

NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

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

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sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment 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

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