

NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

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

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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:

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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 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

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