

SECTION 15. PERMIT MODIFICATIONS – REOPENING FOR CAUSE.

- (A) Administrative Permit Amendments.
- (1) An “administrative permit amendment” is a permit revision that:
 - (a) Corrects typographical errors;
 - (b) Identifies a change in the name, address, or telephone number of any person identified in the permit, provided that the owner or operator of the source is not changed;
 - (c) Requires more frequent monitoring or reporting by the permittee; and
 - (d) Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department.
 - (2) A permittee may request the Department to make an administrative permit amendment in writing by specifying the section of the permit that is to be changed and the reason for the change.
 - (3) The source may implement the changes addressed in the request immediately upon submittal of the request, subject to the Department’s final action on the request under paragraph (A)(4) below.
 - (4) The Department shall take final action on the administrative permit amendment request no more than sixty (60) days after receipt of a request. The Department may incorporate such changes into the permit without providing notice to the public, EPA, or affected states.
 - (5) For Class I operating permits and Prevention of Significant Deterioration of Air Quality (PSD) construction permits only, the Department shall submit a copy of the revised permit to the Administrator of the EPA.
 - (6) If the Department determines that the permittee’s request for an administrative permit amendment should be handled as a minor modification or other permit modification, the Department shall notify the permittee of this determination and proceed with such modification pursuant to the applicable procedures.
 - (7) The permit shield described in Article 2, Section 8, paragraph (N) shall not apply to administrative permit amendments.
- (B) Permit modifications to the Acid Rain portion of a Class I operating permit shall be governed by Article 2, Section 26.
- (C) Minor Permit Modifications.
- (1) The minor permit modification procedures of this section may be used only for those operating permit modifications that:
 - (a) Do not violate any applicable requirement or applicable requirement under the Act;
 - (b) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;
 - (c) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - (d) Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement or applicable requirement under the Act and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
 - (1) A federally enforceable emissions cap assumed to avoid classification as a modification under Article 2, Sections 18, 23, 27, or 28; and
 - (2) An alternative emissions limit approved pursuant to Article 2, Sections 27 or 28.
 - (e) Do not relate to a change within a permitted facility that:
 - (1) Is defined as a modification under Article 2, Sections 18, 23, 27, or 28;
 - (2) Requires a construction permit under Article 2, Sections 17 or 19.
 - (f) Are not required by the Director to be processed as a significant modification; and
 - (g) Involve the use of economic incentives, marketable permits, emissions trading, and other similar programs or procedures; provided that such minor permit modification procedures are explicitly allowed for in a applicable State Implementation Plan or in an applicable requirement or applicable requirement under the Act.

- (2) The minor permit modification procedures of this section may be used for construction permit modifications 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.
 - (3) A permittee may request a minor permit modification by submitting a request to the Department in writing that includes the following:
 - (a) A description of the change, the emissions resulting from the change, and any new applicable requirements and/or applicable requirements under the Act that will apply if the change occurs;
 - (b) The source's suggested draft permit language;
 - (c) Certification by the responsible official, in accordance with Article 2, Section 7, paragraph (H) that the proposed modification meets the criteria in paragraph (C)(1) above for use of minor modification procedures and a request that such procedures be used;
 - (d) For Class I operating permit minor modifications only, one (1) original and one (1) copy of the completed forms identified in paragraph (C)(3)(a) through (C)(3)(c) above for use by the Department to notify the Administrator and affected states.
 - (4) For Class I operating permit modifications only, within five (5) working days of receipt of a complete minor permit modification application, the Department shall notify the Administrator and affected states of the requested permit modification.
 - (a) Affected states shall have thirty (30) days to review and provide comments on the complete permit modification application. The Department shall provide notice to the Administrator and any affected state in writing of any refusal by the Department to accept all recommendations that the affected state has submitted.
 - (b) EPA shall have forty-five (45) days to review and comment on the complete permit modification application. The Department shall not issue a final permit modification until after EPA's forty-five (45) day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first.
 - (5) Within ninety (90) days of the Department's receipt of an application under the minor permit modification procedures or fifteen (15) days after the end of EPA's forty-five (45) day review period, whichever is later, the Department shall:
 - (a) Issue the permit modification as proposed;
 - (b) Deny the permit modification application;
 - (c) Determine that the requested modification does not meet the minor permit modification criteria in paragraph (C)(1) above and should be reviewed under the significant modification procedures; or
 - (d) For Class I operating permits only, revise the draft permit modification and transmit the new proposed permit modification to EPA for review as required in paragraph (C)(4)(b) above.
 - (6) A source submitting a minor permit modification request may make the change proposed immediately after it files the application, unless notified by the Department that the request does not qualify as a minor permit modification. After the source makes the change, and until the Department takes action under paragraph (C)(5)(a) through (C)(5)(c) above, the source must comply with both the applicable requirements governing the change, applicable requirements under the Act, and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to modify may be enforced and such failure to comply shall be cause for denial of the minor permit modification request.
 - (7) The permit shield described in Article 2, Section 8, paragraph (L) shall not apply to a minor permit modification.
- (D) Group Processing of Minor Permit Modifications.
- (1) The Director may modify the minor permit modification procedures in paragraph (C) above to process groups of a source's applications for certain modifications eligible for minor permit modification procedures.

- (2) Group processing of modifications may only be used for those permits modifications:
 - (a) That meet the criteria for minor permit modification procedures under paragraph (C) above; and
 - (b) That collectively are below the following threshold levels: ten percent (10%) of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent (20%) of the applicable definition of major source for purpose of Class I permitting, or five (5) tons per year, whichever is less.
- (3) A permittee may request the use of group processing procedures in this section by filing the standard application form for a Class I or Class II operating permit, as appropriate, and shall include the following:
 - (a) A description of the change, the emissions resulting from the change, any applicable requirements and/or applicable requirements under the Act that will apply if the change occurs;
 - (b) The source's requested draft permit language;
 - (c) Certification by a responsible official, in accordance with Article 2, Section 7, paragraph (H), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;
 - (d) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (D)(2)(b) above;
 - (e) For Class I operating permit modifications only, one (1) original and one (1) copy of the completed forms for use by the Department to notify the Administrator and affected states.
 - (1) Within five (5) working days of receipt of a complete application for the group processing of a source's minor permit modification requests, the Department shall notify the Administrator and affected states of the request for group processing.
 - (2) Affected states shall have thirty (30) days to review and comment on the request. The Department shall notify EPA and any affected states in writing of any refusal by the Department to accept all recommendations for the proposed permit modification that the affected states has submitted.
 - (3) EPA shall have forty-five (45) days to review and comment on requests for group processing of minor permit modifications. The Department shall not issue a final permit modification until after EPA's forty-five (45) day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first.
 - (4) Within one hundred eighty (180) days of receipt of the application for group processing of minor permit modifications or fifteen (15) days after the end of the EPA's forty-five (45) day review period, the Director shall:
 - (a) Issue the permit modification as proposed;
 - (b) Deny the permit modification application;
 - (c) Determine that the requested modification does not meet the criteria for group processing in paragraph (D)(2) of this section and should be reviewed under the significant modification procedures; or
 - (d) Revise the draft permit modification and, for Class I operating permit modifications only, transmit to the Administrator the new proposed Class I operating permit modification as required by paragraph (D)(3)(e)(3) above.
 - (5) A source submitting a complete request for a group processing of minor permit modifications may make the change proposed immediately after filing the application unless notices by the Department that the request did not qualify as a minor permit modification. After the source makes the change, and until the Department takes action under paragraph (D)(4)(a) through (D)(4)(c) above, the source must comply with applicable requirements governing the change, applicable requirements under the Act, and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to modify may be enforced and such failure to comply shall cause for denial of the minor permit modification request.
 - (6) The permit shield described in Article 2, Section 8, paragraph (N) shall not apply to group-processed minor permit modifications.

- (E) Significant Permit Modifications.
- (1) A “significant permit modification” is any revision or change to a permit that cannot be accomplished as an administrative permit amendment or as a minor permit modification. Any relaxation of existing monitoring, reporting, or record keeping shall be considered significant.
 - (2) A permittee may request a significant permit modification by submitting the application forms in accordance with Article 2, Section 7 for operating permits, or in accordance with Article 2, Section 17, paragraph (S) for construction permits.
 - (3) The Department shall review an application for a significant modification following the applicable procedures for permit issuance, including public participation, and EPA and affected states review.
 - (4) The permit shield described in Article 2, Section 8, paragraph (L), shall apply to a significant modification only after the Director approves the modification, provided that the permit contains a permit shield.
 - (5) Any significant permit modification shall be subject to permit fees in accordance with Article 1, Section 6, paragraph (D).
- (F) Reopening for Cause; Revocation and Reissuance; and Termination.
- (1) Any Class I or Class II operating permit issued by the Director shall be reopened, revoked and reissued, or terminated during its term for cause, including but not limited to:
 - (a) Additional requirements under the Act or the LLCAPCPRS become applicable to a Class I or Class II source with a remaining permit term of three (3) or more years. Such reopening shall be completed no later than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.
 - (b) Additional requirements, including excess emissions requirements, become applicable to an affected source under the Acid Rain program under Title IV of the Act.
 - (c) The Director, or Administrator for a Class I operating permit only, determines that the permit must be revoked and reissued to assure compliance with the applicable requirements.
 - (d) The Director, or the Administrator for a Class I operating permit only, determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms and conditions of the permit.
 - (e) The Director, or the Administrator for a Class I operating permit only, determines that an applicable requirement or applicable requirement under the Act applies which was not identified by the permittee in its application.
 - (2) A permit may be revoked during its term for cause, including, but not limited to:
 - (a) The existence at the source of unresolved noncompliance with applicable requirements or a term or condition of the permit, and refusal of the permittee to agree to an enforceable schedule of compliance to resolve the noncompliance;
 - (b) The permittee has falsely certified or submitted false, incomplete, or misleading information to the Department or EPA;
 - (c) The Director determines that the permitted source or activity endangers human health or the environment and that the danger cannot be removed by a modification of the permit; or
 - (d) The permittee has failed to pay a penalty owed pursuant to a court order, stipulation and agreement, or an order issued by the Administrator.
 - (3) The Department shall initiate a reopening or revocation under paragraphs (F)(1) or (F)(2) above by providing a notice of intent to the permittee no less than thirty (30) days prior to the date that the permit is to be re-opened, unless the Director determines that an emergency exists which necessitates a shorter time period. Proceedings to reopen a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.
 - (4) Within ninety (90) days of receiving notification from the Administrator that a Class I operating permit should be reopened for cause pursuant to this section, the Department shall proceed with reopening the permit, or revoking and reissuing the permit, as appropriate.
 - (5) If the Administrator does not object to the Department’s determination under paragraph (F)(4) above within ninety (90) days, the Department shall proceed as indicated.
 - (6) If the Administrator objects to the Department’s determination under paragraph (F)(4) above within ninety (90) days, the Department shall have an additional ninety (90) days from receipt of EPA’s objection during which the Department may take action to terminate, modify, or revoke and reissue the permit in accordance with the EPA’s objection.

- (7) If the Department fails to take action as stated in any EPA objection under paragraph (F)(6) of this section, the permit may be subject to action by the Administrator.
- (G) Changes Allowed for Class I and Class II Operating Permits Only.
- (1) A permittee may make the following changes within a permitted facility without a permit revision, if the change is not a modification under Article 2, Sections 18, 23, 27, or 28, the change does not require a construction permit under Article 2, Sections 17 or 19, and the change does not result in the emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions) being exceeded, provided that the permittee provides the Director with written notification a minimum of seven (7) days in advance of the proposed changes, unless the Director determines a shorter time is necessary for emergency reasons. The permit shield described in Article 2, Section 8, paragraph (N) shall not apply to any change made under this section.
- (a) Changes in the configuration of the facility's equipment, defined as "Section 502 (b)(10) changes" in Article 2, Section 1, provided that the written notification required above includes:
- (1) A brief description of the change within the permitted facility;
 - (2) The date on which the change will occur;
 - (3) Any changes in emissions; and
 - (4) Any permit term or condition that is no longer applicable as a result of the change.
- (b) Trading of increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision; provided that the written notification required in paragraph (G)(1) above includes such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum:
- (1) The date the proposed change will occur;
 - (2) A description of each such change;
 - (3) Any change of emissions;
 - (4) The regulatory provisions and permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan; and
 - (5) The pollutants emitted subject to the emissions trade.
- (c) Trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that has been established pursuant to Article 2, Section 8, paragraph (S); provided, that the written notification required above shall include:
- (1) The date the change will occur;
 - (2) A description of the changes in emission that will result; and
 - (3) How these increases and decreases in emissions will comply with the terms and conditions of the permit.
 - (4) For Class I sources, the written notifications above shall also be submitted to the Administrator.
 - (5) Notwithstanding any other part of this regulation, the Director may, upon review of written notice submitted in accordance with paragraph (G)(1) above, require a source to apply for an operating permit if the change does not meet the requirements of paragraph (G)(1) above.
- (2) A permittee may make changes within a permitted facility without a permit revision, if the change is not a modification under Article 2, Sections 18, 23, 27, or 28, and the change is not a change which would require a construction permit under Chapters 17 or 19. The permittee may make such changes provided that:
- (a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;
- (b) The source shall provide contemporaneous written notice to the Director of each such change, except for changes that qualify as insignificant activities under the provisions of Article 2, Section 7, paragraphs (F)(3) and (F)(4). Such written notice shall include the following:
- (1) A description of each change;
 - (2) The date each change will be made;
 - (3) A description of any change in emissions;
 - (4) A list the pollutants emitted; and

- (5) A list of any applicable requirement(s) that would apply as a result of the change, including terms and conditions established in the relevant operating permit for synthetic minor purposes.
- (c) For Class I sources, the written notice required in paragraph (G)(2)(b) above shall also be provided contemporaneously to the Administrator
- (H) No permit revisions shall be required under any State-approved programs providing for economic incentives, marketable permits, emissions trading, or other similar programs or processed for changes that are provided for in the permit.

Ref: Title 129, Chapter 15, Nebraska Department of Environmental Quality