

Title 126 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 2 - WASTE MANAGEMENT PERMITS

001 Permit Required.

This chapter applies to all owners or operators of the following activities or operations unless as otherwise provided in these regulations:

Open burning (Chapter 7);

Land application of effluent (Chapter 8);

Land application of sludge (Chapter 9);

Land application of paunch (Chapter 10);

Agricultural by-products (Chapter 11);

Fertilizer and pesticide washwater (Chapter 12);

Septic tank pumpings (Chapter 15);

Wastewater treatment facility grit and screenings (Chapter 16);

Accumulation of junk (Chapter 17);

Oils and hazardous materials spills (Chapter 18); and

Bank stabilization (Chapter 19).

002 Existing Activities or Operations.

Owners or operators of existing activities or operations specified in paragraph 001 of this chapter shall submit an application to the Department within one-hundred eighty (180) days after the effective date of these regulations.

003 New Activities or Operations.

003.01 Any person who is proposing to construct and/or operate any activity or operation specified in paragraph 001 of this Chapter shall submit to the Department a waste management permit application on a form designated and furnished by the Department at least one-hundred eighty (180) days prior to physical construction and/or operation, whichever is applicable;

003.02 The one-hundred eighty (180) days requirement may be reduced with the approval of the Director; and

003.03 Operation shall not commence until a permit is issued.

004 Contents of Application.

004.01 All applicants shall provide the following information to the Director:

004.01A The activity or operation conducted by the applicant which requires a permit and a brief description of the nature of the business;

004.01B The owner/operator's name, address, telephone number, ownership status, and status as federal, state, private, public or other entity;

004.01C The legal description of each location of the activity or operation;

004.01D The name of and distance to the nearest surface water from the activity or operation; and

004.01E Whether the applicant has ever been issued a permit or license from the Department, and if so, the reason for the termination of such permit or license.

004.02 Where an application requires the submission of engineering plans and specifications, such plans and specifications shall be prepared and submitted by a professional engineer duly registered to practice in the State of Nebraska.

004.03 Additional application information is enumerated in the appropriate chapter for each activity or operation specified in paragraph 001 of this Chapter.

005 Signatures; Application and Reports.

005.01 All permit applications submitted to the Department and all reports, required by such permits to be submitted to the Department, shall be signed:

005.01A In the case of a corporation, by a principal executive officer of at least the level of vice-president;

005.01B In the case of a partnership or sole proprietorship, by a general partner or the sole proprietor, respectively; and

005.01C In the case of a municipal, state, federal or other public facility by either a principal executive officer or ranking elected official; or

005.01D By a duly authorized representative of the persons described in paragraphs 005.01A to 005.01C of this Chapter if such representative is responsible for the overall operation of the activity, the authorization is made in writing by the person designated in paragraphs 005.01A to 005.01C of this chapter, and the written authorization is submitted to the Director.

005.02 Any change in an authorization meeting the requirements of paragraph 005.01D of this chapter shall be submitted to the Department in writing prior to or together with any application or report to be signed by an authorized representative.

006 Application; Additional Information Requests.

The one-hundred eighty (180) days filing requirement for permits shall commence after all the necessary information has been received by the Department. No waste management permit application submitted to the Department shall be considered for processing until all information necessary to complete the application or additional information as required by the Department has been received.

007 Permit Conditions; General.

The following general conditions may apply to all waste management permits:

007.01 Duration, see paragraph 008 of this Chapter;

007.02 Compliance schedules and reporting requirements thereunder, see paragraph

011 of this Chapter;

007.03 Commencement of operations within two (2) years after issuance of the permit.

007.04 Retention by permittee of any records required by this Chapter for a minimum of three (3) years; and

007.05 Responsibility of permittee to comply with all other applicable local, state, and federal requirements.

008 Duration.

Except as provided in paragraph 011 of this Chapter, each issued waste management permit shall have a fixed term not to exceed five (5) years.

009 Transferability of Permits.

009.01 A waste management permit may be transferred to another person if the Department is notified in writing at least sixty (60) days prior to the proposed transfer. The notice shall include a written agreement between the permittee and the proposed permittee indicating a date for permit responsibility and transfer, and no objection is made by the Department within the sixty (60) days;

009.02 If a transfer will result in a change in any circumstances that will affect the conditions in the permit, the request to transfer shall be treated as a modification in accordance with paragraph 013 of this Chapter; and

010 Variance from Design Criteria.

010.01 An applicant for a waste management permit may apply to the Director for the use of less stringent design criteria for its activity or operation during the term of its permit than the applicable design criteria specified in these regulations pursuant to Neb. Rev. Stat. § 81-1513 (Reissue 1981).

010.02

010.02A Failure to satisfy the requirements of such statute shall be treated as a permit denial and shall be noticed pursuant to paragraph 016 of this Chapter;

010.02B Where the requirements of such paragraph are satisfied together with all other requirements of these regulations, intent to grant the permit shall be noticed pursuant to paragraph 016 of this Chapter; and

010.03 Any variance granted pursuant to this paragraph may be renewed on terms and conditions and for periods which would be appropriate pursuant to Neb. Rev. Stat. §81-1513 (Reissue 1981).

011 Compliance Schedules.

011.01 General.

Where a permitted facility is found to be out of compliance a reissued or modified permit may specify a schedule of compliance which shall require compliance as soon as possible but where a schedule exceeds one year from the date of permit issuance,

the schedule shall set forth interim requirements and the dates for their achievement.

011.02 Reporting.

No later than fourteen (14) 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.

012 Confidentiality of Information.

Claims of confidentiality shall be processed in accordance with Neb. Rev. Stat. §81-1527 (Reissue 1981). A claim of confidentiality for a permit application information must be substantiated at the time the application is submitted.

013 Modifying, Suspending, Revoking, or Reissuing Permits.

013.01 Any waste management permit issued by the Director, after reasonable notice and opportunity for a public hearing according to the procedure specified for permits in paragraph 017 of this Chapter, may be modified, suspended, revoked, or reissued in whole or in part during its term for cause including, but not limited to:

013.01A A violation of any terms or conditions of the permit.

013.01B Obtaining a permit by misrepresentation of any relevant facts or failure to disclose fully all relevant facts;

013.01C Information indicating that the permitted activity or operation poses a threat to human health or the environment;

013.01D A change in the ownership or control of an activity or operation which has a permit in accordance with paragraph 009 of this Chapter on transferability;

013.01E Upon request by the permittee, provided such request does not create a violation of any existing applicable requirements, standards, laws, or rules and regulations.

013.02 Notwithstanding the provisions of paragraph 013.01 of this Chapter, a waste management permit shall not be revoked until reasonable notice and hearing have been afforded, as specified in Neb. Rev. Stat. §81-1507(2)(Reissue 1981).

013.03 In addition to the reasons specified in paragraph 013.01 of this Chapter, causes for modification, but not revocation, include, but are not limited to:

013.03A Material and substantial alterations or additions to the permitted activity or operation which occurred after issuance of the permit which justify different conditions than those which are present in the existing permit;

013.03B Information received by the Director which was not available at the time of permit issuance, and would have justified the application of different permit conditions at the time of issuance;

013.03C A change in the standards or regulations on which the permit or license was based.;

013.03D A determination is made by the Director that 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 reasonable available remedy.

013.04 Minor Modification.

Permit modifications shall not require public notice and opportunity for hearing unless contested by the permittee when the modification consists of:

013.04A Correcting typographical errors;

013.04B Requiring more or less frequent monitoring or reporting by the permittee;

013.04C Changing an interim compliance date, but not beyond one-hundred twenty (120) days and not where the change would interfere with the attainment of a final compliance date;

013.04D Changing ownership or control of a permitted activity or operation 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 permittee has been submitted to the Director.

013.05 Permit modifications shall not be used to extend the term of a permit.

014 Denial of Permits.

The Director may deny a waste management permit when:

014.01 The terms or conditions of the proposed permit application do not comply and assure compliance with the applicable requirements of state and federal laws and rules and regulations;

014.02 The application does not meet the appropriate design criteria specified in these regulations;

014.03 A request for a variance from design criteria does not satisfy the requirements of paragraph 010 of this Chapter; or

014.04 Upon renewal, the permittee has not complied with all terms, conditions, requirements and schedules of compliance of the expiring permit.

014.05 Such facility shall be within three thousand three hundred (3300) feet of a residential area in a metropolitan class city. For purposes of this section residential area shall mean an area designated as residential under the zoning authority of the city.

015 Emergency Permits.

In the event the Director finds an imminent and substantial endangerment to human health or the

environment, he may issue a temporary emergency permit without notice or hearing for an activity or operation specified in paragraph 001 of this Chapter. This emergency permit may also be issued to a non-permitted activity or operation specified in this Chapter or to one whose existing permit does not cover the authority for which application for the emergency permit is made. This emergency permit:

015.01 May be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit;

015.02 Shall not exceed one-hundred twenty (120) days in duration but may be renewed for an additional sixty (60) days where the permittee can demonstrate that the circumstances justify such extension and that the permittee made good faith efforts to complete the permitted activity or operation within the one-hundred twenty (120) days;

015.03 Shall clearly specify the wastes to be handled and the manner and location of their disposal; and

015.04 May be terminated by the Director at any time without process if he determines that termination is appropriate to protect human health and the environment.

016 Issuance or Denial of a Permit.

016.01 Once an application is complete, the Director shall tentatively decide whether to issue or deny the permit.

016.02 If the Director decides to issue the permit, he shall prepare a draft permit which shall contain the following information and follow the public notice and participation procedures outlined below:

016.02A A brief description of the activity or operation which is the subject of the draft permit;

016.02B The type and quantity of wastes which are proposed to be land applied or disposed of;

016.02C The tentative determination to issue or deny the permit;

016.02D The statutory or regulatory provisions on which permit requirements are based;

016.02E In the case of permits a description of the procedures for the formulation of final determination, including the thirty (30) day comment period, address where comments should be sent, procedures for requesting a public hearing and nature thereof, and any other procedures the Director has determined are appropriate for public participation;

016.02F Name and telephone number of a person to contact for additional information;

016.02G All general and specific permit terms and conditions;

016.02H All compliance schedules under paragraph 011 of this Chapter;
and

016.02I All monitoring requirements.

017 Public Notice of Pending Permit Issuance or Denial.

017.01 Public notice of every application and proposed determination to issue or deny a permit shall be issued by submitting the notice as a news release to the newspaper in the geographical area of the proposed activity or operation, and mailed to the applicant, any unit of local government having jurisdiction over the area where the activity or operation is proposed to be located, each state agency having any authority under state law with respect to the construction or operation of such activity or operation, and to any person or group, either upon request or whose names are on a Departmental mailing list to receive public notices.

017.02 Persons or groups will have thirty (30) days from issuance of the public notice to either provide the Director with any written comments concerning the proposed facility for which the public notice has been issued, and/or request a public hearing in writing pursuant to paragraph 018 of this Chapter. Such comment period may be extended by the Director.

017.03 If any information or public comment is received during the comment period which appears to raise substantial major issues concerning a permit, the Director may formulate a new draft permit which supersedes the original draft permit and recirculate 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.

017.04 Content of Public Notice.

The public notice of an application shall contain:

017.04A Name, address and phone number of the agency issuing the public notice;

017.04B Name and address of the applicant;

017.04C A brief description of each applicant's activities or operations described in the application;

017.04D A statement of the tentative determination to issue or deny the activity or operation described in the application and that a draft permit has been prepared;

017.04E A brief description of the procedures for the final determination including the comment period allowed in paragraph 017 of this Chapter and any other appropriate means by which interested persons or groups may comment upon these determinations or request a public hearing; and

017.04F The address and phone number of premises at which interested persons may obtain further information, request a copy of the fact sheet described below, and inspect and copy forms and related documents.

018 Public Hearings; When Required.

018.01 The applicant, any affected state, any affected interstate agency, the Regional Administrator, or any interested agency, person or group of persons may request or

petition the Director, in writing, within the 30-day comment period of the public notice, with respect to the application, for a public hearing, and state the nature of the issues to be raised and all arguments and factual grounds supporting their position; and

018.01A The Director may, in his discretion, hold an adjudicative hearing on the granting or denial of the permit if he determines that the circumstances justify it; or

018.01B The Director shall hold an adjudicative hearing if he/she agrees that the granting or denial of the permit interferes with or impairs or threatens to interfere with or impair the legal rights of the permit applicant or any person so that the situation falls within the Department's Rules of Practice and Procedure; or

018.01C The Director may hold a public hearing if the comments, requests or petitions raise legal, policy or discretionary questions of general application not pertaining solely to a particular party and significant public interest exists with respect to the application.

018.02 Public notice of any hearing held shall be issued, circulated and mailed in the same manner as public notice of pending issuance or denial of waste management permit and shall be so issued, circulated, and mailed at least thirty (30) days prior to the public hearing.

018.03 Content of Public Notice of Hearing.

In addition to the general public notice, described in paragraph 017 of this Chapter, the public notice of hearing shall contain the following information:

018.03A Reference to the date of previous public notices relating to the permit;

018.03B Date, time, and place of hearing;

018.03C A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

018.03D A concise statement of the issues raised; and

018.03E A brief description of the permit terms and conditions which have been contested and for which the hearing has been granted.

019 Filing for Renewal; Expiring Permits.

019.01 The Director shall notify the permittee that if he wishes to continue to operate after the expiration date of his waste management permit, he must file for reissuance of his permit at least one-hundred eighty (180) days prior to its expiration.

019.02 A renewal application shall consist of the same information required in the original waste management permit application, which may consist of a recertification of the original application, unless the Department requires additional information.

019.03 Prior to renewal, the permittee shall be in compliance with or have complied

with all the terms, conditions, requirements, and schedules of compliance of the expiring permit.

019.04 Public notice and public participation procedures for renewal of the permit shall be those procedures specified for permits in paragraph 017 of this Chapter.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(2)(9)(11)(13)(20)(25);
81-1505(13)(d)(15)(16); 81-1507(2); 81-1510
(2);
81-1518; 81-1519; 81-1527 (Reissue 1981).

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