

NEBRASKA ADMINISTRATIVE CODE

Title 122 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 30 - PERMIT MODIFICATION; REVOCATION AND REISSUANCE

001 Any permit under this title, after public notice and opportunity for a public hearing according to Chapters 32 and 33 of this Title, may be modified or revoked and reissued (either upon request of any interested person, including the permittee, or upon the Director's initiative) in whole or in part during its term for cause, including, but not limited to:

001.01 Cause exists for termination under Chapter 31 of this Title, and the Director determines that modification or revocation and reissuance is appropriate;

001.02 The Director has received notification of a proposed transfer of a permit in accordance with Chapter 29 of this Title;

001.03 New information or standards indicate that location and operation of the permitted facility endangers the health and safety of persons or causes pollution of the environment;

001.04 Upon request by the permittee, provided such request does not create a violation of any existing applicable standards, laws, or rules and regulations; and

001.05 For Class III injection wells and mineral production wells, causes for modification stated in section 002 below may be causes for revocation and reissuance as well as modification.

002 In addition to the above, causes for modification but not revocation and reissuance include, but are not limited to:

002.01 Material and substantial alterations or additions to the permitted facility or activity occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit;

002.02 The Director has received information regarding:

002.02A Factor(s) arising after final permit issuance which would have justified the use of limitations or other requirements different from those required by applicable standards or limitations; and

002.02B For UIC area permits, factors which indicate that cumulative effects on the environment are unacceptable.

002.03 The standards and/or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause as follows:

002.03A For promulgation of amended standards or regulations, when:

002.03A1. The permit condition requested to be modified was based on a regulation under this title;

002.03A2. The Council has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based, or has approved action with regard to a water quality standard on which the permit condition was based after consultation with the Regional Administrator; and

002.03A3. A permittee requests modification within ninety days after department or federal notice of the action on which the request is based;

002.03B For judicial decisions, a court of competent jurisdiction has remanded and stayed state or federally promulgated regulations if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee within ninety days of judicial remand.

002.04 The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

003 Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section. Any permit modification not processed as minor modification under this section must be

made for cause and with draft permit and public notice as required. Minor modifications may only:

003.01 Correct typographical errors;

003.02 Require more frequent monitoring or reporting by the permittee;

003.03 Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

003.04 Allow for a change in ownership of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;

003.05 Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, after reviewing information required, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change the classification of the facility's injection well(s);

003.06 Change construction requirements approved by the Director, provided that any such alteration shall comply with the requirements of these regulations; or

003.07 Amend a plugging and abandonment plan which has been updated.

004 When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

005 If cause does not exist, the Director shall not modify or revoke and reissue the permit; and he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings, but constitute a "final order" subject to appeal pursuant to Section 81-1509.

Enabling Legislation: Neb. Rev. Stat. §§ 81-1504(2)(11)(13)(20); 81-1505(9)

Legal Citation: Title 122, Ch.30, Nebraska Department of Environmental Quality