

NEBRASKA ADMINISTRATIVE CODE

Title 129 – Air Quality Regulations

Chapter 3 - CONSTRUCTION PERMITS

001 When Required.

001.01

Construction Allowed Prior to Obtaining a Permit. A pre-construction notification may be submitted by sources not subject to review under Chapter 3 Section 004, Chapter 4, or Chapter 13 Section 004.03 of this Title, or sources seeking federally enforceable permit restrictions to avoid review under Chapter 3 Section 004, Chapter 4, or Chapter 13 Section 004.03. Such sources may initiate construction prior to issuance of the construction permit by the Director, provided the Department has received a complete application for a construction permit; and the source has submitted the pre-construction notification to the Department at least thirty (30) working days prior to initiating construction. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

001.01A A complete notification for pre-construction activities includes:

001.01A1 The applicant's full acceptance and knowledge of all liability associated with the possibility of denial of the permit application;

001.01A2 A waiver of any state liability, that must be signed by a responsible official for the source; and

001.01A3 A complete list of the construction-related activities to be undertaken.

001.01B The activities will not be allowed if the start of actual construction has occurred; and/or an application for permit approval under this rule has not been filed.

001.02 Additional Pre-construction Requirements.

001.02A Cease Construction. The applicant must cease construction if the Department determines construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the NAAQS or will result in a violation of a control strategy as approved pursuant to 40 CFR Part 51, Subpart G.

001.02B Modification. The applicant will be required to make any changes or modifications to the source imposed in the issued construction permit.

001.02C Notification of Construction. The applicant must notify the Department of the date that actual construction or reconstruction activities started. All notifications shall be submitted to the Department in writing no later than thirty (30) days after construction or reconstruction started.

001.03 Except as provided in this Chapter or Chapters 4 or 8 of Title 129, or other applicable state and federal regulations, no person will cause the construction, reconstruction, or modification at any of the following without a construction permit issued by the Department.

001.03A Any stationary source or emission unit, such that there is a net increase in potential emissions at the stationary source equal to or exceeding the following levels:

001.03A1 Fifteen (15) tpy of PM₁₀ emissions.

001.03A2 Ten (10) tpy of PM_{2.5} emissions.

001.03A3 Forty (40) tpy of sulfur dioxide (SO₂) or sulfur trioxide (SO₃), or any combination of the two.

001.03A4 Forty (40) tpy of oxides of nitrogen (calculated as NO₂).

001.03A5 Forty (40) tpy of volatile organic compounds (VOC).

001.03A6 One hundred (100) tpy of carbon monoxide (CO).

001.03A7 Six-tenths (0.6) tpy of lead.

001.03A8 Two and one-half (2.5) tpy of any hazardous air pollutant or an aggregate of ten (10) tpy of any hazardous air pollutants, including all associated fugitive emissions (see Chapter 13).

001.03B Any incinerator used for refuse disposal or for the processing of salvageable materials except refuse incinerators located on residential premises containing five or less dwelling units used only for the disposal of residential waste generated on the said property.

001.04 When determining applicability under 001.03A above, sources belonging to one of the source categories found in 40 CFR § 52.21(b)(1)(iii) will include fugitive emissions.

001.05 Where a permit is not explicitly required for a source, the owner or operator may apply for a construction permit for one of more of the following purposes:

001.05A To establish enforceable limits to avoid otherwise applicable requirements under the provisions of Title 129.

001.05B To revise existing construction permits to incorporate significant permit revisions as defined in Chapter 9.

001.05C To establish a PAL pursuant to the provisions of Chapter 4 of Title 129. The construction permit used to establish a PAL will include the information and conditions listed in Chapter 4.

001.05D To establish a Best Available Retrofit Technology (BART) permit or other permit required to reduce visibility impairment in a Class I Federal area as described in 40 CFR § 81.400, pursuant to the visibility protection provisions of Chapter 2. Administrator, as used in 40 CFR § 81.400, means Administrator of EPA.

001.06 Sources not subject to provisions of this Chapter may still be required to obtain a Prevention of Significant Deterioration (PSD) permit pursuant to provisions in Chapter 4.

002 Duty to Apply, Application Form. To apply for a construction permit, request construction permit applicability, or request a significant permit revision for a source, the owner or operator will submit a complete application for a construction permit on forms provided by the Department and an application fee.

002.01 Application Fee. Each application for a construction permit will be accompanied by a non-refundable application fee. The application fee will be based on the potential to emit, which includes fugitive emissions, as provided for in Neb. Rev. Stat. § 81-1505.06.

002.02 Complete Application.

002.02A The application will be certified by a responsible official for the source.

002.02B The Department will review each application and evaluate potential emissions from the planned source for compliance and attainment with these regulations, applicable federal air quality regulations, and National Ambient Air Quality Standards (NAAQS). The Department will require in the application information as necessary to determine if the new or modified source will interfere directly or indirectly with the attainment or maintenance of National Primary and Secondary

Ambient Air Quality Standards, or violate any portion of an existing control strategy.

002.02C The owner or operator of a source required to obtain a construction permit will submit an application on the standard forms available from the Department. The applicant, at a minimum, will include the following information on the standardized application form or in attachments:

002.02C1 Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of designated source contacts. If the company is located on leased property, the name of the property owner will be provided.

002.02C2 A description of the source's processes and products by Standard Industrial Classification Code as described in the Standard Industrial Classification Manual, 1987.

002.02C3 The following emission-related information for each emissions unit:

002.02C3(a) All potential emissions of regulated air pollutants. A permit application will describe all potential emissions of regulated air pollutants emitted from any emissions unit. If requested by the Department, the applicant will submit additional information related to the emissions of air pollutants sufficient to verify which regulations are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule. This information will be provided for each operating scenario identified by the source.

002.02C3(b) Identification and description of all points of emissions described in 002.02C3(a) above in sufficient detail to establish the basis for fees and applicability of requirements of the Act and State Act.

002.02C3(c) Emissions rate in tpy and lb/hr and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method or alternative method as approved by the Director.

002.02C3(d) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use,

raw materials, production rates, and operating schedules to the extent needed to determine or regulate emissions.

002.02C3(e) Identification and detailed description of air pollution control equipment and compliance monitoring devices and activities.

002.02C3(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

002.02C3(g) Other information identified in any applicable requirement (including information related to stack height limitations developed pursuant to Section 003 of this Chapter).

002.02C3(h) Calculations on which the information in the above paragraphs is based.

002.02C3(i) The applicant will indicate any emission points at the facility for which the applicant has or intends to request coverage under a general permit. Existing general permit coverage will be incorporated into the current permitting action and the general permit coverage will expire on permit issuance without further action needed by the Department.

002.02C4 The following air pollution control requirements:

002.02C4(a) Citation and description of all applicable requirements, and

002.02C4(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

002.02C5 Other specific information that may be necessary to implement and enforce other applicable requirements of the Act, State Act, or this Title or to determine the applicability of such requirements.

002.02C6 An explanation of any proposed exemptions from otherwise applicable requirements.

002.02C7 Additional information as determined to be necessary by the permitting authority to define alternate operating scenarios

identified by the source or to define permit terms and conditions related to modifications that do not require a permit revision.

002.03 Duty to Supplement and Correct Application.

002.03A If the Department determines that the application is not complete or additional information is necessary to evaluate or take final action on the application, the Department may request such information in writing and set a reasonable deadline for a response.

002.03B Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, immediately notify the Department and promptly submit such supplementary facts or corrected information.

002.03C If an ambient air quality impact analysis is deemed necessary by the Director as a part of a construction permit application, concentrations of pollutants that may be expected to occur in the vicinity of a source or combination of sources will be determined by use of an air pollution dispersion model acceptable to the Director. Meteorological and operating conditions that may occur that will produce the greatest concentrations of the pollutants emitted will be used in evaluating the effect of the source(s) on ambient air quality.

002.04 Disapproval of Application.

002.04A If it is determined by the Director that emissions resulting from the operation of a source to be constructed or modified will violate any portion of these rules and regulations, violate any applicable federal air quality regulation, or interfere with attainment or maintenance of the NAAQS, no construction permit will be granted until necessary changes are made in the plans and specifications to resolve, to the Director's satisfaction, the objections to issuance.

002.04B A construction permit will not be issued for any major source or major modification when such source or modification would cause or contribute to a violation of the NAAQS in any area that does not or would not meet the national standard by exceeding, at a minimum, the significant levels listed at 40 § 51.165(b)(2).

003 Permit Action. The Director will publish notice of intent to approve or disapprove the application in accordance with the procedures of Chapter 10.

003.01 A construction permit issued for any construction, reconstruction, or modification, does not relieve the owner or operator from the responsibility to

comply with the applicable portions of the State Implementation Plan (SIP) control strategy. The source is to comply with all conditions of the construction permit. Any permit noncompliance will constitute a violation of the State Act and the Act, and is grounds for enforcement action or permit revocation.

003.02 Approval to construct will become invalid if construction is not commenced within 18 months after approval of the construction permit, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Director may extend the 18-month period upon a satisfactory showing by the permittee, made at least 30 days before the approval to construct becomes invalid, that the complexity of the construction, reconstruction, or modification requires additional time.

004 Additional Requirements for Construction or Modification of Sources in Nonattainment Areas.

004.01 A construction permit or permit modification will not be issued to a source if the source is located or is to be located in an area that is nonattainment for a pollutant for which the source or modification is major unless it is determined that:

004.01A By the time the facility is to begin operation, total allowable emissions from all the sources described in Sections 004.01A1 through 004.01A3 represent a net decrease in emissions and show reasonable further progress toward attainment and maintenance of the NAAQS; which include:

004.01A1 The same source or existing sources in the same nonattainment area,

004.01A2 New sources which are not major emitting facilities, and,

004.01A3 Existing sources allowed under the SIP prior to the application for such permit to construct or modify;

004.01B Any emissions reductions required as a precondition of the issuance of a permit are be federally enforceable before such permit is issued;

004.01C The proposed source is required to comply with the lowest achievable emission rate;

004.01D The owner or operator of the proposed new or modified source has demonstrated that all other major stationary sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the State subject to emissions

limitations are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards;

004.01E The proposed source is in compliance with requirements established under the State Implementation Plan and the nonattainment area SIP is being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified; and

004.01F The source has provided the Director an acceptable, complete, and detailed assessment of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. This assessment will include an analysis as to why the facility cannot be constructed elsewhere.

004.02 The requirements of Section 004.01A for emission reductions from existing sources in the vicinity of proposed new sources or modifications will be determined on a case-by-case basis. The offset baseline will be the actual emissions of the source from which offset credit is obtained. The following apply to emission offsets:

004.02A If the emissions limit under these regulations allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

004.02B Requirements for an existing fuel combustion source, as described in 40 CFR Part 51, Appendix S, Section IV.C.2;

004.02C Requirements for emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels, as described in 40 CFR Part 51, Appendix S, Section IV.C.3;

004.02D Requirements for replacing one volatile organic compound with another of lesser reactivity, as described in 40 CFR Part 51, Appendix S, Section IV.C.4;

004.02E The procedures set out in 40 CFR Part 51, Appendix S, Section IV.D, relating to the permissible location of offsetting emissions will be followed, unless the Director determines that an equally or more stringent procedure is appropriate;

004.02F Credit for an emissions reduction can be claimed to the extent that the Director has not relied on it in issuing any permit under regulations

approved pursuant to 40 CFR Part 51 Subpart I or in demonstrating attainment or reasonable further progress; and

004.02G Emission reductions otherwise required by this Title will not be creditable as emissions reductions for purposes of any offset.

004.03 The provisions of 004 do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the source categories found in 40 CFR § 52.21(i)(1)(vii).

004.04 At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this section will apply to the source or modification as though construction had not yet commenced on the source or modification.

005 Stack Heights; Good Engineering Practice.

005.01 For purposes of this section, the definitions and specifications in 40 CFR § 51.100(hh) through (kk) apply.

005.02 The degree of emission limitation required of any source for control of any air pollutant will not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique.

005.03 No emission limitation will be established, or permit to construct or modify issued, involving any dispersion technique, unless approved by the Council following public hearing noticed at least 30 days in advance. The public notice will announce the availability of any fluid model or field study demonstration.

006 Permit Content. Each construction permit will include requirements applicable to the source and any additional requirements which the Director deems appropriate, including, but not limited to, the following:

006.01 Emissions limitations and standards, which are at least as stringent as any applicable requirement or other requirements contained in the SIP.

006.02 Compliance certification, testing, monitoring, reporting, and recordkeeping.

007 The emission limitations or emission standards which would have been imposed under a construction permit are applicable to those sources who have failed to obtain a permit to the same extent as if a permit had been obtained.

Enabling Legislation: Neb. Rev. Stat. § 81-1504(1)(2), 81-1505(1)(12)(16), 81-1505.06

Chapter 03

EPA Rulemakings

CFR: 40 C.F.R. 52.1420(c)
FRM: 89 FR 66609 (8/16/2024)
PRM: 89 FR 47504 (06/03/2024)
State Submission: 12/02/2022
State Final: Title 129, Chapter 3 (9/28/2022)
APDB File: NE-106; EPA-R07-OAR-2024-0025 effective 9/16/2024
Description: This revision approves the state of Nebraska's request to renumber and combine Chapter 16 - Stack Heights – Good Engineering Practice, and Chapter 17- Construction Permits -When Required, to Chapter 3 (single).

Difference between state and EPA approved regulations

None

Note: All previous versions of the rule are obsolete; the record of prior rulemakings is shown below for historical purposes only.

Former Chapter 16

CFR: 40 C.F.R. 52.1420(c)
FRM: 67 FR 37325 (05/29/2002)
PRM: 67 FR 37370 (05/29/2002)
State Submission: 06/29/2001
State Final: 12/15/1998
APDB File: NE-46
Description: This revision transferred four definitions related to Stack Height Good Engineering Practice from Chapter 1 to Chapter 16. These rules have previously been approved by EPA.

CFR: 40 C.F.R. 52.1420(c)(41)
FRM: 60 FR 372 (01/04/95)
PRM: 60 FR 418 (01/04/95)
State Submission: 2/16/94
State Proposal: 9/16/93
State Final: 6/26/94
APDB File: NE-31
Description: The EPA approved the renumbering of this rule as part of the overall recodification of the Nebraska rules. The rule was previously Chapter 5. Note: All previous versions of the rule are obsolete; the record of prior rulemakings is shown below for historical purposes only.

CFR: 40 C.F.R. 52.1420(c)(37)
FRM: 54 FR 21059 (5/16/89)
PRM: None
State Submission: 6/15/88
State Proposal: 2/5/88
State Final: 6/5/88
APDB File: NE-21
Description: The EPA reapproved this rule as Chapter 5 as part of an action to update the entire set of regulations in the Nebraska SIP.

CFR: 40 C.F.R. 52.1420(c)(36)
FRM: 54 FR 7034 (2/16/89)
PRM: None
State Submission: 5/6/86
State Proposal: 10/3/85; 12/17/85
State Final: 5/5/86
APDB File: NE-24
Description: The EPA approved a new rule to incorporate the stack height regulations.

Former Chapter 17

CFR: 40 C.F.R. 52.1420(c)
FRM: 79 FR 45108 (8/4/2014)
PRM: 79 FR 45174 (8/4/2014)
State Submission: 2/13/13
State Final: 4/1/12
APDB File: NE 86; EPA-R07-OAR-2014-0468
Description: This revision amends Title 129 of the Nebraska Administrative Code to facilitate the implementation of the fine Particulate Matter (PM2.5) program; modifying various definitions; changing the state's minor source construction permit program; adding a minor source permitting threshold for PM2.5 and a level consistent with the significant thresholds for PSD. As a result of U.S. Court of Appeals for the District of Columbia NDEQ requested that provisions relating to SILs and SMCs not be considered for approval at this time.

CFR: 40 C.F.R. 52.1420(c)
FRM: 76 FR 15852 (03/22/2011)
PRM: 75 FR 81179 (12/27/2010)
State Submission: 01/14/2011
State Final: 02/06/2008
APDB File: NE-81
Description: This revision incorporates changes impacting the regulation of GHGs and establishes emission thresholds for GHG emissions; provides NE the authority to issue PSD permits governing GHGs; and reflects 2002 NSR Reform rules. Updates to Chapter 17 revise 003.01 Application Fee; 014 Modification of the Construction Permit; and 014.01 – 014.04.

CFR: 40 C.F.R. 52.1420(c) and Part 70, Appendix A, Nebraska; City of Omaha; Lincoln-Lancaster County Health Department, (j)
FRM: 75 FR 48582 (08/11/2010)
PRM: 75 FR 48628 (08/11/2010)
State Submission: 05/27/2009
State Final: 09/25/2005
APDB File: NE-79
Description: Changes to Chapter 17 clarify various terms in the regulation, adds cross-references, deletes redundant language, adopts the construction permit application fee structure, and delineates the construction permit process to be used as a vehicle to accomplish other permitting needs when a construction permit is not required. "air contaminant" is replaced with "stationary"; section 001.01A is replaced - the new section more clearly delineates the uses of the construction permit process; "sulfur dioxide and sulfur trioxide" are spelled out; cross reference to Chapter 27 is added; section 002.01 is moved to section 011; section 003.01 adopts the construction permit application fee structure; section 015 is added. Part 70 change adds paragraph (j) under "Nebraska; City of Omaha; Lincoln Lancaster County Health Department"

CFR: 40 C.F.R. 52.1420(c)
FRM: 68 FR 40528 (07/08/2003)
PRM: 68 FR 40617 (07/08/2003)
State Submission: 11/05/2002
State Final: 07/10/2002
APDB File: NE-57
Description: This revision clarifies that fugitive emissions must be included in calculating levels of hazardous air pollutants and defines the source categories that must include fugitive emissions when determining the net change in potential emissions.

CFR: 40 C.F.R. 52.1420(c)
FRM: 67 FR 37325 (05/29/2002)
PRM: 67 FR 37370 (05/29/2002)
State Submission: 06/29/2002
State Final: 12/15/1998 and 08/22/2000
APDB File: NE-46
Description: Subsection 002.01 was added to reinforce that permit non-compliance is not allowed.
Section 014 was added to allow for modification of construction permits without public notice procedures under tightly limited circumstances.

CFR: 40 C.F.R. 52.1420(c)
FRM: 65 FR 3130 (1/20/00)
PRM: 65 FR 3168 (1/20/00)
State Submission: 2/5/99
State Final: 9/7/97
APDB File: NE-41
Description: Subsection 001 was revised to add the term "or emission unit" for consistency with Chapter 5. Subsection 001.01A was revised to clarify PSD requirements.

CFR: 40 C.F.R. 52.1420(c)(43)(i)(A)
FRM: 61 FR 4899 (2/9/96)
PRM: 61 FR 4949 (2/9/96)
State Submission: 6/14/95
State Proposal: 12/2/94
State Final: 5/29/95
APDB File: NE-33
Description: The EPA approved a revision which consolidated the applicability provisions previously contained in separate rules into this Chapter 17 and specified that a net increase in potential emissions requires a construction permit.

CFR: 40 C.F.R. 52.1420(c)(41)
FRM: 60 FR 372 (01/04/95)
PRM: 60 FR 418 (01/04/95)
State Submission: 2/16/94
State Proposal: 12/17/93
State Final: 6/26/94
APDB File: NE-31
Description: The EPA approved the renumbering of this rule as part of the overall recodification of the Nebraska rules. The rule was previously Chapter 6. The EPA also approved numerous revisions to the regulation involving thresholds for minor new source review, preconstruction requirements in nonattainment areas pursuant to the 1990 amendments to the Clean Air Act, and other miscellaneous changes.

CFR: 40 C.F.R. 52.1420(c)(37)
FRM: 54 FR 21059 (5/16/89)
PRM: None
State Submission: 6/15/88
State Proposal: 2/5/88
State Final: 6/5/88
APDB File: NE-21
Description: The EPA reapproved this rule as Chapter 6 as part of an action to update the entire set of regulations in the Nebraska SIP. The state's revision added provisions for new and modified PM10 sources, added a requirement for operating permits following construction, added air quality significance levels, and made numerous other miscellaneous changes.

CFR: 40 C.F.R. 52.1420(c)(32)
FRM: 51 FR 6221 (2/21/86)
PRM: 49 FR 37427 (9/24/84); 50 FR 23031 (5/30/85)
State Submission: 10/6/83

State Proposal:	5/23/83
State Final:	6/17/83
APDB File:	NE-18
Description:	The EPA approved the deletion of the complex source requirements.
CFR:	40 C.F.R. 52.1420(c)(29)
FRM:	49 FR 29597 (7/23/84)
PRM:	48 FR 39472 (8/31/83)
State Submission:	5/23/83; 5/30/84
State Proposal:	3/25/83
State Final:	5/22/83
APDB File:	NE-16
Description:	The EPA approved this as Chapter 4 pertaining to revisions for new source review for nonattainment areas.
CFR:	40 C.F.R. 52.1420(c)(28)
FRM:	48 FR 53697 (11/29/83)
PRM:	48 FR 39084 (8/29/83)
State Submission:	1/9/81
State Proposal:	Unknown
State Final:	Unknown
APDB File:	NE-13
Description:	The EPA apparently approved revisions to the rule to provide for review of new or modified lead sources with greater than five tons per year of lead emissions. (There is no copy of the revised rule in either EPA or state files.)
CFR:	40 C.F.R. 52.1420(c)(8)
FRM:	40 FR 11778 (9/9/75); 41 FR 8956 (3/2/76)
PRM:	39 FR 24921 (7/8/74)
State Submission:	2/27/74
State Proposal:	12/14/73
State Final:	2/26/74
APDB File:	NE-00
Description:	The EPA approved revisions pertaining to complex sources and procedures for disapproving construction permits.
CFR:	40 C.F.R. 52.1420(c)(4)
FRM:	41 FR 8962 (3/2/76)
PRM:	None
State Submission:	6/9/72
State Proposal:	Unknown
State Final:	6/6/72
APDB File:	NE-00
Description:	As part of an action to clarify the list of SIP revisions submitted by the states, the EPA approved a revised rule. The rule was substantially rewritten.
CFR:	40 C.F.R. 52.1420(a)
FRM:	37 FR 10842 (5/31/72)
PRM:	None
State Submission:	1/28/72
State Proposal:	Unknown
State Final:	6/6/72
APDB File:	NE-00
Description:	The EPA approved this as Rule 5 pertaining to new sources in the original SIP.