



*This **guidance document** is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.*

15-008

October 2021

Two Construction Permits Necessary for CAFOs

When an individual wishes to begin construction on a concentrated animal feeding operation (CAFO), or expand an existing operation, they will need to contact the Nebraska Department of Environmental Quality (NDEE) regarding the need for a construction and operating permit as well as a construction storm water permit. In addition to these requirements, there may be other permitting obligations that may be applicable to the facility; however, the focus of this fact sheet is the **difference** between these two construction permits.

NDEE encourages any person with questions regarding permitting requirements to contact the appropriate agency division or the Small Business and Public Assistance Coordinator. Contact information provided below.

Construction Storm Water General Permits Issued Under Nebraska Title 119

Under [Nebraska Title 119 – Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System](#), if the construction of a facility will involve clearing, grading or excavating an area of one acre or more, a National Pollutant Discharge Elimination System (NPDES) construction storm water permit will need to be obtained.

Prior to construction, an NPDES Storm Water Pollution Prevention Plan (SWPPP) will need to be implemented to control erosion and sediment run-off during construction. The state has a general permit, which covers construction storm water activities; permit NER110000.

To obtain coverage under this general permit, you will need to submit a [Notice of Intent](#).

A few things to note regarding NDEE review times for a Construction Stormwater Permit:

- Under the general storm water permit, staff seek to prepare and mail a courtesy letter which provides the authorization number for the project within seven (7) days

of the program receiving the Construction Storm Water Notice of Intent (CSW-NOI), assuming there are no deficiencies or inaccuracies – i.e., the CSW-NOI is complete and accurate. The Department recommends you send your CSW-NOI in 30 days in advance of when you wish to begin construction to allow for any corrections that may need to be made.

- The project must have a prepared Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must be prepared before the CSW-NOI is submitted. This work may need to be contracted in advance to avoid delays.
- Occasionally a CSW-NOI is sent in which has a deficiency. NDEE staff will notify the project proponent via phone or e-mail about the deficiency and what actions will resolve the issues. The timeliness in the response of the applicant may dictate the permitting time.
- Very rarely, a project CSW-NOI may be delayed for approval beyond the seven-day timeframe if there are issues that are raised by the Nebraska Games and Parks Commission regarding threatened or endangered species. It is always recommended that the provided checklist be completed early so it can be determined early-on if a review is required.

For questions concerning the NPDES construction storm water permit program, please contact the NDEE Construction Storm Water Coordinator at [\(402\) 471-4220](tel:402-471-4220).

Livestock Waste Control Regulations Permits

Issued Under Title 130

Nebraska's regulations pertaining to the animal wastes generated by animal feeding operations can be found under [Title 130 – Livestock Waste Control Regulations](#). The NDEE [Livestock Waste Control Program](#) administers two types of permitting programs for livestock waste control facilities in Nebraska: The federal National Pollutant Discharge Elimination System (NPDES) permitting program and the state construction and operating permit program.

The state construction and operating permit program requires an applicant to have an approved permit in place before construction of an animal feeding operation. After submitting [Title 130 – Form A Request for Inspection of Animal Feeding Operation Form](#), Department personnel will conduct an initial site inspection, and if the location is feasible send out a letter saying a permit is required. The individual then must prepare and submit the [Title 130 – Form B – Permit Application](#).

Once an applicant has submitted a complete application package:

- Within **60 days**, the Department issues a public notice on whether the proposed project is to be approved or denied. If the permit is to be approved, the public has a 30-day comment period.
- The Department has **up to 110 days** from the receipt of the application to approve or deny the application and transmit the findings to the applicant. This timeframe includes the 60- and 30-day periods mentioned above.

Please note that the federal NPDES permitting program generally requires large and medium-sized CAFOs to have an NPDES permit before discharging livestock waste into waters of the state. NDEE requires an operation to obtain a NPDES permit. Applications must be submitted at **least 180 days** before the planned use of the livestock waste control facilities.

For questions concerning the Livestock Waste Control Program permits, please contact the NDEE at [\(402\) 471-4239](tel:402-471-4239).

Construction Permit Requirements for CAFOs – Summary Table

Permit or Notification	Regulation	Submittal Timeframe	Fees
NPDES Construction Storm Water Permits	Title 119	At a minimum, 7 days in Advance Recommend, 30 days in Advance	None
Construction and Operating Permit	Title 130	110 days, in Advance	\$200

Resources

NDEE Home Page: <http://dee.ne.gov>

NDEE Livestock Waste Control Program: <http://dee.ne.gov/NDEQProg.nsf/OnWeb//LWCP>

Contacts

NDEE Main Office [\(402\) 471-2186](tel:(402)471-2186)

NDEE Small Business and Public Assistance [\(402\) 471-8697](tel:(402)471-8697)

NDEE Construction Storm Water Permits [\(402\) 471-4220](tel:(402)471-4220)

NDEE Livestock Waste Control Program..... [\(402\) 471-4239](tel:(402)471-4239)

*Nebraska Department of Environment and Energy
Agriculture Section
P.O. Box 98922
Lincoln, NE 68509-8922*

Visit our website: <http://dee.ne.gov>

This material is intended for guidance purposes only. It is not meant to substitute for the regulations specified in the document, or any other applicable Nebraska environmental regulations.