NEBRASKA ADMINISTRATIVE CODE

TITLE 119 - Water Quality Division/Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System

~~TITLE 119 – NEBRASKA~~

CHAPTER 1 – GENERAL; DEFINITIONS

001. Scope and Purpose. These regulations are promulgated in implementation of the National Pollutant Discharge Elimination System (NPDES) created by the Clean Water Act, 33~~3~~ U.S.C. 1251 et seq.~~ as the act existed on September 1, 2001.~~

002. Availability of Information.

002.01 Any information provided to the Department under this Title will be made available to the public to the extent and in the manner authorized by law and Title 115 – Rules of Practice and Procedure.

002.02 Any person who submits information to the Department in accordance with this Title may assert a claim of business confidentiality covering all or part of that information in accordance with Title 115 – Rules of Practice and Procedure and applicable law.

003. Adoption and incorporation by reference.

003.01 The references to 40 CFR contained in this Title are to the Code of Federal Regulations published by the U.S. Government Printing Office, revised as of July 1, ~~2003~~2015, unless otherwise noted.

~~003.02 All material adopted in whole or in part by reference is available and on file with the Department and with the Secretary of State~~.

003.0~~3~~2 The following regulations are adopted and incorporated by reference and shall apply except as more expressly provided in this Title.

003.0~~3~~2A ~~Adopt and incorporate the following by reference~~ 40 CFR part 136 Guidelines establishing test procedures for the analysis of pollutants.

003.0~~3~~2B ~~Adopt and incorporate the following by reference~~ 40 CFR part 122 EPA administered permit program: The National Pollutant Discharge Elimination System. ~~Amended by the requirements of Volume 69 Federal Register 41682 – 41693 (July 9, 2004) are adopted and incorporated by reference (Update of 40 CFR part 122.21(r)).~~

~~003.03C Adopt and incorporate the following by reference 40 CFR part 257 Criteria for classification of solid waste disposal facilities and practices.~~

003.0~~3D~~2C ~~Adopt and incorporate the following by reference~~ 40 CFR part 125 Criteria and standards for the National Pollutant Discharge Elimination System. ~~Amended by the requirements of Volume 69 Federal Register 41682 – 41693 (July 9, 2004) are adopted and incorporated by reference (Update of 40 CFR part 125, subpart J).~~

003.0~~3E~~2D ~~Adopt and incorporate the following by reference~~ 40 CFR part 129 Toxic Pollutant Effluent Standards.

003.0~~3F~~2E ~~Adopt and incorporate the following by reference~~ 40 CFR part 133 Secondary Treatment Regulations.

003.0~~3G~~2F ~~Adopt and incorporate the following by reference~~ 40 CFR part 503 Standards for the use or disposal of sewage sludge.

004. ~~Servability~~ Severability and Financial Assurance.

004.01 ~~Servability~~Severability. If any chapter, section or subsection of these regulations shall be held invalid, it shall conclusively be presumed that the Environmental Quality Council would have adopted the remainder of these regulations not directly related to such chapter, section or subsection.

004.02 Permits issued under these regulations are exempt from financial responsibility requirement contemplated in Neb. Rev. Stat. §81-1505(21)(a)

005. Definitions. When used in this Title, the following terms have the meaning given in this chapter.

006. "7-day average" represents the arithmetic mean of pollutant parameter values for samples collected in a period of seven consecutive days.

007. "30-day average" represents the arithmetic mean of pollutant parameter values of samples collected in a period of 30 consecutive days.

008. "Administrator" means the Administrator of the United States Environmental Protection Agency.

009. "Animal feeding operation" means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste. Animal feeding operation does not include aquaculture.

010. "Applicable standards and limitations" means all State and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or related activity is subject under state and federal law, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, pretreatment standards, groundwater standards, land application standards, and standards for sewage sludge use or disposal.

011. "Applicable water quality standards" means the Nebraska Water Quality Standards in effect under Nebraska law for both surface water and groundwater of the state. Such standards are codified in the Nebraska Administrative Code at Title 117~~,~~ - ~~Nebraska Water Quality Standards for Surface Waters~~ Nebraska Surface Water Quality Standards and at Title ~~-~~118~~,~~ - Ground Water Quality Standards and Use Classification.

012. "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

012.01 "Designated project area" means the portions of waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

013. "Aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows, or holds:

013.01 Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but, does not include facilities which produce less than 20,000 pounds of aquatic animals per year, including but not limited to, the salmonidae family of fish, (trout and salmon); and facilities which feed less than 5000 pounds of fish during the calendar month of maximum feeding; or

013.02 Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include closed ponds which discharge only during periods of excess runoff; or facilities which produce less than 100,000 pounds of aquatic animals per year, including but not limited to, the Ameiuride, Centrarchidae, and Cyprinidae families of fish, (catfish, sunfish, and minnows); or

013.03 Any other warm or cold water aquatic animal production facility which does not fall within 013.01 or 013.02 above, but which the Director designates as such facility where it is determined to be a significant contributor of pollution to waters of the state.

014. "Average monthly discharge limitation" means the highest allowable average of

discharges over a calendar month, calculated as the sum of all discharges measured during a calendar month divided by the number of discharges measured during that month.

015. "Average weekly discharge limitation" means the highest allowable average of discharges over a calendar week, calculated as the sum of all discharges measured during a calendar week divided by the number of discharges measured during that week.

016. "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State BMPs also include treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal or drainage from raw material storage.

017. "Biological monitoring" means the determination of the effect on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (1) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical and biological characteristics of the effluent, and (2) at appropriate frequencies and locations.

018. "Bio-solids" means sewage sludge that is used or disposed through land application, surface disposal, incineration, or disposal in a municipal solid waste landfill.

019. "Blowdown" means the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice.

020. "BOD" means the five day measure of the pollutant parameter biochemical oxygen demand (BOD).

021. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

022. "CBOD" means ~~T~~the five day measure of the pollutant parameter carbonaceous bio-chemical oxygen demand (CBOD 5).

023. "Class I sludge management facility" means any publicly owned treatment works (POTW) identified as required to have an approved pretreatment program and other treatment works treating domestic sewage classified as Class 1 by the Regional Administrat~~ion~~or.

024. "Co-permittee" means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

025. "Combined Sewer System (CSS)" ~~is~~means a wastewater collection system owned by a State or municipality (as defined by section 502(4) of the CWA) which conveys sanitary

wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant.

026. "Combined Sewer Overflow" means a discharge from a CSS at a point prior to the POTW Treatment Plant.

027. "Concentrated animal feeding operation or CAFO" means ~~L~~large, ~~M~~medium, and ~~S~~small concentrated animal feeding operations ~~are~~as defined in NDEQ Title 130 - Rules and Regulations Pertaining to Livestock Waste Control.

028. "Construction permit" means ~~that~~the permit required by Title 123 - Rules and Regulations for Design, Operation and Maintenance of Wastewater Treatment Works.

029. "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

030. "Controlled discharge" means a "discharge" which occurs on a periodic basis from a facultative lagoon facility.

031. "Council" means the Nebraska Environmental Quality Council.

032. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq.

033. "CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated there-under. In the case of an approved State program, it includes State program requirements.

034. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

035. "Department" means the Nebraska Department of Environmental Quality.

036. "Direct discharge" means the discharge of a pollutant or the discharge of pollutants into waters of the State.

037. "Director" means the director of the Nebraska Department of Environmental Quality.

038. "Discharge", when used without qualification, means accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the State or in a place which will likely reach waters of the State.

039. "Discharge monitoring report (DMR)" means the form approved by the Director for the reporting of self-monitoring results by permittees.

040. "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant or combination of pollutants to waters of the state from any point source.This includes discharge into waters of the state from surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a state or municipality.

041. "Effluent" means wastewater, excluding sludge, discharging from a wastewater treatment works and/or cooling equipment, ~~and/or~~ a boiler, ~~and/~~or any manmade device that discharges or has the potential to discharge.

042. "Effluent limitation" means any restriction, including a schedule of compliance, imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

043. "Effluent limitations guidelines" ~~which have been adopted by the Council are found in Chapters 21 and 27 of this regulation~~means any effluent limitations guidelines issued by the Administrator pursuant to section 304(b) of the Clean Water Act.

044. "EPA" means the United States Environmental Protection Agency.

045. "Existing source" means any source which is not a new source or a new discharger.

046. "Facility or activity" means any point source as defined in this Title or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under this Title.

047. "Facilities or equipment" means buildings, structures, process or production equipment or machinery which forms a permanent part of the new source and which will be used in its operation, provided such facilities or equipment are of such value as to represent a substantial commitment to construct.

048. "Federal Act" means the Clean Water Act, (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4, 33 U.S.C. 1251 et seq.

049. "General permit" means a permit issued under this Title authorizing a category of discharges within a specified geographical area.

050. "Hazardous substance" means any substance designated under Title 126 - Rules and Regulations Pertaining to Management of Waste.

051. "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.

052. "Incorporated place" means a city, town, township, or village that is incorporated under the laws of the State.

053. "Indirect discharger" means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

054. "Industrial user" means a source of indirect discharge ~~which does not constitute a discharge of pollutants under Section 402 of the Clean Water Act~~.

055. “Influent" means water or a water solution containing dissolved or suspended compounds or elements entering any device that discharges or has the potential to discharge as a point source.

056. "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

056.01 Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

056.02 Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable provisions and regulations or permits.

057. “Interstate agency" means any agency of two or more states established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

058. "Land Application" is defined as the controlled application of effluent onto the land surface to achieve a designed degree of treatment through natural physical, chemical and biological processes within the plant-soil-water matrix.

059. "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

059.01 Located in an incorporated place with a population of 250,000 or more as determined by the ~~1990~~ latest Decennial Census by the Bureau of the Census; or

059.02 Owned or operated by a municipality other than those described in 059.01 this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 059.01 of this section. In making this determination the Director may consider the following factors:

059.02A Physical interconnections between the municipal separate storm sewers;

059.02B The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in this section;

059.02C The quantity and nature of pollutants discharged to waters of the State;

058.02D The nature of the receiving waters; and

059.02E Other relevant factors; or

059.03 The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis.

060. "Major facility" means any NPDES facility or activity classified as such by the Regional Administrator in conjunction with the State Director.

061. "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

062. "Major Municipal Wastewater Treatment Facility" means a municipal wastewater treatment facility that has a design flow of 1 MGD (million gallons per day) or greater or a service population of 10,000 or greater.

~~063. "Major Outfall" means a major municipal separate storm sewer outfall.~~

0643. "Maximum daily discharge limitation" means the highest allowable daily discharge.

0654. "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

0654.01 Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 latest Decennial Census by the Bureau of the Census; or

0654.02 Owned or operated by a municipality other than those described in this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 0654.01 of this chapter. In making this determination the Director may consider the following factors:

0654.02A Physical interconnections between the municipal separate storm sewers;

0654.02B The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph 065.01 of this chapter;

0654.02C The quantity and nature of pollutants discharged to waters of the State;

0654.02D The nature of the receiving waters; or

0654.02E Other relevant factors; or

0654.02F The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis.

0665. "mg/l" means milligrams per liter.

0676. "Minor facility" means any NPDES facility not classified as a "Major facility".

0687. "Minor Municipal Wastewater Treatment Facility" means a municipal wastewater treatment facility that has a design flow of less than 1 MGD (million gallons per day) or a service population of less than 10,000.069. "MS4" means a municipal separate storm sewer system.

070068. "Municipality" means a city, town, village, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

~~071~~069. "Municipal separate storm sewer system (MS4)" means all separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems pursuant to this chapter or designated under Chapter 10.

07~~2~~0. "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man- made channels, or storm drains):

07~~2~~0.01 Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity;

07~~2~~0.02 Designed or used for collecting or conveying storm water;

07~~2~~0.03 Which is not a combined sewer; and

07~~2~~0.04 Which is not part of a Publicly Owned Treatment Works (POTW) as defined in this Chapter.

07~~3~~1. "National Pollutant Discharge Elimination System or NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to Sections 307, 402, 318, and 405 of the Clean Water Act, and includes any State program which has been approved by the Administrator, in whole or in part, pursuant to Section 402 of the Clean Water Act.

07~~4~~2. "National Pretreatment Standard", "Pretreatment Standard", "Standard", "National Categorical Pretreatment Standard", "Categorical Pretreatment Standard", or "Categorical Standard" mean~~s~~ any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and of the Clean Water Act, which applies to Industrial Users.

07~~5~~3. "New Discharger" means any building, structure, facility, or installation: (1) which on October 18, 1972, has never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of 'new source.'

07~~6~~4. "New Source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after promulgation of standards of performance under Section 306 of the Clean Water Act which are applicable to such source or after proposal of standards of performance but only if the standards are promulgated within 120 days of their proposal in the Federal Register by EPA, and are subsequently adopted by the Council; or for an Industrial User, the definition found at 40 CFR part 403.3(m).

07~~7~~5. "Noncompliance report form" means a form prepared by the Department for the use of the permittee to indicate non-compliance with applicable effluent limitations and standards.

07~~8~~6. "Noncontact cooling water" means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product. ~~"Noncontact cooling water pollutants" means pollutants present in noncontact cooling waters.~~

07~~9~~7. "Nonpoint source" means a discharge of pollutants from other than a point source.

0~~80~~78. "NPDES permit" means any permit issued by the Director, after June 12, 1974, to regulate the discharge of pollutants pursuant to Sections 402, 307, ~~402,~~ 318, and 405 of the Clean Water Act.

0~~81~~79. "Outfall" means a point source (as defined in this chapter) at the point where a facility ~~and/~~or municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting to municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

0~~82~~80. "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

08~~3~~1. "Owner or operator" means the owner or operator of any facility or activity subject to regulation under this Title.

08~~4~~2. "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

08~~5~~3. "Passive Discharge" means a discharge from a POTW that occurs in the absence of an affirmative action and is not authorized by the NPDES permit (e.g. discharges due to a leaking valve, discharges from an overflow structure) and / or is a discharge from an overflow structure not designed as part of the POTW (e.g. discharges resulting from lagoon berm/dike breaches).

08~~6~~4. "Percent removal" means a percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the 30-day average values of the raw wastewater influent pollutant concentrations to the facility and the 30-day average values of the effluent pollutant concentrations for a given time period.

08~~7~~5. "Person" means any ~~federal agency,~~ individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality, or governmental subdivision, public agency, or any officer or governing or managing body of any public or private

corporation, municipality, governmental subdivision of public agency, or any other legal entity except the Department.

08~~8~~6. "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

08~~9~~7. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2011 et seq), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

~~90~~088. "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

~~091. "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.~~

0~~92~~89. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited this section. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with this section.

09~~3~~0. "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

09~~4~~1. "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. In addition means any water directly or indirectly used in the operations of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing, pens, barns, manure pits, or other animal feeding operations facilities;' direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes spent foot bath water and any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

0952. "Process wastewater pollutants" means pollutants present in process wastewater.

0963. "Publicly oOwned tTreatment wWorks or POTW(POTW)" means a treatment works as defined in Section 212 of the Clean Water Act, which is owned by a state or municipality. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in this chapter, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. This definition excludes septic tanks or similar devices.

0954. "Publicly Owned Treatment Works (POTW) Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

0975. "Regional Administrator" means the EPA, Region VII Regional Administrator or the authorized representative of the Regional Administrator.

0986. "Restricted Public Access" refers to areas where public access can be controlled such as crop and pasture land.

0997. "Runoff Coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

100098. "Sanitary Sewer Overflow or SSO(SSO)" means untreated or partially treated sewage overflows from a sanitary sewer collection system.

101099. "Schedule of compliance" means a schedule of remedial measures contained within the permit including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events)actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard, or other permit requirement.

1020. "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

1031. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass, excluding economic loss caused by delays in production.

1042. "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum,

septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

10~~5~~3. "Significant Industrial User" means:

10~~5~~3.01 All industrial users subject to Categorical Pretreatment Standards; and

10~~5~~3.02 Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the director on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

10~~5~~3.03 Upon a finding that an industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the director may at any time determine that such industrial user is not a significant industrial user.

10~~6~~4. "Significant materials" include~~s~~, but are not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of the Clean Water Act; any chemical the facility is required to report pursuant to section 313 of title III of Clean Water Act; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

10~~7~~5. "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the state. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is natural runoff during precipitation events.

10~~8~~6. "Site" means the land or water area where any facility or activity physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

10~~9~~7. "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405 (d) of the Clean Water Act and is required to obtain a permit under this Title.

~~109. "Small MS4" means a small municipal separate storm sewer system.~~

1~~11~~08. "Small municipal separate storm sewer system (Small MS4)" means all separate storm sewers that are:

1~~11~~08.01 Owned or operated by the United states, State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the State.

1~~11~~08.02 Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to this chapter or designated under Chapter 10.

1~~11~~08.03 This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

1~~12~~09. "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

~~113. "SSO" means sanitary sewer overflow.~~

11~~4~~0. "Standard of performance" shall mean any restriction established by the director on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are or may be discharged from new sources into waters of the state.

11~~5~~1. "State Act" means the Nebraska Environmental Protection Act 81-1501 to 81-1532, as amended.

11~~6~~2. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

11~~7~~3. "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial ~~site~~facility. The term does not include discharges from facilities or activities excluded from the NPDES program under Chapter 10. The term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters ~~in~~(as defined in 40 CFR Part 401); sites used for the storage and maintenance of material

handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs 113.01 through 113.11 of this section) include those facilities designated under the provisions of Chapter 2, 002. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph 113:

113.01 Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted in paragraph 113.11 of this section);

113.02 Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities);

113.03 Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

113.04 Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

113.05 Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

113.06 Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

113.07 Steam electric power generating facilities, including coal handling sites;

113.08 Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;

113.09 Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

113.10 Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

113.11 Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.~~Industrial facilities includes, industrial facilities that are federally, State, or municipally owned or operated.~~

118~~3~~4. "Storm water discharge associated with small construction activity" means the discharge of storm water from:

118~~3~~4.01 Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will

ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

11~~8~~4.02 Any other construction activity designated either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

11~~8~~4.03 Storm Water Discharges Associated with Small Construction Activity Under the NPDES Storm Water Program includes:

11~~8~~4.03A Automatic designation that required nationwide coverage for construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres. Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres.

11~~8~~4.03B Potential designation that is an optional evaluation and designation by the State for construction activities resulting in a land disturbance of less than one acre based on the potential to violate a water quality standard or for significant contribution of pollutants.

11~~8~~4.03C Potential waiver from any automatically designated requirements as determined by the State for construction activity where the operator certifies:

11~~8~~4.03C1 A rainfall Erosivity factor of less than five; or

11~~8~~4.03C2 That the activity will occur within an area where controls are not needed based on a Total Maximum Daily Load (TMDL) or, for non- impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern.

11~~9~~5. "Total dissolved solids ~~or TDS~~(TDS)" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

1~~20~~16. "Total Suspended Solids (TSS)" ~~the pollutant parameter total suspended solids~~means total suspended non-filterable solids.

1~~21~~17. "Toxic pollutant" means any pollutant listed as toxic under section 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing section 405(d) of the CWA.

118. "Treatment Works Treating Domestic Sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not

include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

1~~22~~19. "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to Title 132 – Integrated Solid Waste Management Regulation.

12~~3~~0. "Unrestricted Public Access" refers to areas where public access is not restricted such as parks and playgrounds.

12~~4~~1. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, or careless or improper operation and maintenance.

12~~5~~2. "Waters of the state" means all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulation of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

12~~6~~3. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

12~~7~~4. "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Enabling Legislation: Neb. Rev. Stat. §§ 81-1502; 81-1504(4); 81-1505(3),(4),(5),(6),(7),(8),(11), and (20).

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