



TO: Nebraska Environmental Quality Council (EQC)

FROM: Brian McMullen, DWEE Attorney

DATE: May 11, 2026

RE: Explanatory Statement for June 24, 2026, EQC Hearing Proposing Revisions to Title 126 – *Rules and Regulations Pertaining to the Management of Wastes* (Title 126)

Title 126 presently contains two (2) areas of regulatory content: 1) regulations for responding to spills of oil or hazardous substances, and 2) regulations for the land application of livestock paunch manure.

SHORT DESCRIPTION

Oil and hazardous substance spill response regulations presently in Title 126, chapters 1 and 18 are proposed to be consolidated in Title 126, Chapter 1 with clarifying revisions made to definitions, release notification requirements, and requirements for containment of releases. Regulations related to the land application of livestock paunch manure presently in Title 126, chapters 1, 10, and Appendix I are proposed to be repealed from Title 126 and moved to Title 132, chapters 1 and 17 in a separate rulemaking. Chapters 3 through 9, 11 through 17, and 19 which are presently marked “Reserved” and have no regulatory text are proposed for repeal. Title 126, Chapter 2 which contains permit requirements and permit administration procedures for the chapters that were previously repealed and are now marked as “Reserved” is also proposed for repeal. Title 126 is proposed to be re-titled “Title 126 – *Regulations for Releases of Oil or Hazardous Substances*” to reflect its sole remaining area of regulatory content.

RATIONALE

The proposed streamlining and repeal of obsolete provisions in Title 126 is necessary to maintain DWEE regulations in a clear, coherent, and professional format that is usable to the regulated public. The proposed relocation of provisions from Title 126 to Title 132 is necessary to consolidate similar regulatory content in a single administrative code title.

ANALYSIS OF IMPACT

The current regulations in Title 126, Chapter 18 – “Releases of Oil or Hazardous Substances” potentially impact all industries and economic sectors in the state that are using and managing oil or hazardous substances in their operations. The most frequent notifiers of oil and hazardous substance releases are retail fuel stations; freight rail carriers; local, regional, and over-the-road trucking industries; and various other primary and ancillary industries to gasoline, ethanol, and petroleum products marketing and production. The proposed revisions clarify existing requirements rather than substantially modify those

requirements or create new requirements. During public outreach, DWEE only received questions on existing oil and hazardous spill response requirements, not on any requirement proposed to be revised in this rulemaking.

CHAPTER AND SECTION DESCRIPTIONS

General Changes

- Move Chapter 18 “Releases of Oil or Hazardous Substances” to Chapter 1 and make clarifying revisions as described below. This chapter will be Title 126’s only chapter.
- Move and streamline various paunch related definitions and requirements from chapters 1, 10 and Appendix I to Title 132, Chapter 17.
- Repeal Chapter 2 – “Waste Management Permits and Licenses” as it is no longer needed due to previously repealed chapters, transfer of paunch regulations to Title 132, given that oil and hazardous substances spill response regulations do not contain permit requirements.
- Repeal all formerly repealed chapters now labeled as “Reserved” (3 through 9, 11 through 17, and 19).
- Rename Title 126 from “*Rules and Regulations Pertaining to the Management of Wastes*” to “*Regulations for Releases of Oil or Hazardous Substances*”.

Chapter 1, 001 – Definitions

- 001.01 – “cleanup” revised to a substantially similar definition as used in Title 118 – *Groundwater Quality Standards and Use Classification*.
- 001.03 – “hazardous substance” revised to update an obsolete reference from already repealed regulations in Title 126 to Title 128 – Nebraska Hazardous Waste Regulations; also revised to clarify that meeting any 1 of 3 listed criteria qualifies a substance as hazardous.
- 001.04 – added language that defines “immediate notification” to mean within 15 minutes of release with allowances for as long as 24 hours provided specific circumstances prevented notification within 15 minutes.
- 001.05 – “oil” revised for consistency with the definition for “oil” used by the U.S. EPA Spill Prevention Control and Countermeasure (SPCC) Program in 40 CFR § 112.2.
- 001.07 – added words “but not limited to” preceding the list of example types of remediation projects in the definition of “Remedial Actions”.
- 001.08 – added words “in possession” to define actions, as they pertaining to releases, that the Department would consider for the purposes of naming a “Responsible Person”.

Chapter 1, 003 – Release Notification Requirements

- 003.01A-003.01E – “suspected release” added to all subsections for consistency with the major section, 003.01, in which “suspected release” is already established as creating a duty to notify when an actual or suspected release of oil or a hazardous substance has occurred.
- 003.01B1(a) and 003.01D – “responsible party” is changed to “responsible person” for consistency with the term used in Section 001 – Definitions and throughout the chapter.
- 003.05 – added “local” to the list of government agencies that, in addition to DWEE, may require reporting.

Miscellaneous Sections of Chapter 1

- 002.04K (as numbered in strikethrough text) – removed a requirement that a release notification report submitted up to 15 days after the release include “when appropriate, advice regarding medical attention necessary for exposed individuals”, which by that point is untimely, outside of

agency jurisdiction, and outside the expertise of the facilities and industries regulated by Title 126.

- 004.01 – language added to clarify that a responsible person has a duty to take all necessary steps to stop and contain the release as soon as practicable, not just within twenty-four (24) hours.
- 008 (as numbered in strikethrough text) – “Liabilities” removed which restates enforcement-related provisions from statute that do not need to be codified again in regulation.
- 008.01 – added “investigations” to actions the Department Director may initiate in the event of an actual or suspected oil or hazardous substance release when the responsible person is unwilling to respond or unknown, consistent with department authority in Neb. Rev. Stat. § 81-15,124.