

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 13<sup>th</sup> 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.

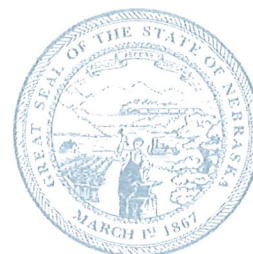
4. Amendments to Title 200 – Petroleum Release Remedial Action Reimbursement Fund. Chapter 1, definitions, is proposed for deletion. Changes to Chapter 2 include a reference to definitions; make changes relating to the application for reimbursement; include provisions applicable to department review, 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: David Chambers  
Date Prepared: September 27, 2019  
Phone: (402) 471-2186  
Title: 200  
Chapter: 1 through 7  
Name: *Rules and Regulations for Petroleum Release Remedial Action Reimbursement Fund*  
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  
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Title 200—Petroleum Release Remedial Action Reimbursement Fund~~

~~Chapter 1—Definition of Terms~~

~~Effective Date of Last Revision: August 30, 2008~~

~~Unless the context otherwise requires:~~

~~001 “Department” means the Department of Environmental Quality.~~

~~002 “Designated representative” means a person to whom the responsible person assigns any right, title, or interest which the responsible person may have in and to the proceeds from a reimbursement for remedial action.~~

~~003 “Fund” means the Petroleum Release Remedial Action Cash Fund created by the Petroleum Release Remedial Action Act.~~

~~004 “NEPA” means the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§81-1501 to 81-1533.~~

~~005 “Occurrence” means an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.~~

~~006 “Operator” means a person in control of or having responsibility for the daily operation of a tank.~~

~~———006.01 Operator shall not include a person described in 007.03 of this chapter.~~

~~007 “Owner” means:~~

~~007.01—In the case of a tank in use on or after November 8, 1984, or brought into use after such date, any person who owns a tank used for the storage, use or dispensing of petroleum; and~~

~~007.02—In the case of a tank in use before November 8, 1984, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.~~

~~007.03—Owner shall not include a person who, without participating in the management of a tank and who otherwise is not engaged in petroleum production, refining and marketing;~~



~~007.03A—Holds indicia of ownership primarily to protect a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or~~

~~007.03B—Acquires ownership of a tank or the property on or within which a tank is or was located:~~

~~007.03B1—Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or~~

~~007.03B2—If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.~~

~~007.04—Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act.~~

~~008—“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.~~

~~009—“Petroleum” means:~~

~~009.01 For purposes of the fee provisions of Neb. Rev. Stat. §66-1521:~~

~~009.01A—Motor vehicle fuel as defined in Neb. Rev. Stat. §66-482, except natural gasoline used as a denaturant by an ethanol facility as defined in Neb. Rev. Stat. §66-1333; and~~

~~009.01B—Diesel fuel as defined in Neb. Rev. Stat. §66-482, including kerosene which has been blended for use as a motor fuel; and~~

~~009.02 For purposes of all provisions of the Petroleum Release Remedial Action Act other than the fee provisions of Neb. Rev. Stat. §66-1521:~~

~~009.02A—The fuels defined above in 009.01; and~~

~~009.02B—A fraction of crude oil that is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven tenths pounds per square inch absolute, except any such fraction which is regulated as a hazardous substance under section 101(14) of the federal Comprehensive Environmental Response,~~

~~Compensation, and Liability Act of 1980, 42 U.S.C. 9601(14), as such act existed on January 1, 2005.~~

~~010 “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank or any overfilling of a tank into ground water, surface water, surface soils, or subsurface soils whether occurring before, on, or after May 27, 1989.~~

~~011 “Remedial action” means any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal.~~

~~011.01 Remedial action shall include:~~

~~011.01A Tank testing, but only in conjunction with a release or a suspected release;~~

~~011.01B Site investigation, site assessment, cleanup, restoration, and mitigation; and~~

~~011.01C Any other action ordered by the department or the State Fire Marshal which is reasonable and necessary.~~

~~011.02 Remedial action shall not include:~~

~~011.02A Tank restoration, upgrading, replacement, or rehabilitation;~~

~~011.02B Actions which do not minimize, eliminate or clean up a release or suspected release to protect the public safety, health, and welfare or the environment; or~~

~~011.02C Aesthetic improvements.~~

~~012 “Remedial Action Act” means the Nebraska Petroleum Release Remedial Action Act, Neb. Rev. Stat. §§66-1501 et seq.~~

~~013 “Responsible person” means a person who is an owner or an operator of a tank. —~~

~~013.01 If an owner or operator is unwilling or unable or fails to comply with required remedial action or to pay a third-party claim, responsible person shall also mean any of the following who voluntarily propose to implement required remedial action or to pay the claim:~~

~~013.01A A person in the chain of title of a tank or in the property on or within which a tank is or was located;~~



~~013.01B—A person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or~~

~~013.01C—A person who has acquired ownership of a tank or the property on or within which a tank is or was located:~~

~~013.01C1—Pursuant to a foreclosure of a security interest in the tank or a lienhold interest in the property; or~~

~~013.01C2—If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.—~~

~~013.02—This voluntary action shall not be construed to render a person described in 013.01 of this chapter responsible or liable for remedial action or payment of the claim.~~

~~014—“Storage and Handling Act” means the Nebraska Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. §§81-15,117 to 81-15,127.~~

~~015—“Tank” means any one or a combination of stationary above-ground or underground containers and enclosures, including structures and appurtenances connected to them, that is or has been used to contain or dispense petroleum.~~

~~015.01—Tank shall not include any pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. Chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. Chapter 29, as in effect January 1, 1988, or any lease production tank used in the production of crude oils.~~

~~016—“Third party claim” means a final judgment against a responsible person obtained by a third party for compensation for bodily injury and property damage caused by a release first reported after January 1, 1990, and within the period of time established by statute. A third party claim does not include a claim made under the State Miscellaneous Claims Act according to the provisions of Chapter 6, 003 of these regulations.~~

~~Legal Citation: Title 200, Ch. 1, Nebraska Department of Environmental Quality~~

NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 200 - Rules ~~And~~ Regulations ~~For~~ Petroleum Release Remedial Action  
~~Reimbursement~~ Cash Fund

## Chapter ~~21~~ - Application for Reimbursement and Department Review

~~Effective Date of Last Revision: August 30, 2008~~

Unless defined in the Petroleum Release Remedial Action Act, Neb. Rev. Stat. § 66-1501 et seq., the words used in this title are to be given their plain and ordinary meaning.

001 Application. ~~An eligible~~ responsible person or his or her designated representative may apply to the department, according to the procedure set out in this chapter, for reimbursement from the fund for the costs of remedial action and for the costs of paying third-party claims.

002 Application Information. ~~The department will send~~ information regarding applications for reimbursement ~~shall be sent by the department~~ to the responsible person or persons upon request.

003 Contents of Application. The completed application ~~shall~~ will include, at a minimum, the following information:

003.01 The identity of the responsible person and the applicant;

003.02 A description of the applicant as a responsible person or designated representative;

003.03 The location of the release;

003.04 The tank facility registration number assigned by the Nebraska State Fire Marshal, if applicable, of the tank from which petroleum was released;

003.05 Information regarding insurance payments or settlements related to the release that have been or may be received;

003.06 A detailed description of all costs and documentation for all costs incurred and/or paid by the responsible person for the remedial action and/or third-party claim;

003.07 An acknowledgment that the responsible person will be responsible for reimbursing the fund for any partial reimbursement if the responsible person does not complete the remedial action as required by the rules and regulations of the department;

003.08 A designated representative statement, if applicable, signed by the responsible person and properly ~~notarized~~ certified;

003.09 A verification, signed by the applicant and properly ~~notarized~~ certified, attesting that the information contained in the application is true and accurate; and

003.10 An acknowledgement that the recipient's accounting records related to the cost submitted may be audited by the Department, ~~as set forth in Chapter 3, 006~~, and that, if



such records are not provided, the recipient may be required to reimburse the fund for any payments previously received.

#### 004 Submission and Order of Applications.

004.01 ~~To be considered,~~ the responsible person ~~shall~~will submit a completed application for reimbursement to the department. An application is incomplete if it does not contain all the information required by the department.

004.01A The department ~~shall~~will notify the applicant ~~in the event it deems~~if the department determines an application ~~is~~ incomplete, stating what additional information the responsible person ~~must~~is to provide.

004.01A1 An application ~~shall~~will be considered received by the department as of the time ~~it~~the application is considered complete by the department.

~~004.02 At the time the department determines that the applications are complete, the applications will be date and time stamped, and a record of order will be maintained.~~

~~004.03 If the department approves reimbursements in excess of the amount in the fund, the department shall make reimbursements in the order in which the complete applications were stamped according to 004.02 of this chapter.~~

~~005 Application for Partial Reimbursement.~~ A responsible person may apply for partial reimbursement of the actual cost of remedial action incurred in accordance with Neb. Rev. Stat. § 66-1523(3).

005.01 A responsible person applying for partial reimbursement ~~shall~~will acknowledge with such application that if the responsible person receives partial reimbursement but does not complete the remedial action ~~as required by~~in accordance with the rules and regulations of the department, the responsible person ~~shall~~is to reimburse the fund for an amount equal to the reimbursement received from the fund.

005.02 Applications for partial reimbursement may be made following completion and department acceptance of approved stages of remedial action and associated cost estimates.

005.03 If any approved stage of remedial action is projected to take more than ninety days to complete, partial payments may be requested every sixty days. When reimbursement is requested prior to completion of an approved stage, the department may withhold 10% of such payment until the approved stage is completed.

~~006 Designated Representative.~~ A responsible person may designate a person to whom the responsible person assigns any right, title, or interest which the responsible person may have in

and to the proceeds from a reimbursement for remedial action and such designated representative may submit an application for reimbursement under this chapter of the regulations.

~~007 Timely Submittal.~~ An application for reimbursement ~~shall~~is to be filed in a timely manner following the completion of each approved stage of remedial action. ~~However, no application is required until~~ as long as the cumulative costs of the remedial stages approved by the department exceed the applicable statutory deductible.

007.01 Complete applications are to be submitted to the department on or before June 11, 1998, where costs were incurred:

007.01A After May 27, 1989 and on or before June 11, 1997;

007.01B During the completion of approved stages of remedial action; and

007.01C In amounts exceeding the applicable deductible.

007.02 Complete applications ~~shall~~are to be submitted to the department within one year of the compliance date established by the department when the remedial stage is approved or within one year of the actual completion date of the remedial stage, whichever is later, ~~where~~Such costs ~~must be~~were incurred:

007.02A After June 11, 1997;

007.02B During the completion of approved stages of remedial action; and

007.02C In amounts exceeding the applicable deductible.

007.03 Applications submitted to the department subsequent to the time limits established in 007.01 and 007.02 of this chapter will be subject to reimbursement reduction or denial according to 012 of this chapter ~~3, 005~~. ~~However, a~~Applicants who submit an incomplete application within the time limits set forth in 007.01 and 007.02 of this chapter will have an additional thirty (30) days, after receipt of written notification from the department specifying deficiencies, to submit supplemental information correcting all deficiencies and ~~shall~~will not be subject to reimbursement reductions under this section.

008 The department will review all complete applications for reimbursement submitted by responsible persons or their designated representatives. No reimbursement may be made unless the department makes the eligibility determinations in Neb. Rev. Stat. § 66-1525.

008.01 In the event immediate remedial action is necessary to protect human health or the environment, as determined by the department, the plan for immediate remedial action which the department requires the responsible person to take may be submitted after the action has been taken.



009 The department will apply a schedule of reasonable rates developed in accordance with Neb. Rev. Stat. § 66-1518(3) in reviewing all costs for remedial action in an application for reimbursement.

009.01 The reimbursement for remedial action costs will in no event exceed the actual costs incurred by the responsible person or his or her designated representative.

009.02 The department may require competitive bidding for equipment or services.

010 The department may withhold action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

011 The department may deny or reduce as much as one hundred percent (100%) a reimbursement for costs of a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements, including the provisions of these regulations.

011.01 Noncompliance issues for which the department will consider reimbursement reductions may include, but are not limited to, any of the following:

011.01A Tank permit and registration requirements.

011.01B Tank design, construction, installation, and repair.

011.01C Release detection requirements.

011.01D Tank gauging requirements

011.01E Release notification requirements.

011.01F Release containment.

011.01G Failure to clean up past spills and overfills when they occurred.

011.01H Compliance with department standards of quality and performance, with department timetables, and with other applicable regulations.

011.01I Disposal of wastes.

011.01J Operator training.

011.01K Product compatibility.

011.02 The responsible person will be responsible for the amount of any reductions.

012 The department may require an audit to assure compliance with these regulations. The audit will be limited to persons who have received payments from the fund. The department reserves the right to contract with an independent accounting firm to conduct the audit.

012.01 The recipient's accounting records relating to remedial actions are to be made available to the department at the time and place of the department's choosing. The audit will include, but not be limited to, such tests of the accounting records to determine that:

012.01A Funds were expended in a manner consistent with that reported to the department.

012.01B Proper equipment inventory records exist.

012.01C All necessary information needed to determine that costs represented were actually incurred.

012.02 Any funds paid to a recipient which are determined to be disallowed according to these regulations will be considered a debt to the fund. If this debt is not paid within a reasonable period after demand, the state may reduce the debt by making an offset against other requests for reimbursement or by taking other action permitted by law.

012.03 Discovery of fraud or other misuse of payments received from the fund may result in referral to the Attorney General for appropriate action and/or in denial or reduction of additional reimbursements from the fund, pursuant to 011 of this chapter.

013 Within thirty (30) days following receipt of notification of departmental action disapproving any part of an application for reimbursement, the applicant may petition for review of the disapproved portion pursuant to Title 115 of the Nebraska Administrative Code, chapter 7, Rules of Practice and Procedure.

014 Reimbursement for Fixtures and Tangible Personal Property.

014.01 All fixtures reimbursed by the fund which are attached to real property at the time of site closure are owned by the responsible person or the property owner, if different from the responsible person.

014.02 The department may require a responsible person to reuse tangible personal property that was previously used in other remedial actions. Such equipment need not be warranted by the responsible person.

014.03 The department will require a warranty on all new remediation equipment for a period of one year following the remediation system startup. The department will also require a warranty that installation of all equipment, whether it be new, used or provided by the Seller, will be done in a workmanlike manner in accordance with standard procedures and will perform as designed for a period of one year following installation.

Enabling Legislation: Neb. Rev. Stat. §66-1518, 66-1529.01

Legal Citation: Title 200, Ch. 2, Nebraska Department of Environmental Quality

~~NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Title 200—Rules And Regulations For Petroleum Release Remedial Action  
Reimbursement Fund~~

~~Chapter 3—Departmental Review of Application for Reimbursement~~

~~Effective Date of Last Revision: August 30, 2008~~

~~001 Conditions for Approval. The department shall review all complete applications for reimbursement submitted by responsible persons or their designated representatives. No reimbursement may be made unless the department makes the following eligibility determinations:~~

~~001.01 The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank;~~

~~001.01A The department shall determine whether substantial compliance exists by taking into consideration:~~

~~001.01A1 The purposes of the Remedial Action Act as stated in that act;  
and~~

~~001.01A2 The adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;~~

~~001.02 Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the NEPA and the Storage and Handling Act.~~

~~001.02A The department shall determine whether substantial compliance exists by taking into consideration:~~

~~001.02A1 The purposes of the Remedial Action Act as stated in that act;  
and~~



~~001.02A2 The adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;~~

~~001.03 The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release, including complying with departmental standards of quality and performance associated with remedial action and with the departmental timetable for remedial action, as required through Title 118, Title 126, or other applicable regulations;~~

~~001.04 The department has approved the plan submitted by the responsible person for the remedial action in accordance with the rules and regulations adopted and promulgated by the department pursuant to the NEPA or the Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested;~~

~~001.04A In the event immediate remedial action is necessary to protect human health or the environment, as determined by the department, the plan for immediate remedial action which the department requires the responsible person to take may be submitted after the action has been taken;~~

~~001.04B A responsible person may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for future reimbursement of the costs of the remedial action if the responsible person complies with applicable procedures, rules and regulations. Reimbursement shall not occur until the department requires and approves remedial action at the site.~~

~~001.05 All costs for the remedial action, including costs under 001.07 of this chapter, were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;~~

~~001.05A The release was first reported to the department after July 17, 1983, and within the period of time established by statute.~~

~~001.05B Costs must have been incurred in accordance with these rules, and the remedial action shall have been taken in a manner and pursuant to a timetable acceptable to the department.~~

~~001.05C Costs of remedial action shall not include costs for the actions specified in chapter 1, 011.02 of these regulations, loss of income, attorney's fees, or reimbursement for the responsible person's own time spent in planning and administering a corrective action plan;~~

~~001.06 If reimbursement for a third party claim is involved:~~



~~001.06A The release was first reported to the department after January 1, 1990, and within the period of time established by statute;~~

~~001.06B The cause of action for the third party claim accrued after April 26, 1991, and;~~

~~001.06C The Attorney General was notified by any person of the service of summons for the action within ten (10) days of such service; and~~

~~001.07 The responsible person or his or her designated representative has paid:~~

~~001.07A The first ten thousand dollars (\$10,000) of the cost of the remedial action or third party claim if application is made under chapter 4, 003.01 of these regulations, or the first five thousand dollars (\$5,000) if application is made under chapter 4, 003.02 of these regulations; and~~

~~001.07B Twenty five percent (25%) of the remaining cost of the remedial action or third party claim, not to exceed fifteen thousand dollars (\$15,000) if application is made under chapter 4, 003.01 of these regulations, or ten thousand dollars (\$10,000) if application is made under chapter 4, 003.02 of these regulations.~~

~~002 Schedule of Reasonable Rates. The department shall prepare and make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall apply this schedule of reasonable rates in reviewing all costs for remedial action in an application for reimbursement.~~

~~002.01 These rates are deemed to be reasonable for reimbursement for the costs of remedial action. However, the reimbursement for remedial action costs shall in no event exceed the actual costs incurred by the responsible person or his or her designated representative.~~

~~002.02 The department may require competitive bidding for equipment or services.~~

~~003 Application for Reimbursement in Excess of Schedule or for Remediation Expenses Not on Schedule. An application may be made for reimbursement for costs which exceed or are not included on the schedule of reasonable rates described in 002 of this chapter. However, such an application shall be accompanied by sufficient evidence to show that the costs incurred are reasonable, as determined by the department.~~

~~003.01 The department may approve an application for reimbursement of costs if there is sufficient evidence to show that the costs incurred are reasonable.~~

~~004 Withholding Review. The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.~~

~~005 Grounds for Denying or Reducing Reimbursement.~~ The department may deny or reduce as much as one hundred percent (100%) a reimbursement for costs of a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements, including the provisions of these regulations:

~~005.01 In determining the amount of the reimbursement reduction, the department shall consider:~~

~~005.01A The extent of and reasons for noncompliance;~~

~~005.01B The likely environmental impact of the noncompliance; and~~

~~005.01C Whether noncompliance was negligent, knowing, or willful.~~

~~005.02 Noncompliance issues for which the department will consider reimbursement reductions shall include, but are not limited to:~~

~~005.02A Tank permit and registration requirements.~~

~~005.02B Tank design, construction, installation, and repair.~~

~~005.02C Release detection requirements.~~

~~005.02D Tank gauging requirements~~

~~005.02E Release notification requirements.~~

~~005.02F Release containment.~~

~~005.02G Failure to clean up past spills and overfills when they occurred.~~

~~005.02H Compliance with department standards of quality and performance, with department timetables, and with other applicable regulations.~~

~~005.02I Disposal of wastes.~~

~~005.03 The responsible person shall be responsible for the amount of any reductions.~~

~~006 The department may require an audit to assure compliance with these regulations. The audit will be limited to persons who have received payments from the fund. The department reserves the right to contract with an independent accounting firm to conduct the audit.~~

~~006.01 The recipient's accounting records relating to remedial actions shall be made available to the department at the time and place of the department's choosing. The audit will include, but not be limited to, such tests of the accounting records to determine that:~~



~~006.01A Funds were expended in a manner consistent with that reported to the department.~~

~~006.01B Proper equipment inventory records exist.~~

~~006.01C All necessary information needed to determine that costs represented were actually incurred.~~

~~006.02 Any funds paid to a recipient which are determined to be unallowed according to these regulations shall be considered a debt to the fund. If this debt is not paid within a reasonable period after demand, the state may reduce the debt by making an offset against other requests for reimbursement or by taking other action permitted by law.~~

~~006.03 Discovery of fraud or other misuse of payments received from the fund may result in referral to the Attorney General for appropriate action and/or in denial or reduction of additional reimbursements from the fund, pursuant to 005 of this chapter.~~

~~007 Petition for Review. Within thirty (30) days following receipt of notification of departmental action disapproving any part of an application for reimbursement, the applicant may petition for review of the disapproved portion.~~

~~007.01 A review will be heard as a contested case pursuant to Title 115 of the Nebraska Administrative Code, chapter 7, Rules of Practice and Procedure.~~

~~Enabling Legislation: Neb. Rev. Stat. §66-1518~~

~~Legal Citation: Title 200, Ch. 3, Nebraska Department of Environmental Quality~~

~~NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Title 200—Rules And Regulations For Petroleum Release Remedial Action  
Reimbursement Fund~~

~~Chapter 4—Limitations on Reimbursements~~

~~001 Responsibility of Responsible Person. Responsible persons shall make application for reimbursements for remedial actions under chapter 2 of these regulations. No responsible person may avoid responsibility for a release or a third party claim by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless, or similar agreements. This section shall not be construed to:~~

~~001.01 Prohibit a responsible person from entering into an agreement by which the person is insured or is a member of a risk retention group and is thereby indemnified for part or all of the liability;~~

~~001.02 Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or~~

~~001.03 Bar a cause of action brought by a responsible person or by an insurer or guarantor, whether by right of subrogation or otherwise.~~

~~002 The total of the claims paid under the State Miscellaneous Claims Act pursuant to Chapter 6, 003, and the reimbursement for third party claims shall not exceed one million dollars per occurrence.~~

~~003 Costs of Remedial Action.~~

~~003.01 The amount of the reimbursement shall not exceed nine hundred seventy five thousand dollars (\$975,000) per occurrence, except as provided in 003.02 of this chapter.~~

~~003.02 If the department determines that the responsible person sold no less than two thousand (2,000) gallons of petroleum and no more than two hundred fifty thousand (250,000) gallons of petroleum during the calendar year immediately preceding the first report of the release, or stored less than ten thousand (10,000) gallons of petroleum in the calendar year immediately preceding the first report of the release, the amount of the reimbursement for the costs of remedial action shall not exceed nine hundred eighty five thousand dollars (\$985,000) per occurrence.~~

~~004 Annual Maximum. In no event shall reimbursements or payments from the fund exceed the annual aggregate of:~~

~~004.01 One million nine hundred seventy five thousand dollars (\$1,975,000) per responsible person for reimbursements or payments made under 002 and 003.01 of this chapter; or~~

~~004.02 One million nine hundred eighty five thousand dollars (\$1,985,000) per responsible person for reimbursements or payments made under 002 and 003.02 of this chapter.~~

~~005 Fund Insufficient. If the fund is insufficient for any reason to reimburse the amounts set forth in these regulations, the maximum amount that the fund shall be required to reimburse is the amount in the fund.~~

~~006 Spending Authority. Payment of reimbursements or other expenditures from the fund may not exceed the spending authority given to the department by the legislature.~~



Enabling Legislation: Neb. Rev. Stat. §66-1518, 66-1523 (Supp. 1999)

Legal Citation: Title 200, Ch. 4, Nebraska Department of Environmental Quality

~~NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Title 200—Rules And Regulations For Petroleum Release Remedial Action  
Reimbursement Fund~~

~~Chapter 5—Fixtures and Tangible Personal~~

~~001 Fixtures. All fixtures reimbursed by the fund which are attached to real property at the time of site closure are owned by the responsible person or the property owner, if different from the responsible person.~~

~~001.01 Reasonable costs for removal of fixtures are eligible for reimbursement at the time of site closure if such fixtures were a part of the approved remedial action.~~

~~001.02 Reasonable costs for repair or replacement of fixtures which are damaged by the remedial action are eligible for reimbursement if such activities were approved in a remedial action plan, except in the case of intentional actions or gross negligence by the responsible person or his or her agents.~~

~~002 Tangible Personal Property. The responsible person or his or her designated representative shall be reimbursed from the fund for the value of tangible personal property purchased by the responsible person and used in the approved remedial action, pursuant to chapter 3 of these regulations. All tangible personal property reimbursed by the fund is owned by the state, and may be used by the department in other remedial actions, stored until needed, or sold or disposed of in a manner beneficial to the fund.~~

~~002.01 Any proceeds from the sale or disposal of such property shall be remitted to the State Treasurer for credit to the fund.~~

~~002.02 The department may require a responsible person to reuse tangible personal property that was previously used in other remedial actions. Such equipment need not be warranted by the responsible person.~~

~~002.03 The Department shall require a warranty on all new remediation equipment for a period of one year following the remediation system startup. The department shall also require a warranty that installation of all equipment, whether it be new, used or provided by the Seller, shall be done in a workmanlike manner in accordance with standard procedures and will perform as designed for a period of one year following installation.~~

Enabling Legislation: Neb. Rev. Stat. §66-1518, 66-1529.01 (Cum. Supp. 1998)

Legal Citation: Title 200, Ch. 5, Nebraska Department of Environmental Quality Environmental Quality

NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 200—Rules And Regulations For Petroleum Release Remedial Action  
Reimbursement Fund

Chapter 6—Department Use of Funds

001 Remedial Actions. The department may undertake remedial actions in response to a release first reported after July 17, 1983, and within the period of time established by statute, with money available in the fund, provided:

001.01 The responsible person cannot be identified or located;

001.02 An identified responsible person cannot or will not comply with the remedial action requirements; or

001.03 Immediate remedial action is necessary, as determined by the director of the department, to protect human health or the environment.

002 Third party Claims. The department may pay the costs of a third party claim meeting the requirements of chapter 3, 001.06 of these regulations with money available in the fund if the responsible person cannot or will not pay the third party claim.

003 Claim Under State Miscellaneous Claims Act. The department shall pay any final award made by the State Claims Board pursuant to the State Miscellaneous Claims Act.

004 Damages Caused by the Department. Reimbursement for any damage caused by the department or a person acting at the department's direction while investigating or inspecting or during a remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the costs of remedial action involving the site where the release or suspected release occurred.

004.01 The costs shall be reimbursed from money available in the fund.



~~004.02 If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in Neb. Rev. Stat. §76-705.~~

~~005 Recovery of Expenditures. All expenses paid from the fund under this chapter of these regulations, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County.~~

~~005.01 This action may be brought by the county attorney or Attorney General at the request of the director of the department against the responsible person.~~

~~005.02 All recovered expenses shall be deposited into the fund.~~

~~Enabling Legislation: Neb. Rev. Stat. §§66-1518, 66-1529.02 (Supp. 1999)~~

~~Legal Citation: Title 200, Ch. 6, Nebraska Department of Environmental Quality~~

~~NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Title 200—Rules And Regulations For Petroleum Release Remedial Action  
Reimbursement Fund~~

~~Chapter 7—General Provisions~~

~~001 Powers of the Department. Nothing in the Remedial Action Act or in these regulations shall be construed to limit the powers of the department or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the department or any other person.~~

~~001.01 Administrative remedies need not be exhausted in order to proceed under these statutes or regulations.~~

~~001.02 The remedies provided by these statutes and regulations shall be in addition to those provided under existing statutory or common law.~~

~~002 Intervention. For purposes of Neb. Rev. Stat. §25-328, the state shall have an interest in any litigation which might result in a third-party claim.~~

~~003 Duty to Notify. Nothing in the Remedial Action Act or these regulations shall be construed to limit a person's duty to notify the department and the State Fire Marshal or to take other action related to a release as required pursuant to the NEPA or the Storage and Handling Act.~~

~~004 Severability. If any clause, paragraph, subsection, or section of these regulations shall be held invalid, it shall conclusively be presumed that the Environmental Quality Council would have enacted the remainder of these regulations not directly related to such clause, paragraph, subsection, or section.~~

~~005 Appeals. Any appeal from a final order or final decision of the director shall be pursuant to Neb. Rev. Stat. §81-1509.~~

~~006 Effective Date and Repeal of Earlier Rules.~~

~~006.01 These rules and regulations shall become effective five days after filing with the Secretary of State.~~

~~006.02 Earlier versions of these regulations are hereby repealed.~~

~~Enabling Legislation: Neb. Rev. Stat. §§66-1517, 66-1518 (Supp. 1999); 81-1509 (Cum. Supp. 1998); 84-907 (Reissue 1994)~~

~~Legal Citation: Title 200, Ch. 7, Nebraska Department of Environmental Quality~~