

**SECTION 5. OPERATING PERMITS – WHEN REQUIRED.**

- (A) Applicability and Scope. The following sources are required to obtain operating permits unless exempted under paragraph (B) of this section:
- (1) Class I major source permits shall be required to operate any of the following:
    - (a) Any major source as defined in Article 2, Section 2;
    - (b) Any source, including an area source, subject to a standard, limitation, or other requirement under Article 2, Section 18, except as provided in paragraph (B)(1) of this section;
    - (c) Any source, including an area source, subject to a standard or other requirement under Article 2, Sections 23, 27, or 28, except as provided in paragraph (B)(1) of this section;
    - (d) Any affected source;
    - (e) Any source in a source category designated by the Director or required to do so by any other applicable requirement under the LLCAPCPRS or the Act.
  - (2) Unless a Class I permit is required, Class II minor source permits shall be required to operate any of the following:
    - (a) Any source or emissions unit having a potential to emit:
      - (1) Fifteen (15) tons/year or more of particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (PM<sub>10</sub>) emissions;
      - (2) Forty (40) tons/year or more of sulfur dioxide (SO<sub>2</sub>) or sulfur trioxide (SO<sub>3</sub>), or any combination of the two pollutants;
      - (3) Forty (40) tons/year more of Oxides of Nitrogen (calculated as NO<sub>2</sub>);
      - (4) Forty (40) tons/year or more of volatile organic compounds (VOC);
      - (5) Fifty (50) tons/year or more of carbon monoxide (CO);
      - (6) Six-tenths (0.6) tons/year or more of lead; and/or
      - (7) Two and one-half (2.5) tons/year or more of any hazardous pollutant or an aggregate of ten (10) tons/year or more of any hazardous air pollutants.
    - (b) All incinerators used for cremation of human or animal remains, refuse disposal, or for the processing of salvageable materials except:
      - (1) Operation of refuse incinerators used for disposal of residential waste shall be prohibited; and
      - (2) Human/animal crematories and Type 4 (pathological) waste or material burning incinerators whose potential to emit is less than the quantities listed in paragraphs (A)(2)(a)(1)-(7) of this section and for which a construction permit was issued after January 1, 1992. A source that was issued a construction permit prior to this date may request a revision of the permit by applying for an amended permit which will include specific requirements that will allow the source to qualify for the Class II operating permit exemption.
  - (3) Synthetic Minor Permits. Any source or emissions unit required to obtain a Class I permit based on potential to emit may be limited to below the major source emission thresholds, as provided in paragraphs (A)(3)(a) and (A)(3)(b) of this section:
    - (a) Any owner or operator of a source or emissions unit may apply for a Class II permit, as a synthetic minor source, which provides enforceable limits to potential emissions through restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, or through utilization of air pollution control equipment, as provided in Article 2, Sections 7 through 15.
    - (b) Any owner or operator of a source or emissions unit with potential greenhouse gases (GHGs) emissions less than one hundred (100) tons per year on a mass basis and/or less than one hundred thousand (100,000) tons per year carbon dioxide equivalents (CO<sub>2</sub>e) may apply for a Class II permit which provides enforceable limits to potential emissions, as provided in Article 2, Sections 7 through 15.
- (B) Source Category Exemptions.
- (1) In accordance with 40 CFR Part 70, §70.3 paragraphs (b)(1) and (2) as related to §70.3 paragraph (a)(2), all sources listed in paragraph (A) of this section that are not major sources, or affected sources, are exempt from the obligation to obtain a Class I permit unless required to do so under another applicable requirement of the LLCAPCPRS or under the Act.

- (2) The following sources are exempt from applying for and having a Class I or II operating permit:
  - (a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and
  - (b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, §61.145, Standard for Demolition and Renovation.
  - (c) All sources and source categories subject only to regulations or requirements under Section 112(r) of the Act.
  - (d) All sources and source categories that would be required to obtain a permit solely because of the presence of an emergency generator. This exemption is unavailable to peaking units at electric utilities and any other generator which is used during time periods when power is available from the utility.
  
- (C) Emission Units Covered.
  - (1) Sources required to obtain an operating permit under the LLCAPCPRS shall identify all relevant emission units in the permit application unless the emissions unit is specifically exempted pursuant to Article 2, Section 7, paragraphs (F)(3) and (F)(4). Emissions that have been exempted from reporting requirements because the emissions unit is an insignificant activity must still be included in the determination of whether a source must obtain a Class I or Class II operating permit.
  - (2) A source required to obtain an operating permit under the LLCAPCPRS may comply through one of the following methods:
    - (a) The source may obtain a single permit for all relevant emission points located within a contiguous area under common control, whether or not falling under the same two-digit SIC code; or
    - (b) A major source, as defined in LLCAPCPRS Article 2, Section 2, paragraphs (A) or (H), comprised of different business entities (each defined as a “person” in Article 2, Section 1), whether or not they are under the same two-digit SIC code, may obtain a separate permit for each business entity (“person”). All such business entities (“persons”) must obtain a Class I permit regardless of size. Sources may not avoid major source requirements, including, but not limited to, emissions fees (see Article 1, Section 6) or National Emissions Standards for Hazardous Air Pollutants requirements (see Article 2, Sections 27 and 28), by being permitted in this manner; or
    - (c) The source may request and obtain coverage for one or more emission points eligible for coverage under a general permit issued by the Department and obtain a separate permit for emission points not eligible for such coverage. Sources may not avoid major source requirements, including, but not limited to, emissions fees (see Article 1, Section 6) or National Emissions Standards for Hazardous Air Pollutants requirements (see Article 2, Sections 27 and 28), by being permitted in this manner, unless the source-wide potential emissions are limited to less than the major source thresholds by these permits. This would include paying emissions fees for emissions from the unit(s) covered by a general permit.
  
- (D) Fugitive Emissions. Fugitive emission from a source shall be included in the permit application and covered in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.
  
- (E) Except as provided in Article 2, Section 12, paragraph (B), no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under an approved operating permit program. If an operating source submits a timely and complete application for permit issuance, or for renewal, the source’s failure to have a permit is not a violation of the LLCAPCPRS or the Act until the Department takes final action on the permit application, provided that the failure to have a permit is through no fault of the source. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to Article 2, Section 7, paragraph (C), the applicant fails to submit any additional information necessary to process the application within the deadline specified in writing by the Department.
  
- (F) The submittal of a complete Class I or II operating permit application shall not affect the requirement that any source have a pre-construction permit as may be required by the LLCAPCPRS.

- (G) Any source required to obtain a permit under the provisions of this section shall pay permit fees in accordance with Article 1, Section 6, paragraph (D).

Ref: Title 129, Chapter 5, Nebraska Department of Environmental Quality