

Concise Summary of Proposed Changes to Title 132

- Agency name is changed from Department of Environmental Quality (DEQ) to Department of Water, Energy, and Environment (DWEE) throughout the title as a result of LB317 in 2025 that merged NeDNR and NDEE.
- References to the current state fossil fuel combustion ash (FFCA) regulatory program in Chapter 4 and elsewhere in Title 132 are replaced by the term “coal combustion residuals” or “CCR” as DWEE is proposing to replace its existing state program for the regulation of coal ash generated at electric utilities with the federal CCR program promulgated in 2015 and subsequent amendments.
- Various cleanup, clarifying, and gap-filling revisions.

Chapter 1 - Definitions

- Definitions for “coal combustion residuals (CCR)” and “CCR unit” proposed to be added in sections 015 and 012 verbatim from the federal definitions in 40 CFR § 257.53. These definitions replace similar terms for the prior state fossil fuel combustion ash regulatory program which are proposed for repeal.
- Definition for “major modification” moved from Chapter 9, which is a fee chapter, to Chapter 1, section 069; language added to clarify that a separate definition in Chapter 4, for “major modification” applies to CCR facilities; and language removed to clarify that the type of modification at issue determines the required public involvement procedures, not the reverse.
- Key definitions transferred from Title 126 for “paunch manure” (087), “dedicated paunch manure site” (031), “non-dedicated paunch manure site” (077), and “dry ton” (042) to implement paunch regulations.
- Existing definitions for “landfill unit” (061), “lateral expansion” (062), “surface impoundment” (137), and “uppermost aquifer” (146) have language added to clarify that separate definitions apply to CCR units.
- Definition for “construction and demolition waste” (023) is proposed to have added “uncontaminated wood pallets from construction, industrial, warehousing, transport, or other activities” to the list of materials that can thus be disposed of at C&D landfills.
- Definition for “livestock waste” has language added to clarify that “it does not include solid waste from sources other than animal agriculture for purposes of food or fiber production”, for consistency with the Livestock Waste Management Act and related agency regulations.

Chapter 2 – Permit Application Procedures

- In Section 006.01H relating to documentation of local siting approval, “whichever is” is proposed to be replaced by “if” for consistency with agency policy and required permit application forms clarifying that local governments – not DWEE – are responsible for determining the applicability of and administering solid waste local siting processes.
- In sections 007.03, 007.04, 007.05 language is added to clarify that CCR permittees have additional record-keeping requirements, primarily related to their publicly accessible internet sites.
- In 007.04B a clarifying revision is made for consistency with the language of the preceding subsection, 007.04A. Both sections relate to a permittee’s duty to notify the DWEE when planned or unplanned change in facility activities may result in non-compliance.
- In 007.08 clarifying language is added to establish that the solid waste facility permit application is incorporated into the issued permit as conditions upon issuance.
- 009.02C is a new provision added to distinguish between permit renewals in 009.02B and permit transfers in 009.02C where the compliance record of the transferee is at issue in a transfer, but not a renewal. The “transferee” is the party to whom the permit is being transferred.
- In 009.02D a streamlining revision is made for clarity and to remove a subsection with no change in meaning.
- In 010.04 clarifying language is added to an existing provision stating that a major modification of a permit triggers public involvement procedures under both proposed definitions for major modification – one applicable to CCR facilities and one applicable to all other permitted solid waste facilities.
- 012.05 continuation of expiring permit – the conditions of an expiring permit remain in effect provided that the applicant submits a timely and complete application. If the applicant is not in compliance with the expiring permit, the Department may deny the permit, reissue the permit with appropriate conditions, or take other actions not limited to enforcement. This provision is similar to existing provisions in water, air, and hazardous waste regulations that have federal source regulations.

Chapters 3 & 5 – Municipal Solid Waste and Construction & Demolition Waste Landfill Requirements

- 005.09 – “No person shall excavate, disturb, or **fail to maintain** the final cover” – neglect of the final cover is also a violation, not just overt acts which damage it.

Also made to Chapter 5, 005.10 applicable to Construction & Demolition Waste landfills.

Chapter 4 – Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments

- Chapter 4 replaces the existing state FFCA regulatory program with the federal CCR regulatory program first established in October 2015 and which Nebraska utilities have been complying with since that time through the rule’s “self-implementing” approach.
- The federal CCR regulatory program is proposed for adoption by reference in Chapter 4, sections 001 – 008 from the federal source regulations in 40 CFR 257, subpart D.
- Unique state features of the existing FFCA program are maintained such as financial assurance for closure and corrective action, construction quality assurance plans (CQAPs), and the submittal of certain required maps and drawings with a permit application.

Chapter 7 – Groundwater Monitoring & Remedial Action

- 001.01 – clarifying revision made that CCR units have their own GW monitoring and remedial action requirements in 40 CFR §§ 257.90 through 257.98, as adopted and incorporated by reference in Chapter 4, 005.

Chapter 8 – Financial Assurance Criteria

- 007 and 008 revised to clarify that CCR units required to undertake corrective action under the CCR rule must also develop corrective action cost estimates and establish financial assurance for corrective action.

Chapter 9 – Permit Application Fees

- 001.01 revisions proposed to streamline and update incorrect statutory citations
- 002 proposed move of definition for “major modification” to Chapter 1, 069
- All fee amounts remain unchanged

Chapter 11 – Disposal Fees

- 001.01 which contains the landfill disposal fee will now reference that section of the Integrated Solid Waste Management Act, § 13-2042(1), that was updated by LB 247 raising the fee from \$1.25 ton to \$2.34 ton, effective July 1, 2025.
- Referencing the statute will automatically update the fee amount in regulation if the fee amount changes in the future without the need for a rulemaking.

Chapter 17 – “Plastic Container Coding” changed to “Land Application of Paunch Manure”

- The Plastic Container Coding Act remains in Nebraska Law as statutes in Neb. Rev. Stat. §§ 69-2501 to 69-2507. Given that container coding has been an industry standard for decades, there is no longer a need to repeat these statutes in Title 132 regulations.
- Chapter 17 is proposed to contain the paunch manure regulations which are presently in Title 126, Chapter 10 and Appendix I. They have also been streamlined.
- The general approach is to divide paunch manure application sites into 2 categories:
 - Non-dedicated paunch manure sites where less than ten (10) tons of dry paunch manure per acre per cropping season are applied and where no on-site storage longer than twenty-four (24) hours is involved, other than storage in fully enclosed containers.
 - Dedicated paunch manure sites where greater than or equal to ten (10) tons of dry paunch manure per acre per cropping season are applied or where on-site storage longer than twenty-four (24) hours is involved, other than storage in fully enclosed containers.
- Dedicated paunch manure sites require a permit and submittal of a permit application demonstrating compliance with location criteria (these are primarily setbacks from residences, wells, and surface waters); operational criteria (these are transport, loading, and unloading methods; land application rates & methods); and design criteria (pads, site runoff controls, and how any dewatering activities will be conducted).
- The general idea is if the material gets land applied quickly without stockpiling – no permit required.

Chapter 18 – General Provisions

- Chapter 18 contains general legal provisions related to enforceability (001), severability (002), appeals (003), administrative rulemaking procedures (004), and the effective date of regulations (005).
- These provisions reference general legal principles or statutory provisions and do not need to also be codified in regulation.

Appendix III – Concentration Values at the Relevant Point of Compliance

- A misprint of the MCL for arsenic is corrected to the correct value being the federal and state drinking water standard of 0.01 mg/L.