if made.

002.02 Notice of filing and recommended action on certification shall be published at least once in a newspaper or newspapers regularly published or circulated in the county where the proposed discharge will be occurring.

003 The public may comment to the Director or request a hearing within thirty days of publication. If any information or public comment is received during the thirty day comment period which appears to raise substantial major issues concerning the certification, the Director may republish the public notice as in 002 above.

Enabling Legislation: §401(a)(1) and §404, C.W.A., 33 U.S.C. 1251 et seq.; 81-1505(2)(e)

Legal Citation: Title 120, Ch. 3, Nebraska Department of Environmental Control

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Chapter 4 - PUBLIC COMMENTS, REQUESTS FOR HEARING, AND NOTICE OF HEARING

001 Public comments, requests for hearing and notice of hearing shall be governed by Title 115, (NAC), Chapters 86 and 87, as in the case of application for permits.

Enabling Legislation: §401(a)(1), C.W.A., 33 U.S.C. 1251 et seq.; 81-1505(2)(e)

Legal Citation: Title 120, Ch. 4, Nebraska Department of Environmental Control

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Chapter 5 - EFFECTIVE DATE

001 These rules and regulations shall become effective five days after filing with the Secretary of State.

Enabling Legislation: Neb. Rev. Stat. §84-906

Legal Citation: Title 120, Ch. 5, Nebraska Department of Environmental Control

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