

NEBRASKA ADMINISTRATIVE CODE
~~NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

Title 126 - NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENTAL QUALITY

Chapter 1 - DEFINITIONSRELEASES 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

Legal Citation: Title 126, Ch. 1, Nebraska Department of Water, Energy, and Environment