



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 132 – *Integrated Solid Waste Management Regulations* (Title 132)

Title 132 regulates solid waste management activities and facilities through the issuance of permits, the use of conditional exemptions from the permit requirement, and other solid waste management requirements. The intent of Title 132 is to support various landfill diversion activities such as recycling and composting while ensuring that land disposal of solid waste occurs in the most environmentally protective manner possible, consistent with the requirements of federal law in this area, the “Resource Conservation and Recovery Act” or “RCRA”. A specific section of RCRA – “Subtitle D” – governs solid waste disposal standards and the types of facilities where solid waste can be lawfully disposed.

## SHORT DESCRIPTION

DWEE proposes to revise Title 132 in five (5) areas:

- First, the proposal adopts the federal regulatory program for the management of Coal Combustion Residuals or “CCR” that took effect at the federal level in October 2015. CCR is the various types of ash and other residues that are generated from the burning of coal in electric power plants. This material was unregulated at the federal level prior to October 2015, but Nebraska has regulated it and required permits for its disposal since the early 1990s. The term used in the current state program for this material is “fossil fuel combustion ash” or “FFCA”. The current state regulations are proposed to be replaced by the more recent federal regulations.
- Second, the proposal improves the regulatory text in its readability, clarity, and consistency of application.
- Third, the proposal moves and streamlines regulations for the land application of paunch manure from Title 126 to 132 which is a more appropriate location for these requirements.
- Fourth, the proposal updates the agency name throughout Title 132 from “Department of Environmental Quality” (the agency name at the time of Title 132’s last regulatory update) to “Department of Water, Energy, and Environment” as a result of LB317 passed in 2025.
- Fifth, the proposal updates the regulations for consistency with another legislative bill passed in 2025, LB247, which increased the landfill tipping fee from \$1.25/ton of solid waste to \$2.34/ton.

## RATIONALE

- First, the proposal to adopt the federal CCR regulatory program will allow DWEE to be the primary regulatory and permit-issuing authority for CCR in Nebraska upon submittal and

approval of a state CCR program application to EPA. Nebraska's five (5) public power utilities which generate CCR have been subject to the federal CCR regulations since October 2015 under the rule's "self-implementing" provisions in which regulatory violations are enforced by environmental citizen suit litigation. These five (5) utilities are also subject to the existing Title 132 state FFCA permitting and regulatory program. The current system of overlapping, duplicative federal and state requirements creates an unnecessary administrative and regulatory burden for Nebraska public power utilities which does not produce greater environmental protection.

- Second, clarifying revisions proposed for various areas of Title 132 ensure that the regulations are fairly and evenly applied in different situations and across different agency programs.
- Third, the proposed transfer of regulations from Title 126 to Title 132 related to the land application of paunch manure narrow and focus the regulatory requirements applicable to this material while maintaining equivalent environmental protection standards for both: 1) intensive or "dedicated" paunch application sites which are required to meet design standards and obtain a permit, and 2) less-intensive, "non-dedicated" application sites with short-term storage areas which are not required to be permitted.
- Fourth and fifth, when DWEE is required to amend its regulations based upon a legislative bill, it must propose to do so at a public hearing within twelve (12) months of the effective date of the legislation, being July 1, 2025, as required by Neb. Rev. Stat. § 84-907(2).

## ANALYSIS OF IMPACT

- First, DWEE has closely studied the federal CCR regulatory program and determined that it is substantially equivalent to Nebraska's existing FFCA regulatory program, will be at least as environmentally protective as the current state program, and can be administered with existing staff and fiscal resources with no increase in cost to Nebraska taxpayers. As Nebraska public power utilities are currently subject to two (2) sets of overlapping, duplicative federal and state regulatory requirements for the same material, state adoption of the federal CCR regulatory program will reduce their regulatory obligations from two (2) sets of requirements to a single set.
- Second, the various clarifying revisions to solid waste regulations in Title 132 do not substantively impact solid waste management requirements, they merely provide regulatory clarity, certainty, and streamlining to the existing solid waste regulatory program.
- Third, the streamlined paunch manure regulations proposed for Title 132 impact land applicators of paunch and their suppliers, who are typically third-party brokers or the beef packing plants that generate this material. The proposed revisions from current regulations in Title 126 improve clarity and consistency in areas such as setbacks, operational criteria, and design criteria.
- Fourth, LB317 is estimated to have produced \$1.8 million in cost savings to DWEE in its first fiscal year alone while achieving more effective, efficient, and protective administration of DWEE programs.
- Fifth, LB247 was estimated to produce average additional fee revenues in the amount of \$2,800,000 per year with the Integrated Solid Waste Management Cash Fund receiving a 65% distribution, or \$1,800,000 of the increased fee, and the Waste Reduction and Recycling Incentive Fund receiving a 35% distribution, or \$1,000,000 of the increased fee. The additional portion distributed to the Integrated Solid Waste Management Cash Fund is used primarily to fund state Superfund project activities in Nebraska which remediate some of the most seriously contaminated sites. The legislative increase to the solid waste disposal fee amount from

\$1.25/ton to \$2.34/ton was the first increase in thirty-two (32) years. LB317 did not authorize salary increases to DWEE staff or authorize the creation of new DWEE positions. This change was a legislative change made by the Nebraska Unicameral and signed by the Governor; the EQC is only being asked to update Title 132 for consistency with legislation.

## CHAPTER AND SECTION DESCRIPTIONS

### General Changes

- The agency name is changed from “Department of Environmental Quality (agency name at the time of last regulatory update) 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”.
- In instances where “ground water” is spelled in 2 words, this spelling is proposed to be replaced by the single word spelling of “groundwater” which is used Department-wide at DWEE and has become the preferred spelling in modern scientific, governmental, and general usage.

### Chapter 1 – Definitions

- Definitions for “coal combustion residuals (CCR)” and “CCR unit” are proposed to be added in sections 015 and 012, respectively, 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.
- Definitions repeated in Title 132 from the Plastic Container Coding Act (“code” in 014, “plastic” in 084, “plastic bottle” in 085, and “rigid plastic container” in 105) are proposed for repeal as the Act does not require repetition in statute and is proposed for repeal from Chapter 17.
- The definition for “conditionally exempt small quantity generator” of hazardous waste (020) is proposed to have “or very small quantity generator” added for consistency with a definition change for this generator category made at the federal level, effective on May 30, 2017, and planned for adoption in Title 128 – *Nebraska Hazardous Waste Regulations*.
- The definition of “solid waste processing” (125) as an activity is proposed to be shortened for consistency with the definition of “solid waste processing facilities” (126) and avoid a textual conflict with the types of facilities that may be required to obtain solid waste processing permits. A missing “shall” is also proposed to be added.
- The 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.
- Key definitions are transferred from Title 126 for “dedicated paunch manure site” (030), “dry ton” (041), “non-dedicated paunch manure site” (076), and “paunch manure” (086) to implement updated and streamlined paunch regulations proposed for Chapter 17.
- Existing definitions for “landfill unit” (060), “lateral expansion” (061), “surface impoundment” (133), and “uppermost aquifer” (142) have additional language proposed to clarify that separate definitions apply to CCR units.
- The definition for “livestock waste” (065) 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 Title 132 regulations.
- The definition for “major modification” moved from Chapter 9, which is a fee chapter, to Chapter 1, 068; language added to clarify that a separate definition in Chapter 4, 001.02D 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.

#### Chapter 2 – Permit Application and Administration Procedures

- In Section 006.01D, an internal section reference is corrected from 006.03 to 006.02.
- 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, and 007.05, additional language is proposed 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 proposed for consistency with the language of the preceding subsection, 007.04A. Both subsections 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 proposed for language already establishing that the solid waste facility permit application is incorporated into the issued permit as conditions upon issuance.
- In 009.02C, a new provision is proposed 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 proposed to a disposal facility setback requirement for clarity and to remove a subsection with no change in meaning.
- In 010.04, clarifying language is proposed 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.
- In 012.05, a new section is proposed to establish that 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 based on and equivalent 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

- In Ch. 3, 005.09, the following language in bold, “No person shall excavate, disturb, **or fail to maintain** the final cover”, is proposed to establish that neglect of the final cover is also a violation, not just overt acts which damage it. The same language is proposed to be added to Ch. 5, 005.10 applicable to Construction & Demolition Waste Landfills.

#### Chapter 4 – “Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments” to replace “Criteria for Fossil Fuel Combustion Ash Disposal Areas”

- Chapter 4 proposes to replace 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 federal rule’s “self-implementing” framework.
- 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.
- 001.01A proposes to adopt the compliance deadline extension rule applicable to Coal Combustion Residuals Management Units (CCRMU), effective February 10, 2026.

- CCR permit application requirements are in sections 001.01B, 001.02, and subsections of 001.02.
- A definition for “major modification” of a permit is proposed in 001.02D, based on EPA guidance.
- Unique state features of the existing FFCA program are maintained such as financial assurance for closure and corrective action (see chapters 7 & 8, below); submittal of construction quality assurance plan documentation at initial construction and closure (003.01; 006.01); allowing certification of certain groundwater monitoring and corrective action documents by professional geologists, not only by professional engineers (005.01); and the submittal of certain required maps and drawings with a permit application (009).

#### Chapter 7 – Groundwater Monitoring & Remedial Action

- In 001.01, a clarifying revision is proposed 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

- In 007 and 008, revisions are proposed clarifying 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

- In 001.01, revisions are proposed to streamline the subsection and update incorrect statutory citations.
- In 002, the definition for “major modification” is proposed to be moved to Chapter 1, 068.
- All fee amounts remain unchanged.

#### Chapter 11 – Disposal Fees

- 001.01, which contains the landfill disposal fee, is proposed to reference that section of the Integrated Solid Waste Management Act, § 13-2042(1), that was updated by LB247 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 and EQC hearing.

#### 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 and they are proposed for repeal.
- Chapter 17 is proposed to contain the paunch manure regulations which are presently in Title 126, Chapters 1, 10, and Appendix I. The Title 126 regulations have also been streamlined.
- The general approach is to divide paunch manure application sites into 2 categories:
  - Non-dedicated paunch manure sites (001) 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 (002) 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 (002.01) which are primarily setbacks from residences, wells, and surface waters; operational criteria (002.02) which are transport, loading,

and unloading methods, land application rates & methods; and design criteria (002.03) which are low permeability pads, site runoff controls, and how any dewatering activities will be conducted.

- The general idea is that if the material gets land applied quickly without extended stockpiling, no permit is 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 state statutes 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.
- A misspelling in the chapter title is corrected.