

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.

05-171

March, 2020

Permit by Rule

Introduction

Nebraska Department of Environment and Energy (NDEE) issues two types of air quality permits: construction permits and operating permits. The purpose of the air quality construction permit program is to ensure Nebraska's air quality is protected when new air contaminant sources are built or existing sources expand their operations. For more detail regarding air quality construction permits, review the NDEE fact sheet "Construction Permits." The fact sheet can be obtained from the NDEE website at <http://dee.ne.gov> under Air Quality Publications or by contacting the Air Quality Division via the Air Quality Construction Permit Hotline at (877) 834-0474 or via the Air Quality Permitting Section at (402) 471-2189.

Air quality operating permits contain all applicable requirements for all emission points at a facility. This includes incorporating conditions from the construction permits issued to that source. Operating permits are valid for up to 5 years. For more detail regarding air quality construction or operating permits, review the NDEE fact sheets which can be obtained from the NDEE website at <http://dee.ne.gov> under Air Quality Publications, or by contacting the Air Quality Division at (877) 834-0474 or (402) 471-2189.

Many sources need both a construction permit and an operating permit. In order to issue permits to these sources more quickly and more efficiently, with standardized conditions among sources, the Department has established a permit-by-rule program. Permit-by-rule satisfies both the construction permit and operating permit requirements for the source.

Frequently Asked Questions

What is a Permit-by-Rule (PbR)?

A PbR is a set of conditions, found in Title 129, Chapter 42, that have been established for a specific industry or unit in order to control air emissions. These conditions insure that the facility/unit is in compliance with the emission standards instituted by the NDEE and Environmental Protection Agency (EPA). PbR satisfies both the construction permit and operating permit requirements. Sources do not have to apply every five years for an operating permit renewal if covered by the PbR.

When can I use Permit-by-Rule?

You may use the PbR application when you are planning to construct a new source, adding a unit to your existing facility, applying for an operating permit for your facility, or when you need to renew your operating permit.

What are the benefits of the Permit-by-Rule program?

There are many benefits of this program for both NDEE and the source. The Notice of Intent (NOI) form for the PbR is briefer than the construction and operating permit applications, therefore should require less time to complete. The NOI form is standardized, making it easier for the NDEE to review.

Additionally, the permit writer will not have to develop a new permit for each source, which can be a lengthier process. The PbR approval process will generally take less than 30 days.

How do I know if I qualify for the Permit-by-Rule program?

Currently, only two specific industry categories have PbR programs established: Asphalt Plants and Small Animal Incinerators, more categories are under development. To qualify for the PbR, you must satisfy the following conditions:

- Cannot be operating as a Class I, major source under the operating permit program;
- Cannot be operating as a major source under the Prevention of Significant Deterioration Program;
- The NDEE has established a PbR for your source category;
- If you are subject to a federal regulation (such as a New Source Performance Standard), the PbR must not overrule those requirements;
- The source cannot be located in a nonattainment area (currently there are none in Nebraska) or within five miles of Weeping Water, NE (unless the specific PbR for your source category states that you may be closer);
- The source must certify that they will comply with the PbR provisions and keep the appropriate records for five years; and
- The source must ensure they protect the public health by preventing access to their facility by the public. Each source category's PbR will have specific boundary requirements established.

I think I may qualify for the Permit-by-Rule, now what?

Obtain the PbR of Intent (NOI) form from the NDEE website under Air Quality Publications or contact the Air Quality Division via the Air Quality Construction Permit Hotline at (877) 834-0474 or via the Air Quality Permitting Section at (402) 471-2189. All facilities must fill out Section 1.0: Permit by Rule: General Information. You must also fill out the section which applies to the specific unit you are permitting. Forms will be available for each specific PbR.

What is a Notice of Intent?

Each section of the PbR application contains a Notice of Intent (NOI) form. This form is a checklist containing the majority of the conditions that have been set forth in Title 129, Chapter 42. By answering the questions, you are agreeing to follow the established conditions for your facility/unit. You are *notifying* the Department that you *intend* to follow the conditions. The NOI contains most of the conditions in Title 129, Chapter 42. Essentially Title 129, Chapter 42 is a permit.

When do I need to submit the Notice of Intent (NOI) form?

New sources must submit the completed NOI form to the NDEE Air Quality Division at least 45 days prior to the actual date of construction, reconstruction, or modification of the source. Existing sources with an operating permit must submit the NOI form at least six months prior to the permit expiration date and no sooner than 18 months prior to the expiration date. Existing sources without an operating permit must submit the NOI form within 12 months of the source becoming operational or subject to the requirement to obtain a permit.

I operate a portable facility; can I be covered by a Permit-by-Rule?

Portable sources (also termed temporary sources) are sources that emit pollutants and may require construction and/or operating permits based on the amount of pollutants emitted. These sources, however, can be relocated as the need may arise, such as a portable asphalt or concrete plant that tends to move locations in order to be closer to road construction sites. Temporary (portable) sources can be covered under certain PbRs. If you operate a temporary source, you should submit the completed NOI within the same time frame as permanent sources. Each time a location change is

proposed, you must notify the proper authorities (usually only the NDEE unless you are moving into Douglas or Lancaster counties) 20 days prior to the move. This notification should be in writing and include any necessary materials or documents outlined in the PbR that applies to your industry category.

What is the approval process for the Permit-by-Rule?

Once the NDEE receives the NOI form the Air Quality Division will either approve coverage under the PbR or request additional information within 30 days of receiving the NOI request. NDEE will send the source written confirmation of their approval or disapproval decision. If NDEE fails to meet this deadline, the source may provide a written request to the NDEE Director asking for NDEE to make a determination on the NOI. If the NDEE disapproves an NOI request, the source must obtain a construction and/or operating permit via the standard procedure described in Title 129.

Is there a fee to apply for a Permit-by-Rule?

The requirement to submit a fee with each NOI is dependent on whether the source is obtaining the PbR to comply with construction permit requirements, operating permit requirements, or both. All sources applying for a PbR to meet their construction permit requirements will need to submit a fee. Sources applying to meet only their operating permit requirements will not have to submit a fee. Since the PbR program is designed to streamline the processing of certain source categories, the application fee is set at the minimum level of \$250. Instructions for submitting the fee are included on the appropriate NOI form. Contact the NDEE if you are unsure whether a PbR application fee applies in your situation.

If you have any questions related to the Permit-by-Rule program or air quality permits, feel free to call the Air Quality Construction Permit Hotline at (877) 834-0474 or the Air Quality Division at (402) 471-2189.

Produced by: Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-8922; phone (402) 471-2186. To view this, and other information related to our agency, visit our web site at <http://dee.ne.gov>