

Summary of Proposed Amendments to Title 128 – *Nebraska Hazardous Waste Regulations*

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The revisions proposed for Chapters 1, 2, 3, 5, and Appendix V: 1) adopt federal revisions to the RCRA definition of solid waste (DSW) and 2) adopt federal updates to the export provisions of the Cathode Ray Tube (CRT) Monitor rule. These updates are needed to maintain state consistency and stringency with the federal RCRA program.

Chapter 1

Section	Proposed change and description
004 (p. 1-1)	Correct starting and ending section numbers to include new definitions.
023 (pp. 1-3 and 1-4)	Add definition for "contained". Generators of hazardous secondary materials who seek the generator-controlled, verified recycler, or remanufacturing exclusions must be compliant with the contained standard to prevent releases to the environment.
031 (p. 1-5)	Add definition for "CRT exporter". A CRT exporter is within the scope of the proposed export requirements.
052.01 (p. 1-7)	Amend definition of "facility" to include those areas where hazardous secondary materials are managed prior to reclamation.
063 (p. 1-8)	Add definition for "hazardous secondary material". These materials are waste streams that would ordinarily require management as a hazardous waste, but may be managed under the generator-controlled, verified recycler, or remanufacturing exclusions.
064 (p. 1-8)	Add definition for "hazardous secondary material generator". A hazardous secondary material generator may be eligible for the generator-controlled, verified recycler, or remanufacturing exclusions provided they follow the environmentally-protective conditions of the exclusion(s).
079 (p. 1-11)	Add definition for "intermediate facility" that stores hazardous secondary materials for more than 10 days.

081 (p. 1-11)	Add definition for "land-based unit". Land-based units are areas where hazardous secondary materials are temporarily stored on the land prior to recycling and reclamation. Hazardous secondary material generators managing excluded wastes in land-based units are required to notify using EPA Site ID form 8700-12/13. Upon receiving such notices, NDEQ will offer compliance assistance to these generators and, when necessary, inspect the land-based unit.
092 (pp. 1-12 and 1-13)	Replace a reference to the federal underground injection control (UIC) program with a reference to the state UIC program.
110 (p. 1-15)	Add definition for "remanufacturing". This definition clarifies the scope of eligibility for the remanufacturing exclusion, proposed for Chapter 2, Section 008.27.
Chapter 2	
Section	Proposed change and description
002.03 (p. 2-1)	Add examples of reclamation activity for smelting, melting, and refining and reference associated requirements in Chapter 7.
002.07 (p. 2-2)	Add a labeling or inventory log requirement to speculative accumulation criteria.
003.02A4 (p. 2-3)	Add sham recycling to the list of activities that establish a material is "abandoned" and, thus, a solid waste.
003.03C & Table 1 (pp. 2-4 & 2-5)	Incorporate generator-controlled, verified recycler, or remanufacturing exclusions to Table 1 which indicates those materials that are solid wastes.
003.07 (p. 2-7)	Add prohibition on sham recycling.
008.25 (p. 2-22)	Incorporate by reference the conditional exclusion from 40 CFR Part 261.4(a)(23) for hazardous secondary materials that are reclaimed and under the control of the generator ("generator-controlled" exclusion).

008.26 (p. 2-22)	Incorporate by reference the conditional exclusion from 40 CFR Part 261.4(a)(24) for hazardous secondary materials that are reclaimed through transfer to a verified reclamation facility ("verified recycler" exclusion).
008.27 (p. 2-23)	Incorporate by reference the conditional exclusion from 40 CFR Part 261.4(a)(27) for hazardous secondary materials that are reclaimed through transfer to another person for the purpose of reclamation ("remanufacturing" exclusion).
Chapter 3	
Section	Propose change and description
019.01E (p. 3-60)	Incorporate by reference federal update to the export provisions of the larger CRT monitor rule in Chapter 3, Sections 019-021.
021 (p. 3-60)	Incorporate by reference federal update to the export notification and record-keeping provisions of the larger CRT monitor rule in Chapter 3, Sections 019-021.
Chapter 5	
Section	Proposed change and description
001 (p. 5-1)	Modify section heading to include non-waste determinations.
001.01 (p. 5-1)	Add reference to Section 004, "standards and criteria for non-waste determinations".
001.01D (p. 5-1)	Add hazardous secondary materials that are reclaimed in a continuous industrial process to the list of materials eligible for a case-by-case variance from regulation as a solid waste.
001.01E (p. 5-1)	Add hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate to the list of materials eligible for a case-by-case variance from regulation as a solid waste.
001.01F (p. 5-1)	Add hazardous secondary materials that are transferred to an unpermitted, verified recycling facility to the list of materials eligible for a case-by-case variance from regulation as a solid waste.
001.04 (p. 5-2)	Add variance procedure for partially reclaimed hazardous secondary materials that are legitimately recycled and a commodity-like material.

001.04A-E (p. 5-3)	Agency decision criteria for determining whether a partially reclaimed hazardous secondary material is commodity-like.
001.05 (p. 5-3)	Add variance procedure for hazardous secondary materials transferred for reclamation under the verified recycling exclusion, proposed for Chapter 2, Section 008.26.
001.05A-E (pp. 5-3 and 5-4)	Agency decision criteria for determining whether a hazardous secondary material transferred for reclamation under the verified recycling exclusion is eligible for a variance from regulation as a solid waste.
003 & 003.01 (p. 5-4)	Add language to an existing section on variance procedures to include non-waste determinations.
003.03 (p. 5-5)	Add notification requirement in the event of a change in circumstances for generators of hazardous secondary materials managing their materials under an approved variance or non-waste determination.
003.04 (p. 5-5)	Add requirement of a fixed term length not to exceed ten years for generators of hazardous secondary materials managing their materials under an approved variance or non-waste determination.
003.05 (p. 5-5)	Add reference to notification requirement for hazardous secondary materials, proposed for Chapter 5, Section 008.
004 (all) (pp. 5-5 and 5-6)	Add new section containing standards and criteria for non-waste determinations.
008 (all) (pp. 5-9 and 5-10)	Add new section containing the notification requirement for hazardous secondary materials managed under the generator-controlled or verified recycler exclusions.
009 (all) (pp. 5-10 through 5-12)	Add new section containing standards and criteria for legitimate recycling of hazardous secondary materials.

Appendix V

Section	Propose change and description
A.9. (p. V-1)	Add "[c]hanges to remove permit conditions applicable to a unit excluded under the provisions of Chapter 2, 008" (which includes the proposed DSW exclusions) to the list of Class 1 permit modifications requiring prior Department approval.
A.10. (p. V-1)	Add "[c]hanges in the the expiration date of a permit issued to a facility at which all units are excluded under the provisions of Chapter 2, 008" (which includes the proposed DSW exclusions) to the list of Class 1 permit modifications requiring prior Department approval.
N.3. (p. V-16)	Add citation to state incorporation by reference of 40 CFR Part 264.554 to existing federal reference.

The revisions below propose to adopt EPA requirements for public involvement in environmental decision-making from 40 CFR Part 124. At present, Title 128, Chapters 13 and 15 contain substantially similar, but not legally equivalent requirements. The proposed revisions would achieve state equivalency with the federal program in this area.

Chapter 12

<u>Section</u>	<u>Proposed change and description</u>
001.031(4) (p. 12-2)	Add definition for "major facility" consistent with the language and requirements proposed for Chapter 15

Chapter 13

<u>Section</u>	<u>Proposed change and description</u>
001.03 through 001.06 (p. 13-1)	Add state analogs to 40 CFR Parts 124.31(a), 124.32(a) and 124.33(a) concerning pre-application public meeting and notice requirements for certain applicants.
016 through 018 (pp. 13-5 through 13-7)	Add state analogs to the remaining paragraphs of 40 CFR 124.31, 124.32 and 124.33 concerning pre-application meeting and notice procedures.

Chapter 14

<u>Section</u>	<u>Proposed change and description</u>
002.18 (proposed) (p. 14-5)	Add state analog to 40 CFR Part 270.30(m) concerning a discretionary requirement that the permittee establish and maintain an information repository.

Chapter 15

<u>Section</u>	<u>Proposed change and description</u>
002.02A (p. 15-1)	Replace Nebraska's current reference to "Facility standards" with the federal language in 40 CFR Part 270.30 of "Standards for treatment, storage and/or disposal and other permit conditions under Sections 001 and 002 of Chapter 14."
003.01 (p. 15-1)	Add requirement from 40 CFR Part 124.6(e) that a fact sheet be prepared for major hazardous waste management facility or activity.
003.02C (p. 15-2)	Add "why" to achieve consistency of language with the federal code in 40 CFR Part 124.8(b)(5).
006.01 (p. 15-3)	Add two provisions from the federal code that are missing from the state code. The first adds language from 40 CFR Part 124.10(c)(1)(ii) which requires that notice be mailed to any agency involved in permitting actions. The second adds language from 40 CFR Part 124.10(c)(1) to clarify that a person may waive his or her rights to receive notice of certain permitting actions.
006.03 (p. 15-4)	Amend to achieve consistency with the federal code in 40 CFR Part 124.11 and to clarify that comments will be considered and answered according to Chapter 15, Section 009.
006.05A (p. 15-4)	Amend to achieve consistency with the federal code in 40 CFR Part 124.10(d)(1)(i) and to clarify that the notifying agency is the agency "processing the permit action".
006.05B (p. 15-4)	Amend to achieve consistency with the federal code in 40 CFR Part 124.10(d)(1)(ii) and to include "activity regulated by the permit" in the list of notice requirements in Section 006.05.
006.05C (p. 15-4)	Amend to achieve consistency with the federal code in 40 CFR Part 124.10(d)(1)(iii) and to include "the business conducted at the facility" in the list of notice requirements in Section 006.05.

006.05F (p. 15-4)	Amend to achieve consistency with the federal code in 40 CFR Part 124.10(d)(1)(iv) and to clarify that "copies of the draft permit, statement of basis or fact sheet, and the application" may be obtained by interested persons.
006.05G (p. 15-4)	Add new section to mirror the federal code in 40 CFR 124.10(d)(1)(vi) that adds to the list of notice requirements in Section 006.05 the "location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the public record."
006.06 (pp. 15-4 and 15-5)	Add language to mirror the federal code in 40 CFR Part 124.10(e) stating that any applicable agency requiring notice under 124.10(c)(1)(ii)/Section 006.01 must be added to the list of persons to whom a copy of the fact sheet shall be mailed. The 'statement of basis' must also be included in the items to be mailed.
007.01 (p. 15-5)	Add language to mirror the federal code in 40 CFR Part 124.11 and to clarify that hearing requests may be made if no other hearing has been scheduled.

The revisions below propose typographical corrections to Chapters 10, 11, 20, and 25. The corrections are needed for NDEQ's next RCRA program revision application to proceed.

Chapter 10

<u>Section</u>	<u>Proposed change and description</u>
002.14 (proposed) (p. 10-4)	Add waste minimization certification requirement from 40 CFR Part 262.27 to state regulation. This is an existing requirement which must be certified to in Item 15 of the Uniform Hazardous Waste Manifest.
004.01B (p. 10-5)	Add reference to Subparts BB and CC and remove reference to Chapter 26 to achieve equivalency with 40 CFR Part 262.34(a)(1)(ii).

Chapter 11

<u>Section</u>	<u>Proposed change and description</u>
006.10A1 (p. 11-4)	Add citation to state incorporation of federal regulations by reference in Chapter 21, Section <u>005</u> , and Chapter 22, Section <u>005</u> .

Chapter 20

<u>Section</u>	<u>Proposed change and description</u>
009.02; Table 9, footnote 11; various rows in Table 11; Table 11, footnote 8.	Remove citation to state incorporation of 40 CFR Part 268.42(b) by reference as it is non-delegable to the states.
Table 9, D011, Silver (p. 20-20)	Correct the treatment concentration for nonwastewaters.
Table 9, F032, Pentachlorodibenzofurans (p. 20-36)	Correct the treatment concentration for wastewaters.
Table 9, F035 (p. 20-38)	Remove duplicative "processes" from waste description for wastewaters.
Table 9, F039, 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD) (p. 20-51)	Correct the treatment concentration for nonwastewaters.
Table 9, F039, Fluoride (p. 20-54)	Correct the Chemical Abstracts Service (CAS) number.
Table 9, F039, Mercury (p. 20-54)	Correct the treatment concentration for nonwastewaters.
Table 9, K088, Arsenic (p. 20-76)	Remove an incorrect unit of analysis for nonwastewaters.

Table 9, K149, Chloromethane (p. 20-88)	Correct the treatment concentration for wastewaters.
Table 9, K171, Pyrene (p. 20-94)	Correct the treatment concentration for wastewaters.
Table 9, K172, Ethyl benzene (p. 20-94)	Correct the treatment concentration for wastewaters.
Table 9, P056, Fluorine (p. 20-103)	Correct the Chemical Abstracts Service (CAS) number.
Table 9, P127 through P205 (p. 20-109)	Add footnote to footnote 10 (existing) to achieve equivalency with 40 CFR Part 268.40.
Table 9, U134, Hydrogen Fluoride (p. 20-121)	Correct the Chemical Abstracts Service (CAS) number.
Table 10 (p. 20-133)	Remove the row for "Organic Constituents" under the "Technology Code" heading as there is no corresponding row entry for treatment method or other indication as to what purpose this row served. After removal, Table 10 is equivalent to 40 CFR Part 268.42(a), Table 1.
Table 11 (various rows)	Clarify that "Equivalent Technology" approval is under the requirements of 40 CFR Part 268.42(b).
Table 11, B1. Biological Destruction (p.20-145)	Correct spelling of "biodegration" to "biodegradation" under the "Technology description" column heading.

012.01 (p. 20-150)	Clarify that "Table UTS" refers to "Table 12 – Universal Treatment Standards"
Table 12, o- Anisidine (2— methoxyaniline) (p. 20-151)	Correct the regulated constituent/common name.
Table 12, Triethylamine (p. 20-159)	Correct the Chemical Abstracts Service (CAS) number.
Chapter 25	
<u>Section</u>	Propose change and description
012.04B (p. 25-12)	Add clarifying language to achieve equivalency with 40 CFR Part 273.13(d)(2).