

Title 120 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 1 - CERTIFICATION

001 The department will provide certification pursuant to section 401 (33 U.S.C. 1341) of the federal Clean Water Act, 33 U.S.C. 1251 et seq., to an applicant for a federally issued and administered permit or license to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in a discharge into navigable waters, if the discharge will not violate Title 117, Nebraska Surface Water Quality Standards.

002 Certification provided under this Chapter may specify any special conditions necessary to assure that the applicant for a federal license or permit will comply with Title 117.

003 Certification may be withdrawn by the department when it is determined that there is no longer reasonable assurance that there will be compliance with the applicable provisions of Title 117.

003.01 Notification will be given to the applicant by certified mail, return receipt requested, of the intent to withdraw certification and the reason therefor. The withdrawal will become effective unless the applicant requests in writing a hearing before the director no later than ten days after the date the notice is received.

003.02 If a hearing is held, procedure will be governed by Title 115, Rules and Practice and Procedure of the department. The only issue to be determined is whether there is still reasonable assurance that there will be compliance with Title 117.

003.03 If the applicant does not make a timely request for a hearing before the director, or if, after hearing, the director determines that certification should be withdrawn, notice of the decision will be given as soon as practicable by certified mail, return receipt requested, to the applicant and the Federal agency to whom certification had originally been made for an operating license or permit.

004 In the case of individual permits under section 404 of the federal Clean Water Act, the department's notice of filing will be issued jointly with the Corps of Engineers.

005 In all other cases involving certification, the director will, within thirty days of review of a completed application for certification, provide notice on the department webpage of the filing and recommended approval, approval with conditions, or denial.

006 The notice will include:

006.01 The name and address of the applicant;

006.02 A description of the applicant's proposed action;

006.03 Purpose of the action proposed;

006.04 The basis which may be used in determining if certification is to be given;

006.05 Where a person may write to request a public hearing; and

006.06 The legal basis for certification, if made.

007 The public may comment to the director or request a hearing by the end of the public comment period which shall be at least thirty days. Public comments, requests for hearing and notice of hearing will be governed by the procedures in Title 115 applicable to permits. If any information or public comment is received during the comment period which appears to raise significant issues, the director may revise the certification and reissue notice.

Enabling Legislation: Neb. Rev. Stat. §81-1505(2)(e)

Legal Citation: Title 120, Ch. 1, Nebraska Department of Environmental Quality