

Title 129 - Nebraska Air Quality Regulations

Chapter 17 - CONSTRUCTION PERMITS - WHEN REQUIRED

001 No person shall cause the construction, reconstruction, or modification at any of the following without first having obtained a construction permit from the Department in the manner prescribed by this Chapter:

001.01 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:

001.01A	Fifteen (15) tons/year of PM ₁₀ emissions.
001.01B	Ten (10) tons/year of PM _{2.5} emissions.
001.01C	Forty (40) tons/year of sulfur dioxide (SO ₂) or sulfur trioxide (SO ₃), or any combination of the two.
001.01D	Forty (40) tons/year of oxides of nitrogen (calculated as NO ₂).
001.01E	Forty (40) tons/year of volatile organic compounds (VOC).
001.01F	Fifty (50) tons/year of carbon monoxide.
001.01G	Six-tenths (0.6) tons/year of lead.
001.01H	Two and one-half (2.5) tons/year of any hazardous air pollutant or an aggregate of ten (10) tons/year of any hazardous air pollutants, including all associated fugitive emissions (see Chapter 27, section <u>003</u>).

001.02 When determining applicability under 001.01 above, sources in the following source categories must include fugitive emissions:

001.02A	Coal cleaning plants (with thermal dryers);
001.02B	Kraft pulp mills;
001.02C	Portland cement plants
001.02D	Primary zinc smelters;
001.02E	Iron and steel mills;
001.02F	Primary aluminum ore reduction plants;
001.02G	Primary copper smelters;
001.02H	Municipal incinerators capable of charging more than 250 tons of refuse per day;
001.02I	Hydrofluoric, sulfuric, or nitric acid plants;
001.02J	Petroleum refineries;
001.02K	Lime plants;
001.02L	Phosphate rock processing plants;
001.02M	Coke oven batteries;

Chapter 17

001.02N	Sulfur recovery plants;
001.02O	Carbon black plants (furnace process);
001.02P	Primary lead smelters;
001.02Q	Fuel conversion plants;
001.02R	Sintering plants;
001.02S	Secondary metal production plants;
001.02T	Chemical process plants;
001.02U	Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hours heat input;
001.02V	Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
001.02W	Taconite ore processing plants;
001.02X	Glass fiber processing plants;
001.02Y	Charcoal production plants;
001.02Z	Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
001.02AA	Any other stationary source category which is being regulated by a standard promulgated under Section 111 or 112 of the Act as of August 7, 1980.

001.03 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.

002 The 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.

003 The owner or operator of any source required to obtain a construction permit or requesting permit applicability under this Chapter, or submitting a significant permit revision, shall submit an application on forms provided by the Department.

003.01 Application Fee. Each application for a construction permit shall be accompanied by a non-refundable fee. The amount of the fee will be based on the amount of pollutants the entire source will directly emit or have the potential to emit, as follows:

Directly Emit or Have Potential to Emit:	Fee
Less than 50 tons per year of any regulated air pollutant; or Less than 2.5 tons per year of any single HAP; or Less than 10 tons per year of any combination of HAPs	\$250
50 tons or more but less than 100 tons per year of any regulated air pollutant; or 2.5 tons or more but less than 10 tons per year of any single HAPs; or 10 tons or more but less than 25 tons per year of any combination of HAPs	\$1,500
100 tons or more per year of any regulated air pollutant; or 10 tons or more per year of any single hazardous air pollutant (HAP); or 25 tons or more per year of any combination of HAPs	\$3,000

003.02 Listed air pollutants for application fee purposes include PM₁₀, SO₂ or SO₃ or any combination of the two NO_x, VOC, and CO.

004 An application will be deemed complete if it provides all the information required and is sufficient to evaluate the subject source and to determine all applicable requirements. The application shall be certified by a responsible official for the source.

005 If the Department determines that the application is not complete and 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.

006 Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

007 The Department shall 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.

Chapter 17

008 If an 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 shall be used in evaluating the effect of the source(s) on air quality.

009 Disapproval of Application for Permits.

009.01 If it is determined by the Director that emissions resulting from the operation of a source to be constructed or modified will any portion of these rules and regulations, violate any applicable federal air quality regulation, or interfere with attainment or maintenance of a National Ambient Air Quality Standard, no permit will be granted until necessary changes are made in the plans and specifications to obviate the objections to issuance.

009.02 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 a national ambient air quality standard by exceeding, at a minimum, the following significant levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Averaging period				
	Annual	24 hour	8 hour	3 hour	1 hour
SO ₂	1.0 ug/m ³	5 ug/m ³	---	25 ug/m ³	---
PM ₁₀	1.0 ug/m ³	5 ug/m ³	---	---	---
PM _{2.5}	0.3 ug/m ³	1.2 ug/m ³	---	---	---
NO ₂	1.0 ug/m ³	---	---	---	---
CO	---	---	0.5 mg/m ³	---	2 mg/m ³

010 Issuance of permits. The Director shall publish notice of intent to approve or disapprove the application in accordance with the procedures of Chapter 14.

011 Approval, by issuance of a permit for any construction, reconstruction, or modification, does not relieve the owner or operator from the responsibility to comply with the applicable portions of the Implementation Plan control strategy. The permittee must comply with all conditions of the construction permit. Any permit noncompliance shall constitute a violation of the State Act and the Act, and is grounds for enforcement action or permit revocation.

012 If construction, reconstruction, or modification of the source is not commenced within 18 months, the construction permit shall lapse except upon a showing by the permittee that the complexity of the construction, reconstruction, or modification requires additional time.

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

013.01 No permit to construct or modify will be issued for a proposed major source or a major modification 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:

013.01A By the time the facility is to commence operation, total allowable emissions from the same source or existing sources in the same nonattainment area, from new sources which are not major emitting facilities, and from existing sources allowed under the Implementation Plan prior to the application for such permit to construct or modify represent a net decrease in emissions and show reasonable further progress toward attainment and maintenance of the ambient air quality standards, and provided that any emissions reductions required as a precondition of the issuance of a permit shall be federally enforceable before such permit is issued.

013.01B The proposed source is required to comply with the lowest achievable emission rate; and

013.01C 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.

013.01D The proposed source is in compliance with requirements established under the Implementation Plan and the State shall not issue a permit if the Administrator has determined that the applicable Implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified.

Chapter 17

013.01E The source has completed an analysis 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.

013.02 The requirements of section 013.01A for emission reductions from existing sources in the vicinity of proposed new sources or modifications shall be determined on a case-by-case basis. The offset baseline shall be the actual emissions of the source from which offset credit is obtained.

013.03 The following shall apply to emission offsets:

013.03A 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;

013.03B For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The Director will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

013.03C Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production less than one year prior

to the date of permit application, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source;

013.03D No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds". (42 FR 35314, July 8, 1977);

013.03E The procedures set out in 40 CFR Part 51, Appendix S, Section IV.D, relating to the permissible location of offsetting emissions, shall be followed, unless the Director determines that an equally stringent or more stringent procedure is appropriate.

013.03F 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.

013.03G Emission reductions otherwise required by this Title shall not be creditable as emissions reductions for purposes of any offset.

013.04 The provisions of 013 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 following categories:

013.04A	Coal cleaning plants (with thermal dryers);
013.04B	Kraft pulp mills;
013.04C	Portland cement plants;
013.04D	Primarily zinc smelters;
013.04E	Iron and steel mills;
013.04F	Primary aluminum ore reduction plants;
013.04G	Primary copper smelters;
013.04H	Municipal incinerators capable of charging more than 250 tons of refuse per day;
013.04I	Hydrofluoric, sulfuric, or nitric acid plants;
013.04J	Petroleum refineries;
013.04K	Lime plants;
013.04L	Phosphate rock processing plants;

Chapter 17

013.04M	Coke oven batteries;
013.04N	Sulfur recovery plants;
013.04O	Carbon black plants (furnace process);
013.04P	Primary lead smelters;
013.04Q	Fuel conversion plants;
013.04R	Sintering plants;
013.04S	Secondary metal production plants;
013.04T	Chemical process plants;
013.04U	Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hours heat input;
013.04V	Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
013.04W	Taconite ore processing plants;
013.04X	Glass fiber processing plants;
013.04Y	Charcoal production plants;
013.04Z	Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
013.04AA	Any other stationary source category which is being regulated by a standard promulgated under Section 111 or 112 of the Act as of August 7, 1980.

013.05 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 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

014 Any source not required to obtain a construction permit pursuant to 001 may request a construction permit to be issued in the manner prescribed by 002 through 013 for the following purposes:

014.01 Establishing enforceable limits to avoid otherwise applicable requirements under the provisions of Title 129.

014.02 Revising existing construction permits to incorporate significant permit revisions as defined in Chapter 15.

014.03 Establishing a PAL pursuant to the provisions of Chapter 19 of Title 129. The construction permit used to establish a PAL must include the information and conditions listed in Chapter 19, section 011.06.

014.04 Establishing a Best Available Retrofit Technology (BART) permit or other permit required to reduce visibility impairment in a Class I Federal area pursuant to the provisions of Chapter 43.

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

Legal Citation: Title 129, Ch. 17, Nebraska Department of Environmental Quality

Chapter 17

EPA Rulemakings

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 (PM_{2.5}) program; modifying various definitions; changing the state's minor source construction permit program; adding a minor source permitting threshold for PM_{2.5} 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.

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 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.)

Chapter 17

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.

Difference Between the State and EPA-Approved Regulation

In sections 001.02T and 013.04T Nebraska's rule excludes ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140 from chemical processing plants. These exclusions are not approved.