

MEMORANDUM

TO: Environmental Quality Council

FROM: Reuel Anderson, Permitting & Engineering Division Administrator

DATE: December 23, 2025

RE: Title 129 Air Quality Regulations
Explanatory Statement for February 12, 2026 EQC Hearing

Title 129 protects the health and safety of the public by regulating air quality throughout the state. Neb. Rev. Stat. § 81-1501 & § 81-1505.

SHORT DESCRIPTION:

NDEE proposes revisions to Title 129, Chapters 1 through 9, 11 through 16, and Appendices I and II. The proposed revisions will correct typographical errors, clarify and simplify regulatory language, update reference dates for some federal regulations cited in the title, incorporate recent federal rulemaking, reduce the notification timeframe for preconstruction activities, add definitions of terms used in the regulations, and revise the agency name to reflect the NDEE-NDNR merger (LB317).

RATIONALE:

These revisions are necessary to ensure that regulatory language in Title 129 is grammatically correct, straightforward, current, and complete. They are also needed to bring the regulations up to date with federal regulations cited or incorporated by reference.

ANALYSIS OF IMPACT:

Title 129 regulations impact regulated sources of air pollutants in the state. These revisions will ensure that state regulations contain language that is clear, complete, and current.

Clear and complete language communicates the state requirements to regulated entities and supports compliance and enforcement activities conducted by the Department. A lack of clarity in language creates ambiguity and makes it difficult for sources to comply and for the Department to enforce the regulations.

Up-to-date content and reference to federal regulations ensures consistency and aligns state regulatory activities with federal requirements, allowing for comprehensive regulation of sources in the state. State authority to enforce federal regulations (such as those in Chapters 12 and 13) will remain limited to those regulations in effect as of the CFR date cited in Title 129. Nebraska facilities will remain subject to more recent federal regulations not yet adopted into Title 129, however, enforcement authority will lie with the Environmental Protection Agency (EPA) unless and until incorporated into state regulations and the Nebraska state implementation plan (SIP).

SECTION-BY-SECTION DESCRIPTION:

All Chapters and Appendices

- Update Code of Federal Regulations (CFR) citation to “July 1, 2023”
- Change department name to “Department of Water, Energy, and Environment” and replace “NDEE” with “DWE”
- Correct typographical, grammatical, and formatting errors
- Update formatting to accommodate revisions
- Simplify language as needed

Chapter 1 General Provisions; Definitions

- Add definitions
 - “air pollutant” (new section 002.10)
 - “council” (new section 002.34)
 - “person” (new section 002.72)
- Clarify definition of “Complete” (section 002.28) by adding “as deemed by the Department”

Chapter 2

- Spell out “sulfur dioxide” (section 002.02)

Chapter 3 Construction Permits

- Reformat/revise language to
 - describe and clarify the construction permit process and activities allowed prior to receipt of a permit (section 001.01),
 - list eligibility for preconstruction activities (section 001.01A), and
 - list required actions before initiating pre-construction activities and change notification timeframe from 30 to five (5) days (section 001.01)
- Spell out pollutants
 - “particulate matter” (section 001.03A1)
 - “fine particulate matter” (section 001.03A2)

Chapter 6 Operation Permits

- Remove section 005, which references now-obsolete federal regulations

Chapter 11 Emissions Reporting, When Required

- Revise text to reflect the use of electronic emission inventory reporting (sections 001 and 002)

Chapter 12 New Source Performance Standards and Emission Limits for Existing Sources

- Incorporate New Source Performance Standards (NSPS) applicable to Nebraska sources
 - Add Subpart BBa – Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (section 001.02)
 - Replace “WWW” with “XXX” (section 001.75) to align with current rule subpart identifier
 - Add Subpart OOOOa – Crude Oil and Natural Gas Facilities for which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (new section 001.87)
 - Add Subpart QQQQ – New Residential Hydronic Heaters and Forced-Air Furnaces (new section 001.88)
 - Add Subpart TTTT – Greenhouse Gas Emissions for Electric Generating Units (new section 001.89)

Chapter 13 Hazardous Air Pollutants

- Incorporate National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to Nebraska sources

- Add Subpart J – Polyvinyl Chloride and Copolymers Production (new section 002.06)
- Add Subpart JJJJ – Brick and Structural Clay Products Manufacturing (new section 002.86)

Chapter 14 Incinerators, Emission Standards

- Add “residential” to clarify the type of waste permitted for burning (section 001.01)
- Add “that burn only trees, vegetation and untreated lumber” to clarify materials permitted for burning (section 001.02)
- Add “except those operating an incinerator meeting the exemption criteria listed in Sections 001.01 through 001.04” to clarify exceptions to the threshold for grains per dry cubic foot of exhaust gas (section 002)

Chapter 15 Compliance

- Remove “nuisance or” and/or add “traffic” to clarify the Departments authority regarding violations (sections 002.02A, 002.02D, and 002.02E)
- Remove “indigenous to” and replace with “originating from” to clarify materials allowed for burning (section 002.02D1)
- Add “public power and irrigation districts” to the list of groups allowed to conduct burning for plant, wildlife, and parks management (section 002.02F)
- Revise language to clarify the origin of materials allowed to be burned in compliance with a general or community open fire permit for reasons other than “construction activity” (section 002.02G2)
 - Remove “and untreated lumber generated” and “construction activities”
 - Add “and other” and “originating from the property”

Appendix I Hazardous Air Pollutants

- Add reporting level of “20” (lbs/year) for 106945, 1-Bromopropane (1-BP), erroneously omitted from the previous revision (Table 1)
- Add a second table (new Table 2) with hazardous air pollutants sorted by chemical name, including the footnotes from the existing table