

NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 28 –Permit-By-Rule for Pesticides

001 Application of pesticides for the control of larval and adult mosquitoes, weeds, fish, or other pests to, over, or near waters of the State shall be permitted under this rule provided that the pesticide applicator complies with sections 002 through 013.

002 To be eligible for this permit-by-rule for pesticides the applicator must have control or management authority of the water body or bodies being treated or be delegated responsibility or employed by, be under contract, or have an agreement with such person who has control or management authority. In addition, the applicator must insure that they can perform the following:

002.01 Be able to identify the target species.

002.02 Be able to identify non-target species.

002.03 Be able to identify threatened and endangered species listed by the Nebraska Game and Parks Commission or the U.S. Fish and Wildlife Service.

002.04 Be able to identify the water body and uses as assigned in Title 117-Nebraska Surface Water Quality Standards.

002.05 Be able to identify the proper timing for application of pesticides to optimize treatment.

002.06 Be able to properly identify the physical and chemical characteristics of the water and determine the volume of water for calculating mixture and application doses.

002.07 Be able to identify weather conditions that could impact the application of the pesticide.

002.08 Be able to properly evaluate the treatment options that optimize treatment of the pest and minimize impacts to the environment.

003 The water body that the pesticide is applied to shall satisfy at least one of the conditions in section 003.01 through 003.05, but may not have any of the conditions listed in section 004 to be eligible for this permit-by-rule:

003.01 There is no water present in the water body at the time of application for at least 24 hours after application or longer if required by the label.

003.02 An impoundment that is designed not to discharge.

003.03 A lake or reservoir that the applicator can manage the surface discharge for 24 hours from application or longer if required by the label to avoid downstream impacts by one of the following methods:

003.03A The water level is below the discharge inlet sufficiently to prevent discharge.

003.03B Drawdown of the water level is done before application to prevent discharge.

003.03C Discharge structures are closed before application to prevent discharge.

003.03D Inflow is diverted before application to prevent discharge.

003.03E Precipitation events that occur are not likely to result in a discharge.

003.04 A wetland, bog, or marsh that does not surface discharge for at least 24 hours after application or longer, if required by the label.

003.05 Applications to standing or flowing water for control of mosquitoes and other flying insects with biological and/or chemical pesticides so long as aerial or ground based aerosol applications (fogging) for adult mosquitoes and other flying insects shall be performed only when weather conditions and application patterns allow the pesticide to remain in the target area when applied.

003.05A When the target area is within ten stream miles of a surface water intake for public drinking water and the stream or lake would contribute to the intake, the applicator must contact the controlling entity of the public drinking water intake and must obtain in writing a letter of no-objection for the application to be eligible for this permit-by-rule. The applicator must keep this document on file as part of the records requested in section 006.

004 Waters of the state including those waters in section 003.01 through 003.05 that meet any of the following conditions are not eligible for this permit-by-rule for pesticides.

004.01 The target area is on a flowing stream or a lake unable to meet section 003.03. The exception is for application of pesticide for mosquitoes under section 003.05.

004.02 The waters are state resource waters as listed in Title 117. The exception is for application of pesticide for mosquitoes under section 003.05.

004.03 The waters are impaired on the current Clean Water Act 303(d) list for any of the ingredients in the pesticide or residuals from the application of the pesticide.

004.04 Threatened or endangered species or critical habitat are present in the target area unless the Nebraska Game and Parks Commission allows for the pesticide use and specifies any restrictions in an official publication or on their web page for the water body and the threatened or endangered species.

004.05 The weather forecasts for the target site indicate precipitation is expected within 24 hours of the application in sufficient amounts that would cause the pesticide to leave the target area.

005 Application of pesticides shall be in accordance with all relevant requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136 et seq., and the Nebraska Pesticide Act, Neb. Rev. Stat. §2-2622 et seq., relating to water quality including compliance with all label application directions, such as application rates, active ingredient concentrations and dilution requirements, buffer zones, application locations, intended targets, protecting threatened or endangered species, times of day, temperature or other application requirements, and proper disposal of pesticide residues.

006 The applicator shall retain the following information relating to each pesticide application for at least three years from the date of application and provide such information to the department upon request:

006.01 The name of the pesticide, targeted pests or weeds, and a copy of the EPA-approved FIFRA pesticide label, including any supplemental labeling relevant to the aquatic use of the pesticide. The EPA product registration number may be retained by the applicator in lieu of the actual label. The applicator shall be responsible for obtaining a copy of the pesticide label in place at the time of the application.

006.02 The date, time, and location of the application and targeted area, application rate and the total amount of material applied, applicator's name and signature. Documentation of weather forecasts for the target area for the 24 hour period immediately following the intended application.

006.03 Any documentation necessary under section 003.05A.

007 Application equipment shall be appropriate for the application and properly maintained.

007.01 Equipment shall be calibrated at last annually or more frequently if required by the pesticide label or manufacturer's operation and maintenance manuals.

007.02 All equipment shall be inspected prior to application and monitored during application for leaks or inoperative nozzles or valves and such repairs made before the application continues or takes place.

008 The applicator shall visually monitor the target area and any area outside the target area that may have been adversely impacted at the time of application.

008.01 The applicator shall report any over application of pesticides, or adverse impacts to non-targeted species, endangered species, human health, or the environment to the department within 24 hours and submit written documentation within 5 days.

008.01A Written documentation must clearly describe the events causing the adverse impacts, the adverse impact, time, dates, mitigation measures taken, and the individuals and organizations involved with the application and any mitigation.

009 Any non-compliance with the permit-by-rule for pesticides shall constitute a violation of the Nebraska Environmental Protection Act and these regulations.

010 Applicators of pesticides are not required to submit a Notice of Intent for coverage under the permit-by-rule for pesticides provided they comply with the provisions of this chapter and Chapter 14, Permits, Terms, and Conditions – General as applicable.

011 Applications of pesticide that do not qualify for this permit-by-rule for pesticides in this chapter will need to apply for a site-specific permit or a pesticide general NPDES permit before application of pesticides to waters of the State of Nebraska. A site-specific permit requires the owner of the intended application site to submit information or a completed application form at least 180 days prior to the intended application, (Title 119, Permit Application – General Requirements, Chapter 5).

012 The Director may require any application of pesticides to, over, or near waters of the state to cease under this permit-by-rule for pesticides and request that the applicator apply for a site-specific or general permit.

013 The following definitions apply to this Chapter.

013.01 “Near Water” means for the application of pesticides that the application must be able to migrate to waters of the State while only under the influence of gravity within 24 hours or less from application.

013.02 “Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator (excluding fertilizers), defoliant, or desiccant.