

LINCOLN-LANCASTER COUNTY AIR POLLUTION CONTROL PROGRAM

ARTICLE 2. REGULATIONS AND STANDARDS

SECTION 17. CONSTRUCTION PERMITS -- WHEN REQUIRED

(A) No person shall cause the construction, reconstruction, or modification at any of the following without first having obtained a construction permit from the Department in the manner prescribed by these Regulations and Standards:

(1) Any air contaminant source involving a net increase in potential emissions equal to or exceeding the following levels, except that fugitive emissions of that air contaminant source shall not be considered in determining a net increase in potential emissions for the categories in Article 2, Section 2(B) of these Regulations and Standards:

(a) Fifteen (15) tons/year of PM₁₀ emissions.

(b) Forty (40) tons/year of SO₂ or SO₃, or any combination of the two.

(c) Forty (40) tons/year of oxides of nitrogen (calculated as NO₂).

(d) Forty (40) tons/year of volatile organic compounds (VOC).

(e) Fifty (50) tons/year of carbon monoxide.

(f) Six-tenths (0.6) tons/year of lead.

(g) Two and one-half (2.5) tons/year of any hazardous air pollutant or an aggregate of ten (10) tons/year of any hazardous air pollutants.

(2) Any incinerator used for refuse disposal or for the processing of salvageable materials except refuse incinerators located on residential premises containing five or less dwelling units used only for the disposal of residential waste generated on the residential premises where the incinerator is located.

(B) The standards which would have been imposed under a construction permit are applicable to those sources who have failed to obtain a permit to the same extent as if a permit had been obtained.

(C) The owner or operator of any source required to obtain a construction permit under these Regulations and Standards shall submit an application on forms provided by the Department.

(D) An application will be deemed complete if it provides all the information required and is sufficient to evaluate the subject source and to determine all applicable requirements. The application shall be certified by a responsible official for the source.

(E) If the Department determines that the application is not complete and additional information is necessary to evaluate or take final action on the application, the Department may request such information in writing and set a reasonable deadline for a response.

(F) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

(G) The Department shall require in the application information necessary to determine if the new or modified source will interfere directly or indirectly with the attainment or maintenance of National Primary and Secondary Ambient Air Quality Standards, or violate any portion of an existing control strategy.

(H) If an air quality impact analysis is deemed necessary by the Director as a part of a construction permit application, concentrations of pollutants that may be expected to occur in the vicinity of a source or combination of sources will be determined by use of an air pollution dispersion model acceptable to the Director. Meteorological and operating conditions that may occur that will produce the greatest concentrations of the pollutants emitted shall be used in evaluating the effect of the source(s) on air quality.

(I) Disapproval of Application for Permits.

(1) If it is determined by the Director that emissions resulting from the operation of a source to be constructed or modified will violate the "Standards of Performance for New Stationary Sources", violate any portion of these rules and regulations, or interfere with attainment or maintenance of a National Ambient Air Quality Standard, no permit will be granted until necessary changes are made in the plans and specifications to obviate the objections to issuance.

(2) A construction permit will not be issued for any major source or major modification when such source or modification would cause or contribute to a violation of a national ambient air quality standard by exceeding, at a minimum, the following significant levels at any locality that does not or would not meet the applicable national standard:

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Pollutant	Annual	Averaging Time 24 hrs	Averaging Time 8 hrs	Averaging Time 3 hrs	Averaging Time 1 hrs
SO ₂	1.0 Φ g/m ³	5 Φ g/m ³	-----	25 Φ g/m ³	-----
PM ₁₀	1.0 Φ g/m ³	5 Φ g/m ³	-----	-----	-----
NO ₂	1.0 Φ g/m ³	-----	-----	-----	-----
CO ₂	-----	-----	0.5 mg/m ³	-----	2 mg/m ³

(J) Issuance of permits. The Director shall publish notice of intent to approve or disapprove the application in accordance with the procedures in Section 14 of these Regulations and Standards.

(K) Approval, by issuance of a permit for any construction, reconstruction, or modification, does not relieve the owner or operator from his or her responsibility to comply with the applicable portions of the Implementation Plan control strategy.

(L) If construction, reconstruction, or modification of the source is not commenced within 18 months, the construction permit shall lapse except upon a showing by the permittee that the complexity of the construction, reconstruction, or modification requires additional time.

(M) Additional Requirements for Construction or Modification of Sources in Non-attainment Areas.

(1) No permit to construct or modify will be issued for a proposed major source or a major modification if the source is located or is to be located in an area that is non-attainment for a pollutant for which the source or modification is major unless it is determined that:

(a) By the time the facility is to commence operation, total Allowable emissions from the same source or existing sources in the same non-attainment area, from new sources which are not major emitting facilities, and from existing sources allowed under the Implementation Plan prior to the application for such permit to construct or modify represent a net decrease in emissions and show reasonable further progress toward attainment and maintenance of the ambient air quality standards, and provided that any emissions reductions required as a precondition of the issuance of a permit shall be federally enforceable before such permit is issued.

(b) The proposed source is required to comply with the lowest achievable emission rate; and

(c) The owner or operator of the proposed new or modified source has demonstrated that all other major stationary sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the State subject to emissions limitations are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards.

(d) The proposed source is in compliance with requirements established under the Implementation Plan and the Director shall not issue a permit if the Administrator has determined that the applicable Implementation plan is not being adequately implemented for the non-attainment area in which the proposed source is to be constructed or modified.

(e) The source has completed an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(2) The requirements of subparagraph (M)(1)(a) above for emission reductions from existing sources in the vicinity of proposed new sources or modifications shall be determined on a case-by-case basis. The offset baseline shall be the Actual emissions of the source from which offset credit is obtained.

(3) The following shall apply to emission offsets:

(a) If the emissions limit under these regulations allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(b) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The Director will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

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(c) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production less than one year prior to the date of permit application, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source;

(d) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds." (42 FR 35314, July 8, 1977);

(e) The procedures set out in 40 CFR Part 51, Appendix S, Section IV(D), relating to the permissible location of offsetting emissions, shall be followed, unless the Director determines that an equally stringent or more stringent procedure is appropriate.

(f) Credit for an emissions reduction can be claimed to the extent that the Director has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or in demonstrating attainment or reasonable further progress.

(g) Emission reductions otherwise required by the Act or these Regulations and Standards shall not be creditable as emissions reductions for purposes of any offset.

(4) The provisions of subpart (M) above do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primarily zinc smelters;

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- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Liquefaction plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 18, Section 23, or Section 27 of these Regulations and Standards.

(5) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(N) Modification of the Construction Permit. The purpose of this section is to provide a means to address unforeseen situations which may develop in the process of constructing or modifying an emission source subject to this chapter.

(1) Subject to the approval of the Director, the terms of a construction permit may be modified through the substitution of alternative provisions, provided the following conditions are met:

(a) No emission limit in the original construction permit is exceeded;

(b) No applicable requirement included in an operating permit to which the source is subject is violated;

(c) No emissions limit, equipment or operational standard applicable to the source will be exceeded;

(d) No emissions limit, equipment or operational standard assumed to avoid a classification that would render the source subject to an otherwise applicable requirement will be exceeded; and

(e) The nature of the constructed facility will be consistent with that described in the original public notice materials.

(2) Modifications meeting the conditions of (1) above shall be processed as follows:

(a) The owner or operator shall submit an application for modification of a construction permit as provided in (C) above and provide such additional information as may be required to determine if the conditions of (1) above have been met;

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(b) The Department shall review the application and determine whether or not a modification of the construction permit is required. The applicant shall not proceed with the project until determination is made by the Director.

(3) Modifications at a source subject to a construction permit which do not meet the conditions of (1) above must be processed through the full construction permit process as provided in (C) through (M) above.

Ref: Title 129, Chapter 17, Nebraska Department of Environmental Quality

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EPA Rulemakings

CFR: 40 C.F.R. 52.1420(c)
FRM: 65 FR 3130 (1/20/00)
PRM: 65 FR 3168 (1/20/00)
State Submission: 2/5/99
State Final: 8/11/98
APDB File: NE-41
Description: This revision clarifies when fugitive dust omissions must be included in determining the need for a construction permit and deletes particulate matter greater than 10 microns from the permit applicability determination. Subsection (N) was added which provides terms and conditions to allow for modification of a construction permit which has been issued.

CFR: 40 C.F.R. 52.1420(c)(44)(i)(A)
FRM: 61 FR 5701 (2/14/96)
PRM: 61 FR 5725 (2/14/96)
State Submission: 5/31/95
State Proposal: 2/28/95
State Final: 5/16/95 (effective date locally)
APDB File: NE-37
Description: EPA approved a revision to the SIP that updated the local ordinances of the Lincoln-Lancaster County Health Department and created a Federally enforceable Class II operating permit program. The Lincoln-Lancaster County Air Pollution Control Program rules replaced Chapter 8.64 regulations of the city of Lincoln and Resolution No. 3155 of Lancaster County in their entirety.

CFR: 40 C.F.R. 52.1420(c)(24)
FRM: 47 FR 22954 (5/26/82)
PRM: 42 FR 46371 (9/15/77)
State Submission: 12/27/76
State Proposal: 12/10/76
State Final: 3/16/76; 6/21/76 (effective dates locally)
APDB File: NE-08
Description: EPA approved the revised ordinance and regulations for the city of Lincoln. The state withdrew Section 051 of the ordinance and Sections 4, 15, and 17 of the regulations.

CFR: 40 C.F.R. 52.1420(c)(23)
FRM: 47 FR 22954 (5/26/82)
PRM: 42 FR 46371
State Submission: 4/4/77; 2/18/82
State Proposal: 3/18/77
State Final: 2/4/77 (effective date locally)
APDB File: NE-08
Description: EPA approved the Lancaster County regulations into the SIP. Sections 6, 9, and 23 were withdrawn by the state prior to final rulemaking by the EPA.

CFR: 40 C.F.R. 52.1420(a)
FRM: 37 FR 10842 (5/31/72)
PRM: None
State Submission: 1/28/72
State Proposal: Unknown
State Final: 2/28/67 (effective date locally)
APDB File: NE-00
Description: EPA approved the city of Lincoln's ordinance for air pollution control as part of the original SIP.

Difference Between the State and EPA-Approved Regulation

None.