NEBRASKA ADMINISTRATIVE CODE

~~NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Title 126 - NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT~~AL QUALITY~~

Chapter 1 - ~~DEFINITIONS~~RELEASES OF OIL OR HAZARDOUS SUBSTANCES

~~Unless the context otherwise requires:~~

~~001 "Affected Environment" means any portion of the waters of the State or land which has been altered either physically, chemically or biologically due to the release of an oil or hazardous substance.~~

~~002 "Application rate" means the concentration of the paunch manure administered to the soil.~~

~~003 "Best Management Plan" means a plan which describes Best Management Practices intended to prevent or minimize the potential for pollution of waters, air or land of the state and to prevent or minimize health problems resulting from the operation.~~

~~004 "Best Management Practices (BMP's)" means treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control site runoff, spillage, leaks, sludge or waste disposal or drainage from raw material or waste storage.~~

~~005 "Cleanup" means the physical removal or on-site treatment of an oil or hazardous substance release. This may include, but not be limited to, controlling public access and monitoring activities to determine the effectiveness of removal or treatment activities.~~

~~006 "Commence New Source Construction" means the owner or operator has:~~

~~006.01 Begun, or caused to begin as part of a continuous onsite construction program:~~

~~006.01A Any placement, assembly, or installation of facilities or equipment;~~

~~006.01B Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or~~

006.02 Entered into a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time and which cannot be terminated or modified without substantial loss.

007 "Container" means any device, excluding a lagoon, in which a material is stored, transported, treated, disposed of, or otherwise handled.

008 "Council" means the Nebraska Environmental Quality Council.

009 "Crop" means a plant or plant product grown for harvest including grazing by domesticated livestock.

010 "Dedicated paunch manure application site" means land where materials are applied at a high rate (more than ten (10) dry tons per acre cropping season) primarily as a solution to a waste problem. It would include both land treatment and on-site storage.

011 "Department" means the Nebraska Department of Environmental Quality.

012 "Dewatering" means the process of removing water from paunch manure.

013 "Director" means the director of the Nebraska Department of Environmental Quality.

014 "Discharge", when used without qualification, means a discharge of a pollutant, and a discharge of pollutants.

015 "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant or combination of pollutants to waters of the state from any point or nonpoint source. This includes discharge into waters of the state from surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances, owned by a state, municipality or other party which do not lead to treatment systems.

016 "Dry ton" means a theoretical weight of 2000 pounds of material at 0% moisture used in calculating an actual amount of material for land application or other purposes. For sample calculations and actual amounts of material at various moisture contents see Appendix II.

017 "Existing Source" means any source which is not a new source or a new discharger.

018 "Free Product" means an oil or hazardous substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

019 "Generator" means any person, by site, whose act or process produces sludges or paunch manure.

020 "Ground water" means water occurring beneath the surface of the ground that fills available openings in rock or soil materials such that they may be considered saturated.

021 "Hazardous Substance" means any substance or mixture of substances other than oil and petroleum related products or radioactive substances which, when released into the environment, presents an imminent and substantial hazard to the public health or welfare, including but not limited to, fish, shellfish or other wildlife, and:

021.01 Any substance designated pursuant to Chapter 4, 002 through 005 of the Rules and Regulations Governing Hazardous Waste Management in Nebraska;

021.02 Any substance designated by the United States Environmental Protection Agency pursuant to Sections 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or Section 329(3) of the Emergency Planning and Community Right-to-Know Act of 1986.

022 "Hazardous Waste" shall be consistent with the definitions found in Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska.

023 "Incorporated" means to work a material into the surface of the soil by plowing, discing or other means.

024 "Land" means any natural or man-made surfaces of the earth, excluding water.

025 "Land treatment" means the application onto or incorporation of a waste into the soil surface for the purpose of biologically or chemically changing it to a more useable form.

026 "Metropolitan city" means any municipality in the state of Nebraska having a population greater than 300,000.

027 "Municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial

wastes, or other wastes or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act, 33 U.S.C. 1251 et seq.

028 "New source" means any source that has not commenced new source construction prior to the effective date of these regulations.

029 "Non-dedicated paunch manure application site" means land where paunch manure is applied at a low rate (less than ten (10) dry tons per acre per cropping season) with the primary purpose of enhancing crop growth and on-site storage is not practiced. Such sites need not be permitted.

030 "Oil" means oil of any kind or in any form, including, but not limited to:

030.01 Petroleum, fuel oil, oil refuse, and oil mixed with wastes other than dredged spoil (Section 311(a)(1) of the Federal Clean Water Act) and;

030.02 Fats and oils from animals and vegetable sources.

031 "Owner" means the person who owns a facility or land or part of a facility or land.

032 "Paunch manure" means partially digested material taken from an animal at the time of slaughter.

033 "Permit" means any permit issued by the Director under Neb. Rev. Stat. §§ 81-1501 through 81-1533 (Reissue 1981).

034 "Person" means any federal agency, individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality, or governmental subdivision, public agency, officer or governing or managing body of any municipality, governmental subdivision or public agency, or any other legal entity except the Department.

035 "Recycling" means the process by which waste materials are transformed into new products in such a manner that the original products may lose their identity.

036 "Release" means, but is not limited to, any discharging, spilling, leaking, pumping, emitting, emptying or dumping of oil or hazardous substances upon land, beneath the surface of the land, or into waters of the State, either by accident or otherwise.

037 "Remedial action" means any immediate or long-term response to a release or suspected release of an oil or hazardous substance, including precision testing of tanks and lines, site investigation, drilling, cleanup, restoration, mitigation, and any other action which the Department determines is reasonable and necessary.

038 "Responsible Person" means any person producing, handling, storing, transporting, refining, or disposing of an oil or hazardous substance when a release occurs, either by accident or otherwise. This includes carriers and any other person in control of an oil or hazardous substance when a release occurs, whether they own the oil or hazardous substances or are operating under a lease, contract, or other agreement with the legal owner thereof.

039 "Reuse" means the reintroduction of a commodity into the economic stream without change.

040 "Schedule of Compliance" means a schedule of remedial measures contained within the permit including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard, or other permit requirement.

041 "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

042 "Storage" means the leaving or placing of a material in a location or position other than where it will ultimately reside or be used.

043 "Water table" means the surface of underground gravity-controlled water and shall include that water found in the saturated zone beneath the surface of the land.

044 "Watercourse" means a natural or man-made channel through which water flows; a stream of water (as a river, brook or underground stream).

045 "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

~~046 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances to support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.~~

~~047 "Windrow" means a row of sludge or paunch manure placed to dry before being processed.~~

001 Definitions. For purposes of this Chapter, definitions in Neb. Rev. Stat. § 81-1502 and the following additional definitions shall apply:

001.01 "Cleanup" shall mean the removal or attenuation of pollutants from the environment through physical or chemical processes.

001.02 "Free Product" shall mean an oil or hazardous substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

001.03 "Hazardous Substance" shall mean:

001.03A Any substance or mixture of substances other than oil and petroleum related products or radioactive substances which, when released into the environment, presents an imminent and substantial hazard to the public health or welfare, including but not limited to, fish, shellfish or other wildlife;

001.03B Any substance defined as a hazardous waste by N.A.C. Title 128 – Nebraska Hazardous Waste Regulations; or

001.03C Any substance designated by the United States Environmental Protection Agency pursuant to Sections 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 or Section 329(3) of the Emergency Planning and Community Right-to-Know Act of 1986.

001.04 “Immediate notification” shall mean notification provided to the Department, within fifteen (15) minutes after any release or discovery of a suspected release. If the specific circumstances of a release, discovery of a suspected release, or response to a release prevent notification within fifteen (15) minutes, the responsible person shall provide notification as soon as practicable, but no more than twenty-four (24) hours after the release or discovery of a suspected release and shall also provide a detailed explanation of the specific circumstances preventing notification within (15) minutes.

001.05 "Oil" shall mean oil of any kind or in any form or mixture, including, but not limited to:

001.05A Petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, and oil mixed with wastes other than dredged spoil (Section 311(a)(1) of the Federal Clean Water Act); and

001.05B Fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels.

001.06 "Release" shall mean, but is not limited to, any discharging, spilling, leaking, pumping, emitting, emptying or dumping of oil or hazardous substances upon land, beneath the surface of the land, or into waters of the State, either by accident or otherwise.

001.07 "Remedial action" shall mean any immediate or long-term response to a release or suspected release of an oil or hazardous substance, including but not limited to, precision testing of tanks and lines, site investigation, drilling, cleanup, restoration, mitigation, and any other action which the Department determines is reasonable and necessary.

001.08 "Responsible person" shall mean any person producing, handling, storing, transporting, refining, or disposing of an oil or hazardous substance when a release occurs, either by accident or otherwise. This includes carriers and any other person in possession or control of an oil or hazardous substance when a release occurs, whether they own the oil or hazardous substances or are operating under a lease, contract, or other agreement with the legal owner thereof.

002 Antidegradation. No person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as the Department approves.

003 Release Notification Requirements.

003.01 It shall be the duty of any responsible person to notify the Department of any release or suspected release of an oil or hazardous substance, in accordance with the following requirements:

003.01A Immediate notification is required regardless of the quantity of an oil or hazardous substance release or suspected release which occurs beneath the surface of the land or impacts or threatens waters of the state or threatens the public health and welfare.

003.01B Immediate notification is required of a release or suspected release upon the surface of the land of an oil in a quantity that exceeds 25 gallons, or of a hazardous substance which equals or exceeds 100 pounds or its reportable quantity under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (40 CFR Part 302) and Section 329(3) of the Emergency Planning and Community Right-to-Know Act of 1986 (40 CFR Part 355), whichever is less.

003.01B1 Notification is not required for a release under this subsection if either of the following conditions are met:

003.01B1(a) The release is confined and expected to stay confined within a building or otherwise wholly enclosed structure, owned by the responsible person, in which the floors and walls are of non-earthen materials which are adequately impervious to the released substance(s) and is cleaned up within 24 hours of its discovery, or

003.01B1(b) The release is in compliance with conditions established in State statutes, regulations or permits.

003.01C Notification is not required for any release upon the surface of the land of oil or hazardous substance that does not exceed the reportable quantities in 003.01B above and which will not constitute a threat to public health and welfare, the environment, or a threat of entering the waters of the state and provided that the release is cleaned up.

003.01D The Department retains full authority to require further actions of the responsible person although the release or suspected release is not reportable under the above subsections.

003.02 Notification shall be made by telephone to the Department during office hours, from 8:00 a.m. to 5:00 p.m. Monday through Friday. After hours and holidays, reports shall be made to the Nebraska State Patrol. All information known about the release at the time of discovery is to be included, such as time of occurrence, quantity and type of material, location and any corrective or cleanup actions presently being taken.

003.03 After notification of the release has been made to the Department, the Department may require interim reports until any required remedial action has been completed.

003.04 The Department may require a written final report for all releases of an oil or hazardous substance within 15 days after remedial action has been completed, or, if no remedial action occurs, within 15 days of the release, or in such other reasonable time period as the Department shall determine. These reports shall contain, at a minimum, the following information:

003.04A Date, time and duration of the release;

003.04B Location of release;

003.04C Person or persons causing and responsible for the release;

003.04D Type and amount of oil or hazardous substance released;

003.04E Cause of the release;

003.04F Environmental damage caused by the release;

003.04G Actions taken to respond, contain, and clean up the release;

003.04H Location and method of ultimate disposal of the oil or hazardous substance and other contaminated materials;

003.04I Actions being taken to prevent a reoccurrence of the release; and

003.04J Any known or anticipated acute or chronic health risks associated with the release.

003.05 Compliance with the reporting requirements of the Department does not relieve the responsible person from reporting requirements of other government agencies, whether federal, state, or local.

004 Containment.

004.01 Whenever an oil or hazardous substance is released, it shall be the duty of the responsible person to take or cause to be taken, as soon as practicable and no longer than within twenty-four (24) hours, all necessary steps to stop the release and contain all released material.

004.02 As soon as the release has been stopped and contained, the responsible person shall take action to preclude continued or future releases.

005 Investigation.

005.01 When a release occurs, it shall be the duty of the responsible person to determine all of the affected environment and to provide other pertinent information deemed necessary by the Department to fully assess the impacts of the release, including but not limited to the names and addresses of adjacent landowners and existing water users. The release investigation shall be conducted in a timely and diligent manner and in accordance with a schedule established by the Department.

005.02 The Department may request written responses to questions regarding releases and suspected releases from the responsible person or other persons whom the Department has reason to believe have pertinent information necessary to verify the release or determine its extent or impact or verify the identity of the responsible person.

006 Remedial Action

006.01 At any time after notification of a release, the Department may require the responsible person to develop and submit a written remedial action plan in accordance to a schedule and format established by the Department.

006.02 The remedial action plan is subject to the Department's review and approval.

006.03 Upon approval of the remedial action plan or as directed by the Department, the responsible person shall implement the plan and any modifications pursuant to a schedule and in a format established by the Department.

006.04 Remedial action of an oil or hazardous substance release shall proceed in a timely and diligent manner and in accordance with a schedule established by the Department. Actions such as, but not limited to, environmental monitoring and limiting public access may be included as remedial action responsibilities.

006.05 Cleanup shall be to the extent which will prevent a hazard to human health, safety, and the land and waters of the state. Remedial action for ground water shall be performed pursuant to the requirements in Title 118 – Ground Water Quality Standards and Use Classification.

007 Disposal. Wastes generated from the cleanup of an oil or hazardous substance release shall be disposed of in accordance with Department rules and regulations.

007.01 Waste determined to be a hazardous waste shall be disposed of in accordance with the requirements of Title 128 – Nebraska Hazardous Waste Regulations.

007.02 Waste determined to be a solid waste shall be disposed of in accordance with the requirements of Title 132 – Integrated Solid Waste Management Regulations.

007.03 All disposal actions require prior approval by the Department.

008 Responsible Person Unwilling or Unknown.

008.01 In the event of an oil or hazardous substance release or suspected release in which the responsible person is unwilling to carry out Sections 005 or 006 of this Chapter, or the responsible person is unknown, the Director may initiate, by what resources may be available, investigations and remedial actions.

008.02 The Department may require investigations by potentially responsible persons. This may include testing of the potential sources and affected environment by methods approved by the Department.

Enabling Legislation: Neb. Rev. Stat. §§ 81-1505(14); 81-15,124

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NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 -- Rules And Regulations Pertaining To The Management Of Wastes

Chapter 2 -- Waste Management Permits and Licenses

Effective Date of Last Revision: May 31, 1993

001 Permit Required.

This chapter applies to all owners or operators of the following activities or operations unless as otherwise provided in these regulations:

Open burning (Chapter 7);

Land application of effluent (Chapter 8);

Land application of sludge (Chapter 9);

Land application of paunch (Chapter 10);

Agricultural by-products (Chapter 11);

Fertilizer and pesticide washwater (Chapter 12);

Septic tank pumpings (Chapter 15);

Wastewater treatment facility grit and screenings (Chapter 16);

Accumulation of junk (Chapter 17);

Oils and hazardous materials spills (Chapter 18); and

Bank stabilization (Chapter 19).

002 Existing Activities or Operations

Owners or operators of existing activities or operations specified in paragraph 001 of this chapter shall submit an application to the Department within one-hundred eighty (180) days after the effective date of these regulations.

003 New Activities or Operations.

003. 01 Any person who is proposing to construct and/or operate any activity or operation specified in paragraph 001 of this Chapter shall submit to the Department a waste management permit application on a form designated and furnished by the Department at least one-hundred eighty (180) days prior to physical construction and/or operation, whichever is applicable;

003.02 The one-hundred-eighty (180) days requirement may be reduced with the approval of the Director; and

003. 03 Operation shall not commence until a permit is issued.

004 Contents of Application

004.01 All applicants shall provide the following information to the Director:

004.01A The activity or operation conducted by the applicant which requires a permit and a brief description of the nature of the business;

004.01B The owner/operator's name, address, telephone number, ownership status, and status as federal, state, private, public or other entity;

004.01C The legal description of each location of the activity or operation;

004.01D The name of and distance to the nearest surface water from the activity or operation; and

004.01E Whether the applicant has ever been issued a permit or license from the Department, and if so, the reason for the termination of such permit or license.

004.02 Where an application requires the submission of engineering plans and specifications, such plans and specifications shall be prepared and submitted by a professional engineer duly registered to practice in the State of Nebraska.

004.03 Additional application information is enumerated in the appropriate chapter for each activity or operation specified in paragraph 001 of this Chapter.

005 Signatures; Application and Reports.

005.01 All permit applications submitted to the Department and all reports, required by such permits to be submitted to the Department, shall be signed:

005.01A In the case of a corporation, by a principal executive officer of at least the level of vice-president;

005.01B In the case of a partnership or sole proprietorship, by a general partner or the sole proprietor, respectively; and

005.01C In the case of a municipal, state, federal or other public facility by either a principal executive officer or ranking elected official; or

005.01D By a duly authorized representative of the persons described in paragraphs 005.01A to 005.01C of this Chapter if such representative is responsible for the overall operation of the activity, the authorization is made in writing by the person designated in paragraphs 005.01A to 005.01C of this chapter, and the written authorization is submitted to the Director.

005.02 Any change in an authorization meeting the requirements of paragraph 005.01D of this chapter shall be submitted to the Department in writing prior to or together with any application or report to be signed by an authorized representative.

006 Application; Additional Information Requests.

The one-hundred eighty (180) days filing requirement for permits shall commence after all the necessary information has been received by the Department. No waste management permit application submitted to the Department shall be considered for processing until all information necessary to complete the application or additional information as required by the Department has been received.

007 Permit Conditions; General.

The following general conditions may apply to all waste management permits:

007.01 Duration, see paragraph 008 of this Chapter;

007.02 Compliance schedules and reporting requirements thereunder, see paragraph 011 of this Chapter;

007.03 Commencement of operations within two (2) years after issuance of the permit.

007.04 Retention by permittee of any records required by this Chapter for a minimum of three (3) years; and

007.05 Responsibility of permittee to comply with all other applicable local, state, and federal requirements.

008 Duration.

Except as provided in paragraph 011 of this Chapter, each issued waste management permit shall have a fixed term not to exceed five (5) years.

009 Transferability of Permits.

009.01 A waste management permit may be transferred to another person if the Department is notified in writing at least sixty (60) days prior to the proposed transfer. The notice shall include a written agreement between the permittee and the proposed permittee indicating a date for permit responsibility and transfer, and no objection is made by the Department within the sixty (60) days;

009.02 If a transfer will result in a change in any circumstances that will affect the conditions in the permit, the request to transfer shall be treated as a modification in accordance with paragraph 013 of this Chapter; and

010 Variance from Design Criteria.

010.01 An applicant for a waste management permit may apply to the Director for the use of less stringent design criteria for its activity or operation during the term of its permit than the applicable design criteria specified in these regulations pursuant to Neb. Rev. Stat. § 81-1513 (Reissue 1981).

010. 02

10.02A Failure to satisfy the requirements of such statute shall be treated as a permit denial and shall be noticed pursuant to paragraph 016 of this Chapter;

010.02B Where the requirements of such paragraph are satisfied together with all other requirements of these regulations, intent to grant the permit shall be noticed pursuant to paragraph 016 of this Chapter; and

010.03 Any variance granted pursuant to this paragraph may be renewed on terms and conditions and for periods which would be appropriate pursuant to Neb. Rev. Stat. §81-1513 (Reissue 1981).

011 Compliance Schedules.

011.01 General.

Where a permitted facility is found to be out of compliance a reissued or modified permit may specify a schedule of compliance which shall require compliance as soon as possible but where a schedule exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

011.02 Reporting.

No later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements or submit progress reports.

012 Confidentiality of Information.

Claims of confidentiality shall be processed in accordance with Neb. Rev. Stat. §81-1527 (Reissue 1981). A claim of confidentiality for a permit application information must be substantiates at the time the application is submitted.

013 Modifying, Suspending, Revoking, or Reissuing Permits.

013.01 Any waste management permit issued by the Director, after reasonable notice and opportunity for a public hearing according to the procedure specified for permits in paragraph 017 of this Chapter, may be modified, suspended, revoked, or reissued in whole or in part during its term for cause including, but not limited to:

013.01A A violation of any terms or conditions of the permit.

013.01B Obtaining a permit by misrepresentation of any relevant facts or failure to disclose fully all relevant facts;

~~013.01C Information indicating that the permitted activity or operation poses a threat to human health or the environment;~~

~~013.01D A change in the ownership or control of an activity or operation which has a permit in accordance with paragraph 009 of this Chapter on transferability;~~

~~013.01E Upon request by the permittee, provided such request does not create a violation of any existing applicable requirements, standards, laws, or rules and regulations.~~

~~013.02 Notwithstanding the provisions of paragraph 013.01 of this Chapter, a waste management permit shall not be revoked until reasonable notice and hearing have been afforded, as specified in Neb. Rev. Stat. §81-1507(2)(Reissue 1981).~~

~~013.03 In addition to the reasons specified in paragraph 013.01 of this Chapter, causes for modification, but not revocation, include, but are not limited to:~~

~~013.03A Material and substantial alterations or additions to the permitted activity or operation which occurred after issuance of the permit which justify different conditions than those which are present in the existing permit;~~

~~013.03B Information received by the Director which was not available at the time of permit issuance, and would have justified the application of different permit conditions at the time of issuance;~~

~~013. 03C A change in the standards or regulations on which the permit or license was based.;~~

~~013.03D A determination is made by the Director that 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 reasonable available remedy.~~

~~013.04 Minor Modification.~~

~~Permit modifications shall not require public notice and opportunity for hearing unless contested by the permittee when the modification consists of:~~

~~013.04A Correcting typographical errors;~~

~~013.04B Requiring more or less frequent monitoring or reporting by the permittee;~~

~~013.04C Changing an interim compliance date, but not beyond one-hundred twenty (120) days and not where the change would interfere with the attainment of a final compliance date;~~

~~013.04D Changing ownership or control of a permitted activity or operation 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 permittee has been submitted to the Director.

013.05 Permit modifications shall not be used to extend the term of a permit.

014 Denial of Permits.

The Director may deny a waste management permit when:

014.01 The terms or conditions of the proposed permit application do not comply and assure compliance with the applicable requirements of state and federal laws and rules and regulations;

014.02 The application does not meet the appropriate design criteria specified in these regulations;

014.03 A request for a variance from design criteria does not satisfy the requirements of paragraph 010 of this Chapter; or

014.04 Upon renewal, the permittee has not complied with all terms, conditions, requirements and schedules of compliance of the expiring permit.

014.05 Such facility shall be within three thousand three hundred (3300) feet of a residential area in a metropolitan class city. For purposes of this section residential area shall mean an area designated as residential under the zoning authority of the city.

015 Emergency Permits.

In the event the Director finds an imminent and substantial endangerment to human health or the environment, he may issue a temporary emergency permit without notice or hearing for an activity or operation specified in paragraph 001 of this Chapter. This emergency permit may also be issued to a non-permitted activity or operation specified in this Chapter or to one whose existing permit does not cover the authority for which application for the emergency permit is made. This emergency permit:

015.01 May be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit;

015.02 Shall not exceed one-hundred twenty (120) days in duration but may be renewed for an additional sixty (60) days where the permittee can demonstrate that the circumstances justify such extension and that the permittee made good faith efforts to complete the permitted activity or operation within the one-hundred twenty (120) days;

015.03 Shall clearly specify the wastes to be handled and the manner and location of their disposal; and

015.04 May be terminated by the Director at any time without process if he determines that termination is appropriate to protect human health and the environment.

016 Issuance or Denial of a Permit.

016.01 Once an application is complete, the Director shall tentatively decide whether to issue or deny the permit.

016.02 If the Director decides to issue the permit, he shall prepare a draft permit which shall contain the following information and follow the public notice and participation procedures outlined below:

In the case of permits a description of the procedures for the formulation of final determination, including the thirty (30) day comment period, address where comments should be sent, procedures for requesting a public hearing and nature thereof, and any other procedures the Director has determine

016.02A A brief description of the activity or operation which is the subject of the draft permit;

016.02B The type and quantity of wastes which are proposed to be land applied or disposed of;

016.02C The tentative determination to issue or deny the permit;

016.02D The statutory or regulatory provisions on which permit requirements are based;

016.02E d are appropriate for public participation;

016.02F Name and telephone number of a person to contact for additional information;

016.02G All general and specific permit terms and conditions;

016.02H All compliance schedules under paragraph 011 of this Chapter; and

016.02I All monitoring requirements

017 Public Notice of Pending Permit Issuance or Denial.

017.01 Public notice of every application and proposed determination to issue or deny a permit shall be issued by submitting the notice as a news release to the newspaper in the geographical area of the proposed activity or operation, and mailed to the applicant, any unit of local government having jurisdiction over the area where the activity or operation is proposed to be located, each state agency having any authority under state law with respect to the construction or operation of such activity or operation, and to any person or group, either upon request or whose names are on a Departmental mailing list to receive public notices.

017.02 Persons or groups will have thirty (30) days from issuance of the public notice to either provide the Director with any written comments concerning the proposed facility for which the public notice has been issued, and/or request a public hearing in writing pursuant to paragraph 018 of this Chapter. Such comment period may be extended by the Director.

017.03 If any information or public comment is received during the comment period which appears to raise substantial major issues concerning a permit, the Director may formulate a new

~~draft permit which supersedes the original draft permit and recirculate the public notice. If no major issues are raised, and the Director issues the permit, the Director shall prepare a written response to each submitted comment.~~

~~017.04 Content of Public Notice.~~

~~The public notice of an application shall contain:~~

~~017.04A Name, address and phone number of the agency issuing the public notice;~~

~~017.04B Name and address of the applicant;~~

~~017.04C A brief description of each applicant's activities or operations described in the application;~~

~~017.04D A statement of the tentative determination to issue or deny the activity or operation described in the application and that a draft permit has been prepared;~~

~~017.04E A brief description of the procedures for the final determination including the comment period allowed in paragraph 017 of this Chapter and any other appropriate means by which interested persons or groups may comment upon these determinations or request a public hearing; and~~

~~017.04F The address and phone number of premises at which interested persons may obtain further information, request a copy of the fact sheet described below, and inspect and copy forms and related documents.~~

~~018 Public Hearings; When Required.~~

~~018.01 The applicant, any affected state, any affected interstate agency, the Regional Administrator, or any interested agency, person or group of persons may request or petition the Director, in writing, within the 30-day comment period of the public notice, with respect to the application, for a public hearing, and state the nature of the issues to be raised and all arguments and factual grounds supporting their position; and~~

~~018.01A The Director may, in his discretion, hold an adjudicative hearing on the granting or denial of the permit if he determines that the circumstances justify it; or~~

~~018.01B The Director shall hold an adjudicative hearing if he/she agrees that the granting or denial of the permit interferes with or impairs or threatens to interfere with or impair the legal rights of the permit applicant or any person so that the situation falls within the Department's Rules of Practice and Procedure; or~~

~~018.01C The Director may hold a public hearing if the comments, requests or petitions raise legal, policy or discretionary questions of general application not pertaining solely to a particular party and significant public interest exists with respect to the application.~~

018.02 Public notice of any hearing held shall be issued, circulated and mailed in the same manner as public notice of pending issuance or denial of waste management permit and shall be so issued, circulated, and mailed at least thirty (30) days prior to the public hearing.

018.03 Content of Public Notice of Hearing.

In addition to the general public notice, described in paragraph 017 of this Chapter, the public notice of hearing shall contain the following information:

018.03A Reference to the date of previous public notices relating to the permit;

018.03B Date, time, and place of hearing;

018.03C A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

018.03D A concise statement of the issues raised; and

018.03E A brief description of the permit terms and conditions which have been contested and for which the hearing has been granted.

019 Filing for Renewal; Expiring Permits.

019.01 The Director shall notify the permittee that if he wishes to continue to operate after the expiration date of his waste management permit, he must file for reissuance of his permit at least one-hundred eighty (180) days prior to its expiration.

019.02 A renewal application shall consist of the same information required in the original waste management permit application, which may consist of a recertification of the original application, unless the Department requires additional information.

019.03 Prior to renewal, the permittee shall be in compliance with or have complied with all the terms, conditions, requirements, and schedules of compliance of the expiring permit.

019.04 Public notice and public participation procedures for renewal of the permit shall be those procedures specified for permits in paragraph 017 of this Chapter.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(2)(9)(11)(13)(20)(25); 81-1505(13)(d)(15)(16); 81-1507(2); 81-1510(2); 81-1518; 81-1519; 81-1527 (Reissue 1981).

Legal Citation: Title 126, Ch. 2, Nebraska Department of Environmental Quality

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 3 – Reserved

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 4 – Reserved

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~~Title 126 – Rules And Regulations Pertaining To The Management Of Wastes~~

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NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 6 – Reserved

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 7 – Reserved

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NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 9 – Reserved

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NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 10 – Land Application of Paunch

Effective Date of Last Revision: May 31, 1993

001 A person who land-applies paunch manure at a dedicated paunch manure application site (where the application rate is greater than ten (10) tons of dry paunch manure per acre for cropping season or paunch manure is stored on-site) shall obtain a permit from the Department pursuant to Chapter 2 of these regulations.

001.01 Where the person who land-applies the paunch manure is not the generator of the paunch manure, such person shall be considered an agent of the generator. The permit shall be issued to the generator in those situations.

001.02 In situations where the generator assigns the paunch manure to a facility (such as a composting facility) permitted by this Department: the material shall become the responsibility of such permitted facility and further disposition will be the responsibility of that facility.

002 Exemptions.

002.01 Non-dedicated paunch manure application sites where less than ten (10) tons of dry paunch manure per acre per cropping season are applied and where no on-site storage (excluding storage in confined containers) is involved are exempted from permitting under Section 001. Such operations, however, must observe the minimum distance requirements contained in Sections 004.04C, 004.04D, 004.04E, transportation requirements enumerated in Section 004.01, protect adjacent wells from surface runoff and immediately incorporate the material into the soil when found necessary by the Department.

002.02 In cases where incorporation of the paunch manure into the soil is found necessary by this Department and/or the material is not being stored as specified in a permit issued by this Department; the following procedures are to be followed:

002.02A When soil and weather conditions allow, the paunch manure must be removed from or incorporated into the soil within twenty-four (24) hours or other time frame approved by this Department after notification to do so by this Department. Incorporation shall be done in compliance with Section 002.01 of this Chapter.

~~002.02B When soil and weather conditions do not allow immediate removal or incorporation such measures shall be completed within twenty-four (24) hours or other time frame approved by this Department after weather and soil conditions have improved sufficiently to allow this work. Incorporation shall be done in compliance with Section 002.01 of this Chapter.~~

~~002.02C In cases where immediate incorporation would normally be found necessary, paunch manure may be land applied without incorporation during winter months provided it is incorporated within thirty (30) days or other time frame approved by this Department after weather and soil conditions become favorable for such work in the spring. This incorporation shall be in compliance with Section 002.01 of this Chapter.~~

~~003 The permit application will consist of a Best Management Plan submitted by the applicant.~~

~~003.01 The following information must be supplied on the permit application in addition to that enumerated in Chapter 2, 004.~~

~~003.01A Authorized Agent of the individual company producing the paunch manure.~~

~~003.01B Name and address of owner or owners of the paunch manure application site(s), legal description of the site, and travel directions from the nearest town.~~

~~003.01C The area available, the current and foreseeable future use of the land and the slope of the land.~~

~~003.01D An explanation of how paunch manure will be transported to the application site.~~

~~003.01E A description of the method of unloading and storage of paunch manure at the application area. If storage or unloading facilities are to be utilized, engineering plans and specifications must be included. Construction of such facilities shall not commence until the plans and specifications have been approved by the Director.~~

~~003.01F A description of the method of spreading of material and incorporation into the soil, if found necessary by the Department. This description must include a discussion of methods to be used during winter months and periods of unfavorable weather and soil conditions as well as normal favorable conditions. The proposed application rate and justification for the rate taking into account the items listed in 004.03 must also be shown.~~

003.01G A topographic map or engineering plans and specifications with topography shown of the application area must be included with the following features delineated.

003.01G1. Land available for application of paunch and overall dimensions of the land.

003.01G2. Location of neighboring homesites or farmsteads and adjacent land owned by others.

003.01G3. The location of domestic and municipal water supply wells within 500 feet of the area, and the approximate depths of the water tables used.

003.01G4. Location and name of watercourses or wetlands in the area.

004 Specific Permit Terms and Conditions.

004. 01 Transportation: In all instances, paunch manure hauled within a metropolitan city shall be hauled in a splashproof, tightly covered container. In other areas transportation of paunch manure over public roads, or near an inhabited residence, business, or facility/area (excluding public roads) shall be done in a leak-proof, tightly covered, splashproof container when found necessary.

004.02 Storage of paunch manure at the application site must be done under the following conditions.

004.02A Prevention of discharges to waters of the State.

004.02B If the material will stand in a pile such that the height is 20% of the width when placed unconfined on a flat surface, it may be stored in a windrow or static pile in an area meeting the design criteria set out in Appendix I. If it will not stand as specified in this section, it shall be stored in a lagoon meeting the design criteria set out in Appendix I. Alternatively, paunch manure may be stored in a container as defined in Chapter 1, 005.

004.03 Application rates shall not exceed those specified in the permit. Application rates will be approved for permitting purposes taking into consideration:

004.03A Protection of waters of the State.

004.03B Any other State or Federal Regulations applying to this practice.

004.04 Land and Location Considerations.

~~004.04A Unless the applicant can demonstrate to the Department's satisfaction that pollution of waters of the state will not result, paunch manure shall not be surface applied on land with greater than 5% slope when the ground is frozen.~~

~~004.04B Unless the applicant can demonstrate to the Department's satisfaction that pollution of waters of the state will not result, paunch manure shall not be surface applied on land with greater than 10% slope unless incorporated immediately.~~

~~004.04C Paunch manure shall not be applied on wetland areas.~~

~~004.04D Paunch manure shall not be applied within one thousand (1000) feet of inhabited dwellings, businesses, or facilities or lands (excluding public roads) frequented by the public without documented permission (submitted to this Department) from the owners (and in the case of a dwelling, the residents) of such dwelling, business, facility, or lands. This requirement does not apply to subsurface injection.~~

~~004.04E Paunch manure shall not be applied within five hundred (500) feet of a municipal water supply well. Diking or other procedures may be required to protect nearby wells from surface runoff if found necessary.~~

~~004.05 Crop Considerations.~~

~~004.05A Paunch manure shall not be applied to edible portions of crops that are consumed by humans without processing to minimize pathogens prior to consumption.~~

~~004.06 General Considerations.~~

~~004.06A Application of paunch manure may be made by any method which injects or disperses the material so that a uniform application is achieved.~~

~~004.06B Application of material shall be to land properly selected and managed in such a manner so that:~~

~~004.06B1 No pollution of water of the State results.~~

~~004.06B2 A dewatering of the material may be required either at the source or the application site to reduce the potential for flies and odors and improve the operation. In the case where such a dewatering facility is located at the site, engineering plans and specifications must be submitted to this Department for approval. Such facilities must meet the design requirements for storage facilities set out in Appendix I.~~

005 Record and Reporting.

005.01 Any facility expansion or modification which may result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants must be reported by the permittee 180 days prior to the expansion, increases, or modifications, either by amending his original application or by submitting a new application.

006 Monitoring.

006.01 Prior to application and yearly thereafter the soil shall be analyzed by the permittee and submitted to this Department, for parameters as specified in the permit (See 005.02 above). This will include monitoring various levels of the soil profile for migration of pollutants toward the water table.

007 Failure to comply with the foregoing procedures shall be grounds for prosecution under Neb. Rev. Stat. § 81-1508(l)(b) Reissue 1981.

Note: For disposal or alternate method of using paunch manure see Chapter 4 (Sanitary Landfill) or Chapter 3 (Composting), respectively.

Enabling Legislation: Neb. Rev. Stat, §§ 28-1305 (Reissue 1979); 81-1504(2)(3)(11)(13)(15)(17)(20) (24); 81-1505(l)(16); 81-1506(l)(a); 81-1510(2); 81-1514 (Reissue 1981)

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NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 12 – Fertilizer and Pesticide Washwater

Effective Date of Last Revision: May 31, 1993

001 Permits required under this chapter shall follow the permitting requirements in Title 198 – Rules and Regulations Pertaining to Agricultural Chemical Containment.

Enabling Legislation: Neb. Rev. Stat. §81-1505(8)(14)

Legal Citation: Title 126, Ch. 12, Nebraska Department of Environmental Quality

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Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 15 – Reserved

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Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 16 – Reserved

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Title 126 – Rules And Regulations Pertaining To The Management Of Wastes

Chapter 17 – Reserved

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 18 - RELEASES OF OIL OR HAZARDOUS SUBSTANCES

001 Antidegradation.

001.01 No person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as the Department approves.

002 Release Notification Requirements.

002.01 It shall be the duty of any responsible person to notify the Department of any release or suspected release of an oil or hazardous substance, in the following manner:

002.01A Immediate notification is required regardless of the quantity of an oil or hazardous substance release which occurs beneath the surface of the land or impacts or threatens waters of the state or threatens the public health and welfare.

002.01B Immediate notification is required of a release upon the surface of the land of an oil in a quantity that exceeds 25 gallons, or of a hazardous substance which equals or exceeds 100 pounds or its reportable quantity under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (40 CFR Part 302) and Section 329(3) of the Emergency Planning and Community Right-to-Know Act of 1986 (40 CFR Part 355), whichever is less.

002.01B1 Notification is not required for a release under this subsection if either of the following conditions are met:

002.01B1a The release is confined and expected to stay confined within a building or otherwise wholly enclosed structure, owned by the responsible party, in which the floors and walls are of non-earthen materials which are adequately

impervious to the released substance(s) and is cleaned up within 24 hours of its discovery, or

002.01B1b The release is in compliance with conditions established in State statutes, regulations or permits.

002.01C Notification is not required for any release upon the surface of the land of oil or hazardous substance that does not exceed the reportable quantities in 002.01B above and which will not constitute a threat to public health and welfare, the environment, or a threat of entering the waters of the state and provided that the release is cleaned up.

002.01D The Department retains full authority to require further actions of the responsible party although the release or suspected release is not reportable under the above subsections.

002.02 Notification shall be made by telephone to the Department during office hours, from 8:00 a.m. to 5:00 p.m. Monday through Friday. After hours and holidays, reports shall be made to the Nebraska State Patrol. All information known about the release at the time of discovery is to be included, such as time of occurrence, quantity and type of material, location and any corrective or cleanup actions presently being taken.

002.03 After notification of the release has been made to the Department, the Department may require interim reports until any required remedial action has been completed.

002.04 The Department may require a written final report for all releases of an oil or hazardous substance within 15 days after remedial action has been completed, or, if no remedial action occurs, within 15 days of the release, or in such other reasonable time period as the Department shall determine. These reports shall contain, at a minimum, the following information:

002.04A Date, time and duration of the release;

002.04B Location of release;

002.04C Person or persons causing and responsible for the release;

002.04D Type and amount of oil or hazardous substance released;

002.04E Cause of the release;

002.04F Environmental damage caused by the release;

002.04G Actions taken to respond, contain and clean up the release;

002.04H Location and method of ultimate disposal of the oil or hazardous substance and other contaminated materials;

002.04I Actions being taken to prevent a reoccurrence of the release;

002.04J Any known or anticipated acute or chronic health risks associated with the release; and

002.04K When appropriate, advice regarding medical attention necessary for exposed individuals.

002.05 Compliance with the reporting requirements of the Department does not relieve the responsible person from reporting requirements of other government agencies, either State or Federal.

003 Containment.

003.01 Whenever an oil or hazardous substance is released, it shall be the duty of the responsible person to take or cause to be taken, within 24 hours, all necessary steps to stop the release and contain all released material.

003.02 As soon as the release has been stopped and contained, the responsible person shall take action to preclude continued or future releases.

004 Investigation.

004.01 When a release occurs, it shall be the duty of the responsible person to determine all of the affected environment and to provide other pertinent information deemed necessary by the Department to fully assess the impacts of the release, including but not limited to the names and addresses of adjacent landowners and existing water users. The release investigation shall be conducted in a timely and diligent manner and in accordance with a schedule established by the Department.

004.02 The Department may request written responses to questions regarding releases and suspected releases from the responsible

person or other persons whom the Department has reason to believe have pertinent information necessary to verify the release or determine its extent or impact or verify the identity of the responsible person.

005 Remedial Action

005.01 At any time after notification of a release, the Department may require the responsible person to develop and submit a written remedial action plan in accordance to a schedule and format established by the Department.

005.02 The remedial action plan is subject to the Department's review and approval.

005.03 Upon approval of the remedial action plan or as directed by the Department, the responsible person shall implement the plan and any modifications pursuant to a schedule and in a format established by the Department.

005.04 Remedial action of an oil or hazardous substance release shall proceed in a timely and diligent manner and in accordance with a schedule established by the Department. Actions such as, but not limited to, environmental monitoring and limiting public access may be included as remedial action responsibilities.

005.05 Cleanup shall be to the extent which will prevent a hazard to human health, safety, and the land and waters of the state. Remedial action for ground water shall be performed pursuant to the requirements in Title 118 Ground Water Quality Standards and Use Classification.

006 Disposal.

006.01 Wastes generated from the cleanup of an oil or hazardous substance release, if determined to be hazardous wastes, shall be disposed of in accordance with Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska.

006.01A Wastes generated from a cleanup action, that are not specifically covered by Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska, shall be disposed of as determined by the Department in accordance with the Departmental Rules and Regulations.

006.01B All disposal actions shall require prior approval by the Department.

007 Responsible Person Unwilling or Unknown.

007.01 In the event of an oil or hazardous substance release or suspected release in which the responsible person is unwilling to carry out Sections 004 or 005 of this Chapter, or the responsible person is unknown, the Director may initiate, by what resources may be available, remedial actions.

007.02 The Department may require investigations by potentially responsible persons. This may include testing of the potential sources and affected environment by methods approved by the Department.

008 Liabilities.

008.01 Compliance with the above sections does not relieve the responsible person from liabilities, damages or penalties resulting from the release, cleanup and disposal of an oil or hazardous substance. This may include the reimbursement for any losses of fish or wildlife pursuant to Neb. Rev. Stat. §81-1508(2).

Enabling Legislation: Neb. Rev. Stat. §§81-1505(14); 81-1506; 81-1507(4); 81-1508(2); 81-15,124.

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NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 126 - Rules And Regulations Pertaining To The Management Of Wastes

Appendix I - Appendix

Effective Date of Last Revision: May 31, 1993

-- Design criteria for paunch storage areas.

1. Static pile or windrow type storage.

a. Ground water must be protected by a layer of soil or other material designed with a maximum percolation rate of 1/8 inch per day or less or by some other method offering equivalent protection.

b. Surface water diversion must be provided so that foreign drainage is diverted around the stored material.

c. Some type of containment structure must be used to capture any runoff from the stored material. This containment structure shall be lined in accordance with the ground water protection requirements in (a) above.

d. The diversion and containment structures shall be designed to handle at least a 25 year, 24-hour rainfall runoff event. In the case of the containment structure, it shall be constructed to handle at least a 25 year, 24-hour rainfall runoff event in addition to any normal amount of water which would be present in the structure. The water level may be lowered by using the water for irrigation, injection, land application, or by evaporation or other environmentally acceptable means.

e. Such a storage area shall not be located:

(i) Within 1320 feet of an inhabited residence, business or a facility (excluding public roads) or land frequented by the public without documented permission (submitted to this Department) from the owners (and in the case of a dwelling, the residents), of such dwelling, business, facility, or lands.

(ii) Within 500 feet of a domestic or municipal water supply well.

(iii) Within 50 feet of surface waters of the state.

(iv) Within a 100 year flood plain unless protected from inundation.

~~2. Storage lagoon.~~

~~a. The storage lagoon should be constructed to comply with the "Recommended Standards for Sewage Works" 1971 Revised Edition, or as amended, prepared under the director of the Great Lakes-Upper Mississippi River board of State Sanitary Engineers.~~

~~b. Such a storage area shall not be located:~~

~~(i) Within 1320 feet of an inhabited residence, business or a facility (excluding public roads) or land frequented by the public without documented permission (submitted to this Department) from the owners (and in the case of a dwelling, the residents), of such dwelling, business, facility, or lands.~~

~~(ii) Within 500 feet of a domestic or municipal water supply well.~~

~~(iii) Within 50 feet of surface waters of the state.~~

~~(iv) Within a 100 year flood plain unless protected from inundation.~~