NEBRASKA ADMINISTRATIVE CODE

Title 129 - Department of Environmental Quality

Chapter 5 - OPERATING PERMITS - WHEN REQUIRED

001 Applicability and Scope. The following sources are required to obtain operating permits unless exempted under 002:

001.01 Class I (major source) permits shall be required to operate any of the following:

001.01A Any major source as defined in Chapter 2;

001.01B Any source, including an area source, subject to a standard, limitation, or other requirement under Chapter 18;

001.01C Any source, including an area source, subject to a standard or other requirement under Chapters 23, 27 or 28;

001.01D Any affected source;

001.01E Any source in a source category designated by the Director or required to do so by any other applicable requirement under Title 129 or under the Act.

001.02 Unless a Class I permit is required, Class II (minor source) permits shall be required to operate any of the following, unless covered under the provisions of Chapter 42:

001.02A Any source or emissions unit with actual emissions above the following:

001.02A1 [rescinded]

001.02A2 Fifty (50) tons/year or more of PM_{10} emissions.

001.02A3 Fifty (50) tons/year or more of SO_2 or SO_3, or any combination of the two.

001.02A4 Fifty (50) tons/year or more of oxides of nitrogen (calculated as NO_2).

001.02A5 Fifty (50) tons/year or more of volatile organic compounds (VOC).

001.02A6 Fifty (50) tons/year or more of carbon monoxide.

001.02A7 Two and one-half (2.5) tons/year or more of lead.

001.02A8 Five (5) tons/year or more of any hazardous air pollutant or an aggregate of twelve and one-half (12.5) tons/year or more of any hazardous air pollutants.

001.02B All incinerators used for refuse disposal or for the processing of salvageable materials except refuse incinerators located on residential premises containing five or less dwelling units used only for disposal of residential waste generated on the said property.

001.03 Any source or emissions unit required to obtain a Class I permit based on potential emissions may request that potential to emit be limited to below the major source threshold, as provided in Chapter 42 or in section 001.03A and 001.03B below.

001.03A Synthetic Minor Permits

001.03A1 Any source or emissions unit with actual emissions between the levels specified in section 001.02A above and the major source levels may apply for a Class II permit, as a synthetic minor source, which provides enforceable limits to potential emissions, as provided in Chapters 7 through 15.

001.03A2 Any source or emissions unit with actual GHGs emissions less than 100 tons per year on a mass basis or less than 100,000 tons per year CO_2e may apply for a Class II permit which provides enforceable limits to potential emissions, as provided in Chapters 7 through 15.

001.03B Any source or emissions unit with actual emissions below the levels specified in section 001.02A above shall be exempt from the duty to obtain an operating permit under the following conditions, known as the Low Emitter Rule, unless required to do so in section~~s~~ 001.02B.

001.03B1 The source is not otherwise required to obtain an operating permit;

001.03B2 The source has submitted a demonstration and maintains records on site, updated at least monthly, for at least five years that

actual emissions for each regulated pollutant do not exceed the levels specified in section 001.02A above;

001.03B3 Credit for controls which are not required under the provisions of this title will only be allowed if documentation is maintained that demonstrates that controls were continuously maintained and operated as specified by the manufacturer to achieve the level of efficiency for which credit is sought;

001.03B4 Additional information, such as an annual emissions inventory or information necessary to determine applicability or to determine that emissions from the source in conjunction with all other emissions will not prevent attainment or maintenance of the ambient air quality standards specified in Chapter 4, must be provided upon Department request; and

001.03B5 Compliance with the provisions of this section do not shield the owner or operator from the duty to comply with any other applicable requirement under Title 129, nor shield the owner or operator from enforcement action for the violation of any other applicable requirement under Title 129.

002 Source Category Exemptions.

002.01 All sources listed in 001.01 above that are not major, or affected sources, are exempt from the obligation to obtain a Class I permit unless required to do so under another applicable requirement under Title 129 or under the Act. Any such exempt source may opt to apply for a permit under these regulations and shall be issued a permit if the applicant otherwise satisfies all of the requirements of these regulations.

002.02 The following sources are exempt from applying for and having a Class I or II operating permit:

002.02A All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

002.02B All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, §61.145, Standard for Demolition and Renovation.

002.02C All sources and source categories subject only to regulations or requirements under Section 112(r) of the Act.

002.02D All sources and source categories that would be required to obtain a permit solely because of the presence of a generator whose sole function is to provide back-up power when electrical power from the local utility is interrupted. This exemption is unavailable to peaking units at electric utilities and any other generator which is used during time periods when power is available from the utility.

Exempted units must submit an annual report of hours of operation to the Department by the end of the month following the month in which 500 hours per year are exceeded, or upon request.

003 Emissions Units Covered.

003.01 Sources required to obtain an operating permit under this title shall identify all relevant emission units in the permit application unless the emission unit is specifically exempted pursuant to sections 006.03 and 006.04 of Chapter 7.

003.02 A source required to obtain an operating permit under this title may comply through one of the following methods:

003.02A A source may obtain a single permit for all relevant emission units located within a contiguous area under common control, whether or not falling under the same two-digit Standard Industry Code (SIC) code; or

003.02B A major source, as defined in Chapter 2, section 001 or section 008, comprised of different business entities (each defined as a “person” in Chapter 1~~, section~~ 107), whether or not they are under the same two-digit SIC code, may obtain a separate permit for each business entity (“person”). All business entities (“persons”) must obtain a Class I permit regardless of size. Sources may not avoid major source requirements, including, but not limited to, emissions fees (see Chapter 29) or National Emissions Standards for Hazardous Air Pollutants requirements (see Chapters 27 and 28), by being permitted in this manner; or

003.02C A source may request and obtain coverage for one or more emission units eligible for coverage under a general permit issued by the Department and obtain a separate permit for emission units not eligible for such coverage. Sources may not avoid major source requirements, including, but not limited to, emissions fees (see Chapter 29) or National Emissions Standards for Hazardous Air Pollutants requirements (see Chapters 27 and 28), by being permitted in this manner, unless the source-wide potential emissions are limited to less than the major source thresholds by these permits. This would- include paying emissions fees for emissions from the unit(s) covered by a general permit.~~.~~

003.03 A source required to obtain a mercury budget permit under rules incorporated in Chapter 18, section 005, must obtain, in addition to any other required permits, a mercury budget permit which covers every mercury budget unit at the source, contains all applicable mercury budget program requirements, and is a complete and separable portion of the operating permit.

004 Fugitive Emissions. Fugitive emissions from a source shall be included in the permit application and covered in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

005 Except as provided in Chapter 12, section 003, no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under an approved operating permit program. If an operating source submits a timely and complete application for permit issuance, or for renewal, the source's failure to have a permit is not a violation of the State Act or Act until the Department takes final action on the permit application, provided that the failure to have a permit is through no fault of the source. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to Chapter 7, section 003, the applicant fails to submit any additional information necessary to process the application within the deadline specified in writing by the Department.

006 The submittal of a complete Class I or II operating permit application shall not affect the requirement that any source have a pre-construction permit as may be required by these regulations.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(2); 81-1505(12)(16)

Legal Citation: Title 129, Ch. 5, Nebraska Department of Environmental Quality