



MEMORANDUM

TO: Environmental Quality Council

FROM: Shelley Schneider, Division Administrator, Permitting and Engineering Brad Pracheil, Division Administrator, Inspection and Compliance

DATE: February 11, 2022

SUBJECT: Explanatory Statement for Proposed amendments to Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*

EXPLANATORY STATEMENT

Attached for your review and approval is these proposed amendments to Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*.

Title 119 implements those provisions of the Clean Water Act (CWA), as amended, 33 U.S.C. §1251 et seq., that regulate discharges of pollutants to waters of the state through the issuance of National Pollutant Discharge Elimination System (NPDES) permits. The designated uses protected under NPDES permits are recreation, aquatic life, drinking water, agricultural, industrial, aesthetics, and State Resource Waters.

The Policy Team, in coordination with air program and Legal staff, develops and proposes new and revised regulations to the Environmental Quality Council (EQC). Title 119 is updated regularly to keep up with frequently changing federal regulations.

1. A DESCRIPTION OF THE OF THE PROPOSED AMENDMENTS.

The proposed regulations amend Title 119 in five (5) key areas:

1. *"Plain language" revisions to all Chapters and Appendices*

The department is proposing replacement of words such as "shall" in order to simplify and modernize the agency's use of legal language in regulations.

2. *Replace duplicative language with references to state statute and federal regulation*

The department is proposing replacement of content throughout the current regulations, including some definitions, which are verbatim restatements of state statute or federal regulation with citation.

3. *Consolidation of chapters.*

Numerous chapters are proposed for consolidation to streamline and reorganize the regulations, which include:

- NPDES permit applicability, exclusions, prohibitions, application requirements, and variances, chapters (2, 3, 4, 5, 6, 7, 8, and 9); and permit signatories, conditions, effluent limitations, technology based treatment requirements, secondary treatment, issuance decision making, transfer, modification, reissuance, continuation, termination, and general permits, chapters (13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25) are proposed for consolidation into Chapter 2;
- Effluent limitation guidelines (ELG), chapter 27 is proposed for consolidation into Chapter 5.

4. *Reduction or modification of regulations to better serve the regulated community. The most notable proposed revisions are listed below.*

- Definitions provided in 40 CFR are removed from Chapter 1.
- Reference to NAC Title 115 is removed from Chapter 1.
- Consolidates Title 119 Chapters identified in the previous paragraph to reference CFR. This reference enables the reader to access this code in one location at 40 CFR, Part 122, *EPA Administered Permit Programs: The National Pollutant Discharge Elimination System*.
- The adoption by reference of the NPDES Electronic Reporting Rule and Phase 2 Extension allowing the regulated community access to the electronic reporting tools as developed by the Environmental Protection Agency (EPA) for the State of Nebraska.
- Chapter 10 is renumbered as Chapter 3.
- Chapter 12 is renumbered as Chapter 4.
- Remove an incorrect noncompliance reporting reference in Chapter 14.
- Chapter 22 is removed.
- Chapter 26 is adopted by reference in Chapter 1.
- Effluent limitation guidelines (ELG), chapter 27, is renumbered Chapter 5. Adopts by reference the provisions of 40 CFR, Chapter I, Subchapter N. This reference enables the reader to access this code in one location at 40 CFR, Chapter I, Subchapter N.
- Chapter 28 is renumbered as Chapter 6. Wording is removed to clarify the requirements of Neb. Rev. Stat. §81-1517 through §81-1520.

5. *Revisions to reflect changes to state and federal law.*

Incorporation of regulatory updates includes:

- National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, December 21, 2015
- Clean Water Act Methods Update Rule (40 CFR 136), September 27, 2017
- NPDES Updates Rule, February 7, 2018
- Municipal Separate Storm Sewer System General Permit Remand Rule, January 9, 2017
- Steam Electric Power Generating Point Source Category, September 18, 2017

Rationale for Proposing Adoption

By their numbered proposals from above, the rationale for proposing adoption is as follows:

1. Plain language revisions. These revisions are proposed for all chapters pursuant to E.O. 17-04 to promote readability, clarity, and accessibility in regulatory language. The proposed replacement of words such as “shall” is intended to make regulatory text more accessible to a wider audience of readers, reduce formal legal jargon, and simplify and modernize the agency’s use of legal language in regulations. The proposed changes are not legally significant in terms of substantive meaning or enforceability by the agency.
2. Replace or remove duplicative language. These proposed revisions will remove portions that restate language contained in state statute, federal regulations, and other retained language within Title 119. This action is intended to streamline the regulations, ensure consistency, and reduce unnecessary duplication.
3. Chapter consolidation. The proposal to better organize and simplify the format of the regulations will allow the regulated public to more easily identify state air regulatory requirements that apply to their operations. A significant amount of the content in the proposed regulations has not changed and language not retained in the text of the regulations is conveyed by incorporation of state statute or federal regulation.
4. Reduction or modification of regulations. Revisions are intended to streamline the regulations, modernize language, provide clarity, and remove obsolete or repealed portions of Title 119. The most notable proposed changes include 1) the discontinuation of Permits by Rule, allowing sources to instead apply for general permits; 2) the clarification of pre-permit state construction permit activities to reduce the need for variances; 3) the clarification of extensions for Class II permit duration for true minor and certain synthetic sources; and 4) the clarification of exemptions per the Low Emitter Rule or No Permit Required source categories.
5. Revisions to reflect changes to state and federal law. These revisions will update effective dates of incorporated state and federal regulations and is intended to modernize the regulations and ensure consistency with state statute and federal law.

Impact of the Proposed Changes

The proposed revisions do not create new requirements or modify existing requirements to be more restrictive. The proposed changes eliminate unnecessary regulation, reduce the chance of conflicting provisions, and streamline the Title.

Section-by-Section Description of the Proposed Changes

“Plain language” revisions are proposed for all chapters and appendices. Retained regulations are renumbered appropriately. Language duplicative of state statute, federal regulation, or other portions Title 119 is removed or replaced. Chapter and section references are updated accordingly. Please refer to the attached Title 119 Crosswalk document for detailed line-item revisions and descriptions.