

NEBRASKA ADMINISTRATIVE CODE

Title 128 - Department of Environmental Quality

Chapter 6 - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; RULEMAKING

001 General.

001.01 Any person may petition the Council to modify or revoke any provision of this Title. Title 115, Rules of Practice and Procedure, Nebraska Department of Environmental Quality, sets forth general requirements which apply to all such petitions. Section 002 of this Chapter sets forth additional requirements to add a testing or analytical method to this Title. Section 003 sets forth additional requirements for petitions to exclude a waste at a particular facility from Chapter 2, 004 through 007 or the lists of hazardous wastes in Chapter 3, 011 through 016.

001.02 Each petition must be submitted to the Council through the Director by certified mail and must include:

001.02A The petitioner's name and address;

001.02B A statement of the petitioner's interest in the proposed action;

001.02C A description of the proposed action, including (where appropriate) suggested regulatory language; and

001.02D A statement of the need and justification for the proposed action, including supporting tests, studies, or other information.

001.03 Decisions, hearings and notices regarding such petitions will be in accordance with Title 115.

002 Petitions for equivalent testing or analytical methods.

002.01 Any person seeking to add a testing or analytical method different from those authorized in this Title may petition the Council for a regulatory amendment under Section 001.01 of this Chapter. To be successful, the person must demonstrate to the satisfaction of the Council, that the proposed method is equal to or superior to the corresponding method prescribed in this Title, in terms of its sensitivity, accuracy and precision (i.e., reproducibility).

002.02 Each petition must include, in addition to the information required by Section 001.02 of this Chapter:

002.02A A full description of the proposed method, including all procedural steps and equipment used in the method;

002.02B A description of the types of wastes or waste matrices for which the proposed method may be used;

002.02C Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in these regulations;

002.02D An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

002.02E A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

002.03 After receiving a petition for an equivalent method, the Director or the Council may request any additional information on the proposed method which may reasonably be required to evaluate the method.

003 Petition to amend Chapter 3 to exclude a waste at a particular generating facility.

003.01 Any person seeking to exclude a waste at a particular generating facility from Chapter 3, 011 through 016 may petition for a regulatory amendment under Section 001.01 of this Chapter. To be successful:

003.01A The petitioner must demonstrate to the satisfaction of the Council that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

003.01B The procedures in this Chapter may also be used to petition the Council for a regulatory amendment to exclude a waste which is described in these Sections and is either a waste listed in Chapter 3, 011 through 016, or is derived from a waste listed in Chapter 3, 011 through 016. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by 003.01A of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, the demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only

those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is also excluded may still be a hazardous waste by operation of Chapter 3, 007 through 010.

003.02 If the waste is listed with codes "I", "C", "R", or "E" in Chapter 3, 013 through 016:

003.02A The petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in Chapter 3, 007 through 010, using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in Chapter 3, 007 through 010, using any applicable methods prescribed therein.

003.02B Based on a complete application the Council must determine where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Chapter 3, 005 through 010.

003.03 If the waste is listed with code "T" in Chapter 3, 013 through 016

003.03A The petitioner must demonstrate that the waste:

003.03A1 Does not contain the constituent or constituents as defined in Appendix II that caused the Council to list the waste, using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, which is referenced in 40 CFR 260.11, as incorporated by reference in Chapter 1, 003; or

003.03A2 Although containing one or more of the hazardous constituents as defined in Appendix II that caused the Council to list the waste, does not meet the criterion of Chapter 3, 002.03 when considering the factors used by the Council in Chapter 3, 002.03A through 002.03K under which the waste was listed as hazardous.

003.03B Based on a complete application, the Council must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that

such factors do not warrant retaining the waste as a hazardous waste.

003.03C The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in Chapter 3, 007 through 010, using any applicable methods prescribed therein; and

003.03D A waste which is so excluded, however, still may be a hazardous waste by operation of Chapter 3, 005 through 010.

003.04 If the waste is listed with the code "H" in Chapter 3, 013 through 016:

003.04A The petitioner must demonstrate that the waste does not meet the criterion of Chapter 3, 002.03;

003.04B Based on a complete application, the Council must determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste;

003.04C The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in Chapter 3, 007 through 010, using any applicable methods prescribed therein; and

003.04D A waste which is so excluded, however, still may be a hazardous waste by operation of Chapter 3, 005 through 010.

Enabling Legislation: Neb. Rev. Stat. §81-1505(13)

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