NEBRASKA ADMINISTRATIVE CODE

Title 129 – Department of Environmental Quality

Chapter 15 – PERMIT REVISIONS; REOPENING FOR CAUSE

001 Administrative permit amendments.

001.01 An "administrative permit amendment" is a permit revision that:

001.01A Corrects typographical errors;

001.01B Identifies a change in the name, address, or telephone number of any person identified in the permit, provided that the owner or operator of the source is not changed;

001.01C Requires more frequent monitoring or reporting by the permittee;

001.01D Allows for a change in ownership or operational control of a source where the ~~permitting authority~~Department 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 ~~permitting authority~~Department; or

001.01E For PAL permits only, corrects both typographical and calculation errors.

001.02 A permittee may request the ~~agency~~ Department to make an administrative permit amendment in writing by specifying the section of the permit that is to be changed and the reason for the change.

001.03 The source may implement the changes addressed in the request immediately upon submittal of the request, subject to the Department's final action on the request under 001.04.

001.04 The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes into the permit without providing notice to the public, EPA, or affected States.

001.05 For Class I and PSD construction permits only, the Department shall submit a copy of the revised permit to the Administrator of EPA.

001.06 If the Department determines that the permittee's request for an administrative permit amendment should be handled as a minor revision or other permit revision, the Department shall notify the permittee of this determination and proceed with such revision pursuant to the applicable procedures.

001.07 The permit shield described in Chapter 8, section 014, shall not apply to administrative permit amendments.

002 Permit revisions to the acid rain portion of a Class I permit shall be governed by Chapter 26.

003 Minor Permit Revisions

003.01 The minor permit revision procedures of this section may be used only for those operating permit revisions that:

003.01A Do not violate any applicable requirement or applicable requirement under the Act;

003.01B Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

003.01C Do not require or change a case-by-case determination of an emission limitation or other standard, including a BACT or MACT determination or a plantwide applicability limitation (PAL), or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

003.01D Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement or applicable requirement under the Act and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. ~~to which the source would otherwise be subject.~~ Such terms and conditions include:

003.01D1 A federally enforceable emissions cap assumed to avoid classification as a modification under Chapters 18, 23, 27, or 28~~which would require a construction permit under Chapter 17~~; and

003.01D2 An alternative emissions limit approved pursuant to Chapters 27 or 28;

003.01E Do not relate to a change within a permitted facility that~~a~~

modifications which:

003.01E1 Is defined as a modification under Chapters 18, 23, 27, or 28Requires a construction permit under Chapter 17;

003.01E2 Is defined as a modification under the General Provisions for the standards of performance for new stationary sources incorporated by reference in Chapter 18, 001.01; and

003.01E3 Is defined as a major modification subject to preconstruction review under Chapter 19.

003.01E4003.01E2 Is defined as a modification under the National Emissions Standards for Hazardous Air Pollutants incorporated by reference in Chapter 23, 001.Requires a construction permit under Chapter 17 or Chapter 19.

003.01F Is not required by the Director to be processed as a significant revision; and

003.01G Involves the use of economic incentives, marketable permits, emissions trading, and other similar programs or procedures provided that such minor permit revision procedures are explicitly allowed for in an applicable State implementation plan or in an applicable requirement or applicable requirement under the Act.

003.02 The minor permit revision procedures of this section may be used for construction permit revisions provided the following conditions are met:

003.02A No emission limit in the original construction permit is exceeded.

003.02B No applicable requirement included in an operating permit to which the source is subject is violated.

003.02C No emissions limit, equipment or operational standard applicable to the source will be exceeded.

003.02D No emissions limit, equipment or operational standard assumed to avoid a classification that would render the source subject to an otherwise applicable requirement will be exceeded; and

003.02E The nature of the constructed facility will be consistent with that described in the original public notice materials.

003.03 A permittee may request a minor permit revision by submitting a request to the Department in writing that includes the following:

003.03A A description of the change, the emissions resulting from the change, and any new applicable requirements or applicable requirements under the Act that will apply if the change occurs;

003.03B The source's suggested draft permit language.

003.03C Certification by a responsible official, in accordance with Chapter 7, section 008, for operating permits or Chapter 17, section 004 for construction permits, that the proposed revision meets the criteria in section 003.01 or 003.02 above for use of minor revision procedures and a request that such procedures be used;

003.03D For ~~a~~ Class I operating permit revisions ~~and PSD construction minor permit revisions~~ only, ~~two extra~~ ~~three (3)~~one (1) original and one (1) cop~~ies~~y of the completed applications and information identified in 003.03A through 003.03C above ~~for the~~ ~~are required~~ for use by the Department ~~to use~~ to notify the Administrator of EPA and affected States.

003.04 For Class I operating permit ~~and PSD construction permit~~ revisions only, within five working days of receipt of a complete minor permit revision application, the Department shall notify the Administrator of EPA and affected States of the requested permit revision.

003.04A Affected States shall have 30 days to review and provide comments on the ~~requested~~ complete permit revision application. The Department shall provide notice to the Administrator of EPA and any affected State in writing of any refusal by the Department to accept all recommendations that the affected State has submitted.

003.04B EPA shall have 45 days to review and comment on the ~~requested p~~complete permit revision application. The Department shall not issue a final permit revision until after EPA's 45 day review period or until EPA has notified the Department that EPA will not object to issuance of the permit revision, whichever is first.

003.05 Within 90 days of the Department's receipt of an application under the minor permit revision procedures or 15 days after the end of EPA's 45 day review period, whichever is later, the Department shall:

003.05A Issue the permit revision as proposed;

003.05B Deny the permit revision application;

003.05C Determine that the requested revision does not meet the minor permit revision criteria in 003.01 or 003.02 above and should be reviewed under the significant revision procedures; or

003.05D For Class I operating permits only, ~~P~~revise the draft permit revision ~~and for Class I operating permit and or PSD construction permit revisions only~~ and~~,~~ transmit the new proposed permit revision to EPA for review as required in 003.04B above.~~.~~

003.06 A source submitting a complete minor operating permit revision request may immediately make the proposed change after it submits the application unless notified by the Department that the request does not qualify as a minor permit revision. After the source makes the change, and until the Department takes action under 003.05A through 003.05C above, the source must comply with both the applicable requirements and applicable requirements under the Act governing the change and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to revise may be enforced and such failure to comply shall be cause for denial of the minor permit revision request.

003.07 The permit shield described in Chapter 8, 014, shall not apply to a minor permit revision.

004 Group processing of minor operating permit revisions.

004.01 The Director, at his or her discretion, may modify the minor permit revision procedures in 003 above to process groups of a source's applications for certain revisions eligible for minor permit revision procedures.

004.02 Group processing of revisions may only be used for those permit revisions:

004.02A That meet the criteria for minor permit revision procedures under 003 above; and

004.02B That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source for purposes of Class I permitting, or five tons per year, whichever is less.

004.03 A permittee may request the use of group processing procedures in this section by submitting the application forms for a Class I or Class II operating permit, identified in 003.03, and shall include the following:

004.03A A description of the change, the emissions resulting from the change, and any new applicable requirements or applicable requirements under the Act that will apply if the change occurs;

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004.03B The source's suggested draft permit language;

004.03C Certification by a responsible official, in accordance with Chapter 7, section 008, that the proposed revision meets the criteria for use of group~~s~~ processing procedures and a request that such procedures be used;

004.03D A list of the source's other pending applications awaiting group processing, and a determination of whether the requested revision, aggregated with these other applications, equals or exceeds the threshold set under 004.02B above;

004.03E For Class I permit revisions only, ~~two extra~~ ~~three (3)~~one (1) original and (1) ~~copies~~copy of completed forms ~~for the~~ ~~are required~~ for use by the Department to ~~use to~~ notify the Administrator of EPA and affected States.

004.03E1 Within five (5) working days of receipt of a complete~~n~~ application for the group processing of a source's minor permit revision requests, the Department shall notify the Administrator of EPA and affected States of the request for group processing.~~–~~

004.03E2 Affected States shall have 30 days to review and comment on the request. The Department shall notify EPA and any affected State in writing of any refusal by the Department to accept all recommendations for the proposed permit revision that the affected State has submitted.

004.03E3 EPA shall have 45 days to review and comment on requests for group processing of minor permit revisions. The Department shall not issue a final permit revision until after EPA's 45 day review period or until EPA has notified the ~~permitting authority~~Department that EPA will not object to issuance of the permit revision, whichever is first.

004.04 Within 180 days of receipt of the application for group processing of minor permit revisions or 15 days after the end of the EPA's 45 day review period, whichever is later, the Director shall:

004.04A Issue the permit revision as proposed;

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004.04B Deny the permit revision application;

004.04C Determine that the requested permit revision does not meet the criteria for group processing in 004.02 and should be reviewed under the significant revision procedures; or

004.04D Revise the draft permit revision and, for Class I operating permit

revisions only, transmit to the Administrator of EPA the new proposed Class I permit revision as required by 004.03E3 above.

004.05 A source submitting a complete request for group processing of minor permit revisions may make the change proposed immediately after it files the application unless notified by the Department that the request does not qualify as a minor permit revision. After the source makes the change, and until the Department takes action under 004.04A through 004.04C above, the source must comply with both the applicable requirements and applicable requirements under the Act governing the change and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to revise may be enforced and such failure to comply shall be cause for denial of the minor permit revision request.

004.06 The permit shield described in Chapter 8, section 014, shall not apply to group- processed minor permit revisions.

005 Significant Permit Revisions.

005.01 A "significant permit revision" is any revision or change to a permit that cannot be accomplished as an administrative permit amendment or as a minor permit revision. Any relaxation in existing monitoring, reporting, or recordkeeping shall be considered significant.

005.02 A permittee may request a significant permit revision by submitting the application forms and information in accordance with Chapter 7 for ~~operation~~ operating permit revisions or Chapter 17, section 014, for construction permit revisions.

005.03 The Department shall review an application for a significant permit revision following the applicable procedures for permit issuance, including public participation, EPA and affected States review.

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005.04 For operating permits only, the permit shield described in Chapter 8, section 014, shall apply to a significant permit revision only after the Director approves the permit revision, provided that the permit contains a permit shield.

006 Reopening for cause; revocation and reissuance; and termination.

006.01 Any operating or construction permit issued by the Director shall be reopened, revoked and reissued or terminated, during its term for cause, including but not limited to:

006.01A Additional applicable requirements under the Act or the State Act become applicable to a source holding a Class I or Class II operating permit

with a remaining permit term of 3 or more years. Such reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.

006.01B Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program under Chapter 26.

006.01C The Director, or the Administrator of EPA determines that the permit must be revoked and reissued to assure compliance with the applicable requirements.

006.01D The Director, or the Administrator of EPA, determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

006.01E The Director, or the Administrator of EPA, determines that an applicable requirement or applicable requirement under the Act applies which was not identified by the permittee in its application.

006.02 A permit may be revoked during its term for cause, including but not limited to:

006.02A The existence at the ~~facility~~ source of unresolved noncompliance with applicable requirements or a term or condition of the permit, and refusal of the permittee to agree to an enforceable schedule of compliance to resolve the noncompliance;

006.02B The permittee has falsely certified or submitted false, incomplete, or misleading information to the Department or EPA;

006.02C The Director determines that the permitted ~~facility~~ source or activity endangers human health or the environment and that the danger cannot be removed by a revision of the permit; or

006.02D The permittee has failed to pay a penalty owed pursuant to a court order, stipulation and agreement, or an order issued by the Administrator of EPA.

006.03 The Department shall initiate a reopening or revocation under 006.01 or 006.02 above by providing a notice of intent to the permittee 30 days in advance of the date that the permit is to be reopened, unless the Director determines that an emergency exists which necessitates a shorter time period. ~~and publishing notice~~

~~of such intent following the procedures applicable to permit issuance including public participation.~~ Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance ~~found in Chapters 13, 14 and 19~~ and shall affect only those parts of the permit for which cause to reopen exists. ~~The Department shall provide for EPA and affected states review for Class I and PSD construction permits only. Proceedings to reopen a permit shall affect only those parts of the permit for which cause to reopen exists. The Department shall provide a minimum 30 day public comment period unless the Director determines that an emergency exists which necessitates a shorter time period.~~

006.04 If the Department receives a notification from the Administrator of EPA that a Class I -operating permit should be reopened for cause pursuant to this section, the Department shall, within 90 days of receipt of such notification, forward to EPA a proposed determination of revision, or revocation and reissuance, as appropriate.

006.05 If the Administrator of EPA does not object to the Department's determination under 006.04 above within 90 days, the Department shall proceed as indicated.

006.06 If the Administrator of EPA objects to the Department's determination to revise, revoke, or reissue the permit under 006.04 above within 90 days, the Department shall have an additional 90 days from receipt of EPA's objection during which the Department may take the action to terminate, revise, or revoke and reissue the permit in accordance with the EPA's objection.

006.07 If the Department fails to take action as stated in any EPA objection under 006.06, the permit may be subject to action by the Administrator of EPA.

007 Changes allowed for Class I and Class II operating permits only:

007.01 ~~For Class I and Class II operating permits only, a~~ A permittee may make the following changes within a permitted ~~facility~~facility without a permit revision, if: the change is not a modification ~~which would require a construction permit~~ under Chapters ~~17,~~ 18, ~~19,~~ 23, 27, ~~and~~or 28~~,~~; ~~and~~ the change does not require a construction permit under Chapters 17 or 19; and the change does not result in the emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions) being exceeded, provided that the facility provides the Director with written notification a minimum of seven (7) days in advance of the proposed changes, unless the Director determines a shorter timeframe is necessary for emergency reasons.~~, provided that the permittee provides the Director with written notification, as required below, a minimum of 30 days in advance of the proposed changes, unless the Director determines a shorter time is necessary for emergency reasons. The permittee shall attach a copy of the notice to its copy of the operating permit.~~ The permit shield described in Chapter 8, section 014, shall not apply to any change made

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under this section.

007.01A Changes in the configuration of the facility's equipment, defined as "Section 502(b) (10) changes" , as defined in Chapter 1, provided that the written notification required by 007.01 above includesthe written notification required above shall include:

007.01B007.01A1 A brief description of the change within the permitted facility;,

007.01C007.01A2 The date on which the change will occur;,

007.01D007.01A3 Any change in emissions;, and,

007.02007.01A4 Any permit term or condition that is no longer applicable as a result of the change.

007.02A007.01B Trading of increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision, provided that the written notification required in 007.01 above shall includes such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum,:

007.02B007.01B1 When the proposed change will occur,;

007.02C007.01B2 A description of each such change,;

007.02D007.01B3 Any change in emissions,;

007.02E007.01B4 The regulatory provisions and permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan,; and,

007.03007.01B5 The pollutants emitted subject to the emissions trade.

007.03A007.01C Trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that has been established in the permit pursuant to Chapter 8, section 019, provided that the written notification required above shall include:

007.03B007.01C1 When the change will occur,

007.03C007.01C2 A description of the changes in emissions that will result, and

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~~007.03C1~~007.01C3 How these increases and decreases in emissions will comply with the terms and conditions of the permit.

~~007.03D~~007.01D For Class I sources, the written notifications above shall also be submitted to the Administrator of EPA.

~~008~~007.01E Notwithstanding any other part of this rule, the director may, upon review of a notice submitted in accordance with 007.01, require a source to apply for an operating permit if the change does not meet the requirements of section 007.01.

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~~009~~007.02 A permittee may make changes within a permitted facility without a permit revision, if the change is not: a modification under Chapters 18, 23, 27, or 28; the change is not a change which would require a construction permit under Chapters 17 or 19, provided that:

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~~010~~007.02A Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;

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~~011~~007.02B The source shall provide contemporaneous written notice to the Director of each such change, except for changes that qualify as insignificant activities under the provisions of Chapter 7, sections 006.03 and 006.04. Such written notice shall describe each change; include the date the change will be made; describe any change in emissions; list the pollutants emitted; and list any applicable requirement that would apply as a result of the change, including terms and conditions established in the relevant operating permit for synthetic minor purposes;

~~012~~007.02B1 For Class I sources, the written notice required above shall also be provided contemporaneously to the Administrator of EPA.

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~~014~~007.02C Any change under section 007.02 shall not qualify for a permit shield under Chapter 8, section 014; and,

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~~015~~007.02D The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

007.02E Notwithstanding any other part of this rule, the director may, upon review of a notice submitted in accordance with 007.02B, require a source to apply for an operating permit if the change does not meet the requirements of section 007.02.

Title 129

Chapter 15

~~001~~ 008 No permit revision shall be required, under any State-approved programs providing for economic incentives, marketable permits, emissions trading or other similar programs or processes for change that are provided for in the permit.

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

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