

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

TITLE 119

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

EFFECTIVE DATE: July 2, 2017

PETE RICKETTS

GOVERNOR

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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 Availability of Information.

002.01 Any information provided to the Department under this Title will be made available to the public to the extent and in the manner authorized by law and Title 115 – Rules of Practice and Procedure.

002.02 Any person who submits information to the Department in accordance with this Title may assert a claim of business confidentiality covering all or part of that information in accordance with Title 115 – Rules of Practice and Procedure and applicable law.

003 Adoption and incorporation by reference.

003.01 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, 2015, unless otherwise noted.

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

003.02A 40 CFR part 136 Guidelines establishing test procedures for the analysis of pollutants.

003.02B 40 CFR part 122 EPA administered permit program: The National Pollutant Discharge Elimination System.

003.02C 40 CFR part 125 Criteria and standards for the National Pollutant Discharge Elimination System.

003.02D 40 CFR part 129 Toxic Pollutant Effluent Standards.

003.02E 40 CFR part 133 Secondary Treatment Regulations.

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003.02F 40 CFR part 503 Standards for the use or disposal of sewage sludge.

004 Severability and Financial Assurance.

004.01 Severability. If any chapter, section or subsection of these regulations shall be held invalid, it shall conclusively be presumed that the Environmental Quality Council would have adopted the remainder of these regulations not directly related to such chapter, section or subsection.

004.02 Permits issued under these regulations are exempt from financial responsibility requirement contemplated in Neb. Rev. Stat. §81-1505(21)(a)

005 Definitions. When used in this Title, the following terms have the meaning given in this chapter.

006 "7-day average" represents the arithmetic mean of pollutant parameter values for samples collected in a period of seven consecutive days.

007 "30-day average" represents the arithmetic mean of pollutant parameter values of samples collected in a period of 30 consecutive days.

008 "Administrator" means the Administrator of the United States Environmental Protection Agency.

009 "Animal feeding operation" means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste. Animal feeding operation does not include aquaculture.

010 "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.

011 "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.

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012 "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

012.01 "Designated project area" means the portions of waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

013 "Aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows, or holds:

013.01 Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but, does not include facilities which produce less than 20,000 pounds of aquatic animals per year, including but not limited to, the salmonidae family of fish, (trout and salmon); and facilities which feed less than 5000 pounds of fish during the calendar month of maximum feeding; or

013.02 Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include closed ponds which discharge only during periods of excess runoff; or facilities which produce less than 100,000 pounds of aquatic animals per year, including but not limited to, the Ameiuride, Centrarchidae, and Cyprinidae families of fish, (catfish, sunfish, and minnows); or

013.03 Any other warm or cold water aquatic animal production facility which does not fall within 013.01 or 013.02 above, but which the Director designates as such facility where it is determined to be a significant contributor of pollution to waters of the state.

014 "Average monthly discharge limitation" means the highest allowable average of discharges over a calendar month, calculated as the sum of all discharges measured during a calendar month divided by the number of discharges measured during that month.

015 "Average weekly discharge limitation" means the highest allowable average of discharges over a calendar week, calculated as the sum of all discharges measured during a calendar week divided by the number of discharges measured during that week.

016 "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State BMPs also include treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal or

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drainage from raw material storage.

017 "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.

018 "Bio-solids" means sewage sludge that is used or disposed through land application, surface disposal, incineration, or disposal in a municipal solid waste landfill.

019 "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.

020 "BOD" means the five day measure of the pollutant parameter biochemical oxygen demand (BOD).

021. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

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

023 "Class I sludge management facility" means any publicly owned treatment works (POTW) identified as required to have an approved pretreatment program and other treatment works treating domestic sewage classified as Class 1 by the Regional Administrator.

024 "Co-permittee" means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

025 "Combined Sewer System (CSS)" means a wastewater collection system owned by a State or municipality (as defined by section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant.

026 "Combined Sewer Overflow" means a discharge from a CSS at a point prior to the POTW Treatment Plant.

027 "Concentrated animal feeding operation or CAFO" means large, medium, and small concentrated animal feeding operations as defined in NDEQ Title 130 - Rules and Regulations Pertaining to Livestock Waste Control.

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

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029 "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

030 "Controlled discharge" means a "discharge" which occurs on a periodic basis from a facultative lagoon facility.

031 "Council" means the Nebraska Environmental Quality Council.

032 "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq.

033 "CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

034 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

035 "Department" means the Nebraska Department of Environmental Quality.

036 "Direct discharge" means the discharge of a pollutant or the discharge of pollutants into waters of the State.

037 "Director" means the director of the Nebraska Department of Environmental Quality.

038 "Discharge", when used without qualification, means accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the State or in a place which will likely reach waters of the State.

039 "Discharge monitoring report (DMR)" means the form approved by the Director for the reporting of self-monitoring results by permittees.

040 "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant or combination of pollutants to waters of the state from any point source. This includes discharge into waters of the state from surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other

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conveyances, leading into treatment systems owned in whole or in part by a third party other than a state or municipality.

041 "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.

042 "Effluent limitation" means any restriction, including a schedule of compliance, imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

043 "Effluent limitations guidelines" means any effluent limitations guidelines issued by the Administrator pursuant to section 304(b) of the Clean Water Act.

044 "EPA" means the United States Environmental Protection Agency.

045 "Existing source" means any source which is not a new source or a new discharger.

046 "Facility or activity" means any point source as defined in this Title or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under this Title.

047 "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.

048 "Federal Act" means the Clean Water Act, (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4, 33 U.S.C. 1251 et seq.

049 "General permit" means a permit issued under this Title authorizing a category of discharges within a specified geographical area.

050 "Hazardous substance" means any substance designated under Title 126 - Rules and Regulations Pertaining to Management of Waste.

051 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.

052 "Incorporated place" means a city, town, township, or village that is incorporated under the laws of the State.

053 "Indirect discharger" means a non-domestic discharger introducing pollutants to a

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publicly owned treatment works.

054 "Industrial user" means a source of indirect discharge.

055 "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.

056 "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

056.01 Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

056.02 Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable provisions and regulations or permits.

057 "Interstate agency" means any agency of two or more states established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

058 "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.

059 "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

059.01 Located in an incorporated place with a population of 250,000 or more as determined by the latest Decennial Census by the Bureau of the Census; or

059.02 Owned or operated by a municipality other than those described in 059.01 this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 059.01 of this section. In making this determination the Director may consider the following factors:

059.02A Physical interconnections between the municipal separate storm sewers;

059.02B The location of discharges from the designated municipal separate storm

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sewer relative to discharges from municipal separate storm sewers described in this section;

059.02C The quantity and nature of pollutants discharged to waters of the State;

058.02D The nature of the receiving waters; and

059.02E Other relevant factors; or

059.03 The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis.

060 "Major facility" means any NPDES facility or activity classified as such by the Regional Administrator in conjunction with the State Director.

061 "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

062 "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.

063 "Maximum daily discharge limitation" means the highest allowable daily discharge.

064 "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

064.01 Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest Decennial Census by the Bureau of the Census; or

064.02 Owned or operated by a municipality other than those described in this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 064.01 of this chapter. In making this determination the Director may consider the following factors:

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064.02A Physical interconnections between the municipal separate storm sewers;

064.02B The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph 065.01 of this chapter;

064.02C The quantity and nature of pollutants discharged to waters of the State;

064.02D The nature of the receiving waters; or

064.02E Other relevant factors; or

064.02F The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis.

065 "mg/l" means milligrams per liter.

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

067 "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. .

068 "Municipality" means a city, town, village, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

069 "Municipal separate storm sewer system (MS4)" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to this chapter or designated under Chapter 10.

070 "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man- made channels, or storm drains):

070.01 Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity;

070.02 Designed or used for collecting or conveying storm water;

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070.03 Which is not a combined sewer; and

070.04 Which is not part of a Publicly Owned Treatment Works (POTW) as defined in this Chapter.

071 "National Pollutant Discharge Elimination System or NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to Sections 307, 402, 318, and 405 of the Clean Water Act, and includes any State program which has been approved by the Administrator, in whole or in part, pursuant to Section 402 of the Clean Water Act.

072 "National Pretreatment Standard", "Pretreatment Standard", "Standard", "National Categorical Pretreatment Standard", "Categorical Pretreatment Standard", or "Categorical Standard" mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and of the Clean Water Act, which applies to Industrial Users.

073 "New Discharger" means any building, structure, facility, or installation: (1) which on October 18, 1972, has never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of 'new source.'

074 "New Source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after promulgation of standards of performance under Section 306 of the Clean Water Act which are applicable to such source or after proposal of standards of performance but only if the standards are promulgated within 120 days of their proposal in the Federal Register by EPA, and are subsequently adopted by the Council; or for an Industrial User, the definition found at 40 CFR part 403.3(m).

075 "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.

076 "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.

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

078 "NPDES permit" means any permit issued by the Director, after June 12, 1974, to regulate the discharge of pollutants pursuant to Sections 402, 307, 318, and 405 of the Clean Water Act.

079 "Outfall" means a point source (as defined in this chapter) at the point where a facility or municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting to municipal separate storm sewers, or pipes, tunnels or other

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conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

080 "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

081 "Owner or operator" means the owner or operator of any facility or activity subject to regulation under this Title.

082 "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

083 "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).

084 "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.

085 "Person" means any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality, or governmental subdivision, public agency, or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision of public agency, or any other legal entity except the Department.

086 "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

087 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2011 et seq), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

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

089 "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited this section. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with this section.

090 "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

091 "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. In addition means any water directly or indirectly used in the operations of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing, pens, barns, manure pits, or other animal feeding operations facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes spent foot bath water and any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

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

093 "Publicly Owned Treatment Works (POTW)" means a treatment works as defined in Section 212 of the Clean Water Act, which is owned by a state or municipality. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in this chapter, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. This definition excludes septic tanks or similar devices.

094 "Publicly Owned Treatment Works (POTW) Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

095 "Regional Administrator" means the EPA, Region VII Regional Administrator or the authorized representative of the Regional Administrator.

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

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097 "Runoff Coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

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

099 "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

100 "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

101 "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.

102 "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

103 "Significant Industrial User" means:

103.01 All industrial users subject to Categorical Pretreatment Standards; and

103.02 Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the director on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

103.03 Upon a finding that an industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the director may at any time determine that such industrial user is not a significant industrial user.

104 "Significant materials" include, but are not limited to: raw materials; fuels; materials such

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as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of the Clean Water Act; any chemical the facility is required to report pursuant to section 313 of title III of Clean Water Act; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

105 "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the state. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is natural runoff during precipitation events.

106 "Site" means the land or water area where any facility or activity physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

107 "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405 (d) of the Clean Water Act and is required to obtain a permit under this Title.

108 "Small municipal separate storm sewer system (Small MS4)" means all separate storm sewers that are:

108.01 Owned or operated by the United states, State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the State.

108.02 Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to this chapter or designated under Chapter 10.

108.03 This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

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110 "Standard of performance" shall mean any restriction established by the director on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are or may be discharged from new sources into waters of the state.

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

112 "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

113 "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial facility. The term does not include discharges from facilities or activities excluded from the NPDES program under Chapter 10. The term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs 113.01 through 113.11 of this section) include those facilities designated under the provisions of Chapter 2, 002. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph 113:

113.01 Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted in paragraph 113.11 of this section);

113.02 Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities);

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113.03 Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

113.04 Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

113.05 Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

113.06 Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

113.07 Steam electric power generating facilities, including coal handling sites;

113.08 Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs 113.01-113.07 or 113.09-113.11 of this section are associated with industrial activity;

113.09 Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of

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the facility, or areas that are in compliance with section 405 of the CWA;

113.10 Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

113.11 Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

114 "Storm water discharge associated with small construction activity" means the discharge of storm water from:

114.01 Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

114.02 Any other construction activity designated either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

114.03 Storm Water Discharges Associated with Small Construction Activity Under the NPDES Storm Water Program includes:

114.03A Automatic designation that required nationwide coverage for construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres. Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres.

114.03B Potential designation that is an optional evaluation and designation by the State for construction activities resulting in a land disturbance of less than one acre based on the potential to violate a water quality standard or for significant contribution of pollutants.

114.03C Potential waiver from any automatically designated requirements as determined by the State for construction activity where the operator certifies:

114.03C1 A rainfall Erosivity factor of less than five; or

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114.03C2 That the activity will occur within an area where controls are not needed based on a Total Maximum Daily Load (TMDL) or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern.

115 "Total dissolved solids (TDS)" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

116 "Total Suspended Solids (TSS)" means total suspended non-filterable solids.

117 "Toxic pollutant" means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

118 "Treatment Works Treating Domestic Sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

119 "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to Title 132 – Integrated Solid Waste Management Regulation.

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

121 "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, or careless or improper operation and maintenance.

122 "Waters of the state" means all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulation of

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water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

123 "Wetlands" means those areas that are inundated or saturated by surface or groundwater 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.

124 "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

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

Legal Citation: Title 119, Chapter 1, Nebraska Department of Environmental Quality

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NEBRASKA ADMINISTRATIVE CODE

TITLE 119 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 2 - PERMITS; WHEN REQUIRED

001 No person shall discharge any pollutant into any waters of the state from a point source without first having obtained a permit from the Department for such discharge unless exempted under chapter 3 of this Title.

002 All persons discharging or proposing to discharge pollutants from a point source into any waters of the state are required to apply for and have a permit to discharge as required by 40 CFR 122.21(a). This includes, but is not limited to, such operations as:

002.01 Disposal of sewage sludge resulting from the operation of a treatment works that would result in any pollutant from such sewage sludge entering any waters of the state pursuant to Section 405 of the Clean Water Act;

002.02 Discharge of pollutants into an approved aquaculture project pursuant to Section 318 of the Clean Water Act;

002.03 Discharges from aquatic animal production facilities;

002.04 Discharges from silvicultural point sources;

002.05 Discharges from federal facilities; and

002.06 Discharges of storm water:

002.06A Associated with industrial activity;

002.06B From a large municipal separate storm sewer system;

002.06C From a medium municipal separate storm sewer system;

002.06D From a small municipal separate storm sewer system; or

002.06E Which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state.

002.07 Discharges from concentrated animal feeding operations (CAFO) as required by Title 130 - Livestock Waste Control Regulations.

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003 Any industrial user discharging pollutants into a POTW where such source meets the definition of a significant industrial user, must apply for and have a permit to discharge to such POTW. This includes, but is not limited to:

003.01 Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs; to POTWs which receive wastewater from sources subject to National Pretreatment Standards; and

003.02 Any new or existing source subject to Pretreatment Standards.

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

Legal Citation: Title 119, Chapter 2, Nebraska Department of Environmental Quality

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Title 119 - Nebraska Department of Environmental Quality

Chapter 3 - PERMITS; EXCLUSIONS; PROHIBITIONS

001 The following discharges are exempt from applying for and having an NPDES permit to discharge except as indicated:

001.01 Discharges of sewage from vessels within the meaning of Section 312 of the Clean Water Act;

001.02 Discharges from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a food processing facility, or is secured to the bed of waters of the state for the purpose of mineral or oil exploration development;

001.03 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;

001.04 Nonpoint source discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, range lands, and forest lands, unless identified by the Director as a significant contributor of pollution;

001.05 Discharges of dredged or fill material into waters of the state and regulated under Section 404 of the Clean Water Act;

001.06 Discharges of sewage, industrial wastes or other pollutants into POTW's by indirect dischargers. Indirect dischargers may require an NPDES Pretreatment Permit;

001.07 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;

001.08 Discharge of water from single family household 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;

001.09 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;

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

001.11 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.

002 No permit may be issued:

002.01 When the conditions of the permit do not provide for compliance with the applicable requirements of the Clean Water Act, or regulations promulgated under the Clean Water Act;

002.02 When the applicant is required to obtain a State or other appropriate certification under section 401 of Clean Water Act and Title 120 and that certification has not been obtained or waived;

002.03 By the State Director where the Regional Administrator has objected to issuance of the permit;

002.04 When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

002.05 When, in the judgment of the Secretary of the Army acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

002.06 For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

002.07 For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act;

002.08 To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. Any discharge from a new source or new discharger, if the discharge from the construction or operation of the facility will cause or contribute to the violation of water quality standards by

the POTW to which it discharges. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the Clean Water Act, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

002.08A There are sufficient remaining pollutant load allocations to allow for the discharge; and

002.08B The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of required information by the new source or new discharger if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit.

002.09 Any discharge from a new source or new discharger if the discharge exceeds the reserve treatment capacity at the POTW.

002.10 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.

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003 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.

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

Legal Citation: Title 119, Chapter 3, Nebraska Department of Environmental Quality

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NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 4 - NEW DISCHARGER AND NEW SOURCE; APPLICATION

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

002 Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this section.

002.01 It is constructed at a site at which no other source is located; or

002.02 It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

002.03 Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

003 A source meeting the requirements of 002 above is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

004 Construction on a site at which an existing source is located results in a modification rather than a new source (or a

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new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of 002 above but otherwise alters, replaces, or adds to existing process or production equipment.

005 Construction of a new source has commenced if the owner or operator has:

005.01 Begun, or caused to begin as part of a continuous on-site construction program:

005.01A Any placement, assembly, or installation of facilities or equipment; or

005.01B Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

005.02 Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this section.

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

Legal Citation: Title 119, Chapter 4, Nebraska Department of Environmental Quality

NEBRASKA ADMINISTRATIVE CODE

TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 5 – PERMIT APPLICATION – GENERAL REQUIREMENTS

001 Duty to Apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a “sludge-only facility” whose sewage sludge use or disposal practice is regulated by 40 CFR part 503, and who does not have an effective permit, except persons covered by general permits under Chapter 25, excluded under Chapter 3, or a user of a privately owned treatment works unless the Director requires otherwise under Chapter 17, must submit a complete application to the Director in accordance with this section and Chapter 11. The requirements for concentrated animal feeding operations are described in Title 130 – Livestock Waste Control Regulations.

001.01 Applicants for State-issued permits must submit the information required and may use a standard form issued by the Department which must require at a minimum the information listed in the appropriate Chapters of this Title.

001.02 An electronic submittal may be provided through an online Department application when available that uses an electronic signature process assigned by the Department.

002 Time to Apply.

002.01 Any person proposing a new discharge, shall submit a NPDES application at the same time as application is made to the Department for a construction permit for a new source, not less than 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director.

002.02 Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity.

002.03 Facilities involving construction activities subject to storm water regulations in chapter 10 shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits.

002.04 An existing treatment works treating domestic sewage (TWTDS) sewage sludge use or disposal must submit an application to the Director at least 180 days prior to the

date proposed for commencing operations.

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003 Duty to reapply. Except with respect to portions of the permit application required pursuant to paragraph 007, all permittees, including any POTW, with a currently effective permit, shall submit a new application 180 days before the expiration date of the existing permit. The Director may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

004 Who Applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

005 Completeness. The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

006 Information requirements. All applicants for NPDES permits must provide the information in 40 CFR 122.21(f) to the Director. Applicants may use a standard form provided by the Director.

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

Legal Citation: Title 119, Chapter 5, Nebraska Department of Environmental Quality

Effective Date: 7/2/17

NEBRASKA ADMINISTRATIVE CODE

TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

001 Existing manufacturing, commercial mining, and silvicultural dischargers applying for NPDES permits, except for those facilities subject to the requirements of Section 002, shall provide the information listed in 40 CFR 122.21(g) to the Director. Applicants may use a standard form provided by the Director.

002 Except for storm water discharges, the additional application information is required for all manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the information required in 40 CFR 122.21(h) to the Director. Applicants may use a standard form provided by the Director.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(11) and (20); 81-1505(4), (11), and (20)

Legal Citation: Title 119, Chapter 6, Nebraska Department of Environmental Quality

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NEBRASKA ADMINISTRATIVE CODE

TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 7 - PERMIT APPLICATION – ADDITIONAL INFORMATION FOR POTWs

001 Unless otherwise indicated, all Publicly Owned Treatment Works and other dischargers designated by the Director must provide, at a minimum, the information required in 40 CFR 122.21(j). Applicants may use a standard form provided by the Director.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(11) and (20); 81-1505(4), (11), and (20)

Legal Citation: Title 119, Chapter 7, Nebraska Department of Environmental Quality

Effective Date: 7/2/17

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NEBRASKA ADMINISTRATIVE CODE

TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

001 Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities discharging non-process wastewater or new discharges of storm water associated with industrial activity which are subject to the requirements of Chapter 10 shall provide the information required in 40 CFR 122.21(k) to the Director. Applicants may use a standard form provided by the Director.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(11) and (20); 81-1505(4), (11), and (20)

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NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 9 - VARIANCES

001 A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations as provided in 40 CFR part 122.21(m) which is incorporated by this reference.

002 A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations as provided in 40 CFR part 122.21(n) which is incorporated by this reference.

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

Legal Citation: Title 119, Chapter 9, Nebraska Department of
Environmental Quality

Title 119

Chapter 9

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NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 10 - NPDES REGULATIONS APPLICABLE TO STORM WATER DISCHARGES

001 Definitions see Chapter 1.

002 Permit Requirement

002.01 No person shall discharge storm water containing any pollutant except as authorized by a NPDES permit or this Chapter.

002.02 The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

002.02A The location of the discharge with respect to waters of the State as defined in Chapter 1.

002.02B The size of the discharge;

002.02C The quantity and nature of the pollutants discharged to waters of the State; and

002.02D Other relevant factors.

002.03 The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw

material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

002.04 Large and medium municipal separate storm sewer systems.

002.04A Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

002.04B The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

002.04C The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

002.04C1 Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

002.04C2 Submit a distinct permit application which only covers discharges from the municipal

separate storm sewers for which the operator is responsible; or

002.04C3 A regional authority may be responsible for submitting a permit application under the following guidelines:

002.04C3(a) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence;

002.04C3(b) The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

002.04C3(c) Each of the operators of Large and Medium municipal separate storm sewers within the systems as defined in Chapter 1 that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph 004 of this chapter.

002.04D One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

002.04E Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different

discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

002.04F Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

002.05 Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the other requirements of this chapter, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing NPDES permit number.

002.06 Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

002.07 Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his or her discretion, may issue: a single NPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the state; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

002.07A All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the state, with each discharger to the non-municipal conveyance a co-permittee to that permit.

002.07B Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

002.07C Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

002.08 Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of Chapter 5 and are not subject to the provisions of this chapter.

002.09 Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under any other law.

002.10 A small MS4 is subject to storm water regulation as follows:

002.10A A small MS4 is subject to the NPDES storm water discharge permit requirement if it is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, or designated by the Director under a comprehensive watershed plan, on the basis that the MS4 contributes

substantially to the pollutant loadings of a physically interconnected municipal separate storm water sewer subject to NPDES regulation, or on the basis of a petition under section 006 of this chapter.

002.10B If upon petition under section 006 of this chapter, an MS4 is determined to be in need of a permit, the provisions of this chapter apply to the MS4.

002.10C The Director may waive the requirements otherwise applicable to a small MS4 if the MS4 meets the criteria of paragraph 002.10D or 002.10E of this section. An MS4 in receipt of a waiver may subsequently be required to seek coverage under an NPDES permit if circumstances change.

002.10D The Director may waive permit coverage if an MS4 serves a population of less than 1,000 within the urbanized area and the MS4 does not contribute substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES program. Storm water controls may be waived, even in the event that a discharge contributes to impairment of a water body, with respect to pollutants for which the EPA has approved or established a "total maximum daily load" (TMDL) that addresses the pollutant of concern.

002.10E The Director may waive permit coverage if a small MS4 serves a population of less than 10,000 and meets the following criteria:

002.10E1 The Director has evaluated all waters of the State, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;

002.10E2 For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;

002.10E3 For the purposes of a waiver determination, the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and

002.10E4 The permitting authority has determined that future discharges from the MS4 do not have the potential to result in exceedences of water quality standards, including impairments of designated uses, or other significant water quality impacts, including habitat and biological impacts.

002.11 A small MS4 subject to the storm water NPDES discharge permit requirement of this chapter must seek authorization to discharge as follows:

02.11A If the NDEQ has issued a general permit applicable to the MS4's discharge and the MS4 seeks coverage under the general permit, the MS4 shall submit a Notice of Intent (NOI), that includes the information on its best management practices and measurable goals required by 002.12H. An MS4 may file its own NOI, or it may jointly submit an NOI with

other municipalities and government entities. If the MS4 intends to share responsibilities for meeting the minimum measures with other municipalities and government entities, it must submit an NOI that describes which minimum measures it will implement and identify the entities that will implement the other minimum measures within the area served by the MS4.

002.11B A small MS4 may also apply for an individual permit.

002.11B1 If a small MS4 seeks authorization to discharge under an individual permit and desires to implement a program that is different from the program under 002.12 of this chapter, the MS4 must submit an application to NDEQ that includes the information required under paragraph 005 of chapter 5 and 002.12H of this chapter and an estimate of square mileage served by the MS4, and any other additional information that the NDEQ requests.

002.11B2 If the MS4 seeks authorization to discharge under an individual permit and wishes to implement a program that is different from the program under 002.12 of this chapter the MS4 must comply with the permit application requirements of section 004 of this chapter. Both parts of the application required by 004 must be submitted. The information regarding the MS4's legal authority is not required unless the MS4 intends that the NDEQ take the information into account when developing the permit conditions.

02.11B3 The NDEQ may in its discretion allow an MS4 and another regulated entity to apply jointly for an individual permit.

002.11C A small MS4 that is in the same urbanized area as a medium or large MS4 with an NPDES storm water discharge permit and that other MS4 is willing to have the small MS4 participate in its storm water program, The small MS4 and the other MS4 may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited co-permittee. The limited co-permittee will be responsible for compliance with the permit's conditions applicable to its jurisdiction. A small MS4 that chooses this option must make a permit application according to section 004 of this chapter rather than section 002.11. In such case the provisions of 004.01C, 004.01D, and 004.02C are not applicable and the requirement for identification of a management program may be satisfied by referring to the other MS4's storm water management program.

002.11D If a small MS4 that is not otherwise subject to the requirement for an NPDES storm water permit discharge permit becomes designated by the Director or petition under section 006 of this chapter as an MS4 that requires a permit, then the MS4 must apply for coverage under an NPDES permit within 180 days of notice, unless NDEQ grants a later date.

002.11E NDEQ may establish a phasing schedule for small MS4s serving jurisdictions with a population under 10,000, in which case an MS4 shall meet the application deadlines of the NDEQ phasing schedule.

002.12 Content of small MS4 permits. The content of small MS4 permits shall be as follows:

002.12A A small MS4 permit will require at a minimum that the permittee develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent possible (MEP), to protect water quality, and

to satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management program must include the minimum control measures described in paragraphs 002.12B through 002.12F of this chapter, unless the MS4 applies for a permit under section 004 of this chapter. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the to the maximum extant practicable) and to protect water quality. Implementation of best management practices consistent with this section and the provisions of the MS4's permit constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." The Director will specify a time period of up to 5 years from the date of permit issuance for the MS4 to develop and implement its program. The content of the small MS4 permit shall be as follows:

002.12B Minimum control measures related to public education and outreach on storm water impacts will be required by the permit. The MS4 must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

002.12C The permit will require that the MS4 develop, implement a program to detect, implement and enforce a program to detect and eliminate illicit discharges as defined in Chapter 1 into the small MS4.

002.12C1 The MS4 must develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and

location of all waters of the state that receive discharges from these outfalls;

002.12C2 To the extent allowable under state or local law, the MS4 must effectively prohibit, through ordinance or other regulatory mechanism, non-storm water sewer system and implement appropriate enforcement procedures and actions;

002.12C3 The MS4 must develop and implement a plan to detect and address non-storm water discharges, including illegal dumping to the MS4 system; and

002.12C4 The MS4 must inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

002.12C5 The MS4's program need not address the following categories of non-storm water discharges or flows and illicit discharges if the MS4 correctly identifies them as not significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground water, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water, discharges or flows from fire fighting activities.

002.12D The permit will require that the MS4 develop, implement, and enforce a program to reduce pollutants in any storm water runoff to its small MS4 from

construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the MS4 program if that activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Director waives requirements for storm water discharges associated with small construction activity in accordance with the definition in Chapter 1 the MS4 is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. The program related to construction activities must include the development and implementation of, at a minimum:

002.12D1 An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;

002.12D2 Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

002.12D3 Procedures for site plan review which incorporate consideration of potential water quality impacts;

002.12D4 Procedures for site inspection and enforcement of control measures.

002.12E The MS4's permit will require that the MS4 address post-construction development in new development and redevelopment. The MS4 must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects less one acre that are part of a common plan

of development or sale. The program must ensure that controls are in place that would prevent or minimize water quality impacts and must include:

002.12E1 Development and implementation strategies which include a combination of structural and/or best management practices (BMPs) appropriate for the MS4's community;

002.12E2 Use of an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law; and

002.12E3 Provision for adequate long-term operation and maintenance of BMPs.

002.12F The MS4 permit will require pollution prevention and good housekeeping. The MS4 must develop and implement as operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

002.12G If an existing qualifying local program required the MS4 to implement one or more of the minimum control measures of paragraphs 002.12B through 002.12F of this section, the NPDES permitting authority may include conditions in an MS4's NPDES permit that direct the MS4 to follow that qualifying programs requirements rather than the requirements of 002.12B through 002.12F. A qualifying local program is a local, or State municipal storm water management

program that imposes, at a minimum, the relevant requirements of 002.12B through 002.12F.

002.12H In the MS4's permit application (either a notice of intent for coverage under a general permit or an individual permit application), the MS4 must identify and submit to its NPDES permitting authority the following information:

002.12H1 The best management practices (BMPs) that the MS4 or another entity will implement for each of the storm water minimum control measures at paragraphs 002.12B through 002.12F of this section;

002.12H2 The measurable goals for each of the BMPs including, as appropriate, the months and years in which the MS4 will undertake required actions, including interim milestones and the frequency of the action; and

002.12H3 The person or persons responsible for implementing or coordinating the MS4's storm water management program.

002.12I If the MS4 obtains coverage under a general permit, it is not required to meet any measurable goal(s) identified in the MS4's notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs 002.12B through 002.12F of this section unless, prior to submitting the Notice of Intent (NOI) EPA or the State has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, the MS4 must comply with the minimum measures.

002.12J The MS4 must comply with other applicable NPDES permit requirements, standards and conditions established in the individual or general permit.

002.12K Evaluation and assessment of the small MS4 storm water program will be required in the following manner:

002.12K1 The MS4 must keep records required by the NPDES permit for at least 3 years. The MS4 must submit its records to the NPDES permitting authority only when specifically asked to do so. The MS4 must make its records, including a description of its storm water management program, available to the public at reasonable business hours.

002.12K2 Unless the MS4 is relying on another entity to satisfy its NPDES permit obligations under 002.12L of this chapter it must submit annual reports to the NPDES permitting authority for its first permit term. For subsequent permit terms, the MS4 must submit reports in year two and four unless the NDEQ requires more frequent report. The reports must include:

002.12K2(a) The status of compliance with permit conditions, an assessment of the best management practices and progress towards achieving identified measurable goals for each of the minimum control measures;

002.12K2(b) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

002.12K2(c) A summary of the storm water activities that the MS4 plans to undertake during the next reporting cycle;

002.12K2(d) A change in any identified best management practices or measurable goals for any of the minimum control measures;

002.12K2(e) Notice that the MS4 is relying on another government entity to satisfy some of its permit obligations (if applicable).

002.12L Satisfaction of small MS4 requirements through shared responsibility with other entities. An MS4 may rely on another entity to satisfy its NPDES permit obligations to implement a minimum control measure if:

002.12L1 The other entity, in fact, implements the control measure;

002.12L2 The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

002.12L3 The other entity agrees to implement the control measure on behalf the MS4. In the reports the MS4 must submit under 002.12K2, it must also specify that it relies on another entity to satisfy some of its permit obligations. If the MS4 is relying on another governmental entity to satisfy all of its permit obligations, including its obligation to file periodic reports required by 002.12L3, the MS4 must note that fact in its Notice of Intent (NOI), but it is not required to file the periodic reports. The MS4 remains responsible for compliance with its permit obligations if the other entity fails to implement the control measure (or component thereof).

002.12M Effect of shared responsibility on permit content. In the event that one or more the minimum control measure that would otherwise apply to an MS4 and that control measure(s) is expressly made the responsibility of some other entity in an NPDES permit issued to the MS4 or such other entity, then the small MS4 is not required to include the particular control measure(s) in its storm water management program. The MS4's permit is subject to modification if the surrogate entity fails to implement the control measure.

003 Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

003.01 Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Director is evaluating for designation and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of Chapter 5 as modified and supplemented by the provisions of this paragraph.

003.01A Except as provided in 003.02, 003.03, and 003.04, the operator of a storm water discharge associated with industrial activity subject to this chapter shall provide:

003.01A1 A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge

structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under Title 128 - Nebraska Hazardous Waste Regulation); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

003.01A2 An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a

description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

003.01A3 A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

003.01A4 Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

003.01A5 Quantitative data based on samples collected during storm events and collected in accordance with Chapters 4 and 5 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

003.01A5(a) Any pollutant limited in an effluent guideline to which the facility is subject;

003.01A5(b) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

003.01A5 (c) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

003.01A5(d) Any information on the discharge required concerning effluent characteristics under Chapters 4 and 5;

003.01A5(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

003.01A5(f) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

003.01A6 Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Chapter 10, 001.02 through 001.05

003.01A7 Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph 003.01E of this chapter instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph 003.01F of this chapter within two years after commencement of

discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Chapter 8, 001.04B, 001.04C, and 001.06.

003.02 An operator of an existing or new storm water discharge that is associated with industrial activity solely of clearing, grading and excavation that result in disturbance of less than 5 acres of total land area or is associated with small construction activity solely under paragraph 001.15 of this chapter, is exempt from the requirements of Chapter 6 on permit applications for existing manufacturing and paragraph 003.01A of this chapter. Such operator shall provide a narrative description of:

003.02A The location (including a map) and the nature of the construction activity;

003.02B The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

003.02C Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

003.02D Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

003.02E An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

003.02F The name of the receiving water.

003.03 The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph 003.01 of this chapter, unless the facility:

003.03A Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required.

003.03B Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required.

003.03C Contributes to a violation of a water quality standard.

003.04 The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

003.05 Applicants shall provide such other information the Director may reasonably require under Chapters 5 and 6 to determine whether to issue a permit and may require any

facility subject to paragraph 003.02 of this chapter to comply with paragraph 003.01A of this chapter.

004 Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director pursuant to this chapter, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated in this chapter shall include;

004.01 Part 1. Part 1 of the application shall consist of;

004.01A General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

004.01B Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in this chapter, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

004.01C Source identification.

004.01C1 A description of the historic use of ordinances, guidance or other controls which

limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

004.01C2 A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

004.01C2(a) The location of known municipal storm sewer system outfalls discharging to waters of the State;

004.01C2(b) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

004.01C2(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

004.01C2(d) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

004.01C2(e) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

004.01C2(f) The identification of publicly owned parks, recreational areas, and other open lands.

004.01D Discharge characterization.

004.01D1 Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

004.01D2 Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

004.01D3 A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

004.01D3(a) Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

004.01D3(b) Listed under section 304(1)(1)(A)(i), section 304(1)(1)(A)(ii), or section 304(1)(1)(B) of the Clean Water Act that is not expected to meet water quality standards or water quality goals;

004.01D3(c) Listed in State Nonpoint Source Assessments required by section 319(a) of the Clean Water Act that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

004.01D3(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the Clean Water Act (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

004.01D3(e) Designated estuaries under the National Estuary Program under section 320 of the Clean Water Act;

004.01D3(f) Recognized by the applicant as highly valued or sensitive waters;

004.01D3(g) Defined by the State or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

004.01D3(h) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

004.01D4 Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136 pertaining to analytical methods are hereby adopted and incorporated by reference, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either

major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

004.01D4(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

004.01D4(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

004.01D4(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

004.01D4(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

004.01D4(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

004.01D4(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

004.01D4(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs 004.01D4(a) through 004.01D4(f) of this chapter, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls

(medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

004.01D5 Characterization plan. Information and a proposed program to meet the requirements of paragraph 004.02C of this chapter. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph 004.02C1 of this chapter, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns of this chapter to the extent practicable.

004.01E Management programs.

004.01E1 A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

004.01E2 A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

004.01F Fiscal resources.

004.01F1 A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

004.02 Part 2. Part 2 of the application shall consist of:

004.02A Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

004.02A1 Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

004.02A2 Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

004.02A3 Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

004.02A4 Control through interagency agreements among co applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

004.02A5 Require compliance with conditions in ordinances, permits, contracts or orders; and

004.02A6 Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

004.02B Source identification. The location of any major outfall that discharges to waters of the United States that was not reported under paragraph 004.01C2(a) of this chapter. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

004.02C Characterization data. When "quantitative data" for a pollutant are required under paragraph 004.02C1(c) of this chapter, the applicant must collect a sample of effluent in accordance with

paragraph 001.07 of Chapter 6 and analyze it for the pollutant in accordance with analytical methods approved by NDEQ. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

004.02C1 Quantitative data from representative outfalls designated by the Director (based on information received in part 1 of the application, the Director shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

004.02C1(a) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at 001.07 of Chapter 6 (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

004.02C1(b) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the

previous measurable (greater than 0.1 inch rainfall) storm event;

004.02C1(c) For samples collected and described under paragraphs 004.02C1(a) and 004.02C1(b) of this chapter, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D of 40 CFR part 122. Appendix D 40 CFR part 122 pertaining to these pollutants is hereby adopted and incorporated by reference. Also for the following pollutants:

Total suspended solids (TSS) Total dissolved solids (TDS) COD BOD5 Oil and grease Fecal coliform Fecal streptococcus pH Total Kjeldahl nitrogen Nitrate plus nitrite Dissolved phosphorus Total ammonia plus organic nitrogen Total phosphorus

004.02C1(d) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representiveness);

004.02C2 Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls

during a storm event of greater than 0.1 inch of rainfall for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

004.02C3 A proposed schedule to provide estimates for each major outfall identified in either paragraph 004.02B or 004.01C2(a) of this chapter of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph 004.02C1 of this chapter; and

004.02C4 A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

004.02D Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-

applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

004.02D1 A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

004.02D1(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

004.02D1(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing

construction site runoff are addressed in paragraph 004.02D4 of this chapter;

004.02D1(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

004.02D1(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

004.02D1(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph -004.02D3- of this chapter; and

004.02D1(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational

activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

004.02D2 A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

004.02D2(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only

where such discharges or flows are identified as significant sources of pollutants to waters of the State;

004.02D2(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

004.02D2(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

004.02D2(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

004.02D2(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

004.02D2(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

004.02D2(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

004.02D3 A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

004.02D3(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

004.02D3(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph 004.02D3 of this chapter, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines

subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 CFR part 122.21(g)(7) (vi) and (vii) which pertains to these pollutants and is hereby adopted and incorporated by reference.

004.02D4 A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

004.02D4(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

004.02D4(b) A description of requirements for nonstructural and structural best management practices;

004.02D4(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

004.02D4(d) A description of appropriate educational and training measures for construction site operators.

004.02E Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

004.02F Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs 004.02C and 004.02D of this chapter. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

004.02G Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

004.03 Where requirements under paragraph 004.01D5, 004.02B, 004.02C2 and 004.02D of this chapter are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph 002.02 of this chapter from such requirements.

005 Permit application; Permit issuance or denial, when due.

005.01 Facilities with existing NPDES permits for storm water discharges associated with industrial

activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application within 180 days before the expiration of such permits.

005.02 For any discharge from a regulated small MS4, the permit application made under 002.11 of this chapter must be submitted to the Director within 180 days of notice, unless the NPDES permitting authority grants a later date.

005.03 Discharges associated with small construction activity at oil and gas sites require permit authorization by March 10, 2005.

005.04 The Director shall issue or deny permits for large and medium municipal separate storm sewer systems no later than one year after receipt of a complete permit application.

006 Petitions.

006.01 Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

006.02 Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

006.03 The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined storm

water and sanitary sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

006.04 Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph 001.04D, 001.07D, or 001.16 of this chapter.

006.05 The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

007 Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs 007.01 through 007.04 of this chapter. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

007.01 Qualification. To qualify for this exclusion, the operator of the discharge must:

007.01A Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff;

007.01B Complete and sign a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph 007.02 of this chapter;

007.01C Submit the signed certification to the NPDES permitting authority once every five years;

007.01D Allow the Director to inspect the facility to determine compliance with the "no exposure" conditions;

007.01E Allow the Director to make any "no exposure" inspection reports available to the public upon request; and

007.01F For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operators.

007.02 Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

007.02A Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

007.02B Adequately maintained vehicles used in material handling; and

007.02C Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

007.03 Limitations.

007.03A The following storm water discharges from construction activities are not eligible for this conditional exclusion;

007.03A1 Small construction activities including clearing, grading and excavating that result in disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

007.03B This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

007.03C If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this

exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

007.03D Notwithstanding the provisions of this paragraph, the NPDES permitting authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

007.04 Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

007.04A The legal name, address and phone number of the discharger;

007.04B The facility name and address, the county name and the latitude and longitude where the facility is located;

007.04C The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

007.04C1 Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

007.04C2 Materials or residuals on the ground or in storm water inlets from spills/leaks;

007.04C3 Materials or products from past industrial activity;

007.04C4 Material handling equipment (except adequately maintained vehicles);

007.04C5 Materials or products during loading/unloading or transporting activities;

007.04C6 Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

007.04C7 Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

007.04C8 Materials or products handled/stored on roads or railways owned or maintained by the discharger;

007.04C9 Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

007.04C10 Application or disposal of process wastewater (unless otherwise permitted); and

007.04C11 Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

007.04D All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of

Chapter 13 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph 007.02 of this chapter.) I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

Legal Citation: Title 119, Chapter 10, Nebraska Department of Environmental Quality

Title 119

Chapter 10

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NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 11 - CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

001 Unless otherwise indicated, all new and existing concentrated aquatic animal production must provide, at a minimum, the information in this chapter to the Director, using Form 1 and 2B found in Appendix B or another application form provided by the Director.

002 Permit requirement. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

003 Case-by-case designation of concentrated aquatic animal production facilities.

003.01 The Director may designate any warm or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the State. In making this designation the Director shall consider the following factors:

003.02 The location and quality of the receiving waters of the United States;

003.03 The holding, feeding, and production capacities of the facility;

003.04 The quantity and nature of the pollutants reaching waters of the United States; and

003.05 Other relevant factors.

004 Permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

Title 119

Chapter 11

004.01 Permit requirement. Discharges into aquaculture projects, are subject to the NPDES permit program through section 318 of CWA

004.02 An Aquaculture project is a managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

004.03 A designated project area is the portions of the waters of State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

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

Legal Citation: Title 119, Chapter 11, Nebraska Department of Environmental Quality

NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 12 - LAND APPLICATION OF DOMESTIC EFFLUENT, LAND APPLICATION OF SINGLE PASS NONCONTACT COOLING WATER AND DISPOSAL OF DOMESTIC BIOSOLIDS

001 There shall 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 can not 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

002.02A1 There shall be no public drinking water wells within 500 feet of the application area.

002.02A2 There shall be no private drinking water wells within 100 feet of the application area.

002.02A3 Effluent shall not be applied to sites less than 100 feet from any inhabited dwellings.

002.02A4 Land application sites shall not be located within or adjacent to residential areas.

002.02A5 Effluent shall not be allowed to exceed the land application site boundaries.

002.02A6 Effluent application, runoff or spray shall not be allowed on public roadways.

002.02B Soil and Crop Criteria

002.02B1 Treated effluent shall 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 shall 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 shall be retained by the permittee. Documentation shall be made available immediately upon request to NDEQ.

002.02B2 Treated wastewater shall not be applied to crops that are intended for distribution in their raw form for direct human consumption (e.g. fresh produce).

002.02C Land Application Site Prohibitions

002.02C1 Land application shall not be conducted when the ground is frozen or saturated.

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

002.02C3 Surface runoff of effluent shall be prohibited. Application of wastewater shall cease immediately if ponding or runoff occurs.

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

002.02D Ground Water Criteria

002.02D1 There shall be no impairment to the beneficial uses of ground water. Any substance introduced directly or indirectly by human activity shall not be allowed to exceed the applicable standards for ground water as set forth in Chapter 4, of 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, shall be, at a minimum, greater than 4 feet.

002.02D3 Where the potential for ground water contamination is a concern, the NDEQ may require monitoring wells to be installed and ground water monitoring to be conducted.

002.02E Effluent Criteria

002.02E1 The total hydraulic application rate shall be based on weekly local crop uptake values. (This information may be obtained through the County Extension Office or the Natural Resource District.) The total hydraulic application rate shall not exceed 2 inches per acre (54,304 gallons) per week.

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

002.02E3 The effluent shall 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 shall maintain and retain logs containing the following information;

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

002.02F3 The results of the laboratory analysis for the following parameters; pH, Total Kjeldahl Nitrogen, Nitrate as Nitrogen, Ammonia as Nitrogen, Total Dissolved Solids, Chloride, Phosphorous, and Sodium Adsorption Ratio (SAR). A copy of the laboratory analysis shall 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 shall 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 shall be noted in the log.

002.02F6 The permittee shall make these logs available for review upon request by NDEQ.

002.02G Monitoring Frequency Requirements

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

002.02G2 The monitoring frequency for Unrestricted Public Access Sites shall 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 shall 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 must be dechlorinated prior to land application.

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

002.03C The permittee shall 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 shall not exceed limits for fecal coliform bacteria of 200 CFUs / 100 ml for a 30 day average and within a month, no more than 10% of the samples shall exceed 400 CFU/100 mL. The monthly average shall be calculated as the geometric mean. Invalid test results for fecal coliform colonies, such as "too numerous to count" (TNTC), will not be accepted and the permittee must retest within 24 hours after obtaining invalid results. The NDEQ shall be notified within 24 hours of a TNTC or other invalid result. The results of the laboratory analysis shall be recorded in the log. A copy of the laboratory analysis shall 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 shall be, at a minimum, annually. The effluent shall be sampled on the first day of land application.

003.01B Single pass noncontact cooling water used for land application shall originate from either a well or a municipal water source and shall 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 shall 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 shall 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).

Legal Citation: Title 119, Chapter 12, Nebraska Department of Environmental Quality

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TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 13 - APPLICATIONS; SIGNATORIES

001 All Animal Feeding Operations signatory requirements can be found in NDEQ Title 130 - Livestock Waste Control Regulations.

002 All NPDES permit applications, except for Animal Feeding Operations, submitted to the Department shall be signed as follows:

002.01 For a corporation. By a responsible corporate officer, which means:

002.01A A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business functions, or any other person who performs similar policy or decision making functions for the corporation, or

002.01B The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

002.02 For a partnership or sole proprietorship. By a general partner or the proprietor, respectively.

002.03 For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

002.03A The chief executive officer of the agency, or

002.03B A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency

002.04 For a limited liability company (LLC). By a member in a member-managed LLC

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or by the manager or a manager-managed LLC as set out in the articles of organization.

003 Duly Authorized Representative. All reports required by permits, and other information requested by the Director shall be signed by a person described in 002 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

003.01 The authorization is made in writing by a person described in 002 of this section;

003.02 The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

003.03 The written authorization is submitted to the Director.

004 Changes to authorization. If an authorization under 003 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of 003 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

005 Certification. Any person signing a document under 002 or 003 above shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

Legal Citation: Title 119, Chapter 13, Nebraska Department of Environmental Quality

Effective Date: 7/2/17

NEBRASKA ADMINISTRATIVE CODE

TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 14 - PERMITS; TERMS AND CONDITIONS - GENERAL

001 The following conditions apply to all NPDES permits under this Title:

001.01 Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Federal and State Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

001.01A The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

001.02 Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

001.03 Need to halt or reduce activity not a defense. 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 this permit.

001.04 Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

001.05 Proper operation and maintenance. 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 this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

001.06 Permit actions. The permit may be modified, revoked and reissued, or

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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.

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

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

001.09 Inspection and entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

001.09A Enter 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 this permit;

001.09B Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

001.09C Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

001.09D Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Federal or State Act, any substances or parameters at any location.

001.10 Monitoring and records.

001.10A Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

001.10B Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years or as specified in 40 CFR part 503 (or longer if required by the Director, 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 this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years

from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

001.10C Records of monitoring information shall include:

001.10C1 The date, exact place, and time of sampling or measurements;

001.10C2 The individual(s) who performed the sampling or measurements;

001.10C3 The date(s) analyses were performed;

001.10C4 The individual(s) who performed the analyses;

001.10C5 The analytical techniques or methods used; and

001.10C6 The results of such analyses.

001.10D Monitoring results must be conducted according to test procedures approved under the conditions and requirements of 40 CFR part 136 Pertaining to Guidelines Establishing Test Procedures For The Analysis Of Pollutants (40 CFR part 136) are hereby adopted and incorporated by reference or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or other test procedures have been specified in the permit.

001.11 Signatory requirement.

001.11A All applications, reports, or information submitted to the Director shall be signed and certified in accordance with Chapter 13.

001.12 Reporting requirements.

001.12A Planned changes. The permittee shall give notice to the Director 180 days prior to any planned physical alterations, additions to the permitted facility, production increases or process modifications. Notice is required only when:

001.12A1 The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source or;

001.12A2 The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements.

001.12A3 The alteration or addition results in a significant change in the

permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

001.12B 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.

001.12C 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 may be necessary.

001.12D Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit.

001.12D1 Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

001.12D2 If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136, unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

001.12D3 If the permittee monitors any pollutant more frequently than required by the permit, for process control purposes only and is not a violation of the permit effluent limitations, these results need not be submitted by must be made available to the Department upon request.

001.12D4 Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

001.12F Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

001.12G Twenty-four hour noncompliance reporting.

001.12G1 The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. 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 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.

001.12G2 The following shall be included as information which must be reported within 24 hours under this paragraph.

001.12G2(a) Any unanticipated bypass which exceeds any effluent limitation in the permit.

001.12G2(b) Any upset which exceeds any effluent limitation in the permit.

001.12G2(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours

001.12G2(d) The Director may waive the written report on a case-by-case basis for reports if the oral report has been received within 24 hours.

001.12H Other noncompliance. The permittee shall report all instances of noncompliance not reported under previous subsections of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph 001.12F1 of this section.

001.12I Other information. Where the permittee becomes aware that it 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, it shall promptly submit such facts or information.

001.13 Bypass:

001.13A Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 001.13A2.

001.13A1 Notice:

001.13A1(a) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

001.13A1(b) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph 001.12F of this section.

001.13A2 Prohibition of bypass.

001.13A2(a) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

001.13A2(a)(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

001.13A2(a)(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

001.13A2(a)(3) The permittee submitted notices as required under paragraph 001.13A1 of this section.

001.13B The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 001.14A2(a) of this section.

001.14 Upset:

001.14A Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 001.14A1 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

001.14A1 Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

001.14A1(a) An upset occurred and that the permittee can identify the cause(s)

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of the upset;

001.14A1(b) The permitted facility was at the time being properly operated; and

001.14A1(c) The permittee submitted notice of the upset as required in paragraph 001.12F2(b) of this section.

001.14A1(d) The permittee complied with any remedial measures required in section 001.01D of this chapter.

001.14B Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

002 Prior to the existence of any applicable standard referred in 001 above, 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.

003 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.

004 The Industrial User, in order to maintain compliance with these regulations shall control production and all discharges upon reduction, loss or failure of the pretreatment 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 pretreatment facility is reduced, lost, or fails.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(11), (12), (15), (20), (21), (24), (25), and (30); 81-1505(4), (11), and (20)

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Chapter 15 - PERMIT CONDITIONS; SPECIAL CATEGORIES

001 The following conditions apply to all permits within the categories specified below:

001.01 Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

001.01A That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

001.01A1 One hundred micrograms per liter (100 μ g/l);

001.01A2 Two hundred micrograms per liter (200 μ g/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μ g/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

001.01A3 Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

001.01A4 Any other notification level established by the Director in accordance with these regulations.

001.01B That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not

limited in the permit, if that discharge will exceed the highest of the following notification levels:

001.01B1 Five hundred micrograms per liter (500 µg/l);

001.01B2 One milligram per liter (1 mg/l) for antimony;

001.01B3 Ten (10) times the maximum concentration value reported for that pollutant in the permit application

001.01B4 Any other level established by the Director in accordance with these regulations.

001.02 Publicly owned treatment works. All POTWs must provide adequate notice to the Director of the following:

001.02A Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of Federal or State Act if it were directly discharging those pollutants; and

001.02B Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

001.02C For purposes of this paragraph, adequate notice shall include information on:

001.02C1 the quality and quantity of effluent introduced into the POTW, and;

001.02C2 any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

001.03 Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated

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by the Director in accordance with chapter 10 of this regulation must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

001.03A The status of implementing the components of the storm water management program that are established as permit conditions;

001.03B Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with Chapter 10 of this regulation; and

001.03C Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application.

001.03D A summary of data, including monitoring data, that is accumulated throughout the reporting year;

001.03E Annual expenditures and budget for year following each annual report;

001.03F A summary describing the number and nature of enforcement actions, inspections, and public education programs;

001.03G Identification of water quality improvements or degradation;

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

Legal Citation: Title 119, Chapter 15, Nebraska Department of Environmental Quality

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NEBRASKA ADMINISTRATIVE CODE

TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 16 - PERMIT CONDITIONS; ADDITIONAL CASE-BY-CASE

001 The Director may establish the following conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Federal and State Acts.

002 Duration of permit.

002.01 NPDES permits shall be effective for a fixed term not to exceed five (5) years.

002.02 Except as provided in Chapter 24, section 010, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

002.03 The Director may issue any permit for a duration that is less than the full allowable term under this section.

002.04 A permit may be issued to expire on or after the statutory deadline set forth in section 301(b)(2) (A), (C), and (E), if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

002.05 A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under 002.04 above is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

003 Compliance schedule; general. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and regulations.

003.01 Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

003.02 The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing

dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

003.03 Interim dates. Except as provided in 003.03B, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

003.03A The time between interim dates shall not exceed one year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

003.03B If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

003.04 Reporting. The permit shall be written to require that no later than fourteen days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if 003.03B is applicable.

004 Alternative schedules of compliance. An NPDES permit applicant or permittee may cease conducting regulated activities (by terminating of discharge for NPDES sources) rather than continuing to operate and meet permit requirements as follows:

004.01 If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

004.01A The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

004.01B The permittee shall cease conducting permitted activities before non-compliance with any interim or final compliance schedule requirement already specified in the permit.

004.02 If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

004.03 If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

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004.03A Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

004.03B One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

004.03C The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline.

004.03D Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under 004.03A it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

004.04 The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

004.05 New Sources, new dischargers, sources which recommence discharging after terminating operations and those sources which have been indirect dischargers which commence discharging into waters of the state do not qualify for compliance schedules under this Chapter.

005 All permits shall specify:

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

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

005.03 Applicable reporting requirements based upon the impact of the regulated activity.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(11), (12), (15), (20), (21), (24), (25), and (30); 81-1505(4), (11), and (20)

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Chapter 17 - PERMIT CONDITIONS; APPLICABLE REQUIREMENTS

001 In addition to the conditions established under previous chapters, each NPDES permit shall include conditions meeting the following requirements when applicable.

001.01 Technology-based effluent limitations and standards based on: effluent limitations and standards promulgated under section 301 of the Clean Water Act, or new source performance standards promulgated under section 306 of the Clean Water Act, on case-by-case effluent limitations determined under section 402(a)(1) of the Clean Water Act, or a combination of the three, in accordance with this chapter.

002 Monitoring waivers for certain guideline-listed pollutants.

002.01 The Director may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found in an applicable effluent guideline and standard if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

002.02 This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

002.03 Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background

levels from intake water and without any increase in the pollutant due to activities of the discharger.

002.04 Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

002.05 This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

003 Other effluent limitations and standards under sections 301, 302, 303, 307, 318 and 405 of Clean Water Act. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

004 Standards for sewage sludge use or disposal under section 405(d) of the Clean Water Act unless those standards have been included in a separate permit issued by the department. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the Clean Water Act and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

005 Requirements applicable to cooling water intake structures at new facilities under section 316(b) of the Clean Water Act.

006 Reopener clause: For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the Clean Water Act. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

007 Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of the Clean Water Act necessary to:

007.01 Achieve water quality standards established under section 303 of the Clean Water Act, including State narrative criteria for water quality.

007.01A Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

007.01B When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

007.01C When the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

007.01D When the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

007.01E Except as provided in this subparagraph, when the permitting authority determines toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

007.01F Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

007.01F1 Establish effluent limits using a calculated numeric water quality criterion for the

pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

007.01F2 Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the Clean Water Act, supplemented where necessary by other relevant information; or

007.01F3 Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

007.01F3(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

007.01F3(b) The fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

007.01F3(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain

and maintain applicable water quality standards; and

007.01F3(d) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

007.01G When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

007.01G1 The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

007.01G2 Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA.

007.02 Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of the Clean Water Act;

007.03 Conform to the conditions to a State certification under section 401 of the Clean Water Act when EPA is the permitting authority.

007.04 Conform to applicable water quality requirements under section 401(a)(2) of the Clean Water Act when the discharge affects a State other than the certifying State;

007.05 Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements

established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of the Clean Water Act;

007.06 Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of the Clean Water Act;

007.07 Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors".

008 Technology-based controls for toxic pollutants. An explanation of the development of these limitations shall be included in the fact sheet.

008.01 Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application or in a notification or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

008.02 The requirement that the limitations control the pollutants meeting the criteria of this section will be satisfied by:

008.02A Limitations on those pollutants; or

008.02B Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under this section to the levels required by this chapter.

009 Notification level. A "notification level" which exceeds the notification level of chapter 15, upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under applicable technology-based controls.

010 Twenty-four hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge

limitations (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

011 Durations for permits, as set forth in chapter 16.

012 Monitoring requirements. In addition to chapter 16, the following monitoring requirements:

012.01 To assure compliance with permit limitations, requirements to monitor:

012.01A The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

012.01B The volume of effluent discharged from each outfall;

012.01C Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the Clean Water Act.

012.01D According to test procedures approved under 40 CFR part 136 for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit for pollutants with no approved methods.

012.02 Except as provided in this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency

dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year. Regulations pertaining to sewage sludge found in 40 CFR part 503 are hereby adopted and incorporated by reference.

012.03 Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

012.04 Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

012.04A The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

012.04B The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

012.04C Such report and certification be signed in accordance with chapter 13; and

012.04D Permits for storm water discharges associated with industrial activity from inactive mining

operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

012.05 Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not already reported at least annually.

013 Pretreatment program for POTWs. Requirements for POTWs to:

013.01 Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of CWA.

013.01A Submit a local program when required by the Department to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the NPDES permit. The program must require all indirect dischargers to the POTW to comply with the reporting requirements.

013.01B Provide a written technical evaluation of the need to revise local limits following permit issuance or reissuance.

013.01C For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program when the Director determines that a pretreatment program is necessary to assure compliance with Section 405(d) of the CWA.

014 Best management practices (BMPs) to control or abate the discharge of pollutants when:

014.01 Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

014.02 Authorized under section 402(p) of the CWA for the control of storm water discharges;

014.03 Numeric effluent limitations are infeasible; or

014.04 The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

015 Reissued permits.

015.01 Except as provided in this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance

015.02 In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

015.02A Exceptions. A permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if

015.02A1 Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

015.02A1(a) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

015.02A1(b) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b) of the CWA;

015.02A1(c) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

015.02A1(d) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); of the CWA or

015.02A1(e) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

015.02B Limitations. In no event may a permit be renewed, reissued, or modified to contain an effluent

limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 of the CWA applicable to such waters.

016 Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

017 Grants. Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

018 Sewage sludge. Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

019 Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

020 Qualifying State, Tribal, or local programs.

020.01 For storm water discharges associated with small construction activity identified in Chapter 10, the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph, then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

020.01A Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

020.01B Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

020.01C Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

020.01D Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

020.02 For storm water discharges from construction activity, the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment

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control program is one that includes the elements listed in this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

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

Legal Citation: Title 119, Chapter 17, Nebraska Department of Environmental Quality

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Chapter 18 - EFFLUENT LIMITATIONS; DESCRIPTION

001 Mass limitations.

001.01 All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

001.01A For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

001.01B When applicable standards and limitations are expressed in terms of other units of measurement; or

001.01C If in establishing permit limitations on a case-by-case basis under this regulation, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

001.02 Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

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

Legal Citation: Title 119, Chapter 18, Nebraska Department of Environmental Quality

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Chapter 19 - EFFLUENT LIMITATIONS; CALCULATION ON NET BASIS

001 The permittee may request the Director that its effluent limitations or standards be calculated on a net basis, i.e., adjusted to reflect credit for pollutants in the discharger's intake water, if:

001.01 The permittee shows that its intake water is drawn from the same body of water into which the discharge is made;

001.02 The applicable effluent limitations and standards provide for such net basis application, or

001.03 The treatment system will not substantially remove the pollutants present in the intake water, and

001.04 Additional monitoring is required in the permit. The permittee shall notify the Director if the monitoring indicates that eligibility for an adjustment under this Chapter has been altered or no longer exists.

002 Adjustments made under 001 shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the permittee. No adjustments will be made under 001 when the pollutants in the intake water vary physically, chemically or biologically from the pollutants limited by the permit. Nor shall effluent limitations or standards be adjusted when the discharge significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

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

Legal Citation: Title 119, Chapter 19, Nebraska Department of Environmental Quality

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Chapter 20 - TECHNOLOGY-BASED TREATMENT REQUIREMENTS

001 The conditions and requirements of 40 CFR part 125 pertaining to the technology-based treatment requirements are hereby adopted and incorporated by reference.

002 General. Technology-based treatment requirements under section 301(b) of the Clean Water Act represent the minimum level of control that must be imposed in a permit issued under this title. Permits shall contain technology-based treatment requirements in accordance with statutory deadlines, criteria and requirements.

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

Legal Citation: Title 119, Chapter 20, Nebraska Department of Environmental Quality

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Chapter 21 - SECONDARY TREATMENT

001 Effluent limitations based on secondary treatment, pursuant to Section 304(d)(1) of the Clean Water Act for publicly owned treatment works shall be achieved from date of permit issuance. The conditions and requirements of 40 CFR part 133 pertaining to Secondary Treatment Regulations are hereby adopted and incorporated by reference.

002 Secondary Treatment. The following describe the maximum level of effluent pollutants allowed for secondary treatment facilities in terms of the parameters BOD, TSS and pH. All requirements for each parameter shall be achieved except as provided in subsections 003, 004 and 005 of this chapter, by all publicly owned treatment works and other discharges of domestic wastewater to waters of the State no later than July 1, 1988.

002.01 BOD

002.01A The 30-day average shall not exceed 30 mg/l.

002.01B The 7-day average shall not exceed 45 mg/l.

02.01C The 30-day average percent removal shall not be less than 85 percent.

002.01D Where the Department determines sufficient data exists, it may, in lieu of the parameter BOD and the levels of the effluent quality specified in 002.01, substitute the parameter CBOD with the following levels of the CBOD effluent quality provided:

002.01D1. The 30-day average shall not exceed 25 mg/l.

002.01D2. The 7-day average shall not exceed 40 mg/l.

002.01D3. The 30-day average percent removal shall not be less than 85 percent.

002.02 TSS -- For all Mechanical Facilities.

002.02A The 30-day average shall not exceed 30 mg/l.

002.02B The 7-day average shall not exceed 45 mg/l.

002.02C The 30-day average percent removal shall not be less than 85 percent.

02.03 SS -- For Lagoon Facilities.

002.03A The 30-day average shall not exceed 80 mg/l.

002.03B The maximum for any one day of discharge shall not exceed 120 mg/l.

003 Treatment Equivalent to Secondary Treatment.

This section describes the maximum level of effluent pollutants allowed for trickling filters (TF) facilities in terms of the parameters BOD, SS and pH.

003.01 BOD

003.01A The 30-day average shall not exceed 45 mg/l.

003.01B The 7-day average shall not exceed 65 mg/l.

003.01C The 30-day average percent removal shall not be less than 65 percent.

003.01D Where the Department determines sufficient data exists, it may, in lieu of the parameter BOD and the levels of the effluent quality specified in 003.01, substitute the parameter CBOD with the

following levels of the CBOD effluent quality provided:

003.01D1. The 30-day average shall not exceed 40 mg/l.

003.01D2. The 7-day average shall not exceed 60 mg/l.

003.01D3. The 30-day average percent removal shall not be less than 65 percent.

003.02 TSS

003.02A The 30-day average shall not exceed 45 mg/l.

003.02B The 7-day average shall not exceed 65 mg/l.

003.02C The 30-day average percent removal shall not be less than 65 percent.

003.04 Permit Adjustments

003.04A. The Department may require more stringent limitations when adjusting permits if:

003.04A1. For existing facilities the Department determines that the 30-day average and 7-day average BOD and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations; or

003.04A2. For new facilities, the Department determines that the 30-day average and 7-day average BOD and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, considering the design capability of the treatment process and geographical and climatic conditions, would

enable the treatment works to achieve more stringent limitations.

004 Combined Sewers

Secondary treatment may not be capable of meeting the percentage removal requirements of subsections 002.01C, 002.01D3, 002.02C, 003.01C, 003.01D3, and 003.02C above during wet weather in treatment works which receive flows from combined sewers (sewers which are designed to transport both storm water and sanitary sewage). For such treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage removal level can be defined, and if so, what that level should be.

005 Industrial Wastes.

For certain industrial categories, the discharge to waters of the State of biochemical oxygen demand and suspended solids permitted by any effluent limitation in an issued NPDES Permit may be less stringent than the values in subsections 002.01, 002.02, 002.03, 003.01 and 003.02 of this chapter. In cases when wastes would be introduced from such an industrial category into a publicly owned treatment works, the values for biochemical oxygen demand and suspended solids in subsections 002.01, 002.02, 002.03, 003.01, and 003.02 of this chapter may be adjusted proportionately.

006 Sampling and Test Procedures.

006.01 Sampling and test procedures for pollutants listed in subsection 001 above shall be in accordance with 40 CFR part 136 incorporated by reference.

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006.02 Chemical oxygen demand (COD) or total organic carbon (TOC) may be substituted for biochemical oxygen demand (BOD) when a long term BOD:COD or BOD:TOC correlation has been demonstrated.

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

Legal Citation: Title 119, Chapter 21, Nebraska Department of Environmental Quality

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Chapter 22 - LOSS OF POWER

001 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.

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

Legal Citation: Title 119, Chapter 22, Nebraska Department of Environmental Quality

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Chapter 23 - PERMIT ISSUANCE; PROCEDURES FOR DECISION MAKING

001 Except as more expressly provided in Title 115 - Rules of Practice and Procedure, this chapter contains procedures for issuing, modifying, revoking, reissuing or termination permits.

002 Preparation of a draft permit or denial of a permit.

002.01 Once an application is complete, the Director shall issue a preliminary decision approving or denying the permit.

002.02 If the Director decides to prepare a draft permit, that draft permit shall contain the following information and follow the public notice and participation procedures outlined below:

002.02A Facility standards.

002.02B All conditions, compliance schedules, and monitoring requirements.

002.03 If the Director tentatively decides to deny the permit application, a notice of intent to deny the permit shall be issued. A notice of intent to deny the permit application shall follow the same procedures as any draft permit prepared under this Chapter.

002.04 All draft permits shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The director shall provide an opportunity for a public hearing, issue a final decision, and respond to significant comments.

003 Fact sheet.

003.01 A fact sheet shall be prepared for a major discharger or other discharge which the Director determines involves widespread public interest or where major issues are raised with respect to the application described in the public notice. The fact sheet shall briefly specify the principal facts and significant legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

003.02 Each fact sheet shall contain:

003.02A A brief description of the type of facility or activity which is the subject of the draft permit;

003.02B The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored or disposed of, injected, emitted, or discharged;

003.02C Reasons any requested variances or alternatives to required standards do or do not appear to be justified;

003.02D A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions on which permit requirements are based;

003.02E Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal.

003.02F When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:

003.02F1 Limitations to control toxic pollutants;

003.02F2 Limitations on internal waste streams;

003.02F3 Limitations on indicator pollutants;

003.02F4 Limitations set on a case-by-case basis;

003.02F5 Limitations to meet the criteria for permit issuance, or

003.02F6 Waivers from monitoring requirements granted under this chapter.

003.02G For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users.

003.02H When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application;

003.02I For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit;

003.02J A description of the procedures for reaching a final decision on the proposed permit action, including the beginning and ending dates of the 30-day comment period, address where comments should be sent, procedures for requesting a public hearing, and any other procedures by which the public may participate; and;

003.02K Name and telephone number of a person to contact for additional information.

004 Statement of basis. When a fact sheet is not prepared, a statement of basis will be prepared which shall briefly describe the derivation of the conditions of the draft permit and the

reasons for them, or in the case of a notice to deny or terminate a permit, the reasons supporting the tentative decision. This statement of basis shall be sent to the applicant and on request, to any other person.

005 Administrative record for draft permits.

005.01 The provisions of a draft permit shall be based on the administrative record defined in Section 005.02 of this Chapter.

005.02 The administrative record shall consist of the following:

005.02A The application, and any supporting data furnished by the applicant;

005.02B The draft permit or notice of intent to deny the application or to terminate the permit;

005.02C The statement of basis or fact sheet as defined 003.02 and 004 in this Chapter;

005.02D All documents cited in the statement of basis or fact sheet; and

005.02E Other documents contained in the supporting file for the draft permit including all correspondence, memoranda, and meeting notes that are related to the development of the draft permit.

006 Public notice of permit actions and public comment period.

006.01 Public notice of a draft permit, intent to deny, new source determination, and public hearings shall be issued by circulating the notice in the geographical area of the proposed discharge through publication in a daily or weekly newspaper with general circulation, and mailed to the applicant, and to any other person, agency, or group upon

request or on a department mailing list to receive NPDES public notices.

006.02 Denial of a request for modification, revocation and reissuance, or termination as unjustified are not subject to public notice, comment, or hearing, but the requester shall receive a brief written response giving the reason for the decision.

006.03 Persons or groups will have 30 days from issuance of public notice to either provide the director with any written comments concerning the proposed discharge or action for which the public notice has been issued, or request a public hearing in writing, or both, unless such 30 day period is extended by the director.

006.04 If any information or public comment is received during the comment period which appears to raise substantial issues concerning a permit, the director may formulate a new draft permit which supersedes the original draft permit and republish the public notice. If no major issues are raised, and the director issues the permit, the director shall prepare a written response to each submitted comment.

006.05 Content of public notice. The public notice of a draft permit or tentative permit action shall contain:

006.05A Name, address, and phone number of the agency processing the permit;

006.05B Name and address of the permit applicant, and if different, of the facility or activity regulated by the permit

006.05C A brief description of the business conducted at the facility or activity described in the permit application;

006.05D Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

006.05E A general description of the location of existing or proposed discharge point and the name of the receiving water (if applicable) and the sludge use and disposal practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application;

006.05F The name of the POTW into which each discharge is made (if applicable) and whether such discharge is a new or existing discharge.

006.05F A brief description of the basis for the draft permit conditions and any variances or alternative less stringent effluent limitations;

006.05G A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

006.05H The address and telephone number of the premises at which interested persons may obtain further information, request a copy of the fact sheet, and inspect and copy NPDES forms and related documents.

006.05I Any additional information considered necessary or proper.

006.06 Public comments and requests for public hearings. During the public comment period, any interested person may

submit written comments on the draft permit or proposed permit action and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

006.07 Public hearings.

006.07A A public hearing shall be held when the director finds, on the basis of requests, there is a significant degree of public interest in a draft permit.

006.07B The director may also hold a public hearing at his or her discretion if the circumstances justify it.

006.07C Public notice of the hearing shall be given in the same manner as public notice of pending permit actions and shall be issued at least 30 days prior to the public hearing.

006.07D In addition to the general public notice described in 006.05 above, the public notice of hearing shall contain the following information:

006.07D(1) Reference to the date of previous public notices relating to the permit;

006.07D(2) Date, time, and place of hearing;

006.07D(3) A brief description of the nature and purpose of the hearing including the applicable rules and regulations; and

006.07D(4) A concise statement of the issues raised.

006.08 All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period.

007 Issuance and effective date. After the close of the public comment period on a draft permit, the director shall issue a final permit decision, notify the applicant and specify the effective date of the permit.

008 Response to comments. At the time that any final permit decision is issued, the director shall issue a response to comments, which shall be available to the public. This response shall:

008.01 Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

008.02 Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

009 The director or his or her designee shall base final permit decisions on the administrative record described in this section which shall consist of:

009.01 The administrative record for the tentative permit decision;

009.02 All comments received during the public comment period;

009.03 The tape or transcript of any hearings held;

009.04 Any written materials submitted at such a hearing;

009.05 Any response to comments prepared by the agency;
and

009.06 The final permit or permit decision.

010 Any other state affected by the issuance of an NPDES permit or interstate agency having water quality control authority over the receiving waters shall be sent a copy of the public notice at the time of issuance thereof, and upon request, a fact sheet and a complete copy of the NPDES permit application and a copy of the draft permit. Such state shall be afforded within the 30 days after issuance of public notice the right to submit written comments or recommendations to the Director for the proposed discharge, or request a public hearing, which the Director may incorporate into the final determination or notify the affected state or interstate agency in writing, with a copy to be forwarded to the Regional Administrator. He or she shall state his or her reasons for not incorporating that state's or interstate agency's recommendations into final determination.

011 At the time of issuance of public notice, the Director shall transmit a copy of the public notice, and upon request, a copy of the fact sheet to the appropriate District Engineer of the Army Corps of Engineers of each application for an NPDES permit to discharge pollutants (other than minor discharges) into waters of the state unless such right of the District Engineer is waived for a particular class, type and size within any category of point sources or with respect to discharges to waters of the state or parts thereof. Such agreement or waiver of right shall become a part of the public record and a copy thereof shall be forwarded to the Regional Administrator. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit.

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012 The Director shall mail copies of public notice (or upon specific request, copies of fact sheets) for applications for NPDES permits to any Federal, State, or local agency upon request, and provide such agencies with an opportunity to respond, comment, make recommendations or request a public hearing. Those agencies shall include the agency responsible for area wide waste treatment management plans pursuant to Section 208(b) of the Clean Water Act and the Agency responsible for the preparation of a State Water Quality Management Plan pursuant to any approved continuous planning process under Section 303(e) of the Clean Water Act.

013 The final decision to issue a permit may be reviewed by the district court in a proceeding instituted by filing a petition in error pursuant to Neb. Rev. Stat. §25-1901 and Neb. Rev. Stat. §84-917.

014 In accordance with Neb. Rev. Stat. §81-1507(3), any person who is denied a permit or had a permit revoked or modified may request a contested case under Chapter 7 of this title by filing a petition with the director within 30 days after receipt of notice of the permit decision.

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

Legal Citation: Title 119, Chapter 23, Nebraska Department of Environmental Quality

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Chapter 24 - PERMIT TRANSFER, MODIFICATION, REVOCATION,
REISSUANCE, CONTINUATION AND TERMINATION

001 Transfers by modification. Except as provided in 002 below, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Act.

002 Automatic transfers. As an alternative to transfers under 001 above, any NPDES permit may be automatically transferred to a new permittee if:

002.01 The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

002.02 The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

002.03 The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under this chapter. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned above.

003 Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in this chapter. All requests shall be in writing and shall contain facts or reasons supporting the request.

004 If the director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

005 If the director tentatively decides to modify or revoke and reissue a permit, he or she shall prepare a draft permit in accordance with chapter 23 incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the director shall require the submission of a new application.

006 Modification or revocation and reissuance. The director may determine whether or not one or more of the causes listed below for modification or revocation and reissuance or both exist. If cause exists, the director may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is revised for a new term. If a permit modification satisfies the criteria for "minor modifications", the permit may be modified without a draft permit or public review.

006.01 Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

006.01A Alterations. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

006.01B Information. The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger NPDES permits, this cause shall include any significant information derived from effluent testing required after issuance of the permit.

006.01C New regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

006.01C1 For promulgation of amended standards or regulations, when:

006.01C1(a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR part 133; and

006.01C1(b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

006.01C1(c) A permittee requests modification within ninety (90) days after Federal Register notice of the action on which the request is based.

006.01C1(d) For changes based upon modified State certifications of NPDES permits.

006.01D Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable statutory deadline under the Clean Water Act.

006.01E Toxics. When required to incorporate an applicable toxic effluent standard or prohibition promulgated under Section 307(a) of the Clean Water Act.

006.01F Reopener. When required by the "reopener" conditions in a permit, which are established in the permit.

006.01G Net limits. When a discharger is no longer eligible for net limitations or upon request of a permittee who qualifies for effluent limitations on a net basis.

006.01H Pretreatment. As necessary by a compliance schedule for development of pretreatment program.

006.01I Failure to notify. Upon failure to notify, as required by section 402(b)(3) of the Clean Water Act, another State whose waters may be affected by a discharge from the approved State.

006.01J Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

006.01K Notification levels. To establish a "notification level" as provided in an applicable effluent guideline or requirement.

006.01L Compliance schedules. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of the Clean Water Act for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline for compliance.

006.01M For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures when:

006.01M1 The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

006.01M2 The other entity fails to implement measure(s) that satisfy the requirement(s).

006.01N To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

006.01O When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the Clean Water Act and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

006.01P Land application plans. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

006.02 Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

006.02A Cause exists for termination and the Director determines that modification or revocation and reissuance is appropriate.

006.02B The Director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

007 Minor modifications Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of chapter 23. Any

permit modification not processed as a minor modification under this section must be made for cause and in accordance with chapter 23. Minor modifications may only:

007.01 Correct typographical errors;

007.02 Require more frequent monitoring or reporting by the permittee;

007.03 Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

007.04 Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

007.05 Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

007.06 Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

007.07 Incorporate conditions of a POTW pretreatment program that has been approved by the Department as enforceable conditions of the POTW's permits.

008 In a permit modification under this chapter, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall 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 shall comply with all conditions of the existing permit until a new final permit is reissued.

009 Termination.

009.01 The following are causes for terminating a permit during its term, or for denying a permit renewal application:

009.01A Noncompliance by the permittee with any condition of the permit;

009.01B The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

009.01C A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

009.01D A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

009.02 The Director shall follow the applicable procedures in chapter 23 in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Director may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the

Director shall follow chapter 23. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law.

010 Continuation of expiring permits.

010.01 State permits. 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:

010.01A The permittee has submitted a timely application which is a complete application for a new permit; and

010.01B 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).

001.01C Effect. Permits continued under this section remain fully effective and enforceable.

001.01D Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following:

001.01D1 Initiate enforcement action based upon the permit which has been continued;

001.01D2 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

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be subject to enforcement action for operating without a permit;

001.01D3 Issue a new permit with appropriate conditions; or

001.01D4 Take other actions authorized by these regulations.

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

Legal Citation: Title 119, Chapter 24, Nebraska Department of Environmental Quality

NEBRASKA ADMINISTRATIVE CODE

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Chapter 25 - GENERAL PERMITS

001 The Director may issue a general permit in accordance with the following:

001.01 Area. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in 001.02A of this section, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries such as:

001.01A Designated planning areas under sections 208 and 303 of Clean Water Act;

001.01B Sewer districts or sewer authorities;

001.01C City, county, or State political boundaries;

001.01D State highway systems;

001.01E Standard metropolitan statistical areas as defined by the Office of Management and Budget;

001.01F Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

001.01G Any other appropriate division or combination of boundaries.

001.02 Sources. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in paragraph 001.01 of

this section, where the sources within a covered subcategory of discharges are either:

001.02A Storm water point sources; or

001.02B One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of "treatment works treating domestic sewage", if the sources or "treatment works treating domestic sewage" within each category or subcategory all:

001.02B1 Involve the same or substantially similar types of operations;

001.02B2 Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

001.02B3 Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

001.02B4 Require the same or similar monitoring; and, in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

001.03 Water quality-based limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to 40 CFR part 122.44 hereby adopted and incorporated by reference, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

001.03A Other requirements.

001.03A1 The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

001.03A2 The general permit may exclude specified sources or areas from coverage.

002 Administration.

002.01 In general. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements this regulation.

002.02 Authorization to discharge, or authorization to engage in sludge use and disposal practices.

002.02A Except as provided in paragraphs 002.02E and 002.02F of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph 002.02E of this section, contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph 002.02F of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications.

002.02B The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for storm water discharges associated with

industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with Chapter 13 of this regulation.

002.02C General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit.

002.02D General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Director. Coverage may be terminated or revoked in accordance with this chapter.

002.02E Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges;

other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

002.02F The Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph 002.03 of this section.

002.03 Requiring an individual permit.

002.03A The Director may require any discharger authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

002.03A1 The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general NPDES permit;

002.03A2 A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

002.03A3 Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

002.03A4 A Water Quality Management plan containing requirements applicable to such point sources is approved;

002.03A5 Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

002.03A6 Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

002.03A7 The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

002.03A7(a) The location of the discharge with respect to waters of the United States;

002.03A7(b) The size of the discharge;

002.03A7(c) The quantity and nature of the pollutants discharged to waters of the United States; and

002.03A7(d) Other relevant factors;

002.03B For EPA issued general permits only, the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The

Director may grant additional time upon request of the applicant.

002.03C Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application, with reasons supporting the request, to the Director no later than 90 days after the publication by EPA of the general permit in the Federal Register or the publication by a State in accordance with applicable State law. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

002.03D When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

002.03E A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

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

Legal Citation: Title 119, Chapter 25, Nebraska Department of Environmental Quality

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TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

001 The purpose of the pretreatment regulations are to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

002 Definitions. For the purpose of this chapter, the following definitions shall apply:

002.01 Approval Authority means the Department of Environmental Quality.

003 Prohibited discharges.

003.01 General prohibitions. A user may not introduce into a POTW any pollutant(s) which cause pass through or interference. These general prohibitions and the specific prohibitions in 003.02 apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment standards.

003.02 Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

003.02A Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in Title 128 – Nebraska Hazardous Waste Regulations;

003.02B Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

003.02C Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

003.02D Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference

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with the POTW;

003.02E Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 °C (104 °F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;

003.02F Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

003.02G Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

003.02H Any trucked or hauled pollutants, except at discharge points designated by the POTW.

003.02I Affirmative Defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions and the specific prohibitions of this section where the user can demonstrate that it did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference.

004 Permit conditions.

004.01 In the case of Indirect Discharges, permit limitations, standards, or prohibitions shall be calculated based on design flow, unless actual flow is less than design flow in which case the quantity will be based on daily average flow, or calculated based on the actual production and not the designed production capacity where the promulgated discharge standards are based on production.

004.02 The Director shall for each issued pretreatment permit, describe the level of pollutants in the authorized discharge in terms of maximum daily and average monthly quantitative concentration and/or weight limitations (except pH, temperature, or any other pollutants not appropriately expressed by weight).

004.03 In the application of Categorical Pretreatment Standards, the Director shall, for each issued pretreatment permit, describe discharge limits as concentration limits or mass limits.

004.04 Unless authorized by an applicable Categorical Pretreatment Standard, no Industrial User shall increase the use of process water or dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Categorical Pretreatment Standard.

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004.05 Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, an equivalent concentration limit will be derived by the Director and applied to the mixed effluent so as to account for the presence of flows not contributed by the regulated process. An equivalent pretreatment limit may not be used if the regulated pollutants would no longer be detectable by the equipment monitoring the combined wastewaters.

004.06 Noncompliance reporting to the department and POTW.

004.06A If the permittee does not comply with or will be unable to comply with any discharge limitations or standards specified in the permit, the permittee shall:

004.06A1 Notify the Department within 24 hours of becoming aware of the violation. In addition, a written report shall be filed with the Department and the POTW on a noncompliance report form, within five (5) days after becoming aware of the noncompliance, and in the case of any discharge subject to any applicable Categorical Pretreatment Standards under Section 307(b) or (c) of the Clean Water Act or other discharges which constitute a threat to human health, welfare, or the environment, shall report the same to the Department within 24 hours from the time the permittee becomes aware of the circumstances.

004.06A2 Conduct or repeat sampling and analysis and submit the results of the repeat analysis to the Department within 30 days of becoming aware of the violation.

004.06B An Industrial User shall immediately notify the POTW and the Department of any discharges that could cause problems to the POTW, including slug loads that are discharged at such volume or concentration as to constitute a threat to human health, welfare, or the environment, or could cause interference at the POTW. A slug load control plan may be required and as a minimum must contain the following items:

004.06B1 Description of discharge practices, including non-routine batch discharges.

004.06B2 Description of stored chemicals.

004.06B3 Procedures for immediate notification to the POTW and the Department with follow-up written notification within five (5) days.

004.06B4 Develop procedures to prevent adverse impacts from accidental spills including inspection and maintenance of storage areas, handling of materials, control of plant site runoff, training of employees and general housekeeping.

004.07 Noncompliance report. An Industrial User reporting a noncompliance discharge shall provide:

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004.07A A description of the indirect discharge and the cause of noncompliance;

004.07B The period of noncompliance, including exact dates and times, or if not corrected the anticipated time the noncompliance is expected to continue; and

004.07C Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

004.08 Industrial Users shall notify the POTW, the Director, and Regional Administrator, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under Title 128 - Nebraska Hazardous Waste Regulations. Such notification must include the name of the hazardous waste as set forth in Title 128, the DEQ/EPA hazardous waste identification number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this Section need be submitted only once for each hazardous waste discharged. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of the user's permit.

004.08A Discharges are exempt from the requirements above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in Title 128. Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in Title 128, requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

004.08B In the case of any new regulations under Title 128 identifying additional characteristics of hazardous wastes or listing any additional substance as a hazardous waste, the user must notify the POTW, the director, and the Regional Administrator, of the discharge of such substance within ninety (90) days of the effective date of such regulations.

004.08C In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

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004.08D This provision does not create a right to discharge any substance not otherwise permitted to be discharged by a Nebraska Pretreatment permit, or any Federal or State law.

005 Net/Gross calculation.

005.01 A permittee may request that the Director adjust categorical pretreatment standards to reflect the presence of pollutants in the industrial user's intake water in accordance with this section on a net basis, if:

005.01A The permittee shows that its intake water is drawn from the same body of water into which the discharge from its POTW is made; provided, no net- gross credit shall be given for pollutants found in city water even if the water originates from the same source to which the Industrial User's POTW discharges;

005.01B The treatment system operated by the Industrial User will not entirely remove the pollutants present in the intake water;

005.01C The pollutants in the intake water do not vary chemically or biologically from the pollutants limited by the applicable standard; and

005.01D The Industrial User does not significantly increase concentrations of pollutants in the intake water, even if the total amount of pollutants remains the same; or

005.01E The applicable effluent limitations and standards provide for such net basis application.

005.02 Adjustments made under Section 005 shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the permittee. The adjustments shall be given only to the extent that pollutants in the intake water which are limited by the applicable Standards are not removed by the treatment technology employed by the Industrial User.

005.03 The Industrial User shall notify the Director if there are any significant changes in the quantity of the pollutants in the intake water or in the level of treatment provided.

005.04 Additional monitoring shall be required (i.e., for flow and concentration of pollutants) to determine continued eligibility for and compliance with any adjustments. The Director shall make a written determination of the applicable credit(s) and state the reasons for his determination, and send a copy to the Industrial User and its POTW.

006 Requests for applicability of categorical standards. Within 30 days after the effective date of a Pretreatment Standard by the Council for an industrial subcategory, an Industrial User or POTW may request the director to provide written certification whether the industrial user falls

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within that particular subcategory. A new source must request this certification prior to the commencement of discharge.

007 Compliance date.

007.01 After a categorical standard is effective specifying quantities or concentrations of pollutant properties which may be discharged or introduced to a POTW by existing or new industrial users, compliance by existing sources shall be within three years of the date the standard is effective or earlier if a shorter compliance time is specified.

007.02 Compliance for new sources shall be required immediately upon the effective date of the standard.

007.03 Existing sources which become industrial users subsequent to the establishment and adoption of an applicable categorical standard shall be considered existing industrial users except where such a source meets the definition of a new source.

008 Reporting requirements for POTWs and industrial users.

008.01 Industrial users currently discharging in or scheduled to discharge into a POTW shall be required to submit a baseline report to the director within 180 days of the effective date of a categorical pretreatment standard or within 180 days after final administrative decision made on a categorical determination in accordance with 008. The report must contain the following information.

008.01A The name and address of the Industrial User;

008.01B A description of the location of the Industrial User's treatment system and the point of entrance into the POTW;

008.01C A description of the Industrial User's existing water pollution control facility;

008.01D A schematic flow diagram of the Industrial User's water system including water supply, process wastewater systems, and points of discharge;

008.01E A list of any environmental control permits held by or for the facility;

008.01F A description of the operations carried out by the Industrial User, the average rate of production, and Standard Industrial Classification of the operation carried out by such Industrial User;

008.01G The measured average and maximum flow of the discharge from such Industrial User to the POTW in gallons per day, or the average and maximum flow of the discharge as estimated by verifiable techniques; and

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008.01H The nature, concentration, and mass of pollutants in the discharge from each regulated process from the Industrial User and identification of the applicable Categorical Standards and Requirements. The concentration and mass shall be reported as a maximum or average level as provided for in the applicable Categorical Standard. If an equivalent concentration limit has been calculated in accordance with this Chapter, this adjusted concentration limit shall also be submitted to the Director for approval.

008.01I A statement, reviewed by an authorized representative of the Industrial User and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the Industrial User to meet the pretreatment standards and requirements.

008.01J New sources shall be required to submit to the Director a report which contains the information listed in chapter 8.

008.02 Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Department a report containing the information listed in subsections 008.01 in this chapter.

008.03 The reports required by this chapter shall be signed by an authorized representative meeting the requirements pursuant to Chapter 13 and shall include the certification statement as follows;

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing and willful violations."

009 Any POTW receiving from Industrial Users, a pollutant or flow which causes treatment process upsets, violations of the POTW's effluent limitations, contamination of the POTW's sludge or which interferes with the POTW's process or passes through untreated pollutants, may request the Director to modify its NPDES permit to incorporate a local POTW Pretreatment Program. A POTW may develop an appropriate POTW Pretreatment Program for submission and approval by the director in accordance with 40 CFR part 403.08, 403.09, and 403.10 which are adopted and incorporated by this reference.

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010 General Pretreatment Regulations for Existing and New Sources of Pollution. The requirements of 40 CFR part 403 are adopted and incorporated by this reference.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(4), (11), (12), (15), (20), (21), (24), (25), and (30); 81-1505(6), (7), (8), (11), and (20)

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NEBRASKA ADMINISTRATIVE CODE

TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 27 – 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.

006.01 Where a permittee continuously measures the pH of wastewater pursuant to a requirement or option in a NPDES permit issued pursuant to this Title, the permittee shall maintain the pH of such wastewater within the range set forth in the applicable effluent limitations guidelines, except excursions from the range are permitted subject to the following limitations:

006.01A The total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and

006.01B No individual excursion from the range of pH values shall exceed 60 minutes.

006.02 The director may adjust the requirements set forth in this section with respect to the length of individual excursions from the range of pH values, if a different period of time is

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appropriate based upon the treatment system, plant configuration or other technical factors.

006.03 For purposes of this section, an excursion is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the applicable effluent limitations guidelines.

007 Effluent standards and guidelines.

007.01 Aluminum Forming Point Source Category. The requirements of 40 CFR part 467 are adopted and incorporated by this reference.

007.02 Asbestos Manufacturing Point Source Category. The requirements of 40 CFR part 427 are adopted and incorporated by this reference.

007.03 Battery Manufacturing Point Source Category. The requirements of 40 CFR part 461 are adopted and incorporated by this reference.

007.04 Canned and Preserved Fruits and Vegetables Processing Point Source Category. The requirements of 40 CFR part 407 are adopted and incorporated by this reference.

007.05 Canned and Preserved Seafood Processing Point Source Category. The requirements of 40 CFR part 408 are adopted and incorporated by this reference.

007.06 Carbon Black Manufacturing Point Source Category. The requirements of 40 CFR part 458 are adopted and incorporated by this reference.

007.07 Cement Manufacturing Point Source Category. The requirements of 40 CFR part 411 are adopted and incorporated by this reference.

007.08 The Centralized Waste Treatment Point Source Category. The requirements of 40 CFR part 437 are adopted and incorporated by this reference.

007.09 Coal Mining Point Source Category. The requirements of 40 CFR part 434 are adopted and incorporated by this reference.

007.10 Coil Coating Point Source Category. The requirements of 40 CFR part 465 are adopted and incorporated by this reference.

007.11 Concentrated Aquatic Animal Production Point Source Category. The requirements of 40 CFR part 451 as amended by Volume 69, no. 162 Federal Register pages 54927– 51930 (August 23,2004)are adopted and incorporated by this reference.

007.12 Construction and Development Point Source Category. The requirements of 40

CFR part 450 are adopted and incorporated by this reference.

007.13 Copper Forming Point Source Category. The requirements of 40 CFR part 468 are adopted and incorporated by this reference.

007.14 Dairy Products Processing Point Source Category. The requirements of 40 CFR part 405 are adopted and incorporated by this reference.

007.15 Effluent Limitations Guidelines for Existing Sources and Standards of Performance and Pretreatment Standards for New Sources for the Paving and Roofing Materials (tars and asphalt) Point Source Category. The requirements of 40 CFR part 443 are adopted and incorporated by this reference.

007.16 Electrical and Electronic Components Point Source Category. The requirements of 40 CFR part 469 are adopted and incorporated by this reference.

007.17 Electroplating Point Source Category. The requirements of 40 CFR part 413 are adopted and incorporated by this reference.

007.18 Explosives Manufacturing Point Source Category. The requirements of 40 CFR part 457 are adopted and incorporated by this reference.

007.19 Ferroally Manufacturing Point Source Category. The requirements of 40 CFR part 424 are adopted and incorporated by this reference.

007.20 Fertilizer Manufacturing Point Source Category. The requirements of 40 CFR part 418 are adopted and incorporated by this reference.

007.21 Glass Manufacturing Point Source Category. The requirements of 40 CFR part 426 are adopted and incorporated by this reference.

007.22 Grain Mills Point Source Category. The requirements of 40 CFR part 406 are adopted and incorporated by this reference.

007.23 Gum and Wood Chemicals Manufacturing Point Source Category. The requirements of 40 CFR part 454 are adopted and incorporated by this reference.

007.24 Hospital Point Source Category. The requirements of 40 CFR part 460 are adopted and incorporated by this reference.

007.25 Ink Formulating Point Source Category. The requirements of 40 CFR part 447 are adopted and incorporated by this reference.

007.26 Inorganic Chemicals Manufacturing Point Source Category. The requirements of 40 CFR part 415 are adopted and incorporated by this reference.

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007.27 Iron and Steel Manufacturing Point Source Category. The requirements of 40 CFR part 420 are adopted and incorporated by this reference.

007.28 Landfills Point Source Category. The requirements of 40 CFR part 445 are adopted and incorporated by this reference.

007.29 Leather Tanning and Finishing Point Source Category. The requirements of 40 CFR part 425 are adopted and incorporated by this reference.

007.30 Meat and Poultry Products Point Source Category. The requirements of 40 CFR part 432 are adopted and incorporated by this reference.

007.31 Metal Finishing Point Source Category. The requirements of 40 CFR part 433 are adopted and incorporated by this reference.

007.32 Metal Molding and Casting Point Source Category. The requirements of 40 CFR part 464 are adopted and incorporated by this reference.

007.33 Metal Products and Machinery Point Source Category. The requirements of 40 CFR part 438 are adopted and incorporated by this reference.

007.34 Mineral Mining and Processing Point Source Category. The requirements of 40 CFR part 436 are adopted and incorporated by this reference.

007.35 Nonferrous Metals Forming and Metal Powders Point Source Category. The requirements of 40 CFR part 471 are adopted and incorporated by this reference.

007.36 Nonferrous Metals Manufacturing Point Source Category. The requirements of 40 CFR part 421 are adopted and incorporated by this reference.

007.37 Oil and Gas Extraction Point Source Category. The requirements of 40 CFR part 435 are adopted and incorporated by this reference.

007.38 Ore Mining and Dressing Point Source Category. The requirements of 40 CFR part 440 are adopted and incorporated by this reference.

007.39 Organic Chemicals Manufacturing Point Source Category. The requirements of 40 CFR part 414 are adopted and incorporated by this reference.

007.40 Paint Formulating Point Source Category. The requirements of 40 CFR part 446 are adopted and incorporated by this reference.

007.41 Pesticide Chemicals. The requirements of 40 CFR part 455 are adopted and incorporated by this reference.

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007.42 Petroleum Refining Point Source Category. The requirements of 40 CFR part 419 are adopted and incorporated by this reference.

007.43 Pharmaceutical Manufacturing Point Source Category. Pharmaceutical Manufacturing Point Source Category. The requirements of 40 CFR part 439 are adopted and incorporated by this reference.

007.44 Phosphate Manufacturing Point Source Category. The requirements of 40 CFR part 422 are adopted and incorporated by this reference.

007.45 Photographic Point Source Category. The requirements of 40 CFR part 459 are adopted and incorporated by this reference.

007.46 Plastics Molding and Forming Point Source Category. The requirements of 40 CFR part 463 are adopted and incorporated by this reference.

007.47 Porcelain Enameling Point Source Category. The requirements of 40 CFR part 466 are adopted and incorporated by this reference.

007.48 The Pulp, Paper, and Paperboard Point Source Category. The requirements of 40 CFR part 430 are adopted and incorporated by this reference.

007.49 Rubber Manufacturing Point Source Category. The requirements of 40 CFR part 428 are adopted and incorporated by this reference.

007.50 Soap and Detergent Manufacturing Point Source Category. The requirements of 40 CFR part 417 are adopted and incorporated by this reference.

007.51 Steam Electric Power Generating Point Source Category. The requirements of 40 CFR part 423 are adopted and incorporated by this reference.

007.52 Sugar Processing Point Source Category. The requirements of 40 CFR part 409 are adopted and incorporated by this reference.

007.53 Textile Mills Point Source Category. The requirements of 40 CFR part 410 are adopted and incorporated by this reference.

007.54 Timber Products Processing Point Source Category. The requirements of 40 CFR part 429 are adopted and incorporated by this reference.

007.55 Transportation Equipment Cleaning Point Source Category. The requirements of 40 CFR part 442 are adopted and incorporated by this reference.

007.56 Waste Combustors Point Source Category. The requirements of 40 CFR part

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444 are adopted and incorporated by this reference

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

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TITLE 119 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 28 – ENVIRONMENTAL INFRASTRUCTURE SUSTAINABILITY EVALUATION

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

002 The application request for the affordability and sustainability evaluation shall be submitted to the Director, on a form approved by the Department, at least 180 days before:

002.01 The anticipated date of the first discharge for new permits;

002.02 Expiration of the current NPDES permit for a political subdivision renewing their NPDES permit; or

002.03 Change in an NPDES permit limit or requirement.

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

003.01 A five thousand dollar (\$5,000) fee shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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

Legal Citation: Title 119, Chapter 28, Nebraska Department of Environmental Quality