

Proposed Changes to Title 129 – Nebraska Air Quality Regulations

Background

The process to begin the evaluation of, and propose language changes to, Title 129 – Nebraska Air Quality Regulations (Title 129) came about because of Governor Rickett’s Executive Order No. 17-04.

In order to fulfill the Governor’s order, the Nebraska Department of Environment and Energy (NDEE) began an extensive review of Title 129. Department staff removed language by referencing the Code of Federal Regulations (CFR) where possible, reduced the number of chapters and the overall word count of the Title, and removed restrictive words such as *should*, *must*, *prohibited*, *required*, and *may not*, when able to do so. NDEE staff also referenced state statutes or other Titles where possible rather than replicating the language. Most importantly, NDEE staff went through and looked where state-imposed requirements could be lessened and still meet the approval requirements of Nebraska’s State Implementation Plan (SIP) by the United States Environmental Protection Agency (EPA). Federal requirements, which NDEE cannot change or have its requirements less stringent than, were adopted by reference. Some chapter language that NDEE was seeking to have removed was considered ‘backsliding,’ or lessening requirements already in the Nebraska SIP, and thus unable to be removed and still receive the necessary approval by the EPA.

The revisions to Title 129 that NDEE is proposing is summarized in the Abstract under the Proposed Rules and Regulations tab on the NDEE website.

Outreach

As part of the information public outreach effort, NDEE held a webinar on the proposed Title 129 changes on April 8, 2021. Registrations for the event totaled 128. Questions 1 through 8, on subsequent pages, were asked by attendees of the webinar.

The first in-person and/or online Question-and-Answer outreach event occurred in April 27, 2021. Two individuals attended in person and 22 people signed up to attend via Webex. Questions 9, 10, 11, and 12 were received during the event.

Fourteen people attended the outreach event on May 13, 2021, and no questions were presented or emailed in afterwards.

This first set of 12 questions were reviewed and answered in the [QA Document for Title 129 Outreach – May 20 2021](#) that was posted in the [Draft and Proposed Rules and Regulations](#) page on the NDEE website.

Prior to the May 25, 2021 outreach event, the Department received a question/recommendation related to the proposed language for open burning. At the May 25th meeting, 10 additional questions were asked. At the final outreach meeting on June 10, 2021, two questions were asked. As of the end of the business day on Wednesday, June 16, 2021 no further questions have been submitted to the Department.

Request

The Public Information Office staff received a request for the Department to post the additional 13 questions that were posed after the release of the May 20th QA document. Please find below the questions that were asked, as NDEE staff understood them.

- 13) The NDEE proposed language in regulations and the NDEE couldn't put them in because it was backsliding. Is the Nebraska SIP more stringent than the federal regulations?
- 14) Will older permits be subject to state standards, when revised, only be subject to the federal regulation?
- 15) Moving forward, would a new source be subject to old standards and new federal standards?
- 16) How will the proposed Title 129 changes affect low emitters?
- 17) In the draft document, NDEE has proposed language allowing for Class II permits to have an effective time period longer than five (5) years; at the discretion of the Director. Will specific criteria be put into Title 129 about this? As a regulated source, it is our opinion that criteria should be placed into Title 129.
- 18) Within the proposed language, NDEE specifies when the Director is involved or when her/his approval is needed and where the Department can do things. Why? Is the Department open to comments about where the responsibilities lie?
- 19) June 18th is when public comments regarding the NDEE white papers are due. Is the Department considering incorporating some of the language from these documents into the Title? If not, some language from these documents should be put into the proposed regulation.
- 20) With the proposed changes to Title 129 scheduled to go before the Environmental Quality Council in the autumn, would comments from the public be included in the EQC meeting? If the changes are substantial enough, would the Department delay presenting the proposed language until a later time?
- 21) Can changes be made to the existing Department policy that Title V permit holders cannot operate under a new construction permit until it is incorporated into a new Title V permit?
- 22) What would Class II operating time frames beyond five years look like? Would existing Class II permits be extended?
- 23) A question was sent via email to the Department regarding the current language in Title 129, Chapter 30, Section 002.07A; and the definition is of "dangerous materials." The commenter wanted to point out the vagueness of the section.
- 24) What are the next steps in the process? When will the changes be implemented? How is it passed down to the delegated authorities other than the NDEE?
- 25) Will sources with existing permits have to submit a new application for their existing permit the day the new regulations go into effect?

NDEE staff are in the process of reviewing and answering these questions. Initial Department responses were provided during the events when they were asked. The informal comment period for the drafted Title 129 regulations closes on June 18, 2021, in order to give sufficient time to prepare documents for

review by the Environmental Protection Agency (EPA), the Governor Policy Research Office (GPRO), and the Environmental Quality Council (EQC).