

Proposed Updates to N.A.C. Title 132

Integrated Solid Waste Management Regulations

Brian McMullen, DWEE Attorney

402-471-0276; brian.mcmullen@nebraska.gov




Regulations on Agency Webpage

<https://dwee.nebraska.gov/>


- Menu
- “Resources and Services”
- “Laws & Regulations”
- Rules and Regulations
- “DWEE Draft and Proposed Rules and Regulations”



What is Title 132?

- Regulates solid waste management activities & facilities
 - Using permits, conditional exemptions, and other req'ts
 - Supporting landfill diversion activities while ensuring that landfill disposal is environmentally protective
 - Municipal Solid Waste Landfill (MSWLF) program is compliant with RCRA Subtitle-D, a federal law
- 


5 major areas in this regulatory proposal

- Adopt 2015 federal Coal Combustion Residuals (CCR) rule & subsequent amendments up to those in 2024
 - Various cleanup, clarifying, and gap-filling improvements applying generally to Title 132
 - Paunch regulations moved from Title 126 to Chapter 17
 - DEQ → DWEE name change from LB317 in 2025
 - Update reference to landfill tipping fee increase in N.R.S. §13-2042(1) resulting from LB247, also in 2025
- 


2008 Dam Failure – TVA Kingston Fossil Plant



Federal CCR (condensed) timeline

- 2015 federal CCR rule – regulated active & new LFs, surface impoundments (SIs), and inactive SIs at active facilities
 - intended by EPA as “self-implementing” (enviro groups sue utilities)
 - 2016 – Water Infrastructure Improvements for the Nation Act
 - 2018 – *USWAG v. EPA* case – legacy surface impoundments
 - 2020 – DRAFT federal CCR permit program rule; not finalized
 - 2024 – Legacy Surface Impoundments (LSI) & CCRMU rule
 - 2026 – LSI/CCRMU Amendments & deadline extensions
- 


Chapter 1 – Definitions (CCR)

- “CCR” (015) and “CCR unit” (012) added from CFR; more definitions IBR’ed from 40 CFR 257.53 in Chapter 4, 001.01
 - “CCR” added to definition of “solid waste” (122), “s.w. disposal” (124), “s.w. disposal area” (125) and “s.w.m.f.” (127)
 - state FFCA program definitions removed/replaced
 - “landfill unit” (061), “lateral expansion” (062), “surface impoundment” (137), and “uppermost aquifer” (146) have separate definitions for CCR units in Title 132, Ch. 4, 001.01
- 


T132, Ch. 4 sections and corresponding CFR sections

Title 132, Chapter 4, section number & heading	Corresponding CFR sections
<u>001.01</u> Scope, Applicability, and Definitions	40 CFR §§ 257.50 through 257.53
<u>002</u> Location Restrictions	40 CFR §§ 257.60 through 257.64
<u>003</u> Design Criteria	40 CFR §§ 257.70 through 257.74
<u>004</u> Operating Criteria	40 CFR §§ 257.80 through 257.84
<u>005</u> Groundwater Monitoring and Corrective Action	40 CFR §§ 257.90 through 257.98
<u>006</u> Closure and Post-Closure Care	40 CFR §§ 257.100 through 257.104
<u>007</u> Recordkeeping, Notification, and Posting of Information to the Internet	40 CFR §§ 257.105 through 257.107
<u>008</u> Appendices	Appendix III to part 257—Constituents for Detection Monitoring Appendix IV to part 257—Constituents for Assessment Monitoring


Chs. 2, 7, 8 – CCR reporting, GW monitoring, Corrective Action & financial assurance req'ts

- Chapter 2, 007.03-007.05 – add'l record-keeping for CCR facilities
 - Chapter 7, 001.01 – CCR units have separate g.w. monitoring and corrective action (C.A.) req'ts in Ch. 4, 005
 - Chapter 8, 007 and 008 – financial assurance req'ts applicable to C.A. cost estimates and C.A. work
- 


State & Federal CCR Program Differences

- Under CCR rule, G.W. monitoring & C.A. program is based on SDWA MCLs; FFCA program allows for risk-based corrective action and alternate GWPS when justified
 - State CCR program maintains F.A. requirement of closure, post-closure, and corrective action
 - State CCR program maintains CQAP req'ts; certain maps
 - State CCR program continues to allow P.G.s to sign various G.W. monitoring & C.A. reports & documents
- 

Why Adopt Federal CCR Rules as a State?


- DWEE has 30+ years regulating CCR and 50+ years regulating groundwater quality
 - Federal CCR rules are equally environmentally protective as the current state rules under Title 132, Ch. 4
 - Neb. CCR facilities are subject to 2 sets (1 federal under “self-implementing”; 1 state) of overlapping regulations
 - EPA Federal Permit Program has not been finalized since December 2016 passage of WIIN Act
- 

Chapter 1 – Definitions (misc. solid waste)


- “construction and demolition waste” (023) + “uncontaminated wood pallets”
 - “livestock waste” (066) clarified as solid waste from “animal agriculture for purposes of food or fiber production”
 - “major modification” moved from Chapter 9 to 1, 069; distinguished from CCR definition; clarifying deletion re. type of modification decides public participation
- 

Ch. 2 – Permit Application & Administration

Procedures (misc. s.w.)

- 006.01H – “if applicable” replaces “whichever is applicable” re. certification of local siting for consistency w/ DWEE policy & department application form
 - 007.04B – clarifying revision re. duty to notify when a change in facility activities may result in non-compliance
 - 007.08 – clarifying revision re. incorporation of the application as conditions of the issued permit
- 


Ch. 2 – Permit Application & Administration

- 009.02C – distinguishes permit renewals (009.02B) from permit transfers and that compliance history of the transferee may be considered in agency permit decision
 - 009.02D – streamlining revision, no change in meaning re. setbacks from residential areas for disposal facilities
 - 010.04 – major modification → public participation; one definition for CCR facilities in Ch. 4; all others use Ch. 1
 - 012.05 – continuation of expiring permit; in other titles
- 


Ch. 3 & 5 – MSWLFs and C&D LFs – final cover

- Chapter 3, 005.09 (MSWLFs) & Chapter 5, 005.10 (C&Ds):


““No person shall excavate, disturb, or fail to maintain the final cover, or remove any deposited materials from any active or closed solid waste disposal area without having received prior approval from the Department.”



Ch. 9 – application fees; Ch. 11 – tipping fee

- Ch. 9, 001.01 – streamline & correct outdated, incorrect legal citations of state statutes
 - Ch. 9, 002 – move “major modification” to Ch. 1, 069
 - All Chapter 9 fee amounts remain unchanged
 - Ch. 11, 001.01 – tipping fee now references the statute, N.R.S. §13-2042(1), which was updated by LB247 in 2025 from \$1.25/ton to \$2.34/ton, effective 7-1-2025
- 


Chapter 1 – Definitions (land app. of paunch)

- “paunch manure” (087)
 - “dedicated paunch manure site” (031)
 - “non-dedicated paunch manure site” (077)
 - “dry ton” (042)
 - These are moved from Title 126, Ch. 1 and are now used in Title 132, Ch. 17
- 


Ch. 17 – Land Application of Paunch Manure

- Plastic Container Coding repealed – industry standard now
- Non-dedicated sites – transport properly; apply it w/in 24 hours at <10 tons/acre; observe setbacks; no discharges
- Dedicated paunch manure site – need a permit
 - Storage > 24 hours + applied at \geq 10 tons/acre
 - Location req'ts – setbacks from residences, wells, and waters
 - Operational criteria – loading/unloading, land app. rate & methods
 - Design criteria – pads, runoff controls, any dewatering described


Ch. 18 – repeal; Appendix III – groundwater MCLs

- Ch. 18 references general legal principles or statutory provisions and does not need to be repeated in regulation; it is proposed for repeal.
 - 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
- 

Timeline – Rulemaking & CCR Application

- now to May 21, 2026 – outreach & informal comment
 - May 22 to June 24, 2026 – formal comment period to EQC
 - June 24, 2026 – EQC public hearing & take testimony
 - June 25, 2026 (if adopted) → review by other branches
 - Late summer (if approved) → Secretary of State + 5 days
 - T132 in effect → state CCR application to EPA + 180 days
- 

Title 128 – Hazardous Waste Regulations

- Planning two (2) updates for 2026-2027
 - Update #1 will adopt H.W. generator fees as LB759 passed
 - There will be a robust public outreach process on type & amount
 - H.W. generator fees are required in all Region 7 states (IA, KS, MO)
 - Update #2 will adopt recent RCRA rules since 2015-2016
 - Hazardous waste generator improvements rule, aerosol cans as universal waste rule, Subpart P pharmaceutical waste rule, etc.
 - 1st update in 2026, 2nd in 2027 due to EPA review process
- 

Questions & Comments

- 2nd webinar on Monday, May 4th at 2:00 p.m. – invites to follow
 - Send comments for Title 132 prior to May 22 to dwee.waste@nebraska.gov – “informal” comments
 - After May 22, send comments for titles 126 and 132 to dwee.eqc@nebraska.gov – “formal” comments
 - Brian McMullen, DWEE Attorney
 - 402-471-0276; brian.mcmullen@nebraska.gov
- 