

NOTICE OF PUBLIC HEARINGS
AND PUBLIC MEETING
STATE OF NEBRASKA
DEPARTMENT OF ENVIRONMENT AND ENERGY (NDEE)
ENVIRONMENTAL QUALITY COUNCIL

Notice is hereby given pursuant to Neb. Rev. Stats. §81-1505(17), §84-907, and §84-1411, the Nebraska Environmental Quality Council (EQC) will hold a meeting and public hearings on November 7 and 8, 2019 beginning at 1:00 P.M. Central Time (CT) at the Cornhusker Hotel, 333 South 13th St., Lincoln, Nebraska. Preceding the hearings will be business items on the agenda. The hearings are scheduled to begin at 1:00 P.M. CT on November 7, or as soon thereafter as can reasonably be heard, and continue on November 8, 2019 if necessary. The purpose of the hearings is to take testimony and evidence about the proposed Fiscal Year 2020 Funding Percentage Allocations for the Litter Reduction and Recycling Grant Program and proposed amendment of NDEE regulations, as outlined in this notice.

The meeting agenda and a draft copy of the proposals scheduled for hearing are available at the NDEE's Lincoln office, 1200 N St., Suite 400, Lincoln, NE and on the NDEE website at <http://dee.ne.gov>. The meeting agenda and a draft copy of the proposed regulations scheduled for hearing are also available at the Office of the Secretary of State, Regulations Division, 1201 N St., Suite 120, Lincoln, NE, 68508. The description of the fiscal impact of the proposed regulations on state agencies, political subdivisions, or persons regulated is also available at these locations.

All interested persons may attend and testify orally or by written submission at the public hearing. Any person may provide advance notice of intent to testify by contacting Carla Felix, Hearing Officer, NDEE, 1200 N St., Suite 400, P.O. Box 98922, Lincoln, NE 68509-8922. Unscheduled testimony will be heard following scheduled testimony. Interested persons may also submit written comments to Carla Felix prior to the hearing, which will be entered into the hearing record if received at the Lincoln office by 5:00 P.M. CT, November 6, 2019.

Please notify the NDEE at least one week in advance of the EQC meeting if auxiliary aids or reasonable accommodations or alternate formats of materials are needed. Contact phone number is 402-471-2186. TDD users call 800-833-7352 and ask the relay operator to call us at 402-471-2186.

A public hearing will be held on the following:

1. Litter Reduction and Recycling Grant Program, 2020 Funding Percentage Allocations. The NDEE administers the Litter Reduction and Recycling Grant Fund in percentage amounts to grantees for projects within three categories: public education, cleanup, and recycling. Neb. Rev. Stat. §81-1561 requires the EQC to annually determine the percentages for each category. A statewide litter fee is the source of revenue for the fund. At this hearing, the EQC will take action on the NDEE recommendations for percentage

amounts. For the Year 2020, the NDEE recommends the following percentage allocations: recycling 20.1%, public education 75.0%, and cleanup 4.9% with additional approval to adjust these percentages by up to 20%. All persons affected by the proposed allocations are hereby notified that modifications may be offered to the proposed percentage allocations or the EQC may propose new allocations. The EQC will vote to adopt, amend or not approve the NDEE proposal after hearing and considering all the testimony and written submissions.

2. Amendments to Title 195 – Chemigation Regulations. Chapter 1 is deleted and reference to definitions is moved to new Chapter 1, which is Chapter 2, renumbered. Changes to Chapter 2 include renumbering it to Chapter 1, addition of definitions and references, deletion of language that restates statute, updates application requirements and chemical use, and renames chapter title to include applications, certification, and duties of permit holder. Changes to Chapter 3 remove language on permit issuance, denial, and revocation that repeats statute, and deletes the chapter. Changes to Chapter 4 remove permit renewal and expiration provisions which repeat statute, relocates non-transferability of permit provision to new Chapter 1, and deletes Chapter 4. Changes to Chapter 5 remove special permit requirements which are stated in statute, moves information regarding special permit to be submitted to new Chapter 2, and deletes Chapter 5. Changes to Chapter 6 remove requirements related to emergency permits which are stated in statute, and deletes Chapter 6. Changes to Chapter 7 remove fee language that duplicates statute, moves fee payment schedule to new Chapter 2, and deletes Chapter 7. Changes to Chapter 8 update language relating to natural resource district duties, and renumbers new Chapter 2. Changes to Chapter 9 update equipment standards and installation requirements, renumbers new Chapter 3, and adds maintenance to chapter title. Changes to Chapter 10 remove certain equipment replacement requirements that duplicate statute, moves remaining standards for equipment to new Chapter 2, and deletes Chapter 10. Changes to Chapter 11 remove inspection requirements that restate statute, move provision relating to permit suspension to new Chapter 2, and deletes Chapter 11. Changes to Chapter 12 move posting requirements to new Chapter 1, and delete Chapter 12. Change to Chapter 13 remove requirements for applicator training session and certification which repeat statute, move provision affording a hearing if certification revoked to new Chapter 1, and delete Chapter 13. Changes to Chapter 14 remove certain requirements for accident reporting that duplicate statute, move language on process for reporting accidents to new Chapter 1, and delete Chapter 14. Changes to Chapter 15 remove certain requirements for investigation and remediation of accidents that duplicate statute, move remaining requirements to new Chapter 1, and delete Chapter 15. Changes to Appendix I make minor changes and updates. The EQC will vote to adopt, amend or not approve the NDEE proposal after hearing and considering all the testimony and written submissions.

3. Amendments to Title 135 – Rules and Regulations for Mineral Exploration Holes. Chapters 9 through 12 are proposed for repeal because the language is duplicative of statute, is not needed to implement the statutorily-prescribed program, or restates general legal principles not needed in regulation. The EQC will vote to adopt, amend, or not

approve the NDEE proposal after hearing and considering all the testimony and written submissions.

4. Amendments to Title 200 – Petroleum Release Remedial Action Reimbursement Fund. Chapter 1, definitions, is proposed for deletion. Changes to Chapter 2 include a reference to definitions; make changes relating to the application for reimbursement; include provisions applicable to department review, bidding, reimbursement, reduction in reimbursement, auditing, and notice of department disapproval of an application currently contained in Chapter 3; include provisions relating to limitations on reimbursements currently contained in Chapter 4; include provisions on fixtures and tangible personal property currently in Chapter 5; and renumber Chapter 2 as new Chapter 1. Chapter 3 is proposed for deletion because department review provisions and requirements related to bidding, reimbursement, reduction in reimbursement, auditing, and notice of department disapproval of an application have been moved to and consolidated in new Chapter 1, and the remaining provisions are duplicative of statute or addressed in agency guidance. Chapter 4 is proposed for deletion because provisions relating to limitations on reimbursements are duplicative of statute. Chapter 5 on fixtures and tangible personal property is proposed for deletion because provisions have been moved to new Chapter 1 or have been addressed in agency guidance. Chapter 6 on department use of funds is proposed for deletion as duplicative of statute. Chapter 7 is proposed for deletion because it restates general statutory provisions relating to powers of the department, intervention, release notification, severability, appeals, and effective date of regulations. The EQC will vote to adopt, amend, or not approve the NDEE proposal after hearing and considering all the testimony and written submissions.

5. Amendments to Title 197 – Rules and Regulations for the Certification of Wastewater Treatment Operators. Changes to Chapter 1 add, delete, and modify definitions; and include provisions related to exemptions of wastewater treatment facilities exempted from regulation currently in Chapter 2. Chapter 2 is proposed for deletion because provisions have been moved to Chapter 1 or are no longer applicable. Changes to Chapter 3 include renumbering as Chapter 2; classifications of facilities, staffing and reporting requirements have been modified and updated; and tables added for ease of use. Changes to Chapter 4 include renumbering as Chapter 3; elimination of obsolete temporary and restricted certification provisions; and changes to improve readability. Changes to Chapter 5 include renumbering as Chapter 4; adding and modifying expiration and renewal and certificate requirements currently in Chapter 7; and reciprocity requirements currently in Chapter 8. Changes to Chapter 6 include renumbering to Chapter 5; and modifying applicant education, experience; and continuing education requirements currently in Chapter 7. Chapter 7 is proposed for deletion because provisions have been moved to other chapters or are no longer needed. Chapter 8 is proposed for deletion and reciprocity provisions have been moved to new Chapter 5. Changes to Chapter 9 include renumbering to Chapter 6; and modifying provisions applicable to contract operations and operators. Minor changes have been made to Appendices A and B for readability. No change made to Appendix C. The EQC will vote to adopt, amend, or not approve the NDEE proposal after hearing and considering all the testimony and written submissions.

6. Amendments to Title 198 – Rules and Regulations Pertaining to Agricultural Chemical Containment. Changes to Chapter 1 update add, delete, and update definitions. Changes to Chapter 2 update language for readability and delete obsolete provisions relating to when a secondary containment facility is required. Changes to Chapter 3 update language for readability and delete obsolete provisions relating to when a loadout facility is required. Changes to Chapter 4 update language for readability relating to location of secondary containment and loadout facility. Changes to Chapter 5 update language for readability relating to design requirements for secondary containment facility. Changes to Chapter 6 update language for readability relating to design requirements for loadout facilities and include an applicable date. Changes to Chapter 7 update language for readability for construction plans for secondary containment and loadout facilities. Changes to Chapter 8 update language for readability for management requirements for secondary containment and loadout facilities. Changes to Chapter 9 update language for readability and delete an obsolete provision. Appendix A is proposed to be deleted as not necessary to be included in order to implement regulatory program. The EQC will vote to adopt, amend, or not approve the NDEE proposal after hearing and considering all the testimony and written submissions.

7. Amendments to Title 129 – Nebraska Air Quality Regulations. Chapters 25, 39, and 40 are proposed for repeal. Chapter 25 relating to nitrogen oxides previously applied to only one source which is now subject to regulatory requirements in Chapter 18. Chapter 39 addresses visible emissions testing of motor vehicles which is no longer justified. Chapter 40 relating to a lead nonattainment designation in Douglas County which is obsolete now that Nebraska has been federally designated as in attainment for lead. The EQC will vote to adopt, amend, or not approve the NDEE proposal after hearing and considering all the testimony and written submissions.



FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Environment and Energy
Prepared by: Shelley Schneider, P.E. *Shelley Schneider*
Administrator, Water Permits Division
Date Prepared: September 27, 2019
Phone: (402) 471-2186
Title: 198
Chapter: 1 through 9, Appendix A
Name: *Rules and Regulations Pertaining to Agricultural Chemical Containment*

State Status: Hearing Draft

Type of Fiscal Impact:

	State Agency	Political subdivision	Regulated Public
No Fiscal Impact	X	X	X
Increase Costs			
Decrease Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

State Agency: There is no fiscal impact related to the proposed amendments.

Political Subdivision: There is no fiscal impact related to the proposed amendments.

Regulated Public: There is no fiscal impact related to the proposed amendments.

NEBRASKA ADMINISTRATIVE CODE
Title 198 – RULES AND REGULATIONS PERTAINING TO AGRICULTURAL CHEMICAL
CONTAINMENT
~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Chapter 1 - DEFINITIONS ~~OF TERMS~~

In addition to the definitions in Neb. Rev. Stat. § 81-1502, the following definitions apply:

001 "Appurtenances" means all valves, pumps, fittings, pipes, hoses, and metering devices which are connected to a container, or which are used to transfer a material into or out of such container.

002 "Bulk Dry Pesticide" means any pesticide, once formulated, that is in dry or solid form in an individual container of undivided quantities equal to or greater than 4,000 pounds, and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowables, water-soluble powders, granules, and dry baits.

003 "Bulk Fertilizer" means any liquid fertilizer held in an individual container of undivided capacity greater than 55 U.S. gallons liquid measure.

004 "Bulk Liquid Pesticide" means any liquid pesticide held in an individual container of undivided capacity greater than 55 U.S. gallons liquid measure.

005 "Container" means any device, excluding a lagoon or pit, in which a material is stored, mixed, treated, disposed of, or otherwise handled.

006 "Custom Applicator" means any person who uses or supervises the use of pesticides or fertilizers on property other than their own or which they rent or lease and bills, charges or assesses the cost of such work.

~~007 "Department" means the Department of Environmental Quality.~~

~~007~~ 007 "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication. Anhydrous ammonia, and unmanipulated animal and vegetable manures shall not be included in this definition for the purposes of these regulations.

~~009 "Flood Plain" means the area adjoining a watercourse or drainage which has been or may be covered by flood waters from a 100-year flood.~~

~~010 "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Title 128 or whose act first causes a hazardous waste to become subject to regulation.~~

~~011 "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:~~

~~011.01 Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness;~~

~~011.02 Pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; and as more fully defined in Title 128.~~

~~012~~ 0089 "Loadout Facility" means a location, other than the field of application, used for the loading, unloading, handling or mixing of pesticides or fertilizers or a location used for the rinsing or washing of delivery or application equipment which is designed, constructed, and maintained to hold or confine a release of a liquid pesticide or liquid fertilizer.

~~013-009~~ "Operator" means the person responsible for the overall operation of a storage facility or loadout facility.

~~014-010~~ "Owner" means the person who owns all or part of a storage facility or loadout facility.

~~015~~ "Person" means any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality or other governmental subdivision, public agency, officer or governing or managing body of any municipality, governmental subdivision, or public agency, or any other legal entity except the Department.

~~016-011~~ "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant is defined in Neb. Rev. Stat. § 2-2624(32).

~~017-012~~ "Release" means, but is not limited to, any discharging, spilling, leaking, pumping, emitting, emptying, or dumping of pesticide, fertilizer, or materials containing pesticide or fertilizer, upon land, beneath the surface of the land, or into waters of the State, either by accident or otherwise, except that this definition shall not apply to normal field applications or to the normal rinsing and washing activities on the loadout facility is defined in Title 126, Nebraska Administrative Code.

~~018-013~~ "Secondary Containment" means a device or structure designed, constructed, and maintained to hold or confine a release of a liquid pesticide or liquid fertilizer from a storage facility.

~~019-014~~ "Storage Facility" means a location where bulk pesticide, bulk liquid pesticide, or bulk fertilizer is stored. A storage facility shall include the entire contiguous tract of land upon which bulk pesticide or bulk fertilizer is loaded, unloaded, mixed, blended, or stored.

~~020-015~~ "Sump" means any pit or reservoir open to visual inspection, designed to temporarily collect and contain an accumulation of rinsed or washed off material or spilled liquids, structurally sound, and compatible with the materials contained.

~~021~~ "Title 117" means the Department's Title 117 - Nebraska Surface Water Quality Standards.

~~022~~ "Title 118" means the Department's Title 118 - Ground Water Quality Standards and Use Classification.

~~023~~ "Title 126" means the Department's Title 126 - Rules and Regulations Pertaining to the Management of Wastes.

~~024~~ "Title 128" means the Department's Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska.

~~025-016~~ "Totally Covered or Enclosed" means protected from precipitation and any subsequent drainage so that unwanted moisture does not enter the structure.

~~026-017~~ "Underground Storage" means any container, combination of containers, surface impoundment, pit, pond, or lagoon, including underground pipes connected to such storage, which is used to store an accumulation of pesticide, fertilizer, fertilizer or pesticide solution, or related material and the volume of which is ten percent or more beneath the surface of the ground.

~~027~~ "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 accumulations of water, surface or

~~underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State.~~

~~Legal Citation: Title 198, Ch. 1, Nebraska Department of Environmental Quality~~

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14).

NEBRASKA ADMINISTRATIVE CODE
Title 198 – RULES AND REGULATIONS PERTAINING TO AGRICULTURAL CHEMICAL
CONTAINMENT
~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Chapter 2 - SECONDARY CONTAINMENT FACILITY; WHEN REQUIRED

001 A secondary containment facility is ~~required~~ mandatory when:

001.01 bulk liquid pesticide is stored in aggregate quantities with capacity greater than 500 U.S. gallons, or when bulk dry pesticide is stored.

001.02 ~~A secondary containment facility is required when~~ bulk liquid fertilizer is stored:

001.02A-01 in a container with capacity greater than 2,000 U.S. gallons;

001.02B-02 in containers with an aggregate capacity greater than 3,000 U.S. gallons at any location; or

001.02C-03 in quantities exceeding 25 percent of the container capacity for containers larger than 500 U.S. gallons anytime during the period November 1 through March 15.

~~0023~~ A container designed and used for the storage of ammonium nitrate fertilizer ~~shall not be included in is exempted from~~ the requirements ~~stipulated in 001 and 002~~ above provided the concentration of the ammonium nitrate is such that the temperature at which it freezes is 120 degrees Fahrenheit or higher, the container was in use prior to November 14, 1992, and a monitoring or leak detection system approved by the Department is in place prior to January 1, 1999.

0034 The Department may consider, on a case-by-case basis, the need for secondary containment directly under a container having a capacity of 100,000 U.S. gallons or more and in use prior to November 14, 1992. In such cases, the owner or operator of the container ~~shall is to~~ conduct an environmental evaluation and economic assessment of compliance with these regulations and identify possible alternatives to be considered by the Department. When compliance with the regulations produces serious hardship without equal or greater benefits to the public, the Department may approve an alternative which demonstrates technical practicability and economic reasonableness.

0045 A container designed and used for transportation of a bulk liquid pesticide or bulk fertilizer ~~shall not be included in is exempted from~~ the requirements ~~stipulated in 001 or 002~~ above as long as any storage is solely incidental to the loading or unloading of the container and the container is not connected to a chemigation system. A container with a capacity of 275 U.S. gallons or less which is sealed, and remains sealed at the facility, may be excluded from the aggregate capacities ~~stipulated in 001 or 002~~ above provided ~~any~~ storage is solely incidental to the transfer of the container.

0056 A container or containers with an aggregate capacity of 6,000 U.S. gallons or less which is used at the application site as part of the normal application associated with activities in that field any time during the period March 15 through October 1 may be excluded from the aggregate capacities ~~stipulated in 001.02~~ above. For a container to be excluded from the aggregate capacities, the container and appurtenances ~~must are to~~ be:

0056.01 located a minimum of 500 feet from surface waters of the state;

~~006.02~~ located and a minimum of 100 feet from any well;

0056.023 located in that field for a period not to exceed 21 consecutive days;

0056.034 positioned on relatively level terrain to maintain tank stability;

~~0056.045~~ inspected for leakage and soundness immediately prior to the initial use each year; and

~~0056.056~~ structurally sound, free of ~~any~~ obvious defects, and compatible with the fertilizer placed in the container. Leaky or faulty containers and appurtenances ~~shall~~ are to be repaired or replaced at the time of detection.

~~Provided, however, that a~~ 006 A container used in the application of a bulk liquid pesticide or bulk fertilizer through a chemigation system ~~shall~~ will be considered part of the aggregate capacity stipulated in 001.02 above for the purposes of these regulations.

~~007~~ A secondary containment facility required pursuant to ~~001~~ or ~~002~~ above shall be constructed according to the following schedule:

~~007.01~~ Any person with existing bulk liquid pesticide storage as of November 14, 1992 has until January 1, 1995 to comply.

~~007.02~~ Any person with bulk fertilizer storage in existence as of July 1, 1994 has until January 1, 1999 to comply.

~~007.03~~ New bulk liquid pesticide storage or expansion of existing bulk liquid pesticide storage constructed after November 14, 1992 shall have secondary containment prior to use.

~~007.04~~ New bulk fertilizer storage or expansion of existing bulk fertilizer storage constructed after July 1, 1994 shall have secondary containment prior to use.

~~008~~ 007 Storage and handling of anhydrous ammonia, dry fertilizer and unmanipulated animal and vegetable manures is exempt from the requirements of these regulations. Storage of anhydrous ammonia is regulated by ~~the State Fire Marshal~~, Title 153 - NAC ~~Nebraska State Fire Code Regulations~~.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

Legal Citation: ~~Title 198, Ch. 2, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE
Title 198 – RULES AND REGULATIONS PERTAINING TO AGRICULTURAL CHEMICAL
CONTAINMENT
~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Chapter 3 - LOADOUT FACILITY; WHEN REQUIRED

001 All mixing, loading and unloading of bulk liquid pesticides or bulk fertilizers at a bulk liquid pesticide or bulk fertilizer storage facility and all draining, rinsing and washing of applicator and transportation equipment ~~shall will~~ be performed within the a loadout facility. ~~A loadout facility is required~~ under the following conditions:

001.01 When secondary containment is ~~required to be installed~~ pursuant to Chapter 2 for bulk liquid pesticide stored in aggregate quantities greater than 500 U.S. gallons; or

~~001.02~~ ~~When secondary containment is required pursuant to Chapter 2~~ for bulk liquid fertilizer stored in aggregate quantities greater than ~~53,000~~ U.S. gallons;

001.023 When a custom applicator uses pesticides from original containers greater than three U.S. gallons in capacity;

001.034 When a custom applicator uses pesticide or fertilizer mixtures in individual quantities greater than 100 U.S. gallons; or

001.045 When bulk fertilizer or bulk liquid pesticide is loaded or unloaded from a rail car.

~~002~~ ~~A loadout facility required pursuant to 001 above shall be constructed according to the following schedule:~~

~~002.01~~ ~~A custom applicator of pesticide, person with existing bulk liquid pesticide storage, or person using rail car transfer of bulk liquid pesticide as of November 14, 1992 has until January 1, 1995 to comply.~~

~~002.02~~ ~~A custom applicator of fertilizer, person with existing bulk fertilizer storage, or person using rail car transfer of bulk fertilizer as of July 1, 1994 has until January 1, 1999 to comply.~~

~~002.03~~ ~~A bulk liquid pesticide storage facility, a person with rail car transfer of bulk liquid pesticide or a custom applicator of pesticide that commences operation after November 14, 1992 shall have a loadout facility constructed prior to operation.~~

~~002.04~~ ~~A bulk fertilizer storage facility, a person with rail car transfer of bulk fertilizer, or a custom applicator of fertilizer that commences operation after July 1, 1994 shall have a loadout facility constructed prior to operation.~~

003 A loadout facility is not ~~required~~ needed under the following conditions:

003.01 When loadout activities are conducted at the application site as part of the normal application; or

003.02 When custom applicator loadout activities are conducted no more than fourteen days in a calendar year at any one location, the custom applicator has a loadout facility at a primary operating location, and all other requirements are met. This fourteen day allowance does not apply to loadout facilities required in conjunction with secondary containment specified in 001.01 ~~and 001.02~~ above or to loadout facilities specified in 001.045 above.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

| ~~Legal Citation: Title 198, Ch. 3, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE
Title 198 – RULES AND REGULATIONS PERTAINING TO AGRICULTURAL CHEMICAL
CONTAINMENT
~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Chapter 4 - SECONDARY CONTAINMENT FACILITY, LOADOUT FACILITY; LOCATION

001 A new secondary containment facility or loadout facility, except at an operation in existence prior to November 14, 1992, ~~shall~~will not be allowed to be located:

001.01 Within 100 feet of a well used for domestic purposes;

001.02 Within a Class GA area as defined in Title 118 NAC; or

001.03 In an area or in such a manner that there is a substantial threat of beneficial use impairment to waters of the State as defined in Title 117 NAC and Title 118 NAC.

002 Other locational requirements may be ~~contained in~~inapplicable under the Water Well Standards and Contractors' Licensing Act and rules and regulations adopted pursuant to that act.

003 Construction or improvements in a designated 100-year flood plain ~~shall~~are to comply with existing federal, state and local flood plain management regulations.

004 The facility ~~shall~~is obliged to comply with local governmental zoning regulations. It is the responsibility of the owner or operator to determine whether any such zoning regulations exist.

005 Underground storage of bulk liquid pesticide and bulk fertilizer is prohibited. Temporary underground containment of pesticide or fertilizer rinsed or washed off material, runoff, or other accumulations is allowed ~~with~~under the following conditions:

005.01 A sump open to visual inspection; or

005.02 A container situated in a concrete or solid masonry lined vault open to visual inspection. The container ~~must~~is to be on or above the surface of the floor such that any leak from the container or appurtenances may be readily detected.

006 If plumbing within a secondary containment or loadout facility is directly connected to a public water supply pipeline servicing the facility, the operator must comply with the ~~Department of Health, Title 179 NAC - Regulations Governing Public Water Supply Systems~~.

007 If plumbing within a secondary containment or loadout facility is directly connected to a water well, other than a public water supply pipeline, servicing the facility, a backflow prevention device ~~shall~~is to be installed to protect the water source. Local plumbing codes or regulations ~~shall~~may apply if more restrictive. All equipment ~~shall~~is to be installed, operated and maintained in accordance with the manufacturer's recommendations. The minimum safety equipment ~~shall~~will be one of the following:

007.01 A reduced pressure principle device which meets the American Water Works Association (AWWA) Standard C506-78 for backflow prevention devices; or

007.02 Air gap separation. Air gap is a physical separation between the discharge end of a water pipeline and an open or nonpressurized receiving vessel. To have an acceptable air gap, the discharge end of the pipe ~~must~~is to be at least two pipe diameters above the top rim of the receiving vessel. If the discharge pipe is in a secondary containment facility or loadout facility, the discharge end ~~must~~is to be at least two pipe diameters above either the topmost rim of the receiving vessel or the highest liquid holding capacity of the containment facility, whichever is higher.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

| ~~Legal Citation: Title 198, Chapter 4, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE
Title 198 – RULES AND REGULATIONS PERTAINING TO AGRICULTURAL CHEMICAL
CONTAINMENT
~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Chapter 5 - SECONDARY CONTAINMENT FACILITY; DESIGN REQUIREMENTS

001 The walls and base of the secondary containment ~~must~~ will be designed and constructed to be watertight, to be compatible with the pesticide or fertilizer being stored within the facility, to withstand loading conditions, and to withstand the maximum discharge from the largest container considering the full hydrostatic head of the discharged liquid.

002 Secondary containment of bulk liquid pesticides constructed prior to November 14, 1992 and secondary containment of bulk fertilizers constructed on or before July 1, 1994 ~~shall~~ are to have included one or more of the following:

002.01 Concrete or solid masonry;

002.02 A synthetic, metal, or prefabricated bentonite liner, except that a prefabricated bentonite liner ~~shall~~ will not be considered adequate for secondary containment of pesticides. The liner ~~shall~~ beis to have been installed in accordance with the manufacturer's recommendations;

002.03 A soil liner, except that a soil liner ~~shall~~ will not be considered adequate for secondary containment of pesticides. The soil liner may be natural soil treated with bentonite clay or other comparable material. The seepage rate of the soil liner ~~shall~~ is not to exceed 1/8 inch per day, as determined by independent laboratory or insitu testing. The soil liner ~~shall~~ will be a minimum of six inches thick and covered with a minimum of six inches of aggregate or soil cover; or

002.04 Tank in a tank.

003 Secondary containment of bulk liquid pesticides constructed after November 14, 1992 and secondary containment of bulk fertilizers constructed after July 1, 1994 ~~shall~~ are to include one or more of the following:

003.01 Concrete;

003.02 Metal liner;

003.03 A synthetic liner. ~~A synthetic liner must be~~ installed according to the manufacturer's specifications and used only for applications specifically approved by the manufacturer;

003.04 Tank in a tank; or

003.05 Prefabricated bentonite liner, except that a prefabricated bentonite liner ~~shall~~ will not be considered adequate for secondary containment of bulk liquid pesticides.

004 Secondary containment for bulk liquid pesticides and bulk fertilizers in a totally covered or enclosed structure ~~shall~~ are to be constructed with a volume sufficient to contain at a minimum the sum of the maximum possible discharge from the largest container plus ten percent of the capacity of the largest container plus the containment volume displaced by all other structures, containers and equipment inside the secondary containment area.

005 Secondary containment not totally covered or enclosed ~~shall~~ are to be constructed with the volume specified in 004 above plus sufficient volume to contain the precipitation from a 25-year, 24-hour storm event (~~See Appendix A~~) on the containment area.

006 Pesticides ~~shall~~will not be stored in the same secondary containment area as fertilizers.

007 Storage containers ~~shall~~will be anchored or secured to prevent flotation or instability in the event of a release into the containment structure. Only pesticides, associated products, and equipment ~~shall~~are to be stored or maintained in the pesticide containment area. Empty containers ~~shall~~will not be stored in the containment area unless included in the capacity calculations for the containment facility and anchored or secured to prevent flotation or instability.

008 The containment area ~~shall~~is to slope to a collection point or sump that allows liquids to be easily removed. The volume of the sump ~~shall~~will not be considered part of the containment volume of the secondary containment facility. Any pump used for material removal ~~shall~~is to be manually activated.

009 The secondary containment area ~~shall~~will not have a relief outlet or valve. Sanitary and storm sewer drains ~~shall~~will not be located within the secondary containment facility.

010 Secondary containment facilities for bulk dry pesticides ~~shall~~will be:

010.01 Constructed of steel, reinforced concrete or other rigid materials compatible with the pesticides stored;

010.02 Capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation or other substances, equipment and appurtenances.

011 Stationary containers of bulk dry pesticides ~~shall~~will be:

011.01 Protected from wind and precipitation;

011.02 Placed on pallets or raised concrete platforms;

011.03 On a floor extending completely beneath the pallets or platforms; and

011.04 Enclosed by a curb a minimum of six inches high that extends at least two feet beyond the perimeter of the container.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

~~Legal Citation: Title 198, Ch. 5, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE
Title 198 – RULES AND REGULATIONS PERTAINING TO AGRICULTURAL CHEMICAL
CONTAINMENT
~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Chapter 6 - LOADOUT FACILITY; DESIGN REQUIREMENTS

001 A loadout facility ~~shall~~will be designed and constructed to contain fertilizer, pesticides and associated contaminated material spilled or deposited during mixing, loading, unloading, draining, rinsing and washing.

002 The loadout facility ~~shall~~will be designed and constructed pursuant to the following minimum requirements:

002.01 Constructed of concrete, asphalt or other impermeable material. After ~~the effective date of these regulations~~June 27, 2011, the loadout facility may not be constructed of asphalt;

002.02 Constructed to withstand the weight of vehicles which will be on the loadout facility;

002.03 Sized to contain a minimum of 1,800 gallons or 1.5 times the largest container, whichever is smaller. The loadout facility shall be constructed with sufficient surface area, using curbs or other means, to prevent a release from the facility; and

002.04 After ~~the effective date of these regulation~~June 27, 2011 new, or modified, loadout facilities must be constructed to have curbs or berms to prevent external stormwater from draining into the loadout facility.

003 The loadout area ~~shall~~will slope to a collection point or sump that allows spilled or deposited material to be easily recovered. The volume of the sump ~~shall~~will not be considered part of the containment volume of the loadout facility unless specifically approved by the Department. Any pump used for material removal ~~shall~~is to be manually activated.

004 The loadout facility ~~shall~~will not have a relief outlet or valve. Sanitary and storm sewer drains ~~shall~~will not be located within the loadout facility unless specifically approved by the Department.

005 The placement of spill pans or other spill collection methods under the rail car, which divert released pesticides or fertilizers into a loadout facility meeting all other design requirements, ~~shall~~will be considered in compliance with this chapter.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

~~Legal Citation: Title 198, Ch. 6, Nebraska Department of Environmental Quality~~

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Title 198 – RULES AND REGULATIONS PERTAINING TO AGRICULTURAL CHEMICAL
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~~DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Chapter 7 - CONSTRUCTION PLAN

001 A construction plan ~~shall~~will be developed for each secondary containment facility and loadout facility required in Chapters 2 and 3. The design ~~shall~~will comply with the minimum requirements set forth in these regulations. A management program ~~shall~~will be developed and include the recycle, reuse, or disposal method for accumulations or releases collected in the facility. The construction plan ~~shall~~will be kept up to date and on file at the facility or the nearest office location for the facility. The plan ~~shall~~will include:

001.01 A scale drawing of plans and specifications for the facility, including storage containers, buildings and loadout areas where applicable.

001.02 A copy of the plumbing diagram for the facility which includes the location, size and type of appurtenances. Specify the type and location of any backflow prevention devices as required by Chapter 4, 006 and 007.

002 The construction plan ~~shall~~is to include certification from a Nebraska registered engineer that the facility design complies with these regulations. This certification is not ~~required~~necessary for a secondary containment or loadout facility if, for pesticides, the facility was constructed prior to November 14, 1992 and if, for fertilizers, the facility was constructed on or before July 1, 1994, and all other requirements are met. This certification is also not ~~required~~necessary if the plans and specifications follow generic or standardized designs developed by the industry, university or other governmental personnel or professional engineers and approved by the Department after November 14, 1992. Any changes to the generic or standardized design ~~must~~are to be certified by a professional engineer.

003 A design which does not conform to these regulations may be considered acceptable if a Nebraska registered engineer certifies that such design provides equal or greater protection to waters of the State.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

~~Legal Citation: Title 198, Ch. 7, Nebraska Department of Environmental Quality~~

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Chapter 8 - MANAGEMENT

001 All facilities, including the containment structure, valves, hoses, pipes and tanks, ~~shall are to~~ be maintained and operated to function as originally designed. Seams and cracks ~~shall are to~~ be sealed to prevent leakage. Leaking or faulty appurtenances ~~shall are to~~ be repaired or replaced at the time of detection.

002 Fertilizer, pesticide and contaminated material spilled or deposited on the loadout facility or on the secondary containment facility ~~shall are to~~ be promptly recovered. Material not used or recycled, releases unrecovered, or hazardous waste generated may result in the facility being classified as a generator and subject to regulation under Title 128 NAC. All releases shall be reported to the Department pursuant to Title 126 NAC.

002.01 Fertilizer contaminated material ~~shall is to~~ be used as fertilizer, recycled, or disposed of ~~by in~~ a method approved by the Department.

002.02 Pesticide contaminated material ~~shall is to~~ be used or disposed of according to the pesticide label directions or by a method approved by the Department. Care ~~shall is to~~ be taken to segregate pesticides which are not compatible for use on the same site.

003 Stormwater accumulated in the secondary containment facility or loadout facility which has not been contaminated by a fertilizer, pesticide or other pollutant may be directly pumped from the facility into the normal stormwater drainage system. Any pump used for the removal of stormwater ~~shall is to~~ be manually activated.

004 Stormwater that comes in contact with pesticide, fertilizer, or pesticide or fertilizer contaminated material within the secondary containment or loadout facility ~~shall is to~~ be managed as contaminated ~~water~~ material as described in 002 above.

005 At a minimum, any collection point or sump ~~shall is to~~ be cleared daily of any contaminated material. This material ~~shall will~~ not be allowed to compromise the minimum required containment volume.

006 A release of pesticide, fertilizer, or pesticide or fertilizer contaminated material from the secondary containment facility or loadout facility ~~shall is to~~ be immediately reported to the Department. The release and soil or other contaminated material ~~shall is to~~ be promptly recovered and used or disposed of in a manner approved by the Department.

007 No fertilizer or pesticide contaminated material ~~shall will be allowed to~~ be disposed of:

007.01 Through a storm sewer system or waters of the State;

007.02 Through a treatment system without a National Pollutant Discharge Elimination System (NPDES) permit or, in the case of underground disposal, an Underground Injection Control permit;

007.03 Through a sanitary sewer connected to a publicly owned treatment works without prior written approval of the Department and the sanitary sewer authority in accordance with the discharge limitation of a pretreatment agreement or sewer use ordinance; or

007.04 In violation of Title 126 NAC or Title 128 NAC.

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

| ~~Legal Citation: Title 198, Ch. 8, Nebraska Department of Environmental Quality~~

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Chapter 9 - CONTAINERS AND APPURTENANCES; GENERAL REQUIREMENTS

001 Bulk fertilizer and bulk liquid pesticide containers and appurtenances ~~shall~~will be constructed, installed and maintained so as to prevent the release of a pesticide or fertilizer. The containers and appurtenances ~~must are to~~ be structurally sound, resistant to corrosion, cracking and changes in temperature extremes, and compatible with the products stored therein.

001.01 Every container connection, except a safety relief connection, ~~shall~~will be equipped with a manual shut-off valve.

001.02 Appurtenances ~~shall~~will be adequately supported to prevent sagging and possible breakage because of gravity and other forces encountered in the ordinary course of operation.

001.03 Containers and appurtenances ~~shall~~will be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles or objects.

002 Any pipe connected to bulk liquid pesticide containers, bulk fertilizer containers, or other containers or piping in the secondary containment facility ~~shall~~will not be placed through or under the walls or base of the secondary containment facility. All pipes leading to or from the facility ~~shall~~will be protected from reasonably foreseeable risks of physical damage and adequately supported.

003 Any pipe connected to bulk liquid pesticide containers, bulk fertilizer containers, or other containers or piping in the secondary containment facility shall not be placed below ground or out of sight without adequate protection against leakage. Adequate protection shall include either line leak detection or an annual leakage test.

004 All bulk fertilizer and bulk liquid pesticide containers and appurtenances ~~shall~~will be secured to provide reasonable protection against vandalism or unauthorized access. Valves on containers ~~shall~~will be closed and locked or otherwise secured when left unattended, except that a bulk fertilizer or bulk liquid pesticide container used in chemigation ~~shall~~will not be required to be closed or locked when used in the act of chemigating.

005 All bulk fertilizer and bulk liquid pesticide containers ~~shall~~will be clearly and conspicuously labeled to identify the contents.

006 All bulk fertilizer and bulk liquid pesticide containers and appurtenances ~~shall~~will be inspected for leakage and soundness at least once a month when used for storage or handling.

007 All secondary containment facilities ~~shall~~will be inspected at least once a month when used for storage and the following records ~~shall are to~~ be kept on file for at least three years at the storage facility or the nearest office from which the storage site is administered. ~~The records must be and~~ submitted to the Director upon request within a reasonable time ~~frame~~ as determined by the Director.;

007.01 Monthly facility inspections including date of inspection or maintenance, name of the person that made the inspection, a description of the condition of the facilities, bulk containers and appurtenances, and a description of the specific maintenance performed;

007.02 The level in each container used for storage of bulk liquid pesticides or bulk fertilizer ~~shall~~is to be measured and recorded at least monthly; and

007.03 A quarterly inventory reconciliation accounting for all liquid fertilizer or liquid pesticide placed in each bulk container.

~~008—A storage facility shall comply with the construction and installation requirements listed in Chapter 9 within the same time frames listed in Chapter 2 for construction of a secondary containment facility. All other requirements listed in Chapter 9 are effective as of November 14, 1992.~~

Enabling Legislation: Neb. Rev. Stat. § 81-1505(8)(14)

~~Legal Citation: Title 198, Ch. 9, Nebraska Department of Environmental Quality~~

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APPENDIX A — NEBRASKA 25-YEAR, 24-HOUR RAINFALL EVENT IN INCHES MAP

