

SECTION 17. CONSTRUCTION PERMITS – WHEN REQUIRED.

- (A) Except as provided under paragraph (R) of this section or under Nebraska Administrative Code Title 129 (Nebraska Air Quality Regulations) Chapter 19, no person shall cause the construction, reconstruction, or modification of any of the following without first having obtained a construction permit from the Department:
- (1) A construction permit shall be required for any air contaminant source or emission unit for which there is a net increase in potential emissions equal to or exceeding the levels set forth in Table 17-1 below.

Table 17-1

Pollutants	Net Increase in Potential to Emit (in units of tons per year, or tpy)
Particulate matter less than 10 micrometers nominal diameter (PM ₁₀)	15.0 tpy
Particulate matter less than 2.5 micrometers nominal diameter (PM _{2.5})	10.0 tpy
Sulfur dioxide (SO ₂), sulfur trioxide (SO ₃), or any combination of the two	40.0 tpy
Oxides of nitrogen, calculated as NO ₂	40.0 tpy
Volatile organic compounds (VOC)	40.0 tpy
Carbon monoxide (CO)	50.0 tpy
Lead (Pb)	0.6 tpy

- (2) When determining applicability under paragraph (A)(1) of this section, sources in the following source categories must include fugitive emissions:
- (a) Fossil-fuel-fired steam electric plants of more than two-hundred fifty million British Thermal Units per hour (250.0 MMBtu/hr) heat input;
 - (b) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British Thermal units per hour (250.0 MMBtu/hr) heat input;
 - (c) Coal cleaning plants (with thermal dryers);
 - (d) Kraft pulp mills;
 - (e) Portland cement plants;
 - (f) Sintering plants;
 - (g) Primary copper smelters;
 - (h) Primary lead smelters;
 - (i) Primary zinc smelters;
 - (j) Iron and steel mills;
 - (k) Coke oven batteries;
 - (l) Secondary metal production plants;
 - (m) Primary aluminum ore reduction plants;
 - (n) Taconite ore processing plants;
 - (o) Lime plants;
 - (p) Phosphate rock processing plants;
 - (q) Hydrofluoric, sulfuric, or nitric acid plants;
 - (r) Petroleum refineries;
 - (s) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;
 - (t) Fuel conversion plants;
 - (u) Sulfur recovery plants;
 - (v) Carbon black plants (furnace process);
 - (w) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;
 - (x) Glass fiber processing plants;
 - (y) Charcoal production plants;
 - (z) Chemical processing plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140);

- (aa) Any other stationary source category which is being regulated by a standard promulgated under Section 111 or 112 of the Act as of August 7, 1980.
 - (3) A construction permit shall be required for any air contaminant source or emission unit for which there is a net increase in potential emissions equal to or exceeding two and one-half (2.5) tons per year of any hazardous air pollutant, or an aggregate of ten (10) tons per year of any hazardous air pollutants, including all associated fugitive emissions. Such construction, reconstruction, and/or modification shall be subject to the 'best available control technology (BACT)' requirements set forth under Article 2, Section 27, paragraph (B) of the LLCAPCPRS.
 - (4) A construction permit shall be required for any incinerator used for the following:
 - (a) Processing of salvageable materials;
 - (b) Cremation of human or animal remains; and
 - (c) Incineration of pathological material or pathological waste.
 - (5) Construction and/or operation of refuse incinerators used for disposal of residential waste shall be prohibited.
- (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 or coverage under a general construction permit, requesting permit applicability under this section of the LLCAPCPRS, or submitting a request for a significant permit modification 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. The owner or operator must maintain a copy of the each application, including any supporting emission calculations or other related materials, on file at the location of the source or at the owner's or operator's main or corporate office.
- (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 correct 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 violation of a National Ambient Air Quality Standard by exceeding, at a minimum, the significant levels set forth under Table 17-2 at any locality that does not, or would not, meet the applicable national standard:

Table 17-2

Pollutants	Averaging Time				
	Averaging Time Annual	Averaging Time 24 hrs	Averaging Time 8 hrs	Averaging Time 3hrs	Averaging Time 1 hr
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³	---	---	---
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³	---	---	---
NO ₂	1.0 µg/m ³	---	---	---	---
SO ₂	1.0 µg/m ³	5.0 µg/m ³	---	25.0 µg/m ³	---
CO	---	---	0.5 mg/m ³	---	2.0 mg/m ³

Note: “µg/m³” means micrograms per cubic meter
“mg/m³” means milligrams per cubic meter

- (J) Issuance of Permits. The Director shall publish notice of intent to approve or disapprove the application in accordance with procedures in Article 2, Section 14.
- (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. The permittee must comply with all conditions of the construction permit. Any permit noncompliance shall constitute a violation of the LLCAPCPRS and the Act and is grounds for enforcement action or permit revocation.
- (L) If construction, reconstruction, or modification of the source is not commenced within eighteen (18) months, the construction permit shall lapse except upon 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 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 State 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 paragraph (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 the LLCAPCPRS allows for 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 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.
 - (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 for 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) Emissions reductions otherwise required by the Act or the LLCAPCPRS shall not be creditable as emission reductions for purposes of any offset.
- (4) The provisions of paragraph (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) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour (250.0 MMBtu/hr) heat input;
 - (b) Fossil fuel-fired boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour (250.0 MMBtu/hr) heat input;
 - (c) Coal cleaning plants (with thermal dryers);
 - (d) Kraft pulp mills;
 - (e) Portland cement plants;
 - (f) Sintering plants;
 - (g) Primary copper smelters;
 - (h) Primary lead smelters;
 - (i) Primary zinc smelters;
 - (j) Iron and steel mills;
 - (k) Coke oven batteries;
 - (l) Secondary metal production plants;
 - (m) Primary aluminum ore reduction plants;

- (n) Taconite ore processing plants;
 - (o) Lime plants;
 - (p) Phosphate rock processing plant;
 - (q) Hydrofluoric, sulfuric, or nitric acid plants;
 - (r) Petroleum refineries;
 - (s) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;
 - (t) Fuel conversion plants;
 - (u) Sulfur recovery plants;
 - (v) Carbon black plants (furnace process);
 - (w) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;
 - (x) Glass fiber processing plants;
 - (y) Charcoal production plants;
 - (z) Chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140);
 - (aa) Any other stationary source category which is being regulated by a standard promulgated under Sections 111 or 112 of the Act as of August 7, 1980.
- (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 section.
- (1) Subject to the approval of the Director, the terms of a construction permit may be modified without public review through the substitution of alternative provisions, provided the following conditions set forth in Article 2, Section 15, paragraph (C)(2) are met.
 - (2) Modifications meeting the conditions of Article 2, Section 15, paragraph (C)(2) shall be processed as follows:
 - (a) The owner or operator shall submit an application for modification of a construction permit as provided in Article 2, Section 15, paragraph (C)(3), and provide such additional information as may be required to determine if the conditions of Article 2, Section 15, paragraph (C)(2) have been met;
 - (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 a determination is made by the Director.
 - (3) Proposed modifications to a construction permit which do not meet the conditions of Article 2, Section 15, paragraph (C)(2) must be processed through the full construction permit process as provided in paragraphs (C) through (M) of this section.
- (O) Construction Permits for Commercial, Industrial, and Institutional Emergency Electrical Generators.
- (1) The provisions in this paragraph shall apply to the following emergency electrical generators where the total emergency electrical generator capacity at a commercial, industrial, or institutional facility is or will be equal to or greater than the following: two hundred kilowatts (200 kW) for units burning fuel oil, liquefied petroleum gas (LPG), or natural gas; nineteen kilowatts (19 kW) where one or more generator(s) is fueled with gasoline:
 - (a) Stationary units that are installed on or after November 15, 2009 provided that the owner or operator submits the application for a construction permit no later than thirty (30) days prior to installation; and
 - (b) Portable units that are installed on or after November 15, 2009 provided that the owner or operator submits the application for a construction permit no later than two (2) days after installation except as provided for in paragraph (O)(3)(f) for disasters.
 - (2) To qualify for a construction permit under the provisions of this paragraph, owners or operators of these units shall comply with the following requirements:
 - (a) Each generator shall be equipped with a non-resettable hour meter.

- (b) Total hours of operation for each unit shall be limited to no more than five hundred (500) hours per calendar year.
 - (c) The following records shall be maintained in accordance with Article 2, Section 8, paragraph (D)(2)(b):
 - (1) Total hours of operation during each calendar year;
 - (2) Hours of operation for maintenance and/or readiness testing during each calendar year; and
 - (3) Hours of operation for any non-emergency use (excluding maintenance and/or readiness testing), including any hours of operation for a demand response program, if applicable, during each calendar year.
 - (d) Owners or operators of stationary emergency RICE must operate each unit as an 'Emergency stationary RICE' as defined in 40 CFR Part 63, Subpart ZZZZ §63.6675. In addition, owners or operators of stationary emergency RICE must operate each unit in compliance with the requirements set forth under the following rules, if applicable:
 - (1) 40 CFR Part 60, Subpart IIII for compression ignition (CI) internal combustion engines; or
 - (2) 40 CFR Part 60, Subpart JJJJ for spark ignition (SI) internal combustion engines.
 - (e) The sulfur content of any fuel oil combusted in these units shall not exceed fifteen parts per million (15 ppm) by weight. Any fuel oil combusted must have either a cetane index of forty (40) or a maximum aromatic content of thirty-five percent by volume (35% v/v).
 - (f) A construction permit for a portable unit shall not be required in cases where the unit is relocated to Lancaster County for the express purpose of addressing an immediate emergency condition, such as the result of a natural or man-made disaster, and the unit will not remain operational for a period greater than thirty (30) days. If a portable unit will be operated more than thirty (30) days, the owner or operator shall apply for a construction permit within twenty-four (24) hours after conclusion of the thirtieth (30th) day of operation
- (3) To obtain a construction permit under the provisions of this paragraph, owners or operators of emergency generators shall submit their applications to the Department and provide the following information for each unit:
- (a) The make and model number of the engine.
 - (b) An indication of whether the emergency electrical generator is stationary or portable.
 - (c) The brake horsepower (bhp) rating and kilowatt (kW) rating, the date ordered, the date the engine was manufactured (year), engine displacement (liters/cylinder), and the type of engine (compression ignition or spark ignition). If it is a spark ignition engine, the owner or operator shall state whether it is 2-stroke or 4-stroke engine, and whether it is a rich burn or lean burn engine.
 - (d) The type of fuel(s) (natural gas, LPG, gasoline, fuel oil) combusted.
 - (e) If fuel oil is combusted, indicate the grade (e.g. No. 2), the sulfur content (percent by weight, or wt%), and the cetane index or the aromatic content. Provide a statement of certification from the fuel supplier confirming the grade, sulfur content, and cetane index or aromatic content of the fuel oil delivered and a letter from the owner or operator certifying that this is the only type of fuel oil being combusted. If gasoline is combusted, the owner or operator shall obtain from the fuel supplier a fuel certification to document that the sulfur content of the gasoline meets the requirements of 40 CFR Part 80 §80.195.
 - (f) A site plan showing the proposed location of the unit and the location of any adjacent habitable structures, such as businesses, schools, and/or residences. The height of the unit's exhaust stack and the elevations of surrounding habitable structures shall also be indicated. Depending on the level of concern raised by evaluation of the site plan, the Department may request that an ambient air quality impact analysis be performed.
- (4) In the event the owner or operator of an emergency generator who holds a construction permit issued under the provisions of this paragraph chooses to operate the generator in a manner that is not consistent with the provisions of paragraph (O)(3) of this section, the owner or operator shall submit a construction permit application to the Department no less than thirty (30) days prior to operating the RICE as a non-emergency generator. Within eighteen (18) months of issuance of a construction permit, the Department may require the owner or operator to submit an application for an operating permit in accordance with the requirements of Article 2, Sections 5 or 9.
- (5) The owner or operator of an emergency RICE whose hours of operation exceed an applicable limit set forth under paragraph (O)(3) of this section shall report the exceedance(s) to the Department no later than thirty (30) days after discovery of any such exceedance(s).

- (6) Within thirty (30) days of the date the Department issues the construction permit, the owner or operator shall submit a construction permit fee for review of the construction permit application, drafting the construction permit, and issuing the permit. The fee shall be assessed in accordance with Article 1, Section 6, paragraph (E).
 - (7) In the event the Department determines that a construction permit cannot be granted under the provisions of this paragraph, a letter explaining the reason(s) for refusal will be sent to the owner or operator. The owner or operator who is denied a construction permit may provide additional information to support their request, or may appeal the decision to the Director according to the procedures established in Article 1, Section 4.
 - (8) Owners or operators issued a construction permit under the provisions of paragraph (O) of this section shall not be required to submit an annual emissions inventory in accordance with Article 2, Section 6, and shall not be required to submit annual emission fees in accordance with Article 1, Section 6, paragraph (A).
- (P) Any person or source issued a construction permit under this section shall pay annual emission fees as required under Article 1, Section 6, except as provided for under paragraph (O)(8) of this section.
- (Q) Any source not required to obtain a construction permit pursuant to paragraph (A) of this section may request a construction permit to be issued in the manner prescribed by paragraphs (B) through (M) of this section for the following purposes:
- (1) Establishing enforceable limits to avoid otherwise applicable requirements under the provisions of the LLCAPCRS.
 - (2) Revising existing construction permits to incorporate significant permit revisions as defined in Article 2, Section 15.
 - (3) Establishing a PAL pursuant to the provisions of Nebraska Administrative Code Title 129 (Nebraska Air Quality Regulations) Chapter 19. The construction permit used to establish a PAL must include the information and conditions listed in Title 129, Chapter 19, section 011.06.
 - (4) Establishing a Best Available Retrofit Technology (BART) permit or other permit required to reduce visibility impairment in a Class I Federal area pursuant to the provisions Nebraska Administrative Code Title 129 (Nebraska Air Quality Regulations), Chapter 43.
- (R) For each permit issued pursuant to the provisions of this section, the owner or operator must place a copy of the permit and of the letter of transmittal on file at the location of the source no later than fourteen (14) calendar days after the date of the letter of transmittal or upon the actual start-up of the constructed/reconstructed/modified source, whichever occurs first. A copy of the permit must also be placed on file at the owner's or operator's main or corporate office no later than thirty (30) calendar days after the date of the letter of transmittal.

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