

RECEIVED

AUG 23 2011

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

LANCASTER COUNTY
CLERK

IN THE MATTER OF AMENDING)
ARTICLE 1, SECTIONS 5 AND 6, AND)
ARTICLE 2, SECTIONS 8, 17, 29 AND 30)
OF THE LINCOLN-LANCASTER COUNTY)
AIR POLLUTION CONTROL PROGRAM)
REGULATIONS AND STANDARDS, AS)
PROVIDED IN ATTACHMENTS "A," "B,")
"C," "D," "E," AND "F")

RESOLUTION NO. R-11-0060

WHEREAS, pursuant to Neb. Rev. Stat. § 13-801, et seq. (Reissue 2007), Lancaster County and the City of Lincoln entered into an Interlocal agreement for the purpose of providing for the establishment of the 1993 Lincoln-Lancaster County Air Pollution Program; and

WHEREAS, pursuant to Neb. Rev. Stat. § 71-1630 and § 71-1635 (Reissue 2003), Lancaster County cooperated with the City of Lincoln in the establishment and maintenance of a City-County Health Department; and

WHEREAS, the Lincoln-Lancaster County Health Department has recommended amendments to the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards, to increase the fee for asbestos project notifications and to consolidate all of the fees into Article 1, Section 6, as provided in Attachments "A," "B," "C," "D," "E," and "F," attached hereto and incorporated by this reference; and

WHEREAS, the City of Lincoln has already adopted such amendments; and

WHEREAS, on August 30, 2011, the Lancaster County Board of Commissioners conducted a public hearing regarding adoption of the amendments to the Lincoln-Lancaster County Air Pollution Program Regulations and Standards, as provided in Attachments "A," "B," "C," "D," "E," and "F"; and

WHEREAS, in order to provide consistency and uniformity, the County wishes to make

the same amendment to the regulations that the City of Lincoln has made; and

NOW, THEREFORE, BE IT RESOLVED, by the Lancaster County Board of Commissioners, that the amendments to the 1993 Lincoln-Lancaster County Air Pollution Control Program, as provided in Attachments "A," "B," "C," "D," "E," and "F" are hereby adopted and shall become effective September 27, 2011.

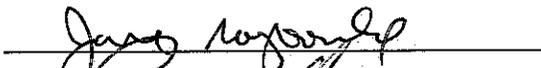
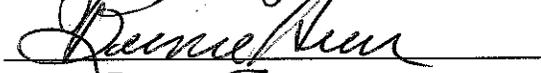
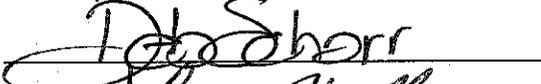
BE IT FURTHER RESOLVED that a copy of this resolution and said amendments be placed on file in the office of the County Clerk.

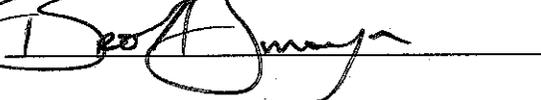
DATED this 30 day of August, 2011, at the County-City Building, Lincoln, Lancaster County Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 30 day of
August, 2011.


Deputy County Attorney
for JOE KELLY
County Attorney



ARTICLE 1
SECTION 5

VARIANCE

SECTION 5. VARIANCE.

- (A) Any person who owns or is in control of any plant, building, structure, process, or equipment may apply to the Director for a variance from rules or regulations. The Director may grant such variance if he or she finds that the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. In making such findings the Director shall give due consideration to all the facts and circumstances bearing upon the reasonableness of the emissions or discharge involved including, but not limited to:
- (1) The character and degree of injury to or interference with the health and physical property of the people;
 - (2) The social and economic value of the source of the pollution;
 - (3) The question of priority of location in the area involved; and
 - (4) The technical practicability and economic reasonableness of reducing or eliminating the emissions or discharges resulting from such source
- (B) No variance shall be granted until the Director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
- (C) Any variance or renewal thereof shall be granted within the requirements of subsection (A) of this section, for time periods and under conditions consistent with the reasons therefore, and within the following limitations:
- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air, water, or land pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternate measures that the Director may prescribe;
 - (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Director, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in a expeditious manner and shall be conditioned on adherence to such timetable;
 - (3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in sub-division (1) or (2) of this subsection, it shall be for not more than one year.
- (D) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Director on account of the variance, no renewal thereof shall be granted unless the Director finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the Director shall give public notice of such application.
- (E) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the Director. The granting or denial of a variance or a renewal shall be by final order of the Director.
- (F) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 8.05.070 to any person or his or her property.
- (G) No variance shall be granted which will sanction any violation of state or federal statutes or regulations.

- (H) The fee associated with issuance of a variance shall be charged at the rate of \$100.00 per hour. The maximum fee shall not exceed \$10,000.00 in accordance with Article 1, Section 6 of these Regulations and Standards.
- ~~(I) Payment of Fees -- any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after receipt of issuance of the variance.~~

SECTION 6. ANNUAL FEES.(A) Annual Emission Fees.

- (1) Applicability -- The provisions of this Regulations and Standards section shall apply to any person who owns or operates a source as defined in Article 2, Section 1 of these Regulations and Standards and is required to obtain any one of the following: 1) A Class I or a Class II operating permit in accordance with Article 2, Section 5 of the Regulations and Standards; 2) A construction permit in accordance with Article 2, Section 17 of the Regulations and Standards; or 3) Any source subject to an applicable requirement (other than permitting) of the Regulations and Standards the nature of which necessitates that the source submit an annual emissions report and/or be the subject of an annual or biannual inspection.
- ~~(B)~~(2) Calculation of Fee -- Beginning July 1, 1999, owners or operators of sources, identified in paragraph (A)(1) above, shall pay an annual fee for emissions of regulated air pollutants for fee purposes. The fee shall be based on the actual emission tonnage as established in the emission inventory for the previous calendar year as required by Article 2, Section 6 of these Regulations and Standards, beginning with calendar year 1998. For purposes of this section, a pollutant which may be regulated under more than one provision of these Regulations and Standards, need only be counted once. Any temporary source issued an operating permit under Article 2, Section 10 of the Regulations and Standards shall pay an annual fee based on emissions which occurred during the time period the source was located and operated in Lincoln or Lancaster County. The annual emission fees shall be assessed in accordance with the following:
- ~~(1)~~(a) Fee Schedule:
- ~~(a)~~(1) Major sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, paragraph (A)(2)(b) and (A)(2)(c) of this section with the minimum annual emission fee to be no less than \$2,500.00.
- ~~(b)~~(2) Synthetic Minor sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than \$1,250.00.
- ~~(c)~~(3) Minor sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than \$250.00.
- ~~(d)~~(4) Sources that have obtained a construction permit for a non-emergency generator(s) in accordance with the provisions set forth in Article 2, Section 17, paragraph (P) of these Regulations and Standards shall pay annual emission fees as follows:
- ~~(1)~~(a) If the generator was operated only for emergency use and testing purposes during the previous calendar year, the source will not be required to pay any emission fees.
- ~~(2)~~(b) If the generator was operated for non-emergency purposes during the previous calendar year, the source shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than \$250.00.
- ~~(c)~~ Notification fee for a National Emission Standards for Hazardous Air Pollutants (NESHAPS asbestos project shall be \$275.00 per project.
- (b) The fee for emissions occurring in the 2011 calendar year is \$56.50 per ton, and is due and payable on July 1, 2012.
- (c) The emission fee is due and payable on actual emissions up to and including 4,000 tons per year for each pollutant.
- (3) For purposes of this section, the following definitions shall apply:
- (a) Major source shall mean any source that meets the criteria set forth in Article 2, Section 2 of these Regulations and Standards.
- (b) Synthetic Minor source shall mean any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 2 of these Regulations and Standards.

- (c) Minor source shall mean any source that does not meet the definition of a major source as defined in Article 2, Section 2 of these Regulations and Standards, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (A)(1) of these Regulations and Standards.
 - (4) Any person subject to the requirements of paragraph (A) of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.
 - (5) Payment of Fees -- Any person required to submit fees pursuant to paragraph (A) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.
 - (6) Failure to submit the fees required by paragraph (A) of this section by July 1st, in addition to other relief allowed by law, shall be cause for:
 - (a) Revocation of the source's operating and/or construction permit; and
 - (b) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (A)(4) above.
 - (7) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (A)(4) above.
- (B) Area Sources of Hazardous Air Pollutants Annual Fees.
- (1) Applicability -- The following provisions of this section shall apply to any person who owns or operates any source subject to requirements of Title 40, Part 63 of the Code of Federal Regulations (40 CFR Part 63), the nature of which necessitates that the source be the subject to inspection.
 - (2) Determination of Fee -- Owners or operators of sources identified in paragraphs (B)(2)(a) through (B)(2)(e) shall pay an annual fee in accordance with the following fee schedule:
 - (f)(a) Area Source Bulk Gasoline Plants subject to 40 CFR Part 63 Subpart BBBB that are stand-alone plants or that are located at facilities that are not required to have a Class II operating permit - \$250.00
 - (g)(b) Area Source Gasoline Dispensing Facilities subject to 40 CFR Part 63 Subpart CCCCC with annual rolling subject to the requirements of §63.11118 (average monthly gasoline throughputs equal to or greater than 100,000 gallons) - \$300.00
 - (h)(c) Area Source Paint Stripping and Miscellaneous Surface Coating Facilities subject to 40 CFR Part 63 Subpart HHHHHH
 - (1) Facilities using one ton or less of methylene chloride annually for paint stripping activities and that are not required to have a Class II operating permit - \$125.00
 - (2) Facilities using more than one ton of methylene chloride annually that are not required to have a Class II operating permit - \$250.00
 - (3) Miscellaneous surface coating operations (auto body shops and mobile equipment painting¹ and non auto body shops and non mobile equipment painting²) that are not required to have a Class II operating permit.
 - (aa)(a) Operations with one painter - \$125.00
 - (bb)(b) Operations with two painters - \$250.00
 - (cc)(c) Operations with 3 or more painters - \$500.00

¹ The fee shall not apply to a facility that has been granted an exemption by the USEPA, the Nebraska Department of Environmental Quality, or the LLCHD because none of its coatings contain any of the 5 metal hazardous air pollutants (HAPS).

² The fee shall not apply to a facility that has certified to the LLCHD that none of its coatings contain any of the five metal HAPS addressed by this rule.

- (4) Facilities that have petitioned for and have been issued an exemption (auto body shops and mobile equipment painting operations) from the Subpart HHHHHH rule or facilities that have certified to the LLCHD (non auto body shops and non mobile equipment painting operations) that they are exempt from the rule because none of their coatings contain any of the five metal HAPS addressed by this rule shall pay a one time exemption fee of \$250.00¹.

¹ Payment of the one time fee assumes that a facility will continue to qualify for exempt status throughout the life of that facility. The exemption or certification fees shall not apply to facilities where all coatings are spray applied with a hand-held device whose paint cup capacity is 3 fluid ounces or less, where coatings are applied by using hand-held non refillable aerosol containers such as spray cans, where coatings are applied using powder coating equipment, where coatings are applied using non spray application methods such as brushing or rolling, or where non atomizing coating application technology (such as flow coating, dip coating and electrodeposition) is utilized.

~~(f)(d)~~ Area Source Plating and Polishing Operations subject to 40 CFR Part 63 Subpart WWWWWW that are not required to have a Class II operating permit - \$500.00

~~(f)(e)~~ Area Source Metal Fabrication and Finishing Facilities subject to 40 CFR Part 63 Subpart XXXXXX that are not required to have a Class II operating permit - \$500.00

- (3) Payment of Fees – Any person required to submit fees pursuant to paragraph (B) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 2011. All fees paid in accordance with the section shall be non-refundable.

- (4) Failure to submit the fees required by paragraph (B) of this section by July 1st, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (B)(3) above.

- ~~(2)~~ For purposes of this section, the following definitions shall apply:

~~(a)~~ Major source shall mean any source that meets the criteria set forth in Article 2, Section 2 of the Regulations and Standards.

~~(b)~~ Synthetic Minor source shall mean any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 2 of the Regulations and Standards.

~~(c)~~ Minor source shall mean any source that does not meet the definition of a major source as defined in Article 2, Section 2 of the Regulations and Standards, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (a)(1) of the Regulations and Standards.

~~(C)~~ Any person subject to the requirements of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.

~~(D)~~ Payment of Fees – Any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.

- ~~(E) Failure to submit the fees required by this section, in addition to other relief allowed by law, shall be cause for:~~
- ~~(1) Revocation of the source's operating and/or construction permit; and~~
 - ~~(2) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D) above.~~
- ~~(F) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (D) above.~~
- (C) National Emission Standards for Asbestos - Project Notification Fees.
- (1) Applicability -- Any person or source who engages in activities subject the requirements of Title 40, Part 61 of the Code of Federal Regulations (40 CFR Part 61) Subpart M: National Emission Standard for Asbestos (NESHAP asbestos projects) shall pay a notification fee of \$285.00 per project.
 - (2) Payment of Fees -- Any person required to submit fees pursuant to paragraph (C) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days of billing by the Department. All fees paid in accordance with the section shall be non-refundable.
 - (3) Failure to submit the fees required by paragraph (C)(1) of this section within thirty (30) days after billing by the Department, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (C)(2) above.
- (D) Construction Permit Fees.
- (1) Applicability - Any person or source required to obtain a construction permit under Article 2, Section 17 of these Regulations and Standards shall pay a construction permit fee for activities included under Article 2, Section 30, paragraph (A) of these Regulations and Standards. The construction permit fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00.
 - (2) Payment of Fees - - Any person required to submit fees pursuant to paragraph (D) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the permit.
 - (3) Failure to submit the fees required by paragraph (D)(1) of this section within thirty (30) days after the issuance of a construction permit, in addition to other relief allowed by law, shall be cause for:
 - (a) Revocation of the source's operating and/or construction permit; and
 - (b) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D)(2) above.
- (E) Emergency Electrical Generator Construction Permit Exemption Fees.
- (1) Applicability - Any person or source requesting to obtain an emergency electrical generator construction permit exemption in accordance with Article 2, Section 17, paragraph (O) of these Regulations and Standards shall pay an exemption fee for review of the construction permit exemption request and issuance of the construction permit exemption. The construction permit exemption fee is \$50.00 per generator.

- (2) Payment of Fees -- Any person required to submit fees pursuant to (E) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable at the time of submittal of the construction permit exemption request. All fees paid in accordance with this section shall be non-refundable.
- (3) Failure to submit the fees required by paragraph (E)(1) of this section at the time of submittal of the construction permit exemption request, in addition to other relief allowed by law, shall be cause for the Department to not issue the exemption.
- (F) Variance Fees
- (1) Applicability - Any person or source issued a variance in accordance with the requirements set forth in Article 1, Section 5 of these Regulations and Standards shall pay a fee for all activities associated with application for and issuance of the variance. The variance fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00.
- (2) Payment of Fees - - Any person required to submit fees pursuant to paragraph (F) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the variance. All fees paid in accordance with the section shall be non-refundable.
- (3) Failure to submit the fees required by paragraph (F) of this section within 30 days after the issuance of a variance, in addition to other relief allowed by law, shall be cause for:
- (a) Revocation of the source's operating and/or construction permit and/or the variance; and
- (b) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (F)(2) above.
- (G) ~~The rate structure~~ Fees will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health may recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure may be adopted by Resolution of the two governing bodies, individually, as a result of a recommendation by the Board of Health, or at the initiation of either of the two governing bodies.
- (H) All money collected from the ~~permit fees, and air quality service charges~~ provided for herein; shall be payable to the Lincoln-Lancaster County Health Department and shall be credited to the Air Pollution Control Fund.

v. September 2010~~1~~

SECTION 8. OPERATING PERMIT – CONTENT.

- (A) Each Class I Operating Permit shall include the standard permit requirements in paragraphs (B) through (K) of this section.
- (B) Emission limitations and standards. Each permit shall specify emission limitations and standards, including those operational requirements and limitations that assure compliance with all requirements applicable at the time of permit issuance.
- (1) The permit shall specify and reference the origin of, and authority for, each term or condition. In addition, it shall identify any difference to the terms or conditions as compared to the applicable requirement upon which the term or condition is based.
 - (2) Where an applicable requirement is more stringent than an applicable requirement specified in Section 26 of these Regulations and Standards, both provisions shall be incorporated into the permit.
 - (3) If an applicable implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance equivalent to that contained in the plan, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicated procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.
- (C) Permit duration
- (1) Class I and Class II operating permits shall be issued for a fixed term not to exceed 5 years;
 - (2) The term of a permit shall not be extended by modification beyond the maximum duration specified except that the conditions of an expiring permit shall continue until the effective date of a new permit in accordance with Section 12 of these Regulations and Standards, provided that:
 - (a) The permittee has submitted a timely application (except as provided in (C)(3)) which has been deemed complete by the Department, and
 - (b) The Director, through no fault of the permittee, does not issue a new permit with an effective date before the expiration date of the previous permit.
 - (3) A Class II permittee who has failed to submit a permit renewal application by the deadline established in the current permit may apply for a variance in order to have the conditions of an expiring permit extended until the effective date of a new permit. The variance request shall be submitted no later than 30 days after the deadline for submittal of the permit renewal application and according to the requirements of Article 1, Section 5 of the Regulations and Standards. The Director may grant a variance of up to 60 days to submit the permit renewal application.
- (D) Monitoring and related record keeping and reporting requirements.
- (1) Each Class I permit shall contain the following monitoring requirements:
 - (a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods established in Section 21 of these Regulation and Standards or pursuant to any permit or order issued by the Director under these Regulation and Standards.
 - (b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.
 - (c) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods and quality assurance and control procedures.

- (2) Each Class I permit shall incorporate all applicable record keeping requirements and require, if necessary, the following:
 - (a) Records of required monitoring information that include the following:
 - (1) The date and place as defined in the permit, and time of sampling or measurements;
 - (2) The date(s) analyses were performed;
 - (3) The company or entity that performed the analyses;
 - (4) The analytical techniques or methods used;
 - (5) The results of such analyses; and
 - (6) The operating conditions existing at the time of sampling or measurement.
 - (b) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The permit may specify that records may be maintained in computerized form.
 - (3) Each Class I permit shall incorporate all applicable reporting requirements and require the following:
 - (a) Submittal of reports of required monitoring at least every 6 months. All instances of deviation from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official in accordance with Section 7, paragraph (H) of these Regulations and Standards.
 - (b) Reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permit shall require reporting of deviations as follows:
 - (1) Any deviation resulting from emergency or upset conditions as defined in Section 11 of these Regulations and Standards shall be reported within two working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under said section;
 - (2) Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable;
 - (3) Any other deviations that are identified in the permit as requiring more frequent reporting than the permittee's semi-annual report shall be reported on the schedule specified in the permit.
 - (4) All reports of deviations shall identify the probable cause of the deviations and any corrective actions or preventative measures taken.
 - (4) Every report submitted under Subparagraph (D) (3) shall be certified by a responsible official, except that of a deviation required under subparagraph (D) (3) (b) of this section must be submitted within ten days of the deviation, the report may be submitted initially without a certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the deviation.
- (E) Acid Rain. Each Class I permit issued to an Affected source shall include a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under the Act.
- (1) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Title IV acid rain program developed under the Act, provided that such increases do not require a permit revision under any other applicable requirement.
 - (2) No limit shall be placed on the number of allowances held by the source.
 - (3) The allowances a source possesses shall not be a defense to noncompliance with any other applicable requirement.
 - (4) Any allowances shall be accounted for according to procedures established in Section 26 of these Regulations and Standards.
- (F) Severability. Each Class I and Class II permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

- (G) General conditions. Each permit shall contain the following provisions:
- (1) The permittee must comply with all conditions of the Class I and Class II permit. Any permit noncompliance shall constitute a violation of these Regulations and Standards and the Act, and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 - (2) It shall not be a defense for a permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - (3) The permit may be modified; revoked, reopened, and reissued; or terminated for cause in accordance with the provisions of these Regulations and Standards. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not supersede any permit condition.
 - (4) The permit does not convey any property rights of any sort, or any exclusive privilege.
 - (5) The permittee shall furnish to the Department, within the time specified by the Department, any information requested by the Department in writing to determine whether cause exists for modifying, revoking and reissuing; or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department, copies of records required to be kept in accordance with the permit or, for information claimed to be confidential, the permittee may furnish such records along with a claim of confidentiality pursuant to, Nebraska Revised Statute 84-712.05.
 - (6) The provisions of a permit issued under these Regulations and Standards supersede the provisions of any previously issued operating or construction permit.
- (H) Fees. Each Class I and Class II operating permit shall contain a provision to ensure that a major sources of regulated pollutants pay fees to the Department consistent with the fee schedule in Article 1, Section 6 and Article 2, Section 29 of these Regulations and Standards.
- (I) Alternative operating scenarios. Each permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:
- (1) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which the source is operating;
 - (2) Must ensure that the terms and conditions of each alternative scenario meet all applicable requirements and the requirements of the permit ; and
 - (3) The permit shield, if requested, described in paragraph (N) of this section shall apply to all terms and conditions under each such operating scenario.
- (J) Reopening for cause. Each permit shall include provisions specifying the conditions under which the permit will be reopened, revoked and reissued, or terminated, in accordance with Section 15, paragraph (F) of these Regulations and Standards.
- (K) Risk Management Plans. If the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act or these Regulations and Standards, the permit will specify that the permittee will comply with the requirement to register such a plan. The content of the risk management plan will not be incorporated as a permit term. The permit shall require:
- (1) Verification of the plan preparation and submittal to the Department, the State Emergency Response Commission, and any local Emergency Planing Committee; and
 - (2) Annual Certification in accordance with Section 7, paragraph (F)(2)(i)(3) of these Regulations and Standards that the risk management plan is being properly implemented.

- (L) Compliance requirements. All Class I operating permits shall contain the following elements with respect to compliance:
- (1) Consistent with paragraph (D) above, compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a Class I permit shall contain a certification by a responsible official that meets the requirements of Section 7, paragraph (H) of the Regulations and Standards.
 - (2) Inspection and entry requirements that require the permittee to allow the Department, EPA or an authorized representative, upon presentation of credentials and other documents, to:
 - (a) Enter upon the permittee's premises at reasonable times where a source subject to a Class I operating permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (c) Inspect at reasonable times any facilities, pollution control equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under the permit, and
 - (d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
 - (3) A schedule of compliance consistent with Section 7, subparagraph (F) (2) (h) of these Regulations and Standards.
 - (4) Progress reports consistent with an applicable schedule of compliance and Section 7, subparagraph (F) (2) (h) of these Regulations and Standards, to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Director. Such progress reports shall contain the following:
 - (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - (b) An explanation of why any dates in the schedule of compliance were not met, or will not be met, and any preventive or corrective measures adopted.
 - (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
 - (a) The frequency, not less than annually or such more frequent periods as specified in the applicable requirement or by the Department, or submissions of compliance certifications;
 - (b) In accordance with paragraph (D) above, a means of monitoring the compliance of the source with its emissions limitations, standards and work practices;
 - (c) A requirement that the compliance certification include the following:
 - (1) The identification of each term or condition of the permit that is the basis of the certification;
 - (2) The compliance status;
 - (3) A determination of whether compliance was continuous or intermittent;
 - (4) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with the paragraph (D) above; and
 - (5) Such other facts as the Department may require to determine the compliance status of the source;
 - (d) A requirement that all compliance certifications be submitted to the Administrator as well as to the Department; and
 - (e) Such additional requirements as may be specified pursuant to these Regulations and Standards, or the applicable Implementation Plan, or any permit issued under these Regulations and Standards.

- (M) The Director may place such conditions and restrictions upon a permit issued or renewed under this section as he or she deems necessary to protect public health or the environment. Such conditions or restrictions may be placed upon the permit at the time it is issued, modified, or renewed. By the way of example, and not of limitation, such conditions or restrictions may be new federal applicable requirements not yet adopted in these Regulations and Standards.
- (N) Permit Shield for Class I Permits.
- (1) If requested in the permit application, the permit shield provided in this section shall be included in the permit.
 - (2) The permit shield shall provide that compliance with a permit during its term constitutes compliance with all applicable requirements identified pursuant to Section 7 of these Regulations and Standards as of the date of permit issuance, provided that:
 - (a) Such applicable requirements are included and specifically identified in the permit; or
 - (b) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination.
 - (3) The permit shield does not affect:
 - (a) The provisions for granting variances;
 - (b) Liability for any violation of applicable requirements, or applicable requirements under the Act, prior to or at the time of permit issuance;
 - (c) The applicable requirements of Section 26 of these Regulations and Standards;
 - (d) The authority of the Department or EPA to obtain information; or
 - (e) Any other permit provisions, terms, or conditions, including, but not limited to, construction permits issued pursuant to Section 17 of these Regulations and Standards or permits issued pursuant to other states or local ordinances, rules or regulations.
 - (4) A Class I permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (O) Each Class II operating permit shall include those permit requirements applicable to Class II sources and any additional requirements which the Director deems appropriate, including but not limited to, the following:
- (1) Emissions limitations and standards which are at least as stringent as any applicable requirement or other requirements contained in the State Implementation Plan.
 - (2) Monitoring and related record keeping and reporting requirements.
 - (3) Compliance certification, testing, monitoring, reporting, and record keeping requirements.
- (P) All terms and conditions in a Class I and Class II operating permit, including any provisions designed to limit a source's potential to emit, are enforced by the Administrator and citizens under the Act except those terms and conditions which have been specifically designated as not federally enforceable under paragraph (Q) below.
- (Q) Each Class I permit shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.
- (R) If an applicable requirement provides for the trading of increases and decreases of emissions without a case-by-case approval of each emissions trade, and if requested by the applicant in its permit application, the Director shall establish terms and conditions for the trading of such emissions increases and decreases within the permitted facility. Such terms and conditions shall include all terms required by these Regulation and Standards to determine compliance and must meet all terms specified in the applicable requirement which allows such trading.

- (S) If an applicant requests in its application, the Director shall establish terms and conditions in the permit allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Emissions from emissions units which are not quantifiable and for which there are no replicable procedures shall not be included in any trades. The permit shall also require compliance with all applicable requirements.

Ref: Title 129, Chapter 8, Nebraska Department of Environmental Quality

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 or emission unit, such that there is a net increase in potential emissions equal to or exceeding the following levels (except as provided in paragraph (A)(3)):
 - (a) For any source which is major for purposes of prevention of significant deterioration, any increase in particulate matter emissions which would subject such source to review or, except for enforceable limits established through the construction permit issued pursuant to this section would subject such source to review under the provisions of 40 CFR Part 52, as adopted in Article 2, Section 19.
 - (b) Fifteen (15) tons/year of PM₁₀ emissions.
 - (c) Forty (40) tons/year of SO₂, or SO₃, or any combination of the two.
 - (d) Forty (40) tons/year of oxides of nitrogen (calculated as NO₂)
 - (e) Forty (40) tons/year of volatile organic compounds (VOC).
 - (f) Fifty (50) tons/year of carbon monoxide.
 - (g) Six tenths (0.6) tons/year of lead.
 - (h) 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, including all associated fugitive emissions.

When determining the net change in potential emissions under paragraph (A)(1) above, fugitive emissions shall be addressed in accordance with the requirements of Article 2, Section 2, paragraph (A)(1) and paragraph (B) without regard to classification of the source as major or minor.
 - (2) Any incinerator used for refuse disposal or for processing of salvageable materials, any human/animal crematory, and any Type 4 (pathological) waste burning incinerator, 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.
 - (3) When a source replaces an existing emission unit with a new unit, that performs the same function as that of the unit being replaced, netting shall not be used to determine the need for a permit under this section, except as follows:
 - (a) The procedure for determining a net increase in projected actual emissions will be allowed for sources where the equipment replacement would be subject to the requirements of Article 2, Section 19 of these Regulations and Standards; and
 - (b) In cases where the source can demonstrate to the Department that netting will result in a net reduction in emissions of individual criteria and toxic air pollutants and total toxic air pollutants, where applicable. In this case, the source may also use actual emissions decreases from emission units that are dissimilar in function to the unit(s) being replaced in order to make this demonstration, provided the actual emissions decreases are concurrent with the planned replacement. However, any emissions increases that occur at this time with respect to these emission units must also be included in this demonstration. The result of the netting calculation must be a difference of less than zero tons per year of emission. This demonstration is not applicable to emission units that are subject to the requirements of Article 2, Section 27 paragraph (C).
 - (c) If the exceptions of (a) or (b), above are not applicable, the potential emissions of regulated air pollutants associated with the new (replacement) unit alone shall be used to determine the need for a permit, i.e., no reduction in emissions from the new unit shall be allowed because of the elimination of actual emissions from the existing emission unit which is being replaced and those associated with other emission units at the facility. A new unit shall not mean an existing emission unit which is being relocated from another site.
- (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.
- (1) The permittee must comply with all conditions of the construction permit. Any permit noncompliance shall constitute a violation of these Regulations and Standards and the Act and is grounds for enforcement action or permit revocation.

- (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 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 following significant levels at any locality that does not or would not meet the applicable national standard:

Pollutants	Annual	Averaging Time 24 hrs	Averaging Time 8 hrs	Averaging Time 3 hrs	Averaging Time 1 hr
	SO ₂	1.0 ug/m ³	5.0 ug/m ³	-----	25 ug/m ³
PM ₁₀	1.0 ug/m ³	5.0 ug/m ³	-----	-----	-----
NO ₂	1.0 ug/m ³	-----	-----	-----	-----
CO	-----	-----	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 procedures in Article 2, 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 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 of 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 emission 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 (LAER); 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, 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 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 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 these Regulations and Standards allow a 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 had 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 shutdown 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 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 51 Subpart I or in demonstrating attainment or reasonable further progress.
 - (g) Emissions reductions otherwise required by the Act or these Regulations and Standards 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 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) Primary zinc smelters;
 - (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) Lign plants;
 - (l) Phosphate rock processing plant;
 - (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 hours 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 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 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 paragraph (N)(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 paragraph (C), above, and provide such additional information as may be required to determine if the conditions of paragraph (N)(1), above, 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 paragraph (N)(1), above, must be processed through the full construction permit process as provided in paragraphs (C) through (M), above.
- (O) Construction Permit Exemption for Commercial, Industrial, and Institutional Emergency Generators. This subsection shall apply to the following emergency generators where the total emergency generator capacity at a commercial, industrial, or institutional facility is or will be equal to or greater than 200 KW (kilowatts) for fuel oil, LPG or natural gas-fired units, or equal to or greater than 19 KW where one or more of these generators is fueled with gasoline: (a) Stationary units that are installed on or after 11-15-09 provided that the owner/operator submits the request for exemption no later than 60 days after installation; and (b) Portable units that are installed on or after 11-15-09 provided that the owner/operator submits the request for exemption no later than 2 days after installation except as provided for in paragraph (O)(3), below, for disasters. Owners/operators of emergency electrical generators that do not submit the request for exemption within the time period provided for in (a) or (b) shall be required to obtain a construction permit in accordance with the requirements of Article 2, Section 17 (A)(1) of the Regulations and Standards. Within 18 months of issuance of a construction permit, the Department may require an owner/operator to submit an application for an operating permit in accordance with Article 2, Section 5 or 10 (portable units) of the Regulations & Standards.
- (1) To qualify for the exemption, owners/operators of these units shall comply with the following requirements:
 - (a) Stipulate that annual operating hours for a unit will not exceed 500 (including maintenance and readiness testing) and that records of annual operating hours will be maintained. Also, for stationary units manufactured after April 1, 2006, stipulate that maintenance and readiness testing of such units shall be limited to no more than 100 hours per year. If the owner/operator of a unit manufactured after April 1, 2006 can provide the Director with information that indicates a Federal, State, or local standard, the manufacturer, the vendor, or an insurance company associated with the unit recommends maintenance and readiness testing of the emergency electrical generator beyond 100 hours per year, the 100 hour per year limit shall not be imposed. However, the overall operating limit of 500 hours per year shall not be exceeded.
Stationary emergency generators (engines) may be operated up to 50 hours per year in non-emergency situations and up to 15 hours per year as part of a demand response program provided that this is allowed by the requirements of the rule that are applicable to emergency stationary reciprocating internal combustion engines (RICE). Depending on the age (new, modified, reconstructed, existing), type of engine (spark ignition, compression ignition), size

of engine (bhp rating), and in the case of hazardous air pollutants (HAPS) whether the engine is located at a major or minor source of HAPS, the applicability of one or more of the following rules should be assessed: (1) In the case of HAP requirements for new, reconstructed, or existing stationary emergency RICE, 40 CFR Part 63 Subpart ZZZZ, Section 63.6640, paragraph (f); (2) For new, modified, or reconstructed compression ignition engines, 40 CFR 60 Subpart IIII, Section 60.4211, paragraph (f); and (3) For new, modified or reconstructed spark ignition engines, 40 CFR Part 60 Subpart JJJJ, Section 60.4243, paragraph (d).

- (b) Record operating hours for both test and emergency conditions, and for any non-emergency and demand response hours, if applicable.
 - (c) The sulfur content of any fuel oil combusted in these units shall not exceed 0.05% (500 ppm) by weight. Beginning June 1, 2010, the per gallon sulfur content of non-road diesel fuel shall not exceed 15 ppm by weight and the cetane index or aromatic content shall either be a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent.
- (2) To obtain the exemption, owners/operators of stationary emergency generators, shall submit their requests to the Department and provide the following information for each unit:
- (a) The make and model number.
 - (b) The horsepower rating and KW rating, the date ordered, the date engine was manufactured (year), engine displacement (liters/cylinder), the type of engine - compression ignition or spark ignition, and if it is spark ignition, whether it is 2-stroke, 4-stroke, rich burn, or lean burn.
 - (c) The type of fuel (natural gas, LPG, gasoline, fuel oil) combusted.
 - (d) If fuel oil is combusted, indicate the grade, such as No. 2, and the sulfur content (% by weight). Provide a statement of certification from the fuel supplier confirming the grade and sulfur content of the fuel oil delivered and a letter from the owner/operator certifying that this is the only type of fuel oil being combusted. If gasoline is combusted, the owner/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, Section 80.195.
 - (e) An estimate of the anticipated annual hours of unit operation at the commercial, industrial, or institutional facility. The estimate shall include both test and emergency operating conditions.
 - (f) The estimated quantity of fuel that will be combusted annually.
 - (g) A site plan showing the proposed location of the unit and the location of any adjacent habitable structures, such as businesses, schools, and residences. The height of the unit's exhaust stack and the elevations of surrounding habitable structures shall also be indicated. Approval of the unit's location by the Department is required before an exemption will be granted.
- Owner/operators who are planning to install stationary emergency generators should be aware that several rules promulgated by the U.S.E.P.A. may be applicable to the internal combustion engines (ICE) associated with these units. In order to assess rule applicability and to evaluate possible requirements, owner/operators are advised to contact the Department and to request the document, "Summary of Requirements for Stationary Internal Combustion Engines: 40 CFR Part 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition ICE; Part 60 Subpart JJJJ - Standards of Performance for Stationary Spark Ignition ICE; and Part 63 Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (RICE)."
- (3) To obtain the exemption, owners/operators of portable gasoline-powered emergency generators, shall submit their requests to the Department and provide the following information:
- (a) The information required in Article 2, Section 17, paragraphs (O)(2)(a) and (b); for horsepower and KW rating only; and
 - (b) The information required in Article 2, Section 17 (O)(2)(e) and (g)

An exemption 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 seven days (168 hours). If a portable unit will be operated more than seven days, the owner/operator shall be required to apply for the exemption within 24 hours after conclusion of the seventh day of operation in order to avoid the construction permit requirement. After these periods, the owner/operator will be required to submit a construction permit application and to obtain a permit, if an exemption was not obtained.

- (4) In the event the owner/operator of an emergency generator who holds an exemption no longer qualifies for the exemption according to the requirements of Article 2, Section 17, paragraphs (O)(1)(a) through (c), or the owner/operator chooses to operate the generator for other than emergency purposes, the owner/operator shall submit a construction permit application to the Department within 60 days of the finding or declaration and shall obtain a permit. Within 18 months of issuance of a construction permit, the Department may require the owner/operator to submit an application for an operating permit in accordance with the requirements of Article 2, Sections 5 or 10 of these Regulations and Standards.
 - (5) Owners/operators of emergency generators who operate these units in non-compliance with the requirements of Article 2, Section 17, paragraphs (O)(2), (3), or (4) shall be deemed in violation of these requirements and shall be subject to the provisions of Article 1, Sections 3 and 4 of these Regulations and Standards. The owner/operator of an emergency generator whose hours of operation exceed 500 hours and/or 100 hours per year (for units manufactured after April 1, 2006) for maintenance and readiness testing during the year shall report these events to the Department no later than 30 days after the month in which the 500 and/or 100 hours per year limits were exceeded.
 - (6) A processing fee for review of the construction permit exemption request shall be assessed in accordance with Article 1, Section 6 of these Regulations and Standards. ~~according to the following schedule:~~
 - ~~(a) The exemption request fee for a stationary emergency generator is \$50.00.~~
 - ~~(b) The exemption request fee for up to three portable emergency generators is \$50.00, and for more than three generators the fee is \$120.00.~~
 - (7) The Department will provide a letter of exemption to the owner/operator of an emergency generator who has requested the exemption, has provided the information required in Article 2, Section 17, paragraph (O)(2), and/or paragraph (O)(3), the Department has determined the unit qualifies for the exemption according to Article 2, Section 17, paragraphs (O)(1)(a) through (c), and has submitted the applicable exemption request fee. The exemption shall remain in effect for each unit that continues to qualify. In the event the Department determines that an exemption can not be granted, a letter explaining the reason(s) for refusal will be sent to the owner/operator. The owner/operator who is denied an exemption may provide additional information to support their request. If the Department, after review of this additional information, continues to deny the exemption, the owner/operator may appeal the decision to the Director according to the procedures established in Article 1, Section 4 of these Regulations and Standards.
- (P) Construction Permit Requirements for Commercial, Industrial, and Institutional Non-Emergency Generators. This subsection shall apply to any stationary electric power producing generators operated at commercial, industrial or institutional facilities where the owner/operator participates in a program established by the local utility in which the utility may request that the owner/operator use these generators to produce a limited number of hours of electric power during periods when power from the local utility is available. An owner/operator who participates in this program must obtain a construction permit from the Department that applies to all generators at the facility that may be used for this non-emergency purpose. The owner/operator may utilize these generators for emergency purposes but they will be designated as non-emergency generators for purposes of this subsection.
- (1) To qualify for and to obtain this permit, an owner/operator shall comply with the following requirements and provide the following information:
 - (a) Each generator that may be used for non-emergency purposes must be specifically identified. A distinction must be maintained between those generators that may be used to generate power for non-emergency purposes and those units that will be used solely as emergency generators.

- (b) The number of hours the unit may be operated for nonemergency purposes shall be limited to no more than 200 hours per calendar year, and for emergency purposes, including testing, the unit's operation shall be limited to no more than 300 hours per calendar year. For units manufactured after April 1, 2006, maintenance and readiness testing is limited to no more than 100 hours per year unless the owner/operator provides the Director with information that indicates a Federal, State, or local standard, the manufacturer, the vendor, or an insurance company associated with the unit recommends maintenance and readiness testing of these units beyond 100 hours per year. Regardless of the 200 hour limit allowed each unit for non-emergency operation, the emission limit established in paragraph (P)(1)(g) of this Section shall not be exceeded.
- (c) A record of unit operating hours for emergency and testing purposes and for non-emergency purposes shall be maintained on a monthly basis. These records shall be made available to authorized representatives of the Department upon request. The owner/operator shall report to the Department any exceedances of the 200 hour per year and/or 300 hour per year and/or the 100 hour per year limits that are applicable to a generator operating under the requirements of this subsection. The report of exceedances shall be submitted no later than 30 days after the month in which the 200 hour per year the 300 hour per year and/or the 100 hour per year limits are exceeded.
- (d) A record of the quantity of fuel (natural gas, LPG, gasoline, fuel oil) combusted annually for emergency and testing purposes and for non-emergency purposes shall be maintained.
- (e) An annual emissions inventory shall be submitted to the Department on forms provided by the Department by March 31st of each year, and shall contain information for the previous calendar year. The inventory must include a separate accounting of the emissions resulting from nonemergency operation and those resulting from emergency, including testing, operation of each generator subject to the requirements of this subsection. This submittal shall also include the records required in subparagraph (c) (operating hours) and (d) (quantities of fuel) above.
- (f) The sulfur content of fuel oil combusted shall not exceed 0.05% by weight. However, beginning June 1, 2010 the per gallon sulfur content of the non-road diesel fuel oil shall not exceed 15 ppm by weight and the cetane index or the aromatic content shall either be a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent. The owner/operator shall provide a statement of certification from the fuel supplier confirming that the fuel oil delivered does not exceed this limit, and the owner/operator shall also certify that oil with this sulfur limit is the only type of fuel oil being combusted. If gasoline is combusted the owner/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, Section 80.195.
- (g) Total criteria and non-criteria emissions from all of these units at a facility during non-emergency operation shall be less than ten (10) tons during a calendar year. The emission factors used to calculate these emissions shall be those provided in AP-42, by the generator manufacturer, or by other sources of information acceptable to the Department.
- (h) Within 30 days of the date the Department issues the construction permit, the owner/operator shall submit a construction permit fee in the amount required by Article 2, Section 30 of the Regulations and Standards.
- (i) Annually, the permittee shall pay emission fees to the Department in accordance with Article 1, Section 6, paragraph (B)(1)(d).
- (j) The owner/operator shall provide the following information for each non-emergency generator in the construction permit application submitted to the Department:
 - (1) The make and model number of the generator;
 - (2) The KW and horsepower ratings, the date ordered, the date engine was manufactured (year), engine displacement (liters/cylinder), the type of engine-compression ignition or spark ignition, and, if spark ignition, whether it is 2-stroke, 4-stroke, rich burn, or lean burn;
 - (3) The type of fuel(s) (natural gas, LPG, gasoline, fuel oil) combusted;

- (4) If fuel oil is combusted, indicate the grade, such as No. 2, the sulfur content (% by weight); the cetane index, and the aromatic content. If gasoline is combusted, indicate the sulfur content: and
- (5) A site plan showing the location of the stationary non-emergency generator(s) and the location of any adjacent habitable structures, such as businesses, schools, and residences. The height of each 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.
- Owner/operators who are planning to install stationary emergency generators or currently have existing stationary emergency generators that will be used for the kind of non-emergency purpose described here in Subsection (P) should be aware that several rules promulgated by the U.S.E.P.A. may be applicable to the internal combustion engines associated with these generators. In order to assess the applicability of these rules and to evaluate possible requirements, owner/operators are advised to contact the Department and to request the document. "Summary of Requirements for Stationary Internal Combustion Engines (ICE): 40 CFR Part 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition ICE; Part 60 Subpart JJJJ - Standards of Performance for Stationary Spark Ignition ICE; and Part 63 Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Stationary Reciprocating Internal Combustion Engines (RICE)."
- (2) The owner/operator who has been issued a construction permit for a stationary non-emergency generator(s) that will be operated in accordance with the requirements of this subsection is not required to obtain an operating permit for the unit provided that emissions from the unit in combination with those of other emissions units at the facility do not make the facility subject to the requirements of Article 2, Section 5 of these Regulations and Standards. The emissions from emergency generators operated in conjunction with non-emergency generators at a facility must also be included in determining the need for an operating permit. A non-emergency generator shall not be considered an insignificant activity and it must be included as an emission unit in the operating permit for facilities required to have this permit.
- (3) Construction permits issued under this subsection shall not be subject to the affected states review or the public participation provisions of Article 2, Sections 13 or 14 of these Regulations and Standards, respectively.
- (Q) Construction Permit Requirements for Commercial, Industrial, and Institutional Electrical Generators Used for Purposes Other Than Those Pertaining to paragraphs (O) and (P) of this Section. These generators, powered by fuel oil, natural gas, LPG or gasoline, shall be required to obtain a construction permit if the provisions of paragraph (A) of this Section apply. Additionally, these units may be subject to any or all of the operating permit requirements of Article 2, Sections 5, 9, and 10 of these Regulations and Standards.
- Owners/operators who are planning to install stationary electrical generators for purposes other than those described in paragraphs (O) and (P) of this section should be aware that the internal combustion engines associated with these generators, in particular those intended for non-emergency purposes, will likely be subject to the rules promulgated by the U.S.E.P.A. that are applicable to stationary internal combustion engines. In order to assess the applicability of these rules and to evaluate possible requirements, owner/operators should contact the Department and request the document. "Summary of Requirements for Stationary Internal Combustion Engines (ICE): 40 CFR Part 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition ICE; Part 60 Subpart JJJJ - Standards of Performance for Stationary Spark Ignition ICE; and Part 63 Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Stationary Reciprocating Internal Combustion Engines (RICE)."
- (R) Any person or source issued a construction permit under this section shall pay annual emission fees as required under Article 1, Section 6 of these Regulations and Standards.

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

v. November 2010 September 2011

SECTION 29. OPERATING AND CONSTRUCTION PERMIT EMISSION FEES.

- (A) Applicability--The provisions of this section of the Regulations and Standards shall apply to any person who owns or operates a source that is required to obtain a Class I or Class II operating permit in accordance with Article 2, Section 5 of these Regulations and Standards, or is required to obtain a construction permit in accordance with Article 2, Section 17 of these Regulations and Standards.
- (B) Calculation of Fee--Beginning July 1, 1995, owners or operators of sources, identified in paragraph (A) above, shall pay an annual emission fee for each ton of a regulated air pollutant for fee purposes emitted to the air by the facility. Any temporary source issued an operating permit under Article 2, Section 10 of the Regulations and Standards shall pay an annual emission fee for emissions during the time period the source was located and operated in Lincoln or Lancaster County. The fee shall be based on the actual emission tonnage and as established in the emission inventory for the previous calendar year, beginning with calendar year 1994. For purposes of this section, a pollutant which may be regulated under more than one provision of these Regulations and Standards, need only be counted once.
- (1) The emission fee shall be determined by multiplying \$25 per ton of regulated air pollutant for fee purposes reported in the annual emission inventory report required in Article 2, Section 6 of these Regulations and Standards. The emission fee shall be increased or decreased annually by the Department in each year, beginning after 1991, by the percentage difference between the Consumer Price Index (CPI) for the most recent year ending before the beginning of such year and the CPI for the year 1989; or
 - (2) The emission fee shall be as required to pay all reasonable direct and indirect costs of developing and administering the air quality permit programs identified in these Regulations and Standards.
 - (3) The emission fee for each ton of actual emissions shall be established annually in Article 1, Section 6, paragraph (A)(2) of these Regulations and Standards.
 - ~~(2)(4)~~ The emission fee is due and payable on Actual-actual emissions up to and including 4,000 tons per year for each regulated air pollutant for fee purposes.
- ~~(C) Any person subject to the requirements of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.~~
- ~~(D) Payment of Fees--Any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with calendar year 1995, with submission of the annual emission inventory report form. All fees paid in accordance with this section shall be non-refundable.~~
- ~~(E) Failure to submit the fees required by this section, in addition to other relief allowed by law, shall be cause for:~~
- ~~(1) Revocation of the source's operating and or construction permit; and~~
 - ~~(2) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D), above.~~
- ~~(F) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (D), above.~~
- ~~(G) The rate structure will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health shall recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure will be adopted by Resolution of the two governing bodies.~~

ARTICLE 2
SECTION 29

OPERATING PERMIT EMISSION FEES

~~(H) All money collected from the permit fees, and air quality service charges herein provided for shall be payable to the Lincoln-Lancaster County Health Department and shall be credited to the Air Pollution Control Fund.~~

Ref: Title 129, Chapter 29, Nebraska Department of Environmental Quality

v. September 20102011

ARTICLE 2
SECTION 30

CONSTRUCTION PERMIT FEE

SECTION 30. CONSTRUCTION PERMIT FEE.

- (A) ~~For the following activities, a fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00. Any person or source required to obtain a construction permit in accordance with the requirements of Article 2, Section 17 of these Regulations and Standards shall pay a fee as prescribed under Article 1, Section 6, paragraph (D) for the following activities:~~
- (1) Review of an application for a permit for the construction, installation, modification, or reconstruction of processing machines, equipment or devices, fuel burning equipment, and waste incinerators;
 - (2) Development of a draft permit to construct, install, modify, or reconstruct;
 - (3) Review of an application or request to modify an existing permit to construct, install, modify, or reconstruct, whereas the modification(s) is defined as neither an "Administrative Permit Amendment", nor a "Minor Permit Modification" as provided in Article 2, Section 15 of these Regulations and Standards;
 - (4) Development of a modified draft permit to construct, install, modify, or reconstruct;
 - (5) Development of a statement of basis to issue an initial, or modified, permit to construct, install, modify, or reconstruct;
 - (6) Development of a document to provide notice for public participation as provided in Article 2, Section 14 of these Regulations and Standards.
 - (7) Issuance of a construction permit for a non-emergency electrical generator as referenced in Article 2, Section 17 (P), paragraph (1)(h) of these Regulation and Standards.

~~Payment of Fees-- any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after receipt of issuance of the permit.~~

RECEIVED

SEP 01 2011

LANCASTER COUNTY
CLERK

11R-207

Introduce: 8-22-11

RESOLUTION NO. A- 86482

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:
 2 That the Amendments to Article 1, Section 5 Variance; Article 1, Section 6 Fees;
 3 Article 2, Section 8 Operating Permits – Content; Article 2, Section 17 Construction Permits –
 4 When Required; Article 2, Section 29 Operating Permit Emission Fees; and Article 2, Section 30
 5 Construction Permit Fee of the Lincoln-Lancaster County Air Pollution Control Program
 6 Regulations and Standards implemented by the Lincoln-Lancaster County Health Department,
 7 copies of which are attached hereto, marked as Attachment "A" and made a part hereof by
 8 reference, to modify the annual fee structure for all regulated industries and business, are
 9 hereby approved.

10 9/1 The City Clerk is directed to return two (2) fully executed copies of this Resolution
 11 and Amendments to Angela Zocholl, Lancaster County Clerk's Office, for filing with the County.

Introduced by:

David Emery

AYES: Camp, Carroll, Cook,
 Emery, Eskridge; ABSENT:
 Hornung, Snyder; NAYS: None.

Approved as to Form and Legality:

Rick Reed

 City Attorney

Approved this 31st day of Aug., 2011:

 Mayor

ADOPTED
AUG 29 2011
BY CITY COUNCIL

SECTION 5. VARIANCE.

- (A) Any person who owns or is in control of any plant, building, structure, process, or equipment may apply to the Director for a variance from rules or regulations. The Director may grant such variance if he or she finds that the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. In making such findings the Director shall give due consideration to all the facts and circumstances bearing upon the reasonableness of the emissions or discharge involved including, but not limited to:
- (1) The character and degree of injury to or interference with the health and physical property of the people;
 - (2) The social and economic value of the source of the pollution;
 - (3) The question of priority of location in the area involved; and
 - (4) The technical practicability and economic reasonableness of reducing or eliminating the emissions or discharges resulting from such source
- (B) No variance shall be granted until the Director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
- (C) Any variance or renewal thereof shall be granted within the requirements of subsection (A) of this section, for time periods and under conditions consistent with the reasons therefore, and within the following limitations:
- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air, water, or land pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternate measures that the Director may prescribe;
 - (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Director, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable;
 - (3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in sub-division (1) or (2) of this subsection, it shall be for not more than one year.
- (D) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Director on account of the variance, no renewal thereof shall be granted unless the Director finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the Director shall give public notice of such application.
- (E) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the Director. The granting or denial of a variance or a renewal shall be by final order of the Director.
- (F) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 8.05.070 to any person or his or her property.
- (G) No variance shall be granted which will sanction any violation of state or federal statutes or regulations.

ARTICLE 1
SECTION 5

VARIANCE

- (H) The fee associated with issuance of a variance shall be charged at the rate of \$100.00 per hour. The maximum fee shall not exceed \$10,000.00 in accordance with Article 1, Section 6 of these Regulations and Standards.
- (I) ~~Payment of Fees -- any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after receipt of issuance of the variance.~~

SECTION 6. ANNUAL FEES.

(A) Annual Emission Fees.

- (1) Applicability -- The provisions of this Regulations and Standards section shall apply to any person who owns or operates a source as defined in Article 2, Section 1 of these Regulations and Standards and is required to obtain any one of the following: 1) A Class I or a Class II operating permit in accordance with Article 2, Section 5 of the Regulations and Standards; 2) A construction permit in accordance with Article 2, Section 17 of the Regulations and Standards; or 3) Any source subject to an applicable requirement (other than permitting) of the Regulations and Standards the nature of which necessitates that the source submit an annual emissions report and/or be the subject of an annual or biannual inspection.
- (B)(2) Calculation of Fee -- Beginning July 1, 1999, owners or operators of sources, identified in paragraph (A)(1) above, shall pay an annual fee for emissions of regulated air pollutants for fee purposes. The fee shall be based on the actual emission tonnage as established in the emission inventory for the previous calendar year as required by Article 2, Section 6 of these Regulations and Standards, beginning with calendar year 1998. For purposes of this section, a pollutant which may be regulated under more than one provision of these Regulations and Standards; need only be counted once. Any temporary source issued an operating permit under Article 2, Section 10 of the Regulations and Standards shall pay an annual fee based on emissions which occurred during the time period the source was located and operated in Lincoln or Lancaster County. The annual emission fees shall be assessed in accordance with the following:
- (+)(a) Fee Schedule:
- (a)(1) Major sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards; paragraph (A)(2)(b) and (A)(2)(c) of this section with the minimum annual emission fee to be no less than \$2,500.00.
- (b)(2) Synthetic Minor sources shall pay an annual emission fee as required by Article 2; Section 29 of the Regulations and Standards; paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than \$1,250.00.
- (c)(3) Minor sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards; paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than \$250.00.
- (d)(4) Sources that have obtained a construction permit for a non-emergency generator(s) in accordance with the provisions set forth in Article 2, Section 17, paragraph (P) of these Regulations and Standards shall pay annual emission fees as follows:
- (+)(a) If the generator was operated only for emergency use and testing purposes during the previous calendar year, the source will not be required to pay any emission fees.
- (2)(b) If the generator was operated for non-emergency purposes during the previous calendar year, the source shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards; paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than \$250.00.
- (c) ~~Notification fee for a National Emission Standards for Hazardous Air Pollutants (NESHAPS asbestos project shall be \$275.00 per project.~~
- (b) The fee for emissions occurring in the 2011 calendar year is \$56.50 per ton, and is due and payable on July 1, 2012.
- (c) The emission fee is due and payable on actual emissions up to and including 4,000 tons per year for each pollutant.
- (3) For purposes of this section, the following definitions shall apply:
- (a) Major source shall mean any source that meets the criteria set forth in Article 2, Section 2 of these Regulations and Standards.
- (b) Synthetic Minor source shall mean any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 2 of these Regulations and Standards.

- (c) Minor source shall mean any source that does not meet the definition of a major source as defined in Article 2, Section 2 of these Regulations and Standards, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (A)(1) of these Regulations and Standards.
 - (4) Any person subject to the requirements of paragraph (A) of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.
 - (5) Payment of Fees -- Any person required to submit fees pursuant to paragraph (A) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.
 - (6) Failure to submit the fees required by paragraph (A) of this section by July 1st, in addition to other relief allowed by law, shall be cause for:
 - (a) Revocation of the source's operating and/or construction permit; and
 - (b) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (A)(4) above.
 - (7) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (A)(4) above.
- (B) Area Sources of Hazardous Air Pollutants Annual Fees.
- (1) Applicability -- The following provisions of this section shall apply to any person who owns or operates any source subject to requirements of Title 40, Part 63 of the Code of Federal Regulations (40 CFR Part 63), the nature of which necessitates that the source be the subject to inspection.
 - (2) Determination of Fee -- Owners or operators of sources identified in paragraphs (B)(2)(a) through (B)(2)(e) shall pay an annual fee in accordance with the following fee schedule:
 - (a) Area Source Bulk Gasoline Plants subject to 40 CFR Part 63 Subpart BBBBBB that are stand-alone plants or that are located at facilities that are not required to have a Class II operating permit - \$250.00
 - (b) Area Source Gasoline Dispensing Facilities subject to 40 CFR Part 63 Subpart CCCCCC with annual rolling subject to the requirements of §63.11118 (average monthly gasoline throughputs equal to or greater than 100,000 gallons) - \$300.00
 - (c) Area Source Paint Stripping and Miscellaneous Surface Coating Facilities subject to 40 CFR Part 63 Subpart HHHHHH
 - (1) Facilities using one ton or less of methylene chloride annually for paint stripping activities and that are not required to have a Class II operating permit - \$125.00
 - (2) Facilities using more than one ton of methylene chloride annually that are not required to have a Class II operating permit - \$250.00
 - (3) Miscellaneous surface coating operations (auto body shops and mobile equipment painting¹ and non auto body shops and non mobile equipment painting²) that are not required to have a Class II operating permit.
 - (a) Operations with one painter - \$125.00
 - (b) Operations with two painters - \$250.00
 - (c) Operations with 3 or more painters - \$500.00

¹ The fee shall not apply to a facility that has been granted an exemption by the USEPA, the Nebraska Department of Environmental Quality, or the LLCHD because none of its coatings contain any of the 5 metal hazardous air pollutants (HAPS).

² The fee shall not apply to a facility that has certified to the LLCHD that none of its coatings contain any of the five metal HAPS addressed by this rule.

- (4) Facilities that have petitioned for and have been issued an exemption (auto body shops and mobile equipment painting operations) from the Subpart HHHHHH rule or facilities that have certified to the LLCHD (non auto body shops and non mobile equipment painting operations) that they are exempt from the rule because none of their coatings contain any of the five metal HAPS addressed by this rule shall pay a one time exemption fee of \$250.00¹.

¹ Payment of the one time fee assumes that a facility will continue to qualify for exempt status throughout the life of that facility. The exemption or certification fees shall not apply to facilities where all coatings are spray applied with a hand-held device whose paint cup capacity is 3 fluid ounces or less, where coatings are applied by using hand-held non refillable aerosol containers such as spray cans, where coatings are applied using powder coating equipment, where coatings are applied using non spray application methods such as brushing or rolling, or where non atomizing coating application technology (such as flow coating, dip coating and electrodeposition) is utilized.

(d) Area Source Plating and Polishing Operations subject to 40 CFR Part 63 Subpart WWWWWW that are not required to have a Class II operating permit - \$500.00

(e) Area Source Metal Fabrication and Finishing Facilities subject to 40 CFR Part 63 Subpart XXXXXX that are not required to have a Class II operating permit - \$500.00

- (3) Payment of Fees -- Any person required to submit fees pursuant to paragraph (B) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 2011. All fees paid in accordance with the section shall be non-refundable.

- (4) Failure to submit the fees required by paragraph (B) of this section by July 1st, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (B)(3) above.

~~(2) For purposes of this section, the following definitions shall apply:~~

~~(a) Major source shall mean any source that meets the criteria set forth in Article 2, Section 2 of the Regulations and Standards.~~

~~(b) Synthetic Minor source shall mean any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 2 of the Regulations and Standards.~~

~~(c) Minor source shall mean any source that does not meet the definition of a major source as defined in Article 2, Section 2 of the Regulations and Standards, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (a)(1) of the Regulations and Standards.~~

~~(C) Any person subject to the requirements of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.~~

~~(D) Payment of Fees -- Any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.~~

- ~~(E) Failure to submit the fees required by this section, in addition to other relief allowed by law, shall be cause for:~~
- ~~(1) Revocation of the source's operating and/or construction permit; and~~
- ~~(2) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D) above.~~
- ~~(F) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (D) above.~~
- (C) National Emission Standards for Asbestos - Project Notification Fees.
- (1) Applicability -- Any person or source who engages in activities subject the requirements of Title 40, Part 61 of the Code of Federal Regulations (40 CFR Part 61) Subpart M: National Emission Standard for Asbestos (NESHAP asbestos projects) shall pay a notification fee of \$285.00 per project.
- (2) Payment of Fees -- Any person required to submit fees pursuant to paragraph (C) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days of billing by the Department. All fees paid in accordance with the section shall be non-refundable.
- (3) Failure to submit the fees required by paragraph (C)(1) of this section within thirty (30) days after billing by the Department, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (C)(2) above.
- (D) Construction Permit Fees.
- (1) Applicability - Any person or source required to obtain a construction permit under Article 2, Section 17 of these Regulations and Standards shall pay a construction permit fee for activities included under Article 2, Section 30, paragraph (A) of these Regulations and Standards. The construction permit fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00.
- (2) Payment of Fees - - Any person required to submit fees pursuant to paragraph (D) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the permit.
- (3) Failure to submit the fees required by paragraph (D)(1) of this section within thirty (30) days after the issuance of a construction permit, in addition to other relief allowed by law, shall be cause for:
- (a) Revocation of the source's operating and/or construction permit; and
- (b) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D)(2) above.
- (E) Emergency Electrical Generator Construction Permit Exemption Fees.
- (1) Applicability - Any person or source requesting to obtain an emergency electrical generator construction permit exemption in accordance with Article 2, Section 17, paragraph (O) of these Regulations and Standards shall pay an exemption fee for review of the construction permit exemption request and issuance of the construction permit exemption. The construction permit exemption fee is \$50.00 per generator.

- (2) Payment of Fees -- Any person required to submit fees pursuant to (E) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable at the time of submittal of the construction permit exemption request. All fees paid in accordance with this section shall be non-refundable.
- (3) Failure to submit the fees required by paragraph (E)(1) of this section at the time of submittal of the construction permit exemption request, in addition to other relief allowed by law, shall be cause for the Department to not issue the exemption.
- (F) Variance Fees
- (1) Applicability - Any person or source issued a variance in accordance with the requirements set forth in Article 1, Section 5 of these Regulations and Standards shall pay a fee for all activities associated with application for and issuance of the variance. The variance fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00.
- (2) Payment of Fees - - Any person required to submit fees pursuant to paragraph (F) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the variance. All fees paid in accordance with the section shall be non-refundable.
- (3) Failure to submit the fees required by paragraph (F) of this section within 30 days after the issuance of a variance, in addition to other relief allowed by law, shall be cause for:
- (a) Revocation of the source's operating and/or construction permit and/or the variance; and
- (b) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (F)(2) above.
- (G) ~~The rate structure~~ Fees will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health may recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure may be adopted by Resolution of the two governing bodies, individually, as a result of a recommendation by the Board of Health, or at the initiation of either of the two governing bodies.
- (H) All money collected from the ~~permit fees, and air quality service charges~~ provided for herein; shall be payable to the Lincoln-Lancaster County Health Department and shall be credited to the Air Pollution Control Fund.

v. September 2010₁

ARTICLE 1
SECTION 6

ANNUAL FEES

SECTION 6. ANNUAL FEES.

(1) Applicability -- The provisions of this Regulations and Standards section shall apply to any person who owns or operates a source as defined in Article 2, Section 1 of these Regulations and Standards and is required to obtain any one of the following: 1) A Class I or a Class II operating permit in accordance with Article 2, Section 5 of the Regulations and Standards; 2) A construction permit in accordance with Article 2, Section 17 of the Regulations and Standards; or 3) Any source subject to an applicable requirement (other than permitting) of the Regulations and Standards the nature of which necessitates that the source submit an annual emissions report and/or be the subject of an annual or biannual inspection.

(2) Calculation of Fee -- Beginning July 1, 1999, owners or operators of sources, identified in paragraph (A) above, shall pay an annual fee. The fee shall be based on the actual emission tonnage as established in the emission inventory for the previous calendar year beginning with calendar year 1998. For purposes of this section, a pollutant which may be regulated under more than one provision of these Regulations and Standards; need only be counted once. Any temporary source issued an operating permit under Article 2, Section 10 of the Regulations and Standards shall pay an annual fee based on emissions which occurred during the time period the source was located and operated in Lincoln or Lancaster County. assessed in accordance with the following:

(1) Fee Schedule:

(a) Major sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, with the minimum annual emission fee to be no less than \$2,500.00.

(b) Synthetic Minor sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than \$1,250.00.

(c) Minor sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, paragraph with the minimum annual emission fee to be no less than \$250.00.

(d) Sources that have obtained a construction permit in accordance with the provisions set forth in Article 2, Section 17, paragraph (P) shall pay annual emission fees as follows:

(1) If the generator was operated only for emergency use and testing purposes during the previous calendar year, the source will not be required to pay any emission fees.

(2) If the generator was operated for non-emergency purposes during the previous calendar year, the source shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, paragraph (A)(2)(b) of this section, with the minimum annual emission fee to be no less than \$250.00.

(e) Notification fee for a National Emission Standards for Hazardous Air Pollutants (NESHAPS) asbestos project shall be \$275.00 per project.

payable on July 1, 2012.

(c) The emission fee is due and payable on actual emissions up to and including 4,000 tons per year for each pollutant.

(3) For purposes of this section, the following definitions shall apply:

(a) Major source shall mean any source that meets the criteria set forth in Article 2, Section 2 of these Regulations and Standards.

ARTICLE 1
SECTION 6

ANNUAL FEES

- (b) Synthetic Minor source shall mean any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 2 of these Regulations and Standards.
- (c) Minor source shall mean any source that does not meet the definition of a major source as defined in Article 2, Section 2 of these Regulations and Standards, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (A)(1) of these Regulations and Standards.
- (4) Any person subject to the requirements of paragraph (A) of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.
- (5) Payment of Fees -- Any person required to submit fees pursuant to paragraph (A) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.
- (6) Failure to submit the fees required by paragraph (A) of this section by July 1st, in addition to other relief allowed by law, shall be cause for:
 - (a) Revocation of the source's operating and/or construction permit; and
 - (b) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D)(A)(4) above.
- (7) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (A)(4) above.

- (1) Applicability -- The following provisions of this section shall apply to any person who owns or operates any source subject to requirements of Title 40, Part 63 of the Code of Federal Regulations (40 CFR Part 63), the name of which necessitates that the source be the subject to inspection.
- (2) Determination of Fee -- Owners or operators of sources identified in paragraphs (B)(2)(a) through (B)(2)(c) shall pay an annual fee in accordance with the following fee schedule:
 - (f)(a) Area Source Bulk Gasoline Plants subject to 40 CFR Part 63 Subpart BBBBBB that are stand-alone plants or that are located at facilities that are not required to have a Class II operating permit - \$250.00
 - (g)(b) Area Source Gasoline Dispensing Facilities subject to 40 CFR Part 63 Subpart CCCCCC with annual rolling subject to the requirements of §63.11118 (average monthly gasoline throughputs equal to or greater than 100,000 gallons) - \$300.00
 - (h)(c) Area Source Paint Stripping and Miscellaneous Surface Coating Facilities subject to 40 CFR Part 63 Subpart HHHHHH
 - (1) Facilities using one ton or less of methylene chloride annually for paint stripping activities and that are not required to have a Class II operating permit - \$125.00
 - (2) Facilities using more than one ton of methylene chloride annually that are not required to have a Class II operating permit - \$250.00
 - (3) Miscellaneous surface coating operations (auto body shops and mobile equipment painting¹ and non auto body shops and non mobile equipment painting²) that are not

ARTICLE 1
SECTION 6

ANNUAL FEES

required to have a Class II operating permit.

- (aa) Operations with one painter - \$125.00
- (bb) Operations with two painters - \$250.00
- (cc) Operations with 3 or more painters - \$500.00

¹ The fee shall not apply to a facility that has been granted an exemption by the USEPA, the Nebraska Department of Environmental Quality, or the LLCHD because none of its coatings contain any of the 5 metal hazardous air pollutants (HAPS).

² The fee shall not apply to a facility that has certified to the LLCHD that none of its coatings contain any of the five metal HAPS addressed by this rule.

- (4) Facilities that have petitioned for and have been issued an exemption (auto body shops and mobile equipment painting operations) from the Subpart HHHHHH rule or facilities that have certified to the LLCHD (non auto body shops and non mobile equipment painting operations) that they are exempt from the rule because none of their coatings contain any of the five metal HAPS addressed by this rule shall pay a one time exemption fee of \$250.00¹.

¹ Payment of the one time fee assumes that a facility will continue to qualify for exempt status throughout the life of that facility. The exemption or certification fees shall not apply to facilities where all coatings are spray applied with a hand-held device whose paint cup capacity is 3 fluid ounces or less, where coatings are applied by using hand-held non refillable aerosol containers such as spray cans, where coatings are applied using powder coating equipment, where coatings are applied using non spray application methods such as brushing or rolling, or where non atomizing coating application technology (such as flow coating, dip coating and electrodeposition) is utilized.

- (i) Area Source Plating and Polishing Operations subject to 40 CFR Part 63 Subpart WWWWWW that are not required to have a Class II operating permit - \$500.00
- (j) Area Source Metal Fabrication and Finishing Facilities subject to 40 CFR Part 63 Subpart XXXXXX that are not required to have a Class II operating permit - \$500.00

(3) Payment of Fees -- Any person required to submit fees pursuant to paragraph (B) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 2011. All fees paid in accordance with the section shall be non-refundable.

(4) Failure to submit the fees required by paragraph (B) of this section by July 1st, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (B)(3) above.

(2) For purposes of this section, the following definitions shall apply:

- (a) Major source shall mean any source that meets the criteria set forth in Article 2, Section 2 of the Regulations and Standards.
- (b) Synthetic Minor source shall mean any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 2 of the Regulations and Standards.
- (c) Minor source shall mean any source that does not meet the definition of a major source as defined in Article 2, Section 2 of the Regulations and Standards, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (a)(1) of the Regulations and Standards.

(c) Any person subject to the requirements of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee

ARTICLE 1
SECTION 6

ANNUAL FEES

based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards:

- (D) — Payment of Fees — Any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.
- (E) — Failure to submit the fees required by this section, in addition to other relief allowed by law, shall be cause for:
- (1) — Revocation of the source's operating and/or construction permit; and
 - (2) — Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D) above.
- (F) — If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (D) above.

(C) National Emission Standards for Asbestos - Project Notification Fees.

- (1) **Applicability — Any person or source who engages in activities subject the requirements of Title 40, Part 61 of the Code of Federal Regulations (40 CFR Part 61) Subpart M: National Emission Standard for Asbestos (NESHAAP asbestos projects) shall pay a notification fee of [redacted] per project.**
- (2) **Payment of Fees — Any person required to submit fees pursuant to paragraph (C) of this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days of billing by the Department. All fees paid in accordance with the section shall be non-refundable.**
- (3) **Failure to submit the fees required by paragraph (C)(1) of this section within thirty (30) days after billing by the Department, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (C)(2) above.**

17 of these Regulations and Standards shall pay a construction permit fee for activities included under Article 2, Section 30, paragraph (A) of these Regulations and Standards. The construction permit fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00.

- (2) **Payment of Fees — Any person required to submit fees pursuant to paragraph (D) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the permit.**
- (3) **Failure to submit the fees required by paragraph (D)(1) of this section within thirty (30) days after the issuance of a construction permit, in addition to other relief allowed by law, shall be cause for:**
 - (a) **Revocation of the source's operating and/or construction permit; and**
 - (b) **Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D)(2) above.**

ARTICLE 1
SECTION 6

ANNUAL FEES

- (1) **Applicability - Any person or source requesting to obtain an emergency electrical generator construction permit exemption in accordance with Article 2, Section 17, paragraph (C) of these Regulations and Standards shall pay an exemption fee for review of the construction permit exemption request and issuance of the construction permit exemption. The construction permit exemption fee is \$50.00 per generator.**
- (2) **Payment of Fees -- Any person required to submit fees pursuant to (E) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable at the time of submittal of the construction permit exemption request. All fees paid in accordance with this section shall be non-refundable.**
- (3) **Failure to submit the fees required by paragraph (E)(1) of this section at the time of submittal of the construction permit exemption request, in addition to other relief allowed by law, shall be cause for the Department to not issue the exemption.**
- (1) **Applicability - Any person or source issued a variance in accordance with the requirements set forth in Article 1, Section 5 of these Regulations and Standards shall pay a fee for all activities associated with application for and issuance of the variance. The variance fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00.**
- (2) **Payment of Fees -- Any person required to submit fees pursuant to paragraph (F) of this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the variance. All fees paid in accordance with the section shall be non-refundable.**
- (3) **Failure to submit the fees required by paragraph (F) of this section within 30 days after the issuance of a variance, in addition to other relief allowed by law, shall be cause for:**
- (a) **Revocation of the source's operating and/or construction permit and/or the variance; and**
 - (b) **Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (F)(2) above.**
- (G) **The rate structure fees** will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health may recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure may be adopted by Resolution of the two governing bodies, individually, as a result of a recommendation by the Board of Health, or at the initiation of either of the two governing bodies.
- (H) All money collected from the permit fees, and air quality service charges provided for herein; shall be payable to the Lincoln-Lancaster County Health Department and shall be credited to the Air Pollution Control Fund.

v. September 2010₁

SECTION 8. OPERATING PERMIT -- CONTENT.

- (A) Each Class I Operating Permit shall include the standard permit requirements in paragraphs (B) through (K) of this section.
- (B) Emission limitations and standards. Each permit shall specify emission limitations and standards, including those operational requirements and limitations that assure compliance with all requirements applicable at the time of permit issuance.
- (1) The permit shall specify and reference the origin of, and authority for, each term or condition. In addition, it shall identify any difference to the terms or conditions as compared to the applicable requirement upon which the term or condition is based.
 - (2) Where an applicable requirement is more stringent than an applicable requirement specified in Section 26 of these Regulations and Standards, both provisions shall be incorporated into the permit.
 - (3) If an applicable implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance equivalent to that contained in the plan, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicated procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.
- (C) Permit duration
- (1) Class I and Class II operating permits shall be issued for a fixed term not to exceed 5 years;
 - (2) The term of a permit shall not be extended by modification beyond the maximum duration specified except that the conditions of an expiring permit shall continue until the effective date of a new permit in accordance with Section 12 of these Regulations and Standards, provided that:
 - (a) The permittee has submitted a timely application (except as provided in (C)(3)) which has been deemed complete by the Department, and
 - (b) The Director, through no fault of the permittee, does not issue a new permit with an effective date before the expiration date of the previous permit.
 - (3) A Class II permittee who has failed to submit a permit renewal application by the deadline established in the current permit may apply for a variance in order to have the conditions of an expiring permit extended until the effective date of a new permit. The variance request shall be submitted no later than 30 days after the deadline for submittal of the permit renewal application and according to the requirements of Article 1, Section 5 of the Regulations and Standards. The Director may grant a variance of up to 60 days to submit the permit renewal application.
- (D) Monitoring and related record keeping and reporting requirements.
- (1) Each Class I permit shall contain the following monitoring requirements:
 - (a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods established in Section 21 of these Regulation and Standards or pursuant to any permit or order issued by the Director under these Regulation and Standards.
 - (b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.
 - (c) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods and quality assurance and control procedures.

- (2) Each Class I permit shall incorporate all applicable record keeping requirements and require, if necessary, the following:
- (a) Records of required monitoring information that include the following:
 - (1) The date and place as defined in the permit, and time of sampling or measurements;
 - (2) The date(s) analyses were performed;
 - (3) The company or entity that performed the analyses;
 - (4) The analytical techniques or methods used;
 - (5) The results of such analyses; and
 - (6) The operating conditions existing at the time of sampling or measurement.
 - (b) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The permit may specify that records may be maintained in computerized form.
- (3) Each Class I permit shall incorporate all applicable reporting requirements and require the following:
- (a) Submittal of reports of required monitoring at least every 6 months. All instances of deviation from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official in accordance with Section 7, paragraph (H) of these Regulations and Standards.
 - (b) Reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permit shall require reporting of deviations as follows:
 - (1) Any deviation resulting from emergency or upset conditions as defined in Section 11 of these Regulations and Standards shall be reported within two working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under said section;
 - (2) Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable;
 - (3) Any other deviations that are identified in the permit as requiring more frequent reporting than the permittee's semi-annual report shall be reported on the schedule specified in the permit.
 - (4) All reports of deviations shall identify the probable cause of the deviations and any corrective actions or preventative measures taken.
- (4) Every report submitted under Subparagraph (D) (3) shall be certified by a responsible official, except that of a deviation required under subparagraph (D) (3) (b) of this section must be submitted within ten days of the deviation, the report may be submitted initially without a certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the deviation.
- (E) Acid Rain. Each Class I permit issued to an Affected source shall include a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under the Act.
- (1) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Title IV acid rain program developed under the Act, provided that such increases do not require a permit revision under any other applicable requirement.
 - (2) No limit shall be placed on the number of allowances held by the source.
 - (3) The allowances a source possesses shall not be a defense to noncompliance with any other applicable requirement.
 - (4) Any allowances shall be accounted for according to procedures established in Section 26 of these Regulations and Standards.
- (F) Severability. Each Class I and Class II permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

- (G) General conditions. Each permit shall contain the following provisions:
- (1) The permittee must comply with all conditions of the Class I and Class II permit. Any permit noncompliance shall constitute a violation of these Regulations and Standards and the Act, and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 - (2) It shall not be a defense for a permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - (3) The permit may be modified; revoked, reopened, and reissued; or terminated for cause in accordance with the provisions of these Regulations and Standards. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not supersede any permit condition.
 - (4) The permit does not convey any property rights of any sort, or any exclusive privilege.
 - (5) The permittee shall furnish to the Department, within the time specified by the Department, any information requested by the Department in writing to determine whether cause exists for modifying, revoking and reissuing; or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department, copies of records required to be kept in accordance with the permit or, for information claimed to be confidential, the permittee may furnish such records along with a claim of confidentiality pursuant to, Nebraska Revised Statute 84-712.05.
 - (6) The provisions of a permit issued under these Regulations and Standards supersede the provisions of any previously issued operating or construction permit.
- (H) Fees. Each Class I and Class II operating permit shall contain a provision to ensure that a major source of regulated pollutants pay fees to the Department consistent with the fee schedule in Article 1, Section 6 and Article 2, Section 29 of these Regulations and Standards.
- (I) Alternative operating scenarios. Each permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:
- (1) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which the source is operating;
 - (2) Must ensure that the terms and conditions of each alternative scenario meet all applicable requirements and the requirements of the permit ; and
 - (3) The permit shield, if requested, described in paragraph (N) of this section shall apply to all terms and conditions under each such operating scenario.
- (J) Reopening for cause. Each permit shall include provisions specifying the conditions under which the permit will be reopened, revoked and reissued, or terminated, in accordance with Section 15, paragraph (F) of these Regulations and Standards.
- (K) Risk Management Plans. If the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act or these Regulations and Standards, the permit will specify that the permittee will comply with the requirement to register such a plan. The content of the risk management plan will not be incorporated as a permit term. The permit shall require:
- (1) Verification of the plan preparation and submittal to the Department, the State Emergency Response Commission, and any local Emergency Planning Committee; and
 - (2) Annual Certification in accordance with Section 7, paragraph (F)(2)(i)(3) of these Regulations and Standards that the risk management plan is being properly implemented.

- (L) Compliance requirements. All Class I operating permits shall contain the following elements with respect to compliance:
- (1) Consistent with paragraph (D) above, compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a Class I permit shall contain a certification by a responsible official that meets the requirements of Section 7, paragraph (H) of the Regulations and Standards.
 - (2) Inspection and entry requirements that require the permittee to allow the Department, EPA or an authorized representative, upon presentation of credentials and other documents, to:
 - (a) Enter upon the permittee's premises at reasonable times where a source subject to a Class I operating permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (c) Inspect at reasonable times any facilities, pollution control equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under the permit, and
 - (d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
 - (3) A schedule of compliance consistent with Section 7, subparagraph (F) (2) (h) of these Regulations and Standards.
 - (4) Progress reports consistent with an applicable schedule of compliance and Section 7, subparagraph (F) (2) (h) of these Regulations and Standards, to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Director. Such progress reports shall contain the following:
 - (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - (b) An explanation of why any dates in the schedule of compliance were not met, or will not be met, and any preventive or corrective measures adopted.
 - (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
 - (a) The frequency, not less than annually or such more frequent periods as specified in the applicable requirement or by the Department, or submissions of compliance certifications;
 - (b) In accordance with paragraph (D) above, a means of monitoring the compliance of the source with its emissions limitations, standards and work practices;
 - (c) A requirement that the compliance certification include the following:
 - (1) The identification of each term or condition of the permit that is the basis of the certification;
 - (2) The compliance status;
 - (3) A determination of whether compliance was continuous or intermittent;
 - (4) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with the paragraph (D) above; and
 - (5) Such other facts as the Department may require to determine the compliance status of the source;
 - (d) A requirement that all compliance certifications be submitted to the Administrator as well as to the Department; and
 - (e) Such additional requirements as may be specified pursuant to these Regulations and Standards, or the applicable Implementation Plan, or any permit issued under these Regulations and Standards.

- (M) The Director may place such conditions and restrictions upon a permit issued or renewed under this section as he or she deems necessary to protect public health or the environment. Such conditions or restrictions may be placed upon the permit at the time it is issued, modified, or renewed. By the way of example, and not of limitation, such conditions or restrictions may be new federal applicable requirements not yet adopted in these Regulations and Standards.
- (N) Permit Shield for Class I Permits.
- (1) If requested in the permit application, the permit shield provided in this section shall be included in the permit.
 - (2) The permit shield shall provide that compliance with a permit during its term constitutes compliance with all applicable requirements identified pursuant to Section 7 of these Regulations and Standards as of the date of permit issuance, provided that:
 - (a) Such applicable requirements are included and specifically identified in the permit; or
 - (b) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination.
 - (3) The permit shield does not affect:
 - (a) The provisions for granting variances;
 - (b) Liability for any violation of applicable requirements, or applicable requirements under the Act, prior to or at the time of permit issuance;
 - (c) The applicable requirements of Section 26 of these Regulations and Standards;
 - (d) The authority of the Department or EPA to obtain information; or
 - (e) Any other permit provisions, terms, or conditions, including, but not limited to, construction permits issued pursuant to Section 17 of these Regulations and Standards or permits issued pursuant to other states or local ordinances, rules or regulations.
 - (4) A Class I permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (O) Each Class II operating permit shall include those permit requirements applicable to Class II sources and any additional requirements which the Director deems appropriate, including but not limited to, the following:
- (1) Emissions limitations and standards which are at least as stringent as any applicable requirement or other requirements contained in the State Implementation Plan.
 - (2) Monitoring and related record keeping and reporting requirements.
 - (3) Compliance certification, testing, monitoring, reporting, and record keeping requirements.
- (P) All terms and conditions in a Class I and Class II operating permit, including any provisions designed to limit a source's potential to emit, are enforced by the Administrator and citizens under the Act except those terms and conditions which have been specifically designated as not federally enforceable under paragraph (Q) below.
- (Q) Each Class I permit shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.
- (R) If an applicable requirement provides for the trading of increases and decreases of emissions without a case-by-case approval of each emissions trade, and if requested by the applicant in its permit application, the Director shall establish terms and conditions for the trading of such emissions increases and decreases within the permitted facility. Such terms and conditions shall include all terms required by these Regulation and Standards to determine compliance and must meet all terms specified in the applicable requirement which allows such trading.

- (S) If an applicant requests in its application, the Director shall establish terms and conditions in the permit allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Emissions from emissions units which are not quantifiable and for which there are no replicable procedures shall not be included in any trades. The permit shall also require compliance with all applicable requirements.

Ref: Title 129, Chapter 8, Nebraska Department of Environmental Quality

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 or emission unit, such that there is a net increase in potential emissions equal to or exceeding the following levels (except as provided in paragraph (A)(3)):
 - (a) For any source which is major for purposes of prevention of significant deterioration, any increase in particulate matter emissions which would subject such source to review or, except for enforceable limits established through the construction permit issued pursuant to this section would subject such source to review under the provisions of 40 CFR Part 52, as adopted in Article 2, Section 19.
 - (b) Fifteen (15) tons/year of PM₁₀ emissions.
 - (c) Forty (40) tons/year of SO₂, or SO₃, or any combination of the two.
 - (d) Forty (40) tons/year of oxides of nitrogen (calculated as NO₂)
 - (e) Forty (40) tons/year of volatile organic compounds (VOC).
 - (f) Fifty (50) tons/year of carbon monoxide.
 - (g) Six tenths (0.6) tons/year of lead.
 - (h) 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, including all associated fugitive emissions.

When determining the net change in potential emissions under paragraph (A)(1) above, fugitive emissions shall be addressed in accordance with the requirements of Article 2, Section 2, paragraph (A)(1) and paragraph (B) without regard to classification of the source as major or minor.

- (2) Any incinerator used for refuse disposal or for processing of salvageable materials, any human/animal crematory, and any Type 4 (pathological) waste burning incinerator, 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.
- (3) When a source replaces an existing emission unit with a new unit, that performs the same function as that of the unit being replaced, netting shall not be used to determine the need for a permit under this section, except as follows:
 - (a) The procedure for determining a net increase in projected actual emissions will be allowed for sources where the equipment replacement would be subject to the requirements of Article 2, Section 19 of these Regulations and Standards; and
 - (b) In cases where the source can demonstrate to the Department that netting will result in a net reduction in emissions of individual criteria and toxic air pollutants and total toxic air pollutants, where applicable. In this case, the source may also use actual emissions decreases from emission units that are dissimilar in function to the unit(s) being replaced in order to make this demonstration, provided the actual emissions decreases are concurrent with the planned replacement. However, any emissions increases that occur at this time with respect to these emission units must also be included in this demonstration. The result of the netting calculation must be a difference of less than zero tons per year of emission. This demonstration is not applicable to emission units that are subject to the requirements of Article 2, Section 27 paragraph (C).
 - (c) If the exceptions of (a) or (b), above are not applicable, the potential emissions of regulated air pollutants associated with the new (replacement) unit alone shall be used to determine the need for a permit, i.e., no reduction in emissions from the new unit shall be allowed because of the elimination of actual emissions from the existing emission unit which is being replaced and those associated with other emission units at the facility. A new unit shall not mean an existing emission unit which is being relocated from another site.

(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.

- (1) The permittee must comply with all conditions of the construction permit. Any permit noncompliance shall constitute a violation of these Regulations and Standards and the Act and is grounds for enforcement action or permit revocation.

- (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 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 following significant levels at any locality that does not or would not meet the applicable national standard:

Pollutants	Annual	Averaging Time 24 hrs	Averaging Time 8 hrs	Averaging Time 3 hrs	Averaging Time 1 hr
	SO ₂	1.0 ug/m ³	5.0 ug/m ³	-----	25 ug/m ³
PM ₁₀	1.0 ug/m ³	5.0 ug/m ³	-----	-----	-----
NO ₂	1.0 ug/m ³	-----	-----	-----	-----
CO	-----	-----	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 procedures in Article 2, 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 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 of 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 emission 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 (LAER); 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, 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 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 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 these Regulations and Standards allow a 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 had 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 shutdown 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 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 51 Subpart I or in demonstrating attainment or reasonable further progress.
 - (g) Emissions reductions otherwise required by the Act or these Regulations and Standards 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 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) Primary zinc smelters;
 - (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) Lign plants;
 - (l) Phosphate rock processing plant;
 - (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 hours 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 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 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 paragraph (N)(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 paragraph (C), above, and provide such additional information as may be required to determine if the conditions of paragraph (N)(1), above, 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 paragraph (N)(1), above, must be processed through the full construction permit process as provided in paragraphs (C) through (M), above.
- (O) Construction Permit Exemption for Commercial, Industrial, and Institutional Emergency Generators. This subsection shall apply to the following emergency generators where the total emergency generator capacity at a commercial, industrial, or institutional facility is or will be equal to or greater than 200 KW (kilowatts) for fuel oil, LPG or natural gas-fired units, or equal to or greater than 19 KW where one or more of these generators is fueled with gasoline: (a) Stationary units that are installed on or after 11-15-09 provided that the owner/operator submits the request for exemption no later than 60 days after installation; and (b) Portable units that are installed on or after 11-15-09 provided that the owner/operator submits the request for exemption no later than 2 days after installation except as provided for in paragraph (O)(3), below, for disasters. Owners/operators of emergency electrical generators that do not submit the request for exemption within the time period provided for in (a) or (b) shall be required to obtain a construction permit in accordance with the requirements of Article 2, Section 17 (A)(1) of the Regulations and Standards. Within 18 months of issuance of a construction permit, the Department may require an owner/operator to submit an application for an operating permit in accordance with Article 2, Section 5 or 10 (portable units) of the Regulations & Standards.
- (1) To qualify for the exemption, owners/operators of these units shall comply with the following requirements:
 - (a) Stipulate that annual operating hours for a unit will not exceed 500 (including maintenance and readiness testing) and that records of annual operating hours will be maintained. Also, for stationary units manufactured after April 1, 2006, stipulate that maintenance and readiness testing of such units shall be limited to no more than 100 hours per year. If the owner/operator of a unit manufactured after April 1, 2006 can provide the Director with information that indicates a Federal, State, or local standard, the manufacturer, the vendor, or an insurance company associated with the unit recommends maintenance and readiness testing of the emergency electrical generator beyond 100 hours per year, the 100 hour per year limit shall not be imposed. However, the overall operating limit of 500 hours per year shall not be exceeded.
Stationary emergency generators (engines) may be operated up to 50 hours per year in non-emergency situations and up to 15 hours per year as part of a demand response program provided that this is allowed by the requirements of the rule that are applicable to emergency stationary reciprocating internal combustion engines (RICE). Depending on the age (new, modified, reconstructed, existing), type of engine (spark ignition, compression ignition), size

- of engine (bhp rating), and in the case of hazardous air pollutants (HAPS) whether the engine is located at a major or minor source of HAPS, the applicability of one or more of the following rules should be assessed: (1) In the case of HAP requirements for new, reconstructed, or existing stationary emergency RICE, 40 CFR Part 63 Subpart ZZZZ, Section 63.6640, paragraph (f); (2) For new, modified, or reconstructed compression ignition engines, 40 CFR 60 Subpart IIII, Section 60.4211, paragraph (f); and (3) For new, modified or reconstructed spark ignition engines, 40 CFR Part 60 Subpart JJJJ, Section 60.4243, paragraph (d).
- (b) Record operating hours for both test and emergency conditions, and for any non-emergency and demand response hours, if applicable.
 - (c) The sulfur content of any fuel oil combusted in these units shall not exceed 0.05% (500 ppm) by weight. Beginning June 1, 2010, the per gallon sulfur content of non-road diesel fuel shall not exceed 15 ppm by weight and the cetane index or aromatic content shall either be a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent.
- (2) To obtain the exemption, owners/operators of stationary emergency generators, shall submit their requests to the Department and provide the following information for each unit:
- (a) The make and model number.
 - (b) The horsepower rating and KW rating, the date ordered, the date engine was manufactured (year), engine displacement (liters/cylinder), the type of engine - compression ignition or spark ignition, an if it is spark ignition, whether it is 2-stoke, 4-stoke, rich burn, or lean burn.
 - (c) The type of fuel (natural gas, LPG, gasoline, fuel oil) combusted.
 - (d) If fuel oil is combusted, indicate the grade, such as No. 2, and the sulfur content (% by weight). Provide a statement of certification from the fuel supplier confirming the grade and sulfur content of the fuel oil delivered and a letter from the owner/operator certifying that this is the only type of fuel oil being combusted. If gasoline is combusted, the owner/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, Section 80.195.
 - (e) An estimate of the anticipated annual hours of unit operation at the commercial, industrial, or institutional facility. The estimate shall included both test and emergency operating conditions.
 - (f) The estimated quantity of fuel that will be combusted annually.
 - (g) A site plan showing the proposed location of the unit and the location of any adjacent habitable structures, such as businesses, schools, and residences. The height of the unit's exhaust stack and the elevations of surrounding habitable structures shall also be indicated. Approval of the unit's location by the Department is required before an exemption will be grants.
- Owner/operators who are planning to install stationary emergency generators should be aware that several rules promulgated by the U.S.E.P.A. may be applicable to the internal combustion engines (ICE) associated with these units. In order to assess rule applicability and to evaluate possible requirements, owner/operators are advised to contact the Department and to request the document, "Summary of Requirements for Stationary Internal Combustion Engines: 40 CFR Part 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition ICE; Part 60 Subpart JJJJ - Standards of Performance for Stationary Spark Ignition ICE; and Part 63 Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (RICE)."
- (3) To obtain the exemption, owners/operators of portable gasoline-powered emergency generators, shall submit their requests to the Department and provide the following information:
- (a) The information required in Article 2, Section 17, paragraphs (O)(2)(a) and (b); for horsepower and KW rating only; and
 - (b) The information required in Article 2, Section 17 (O)(2)(e) and (g)

An exemption 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 seven days (168 hours). If a portable unit will be operated more than seven days, the owner/operator shall be required to apply for the exemption within 24 hours after conclusion of the seventh day of operation in order to avoid the construction permit requirement. After these periods, the owner/operator will be required to submit a construction permit application and to obtain a permit, if an exemption was not obtained.

- (4) In the event the owner/operator of an emergency generator who holds an exemption no longer qualifies for the exemption according to the requirements of Article 2, Section 17, paragraphs (O)(1)(a) through (c), or the owner/operator chooses to operate the generator for other than emergency purposes, the owner/operator shall submit a construction permit application to the Department within 60 days of the finding or declaration and shall obtain a permit. Within 18 months of issuance of a construction permit, the Department may require the owner/operator to submit an application for an operating permit in accordance with the requirements of Article 2, Sections 5 or 10 of these Regulations and Standards.
- (5) Owners/operators of emergency generators who operate these units in non-compliance with the requirements of Article 2, Section 17, paragraphs (O)(2), (3), or (4) shall be deemed in violation of these requirements and shall be subject to the provisions of Article 1, Sections 3 and 4 of these Regulations and Standards. The owner/operator of an emergency generator whose hours of operation exceed 500 hours and/or 100 hours per year (for units manufactured after April 1, 2006) for maintenance and readiness testing during the year shall report these events to the Department no later than 30 days after the month in which the 500 and/or 100 hours per year limits were exceeded.
- (6) A processing fee for review of the construction permit exemption request shall be assessed in accordance with Article 1, Section 6 of these Regulations and Standards, according to the following schedule:

~~(a) The exemption request fee for a stationary emergency generator is \$50.00.~~

~~(b) The exemption request fee for up to three portable emergency generators is \$50.00, and for more than three generators the fee is \$120.00.~~

- (7) The Department will provide a letter of exemption to the owner/operator of an emergency generator who has requested the exemption, has provided the information required in Article 2, Section 17, paragraph (O)(2), and/or paragraph (O)(3), the Department has determined the unit qualifies for the exemption according to Article 2, Section 17, paragraphs (O)(1)(a) through (c), and has submitted the applicable exemption request fee. The exemption shall remain in effect for each unit that continues to qualify. In the event the Department determines that an exemption can not be granted, a letter explaining the reason(s) for refusal will be sent to the owner/operator. The owner/operator who is denied an exemption may provide additional information to support their request. If the Department, after review of this additional information, continues to deny the exemption, the owner/operator may appeal the decision to the Director according to the procedures established in Article 1, Section 4 of these Regulations and Standards.

- (P) Construction Permit Requirements for Commercial, Industrial, and Institutional Non-Emergency Generators. This subsection shall apply to any stationary electric power producing generators operated at commercial, industrial or institutional facilities where the owner/operator participates in a program established by the local utility in which the utility may request that the owner/operator use these generators to produce a limited number of hours of electric power during periods when power from the local utility is available. An owner/operator who participates in this program must obtain a construction permit from the Department that applies to all generators at the facility that may be used for this non-emergency purpose. The owner/operator may utilize these generators for emergency purposes but they will be designated as non-emergency generators for purposes of this subsection.

- (1) To qualify for and to obtain this permit, an owner/operator shall comply with the following requirements and provide the following information:
 - (a) Each generator that may be used for non-emergency purposes must be specifically identified. A distinction must be maintained between those generators that may be used to generate power for non-emergency purposes and those units that will be used solely as emergency generators.

- (b) The number of hours the unit may be operated for nonemergency purposes shall be limited to no more than 200 hours per calendar year, and for emergency purposes, including testing, the unit's operation shall be limited to no more than 300 hours per calendar year. For units manufactured after April 1, 2006, maintenance and readiness testing is limited to no more than 100 hours per year unless the owner/operator provides the Director with information that indicates a Federal, State, or local standard, the manufacturer, the vendor, or an insurance company associated with the unit recommends maintenance and readiness testing of these units beyond 100 hours per year. Regardless of the 200 hour limit allowed each unit for non-emergency operation, the emission limit established in paragraph (P)(1)(g) of this Section shall not be exceeded.
- (c) A record of unit operating hours for emergency and testing purposes and for non-emergency purposes shall be maintained on a monthly basis. These records shall be made available to authorized representatives of the Department upon request. The owner/operator shall report to the Department any exceedances of the 200 hour per year and/or 300 hour per year and/or the 100 hour per year limits limit that are applicable to a generator operating under the requirements of this subsection. The report of exceedances shall be submitted no later than 30 days after the month in which the 200 hour per year the 300 hour per year and/or the 100 hour per year limits are exceeded.
- (d) A record of the quantity of fuel (natural gas, LPG, gasoline, fuel oil) combusted annually for emergency and testing purposes and for non-emergency purposes shall be maintained.
- (e) An annual emissions inventory shall be submitted to the Department on forms provided by the Department by March 31st of each year, and shall contain information for the previous calendar year. The inventory must include a separate accounting of the emissions resulting from nonemergency operation and those resulting from emergency, including testing, operation of each generator subject to the requirements of this subsection. This submittal shall also include the records required in subparagraph (c) (operating hours) and (d) (quantities of fuel) above.
- (f) The sulfur content of fuel oil combusted shall not exceed 0.05% by weight. However, beginning June 1, 2010 the per gallon sulfur content of the non-road diesel fuel oil shall not exceed 15 ppm by weight and the cetane index or the aromatic content shall either be a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent. The owner/operator shall provide a statement of certification from the fuel supplier confirming that the fuel oil delivered does not exceed this limit, and the owner/operator shall also certify that oil with this sulfur limit is the only type of fuel oil being combusted. If gasoline is combusted the owner/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, Section 80.195.
- (g) Total criteria and non-criteria emissions from all of these units at a facility during non-emergency operation shall be less than ten (10) tons during a calendar year. The emission factors used to calculate these emissions shall be those provided in AP-42, by the generator manufacturer, or by other sources of information acceptable to the Department.
- (h) Within 30 days of the date the Department issues the construction permit, the owner/operator shall submit a construction permit fee in the amount required by Article 2, Section 30 of the Regulations and Standards.
- (i) Annually, the permittee shall pay emission fees to the Department in accordance with Article 1, Section 6, paragraph (B)(1)(d).
- (j) The owner/operator shall provide the following information for each non-emergency generator in the construction permit application submitted to the Department:
 - (1) The make and model number of the generator;
 - (2) The KW and horsepower ratings, the date ordered, the date engine was manufactured (year), engine displacement (liters/cylinder), the type of engine-compression ignition or spark ignition, and, if spark ignition, whether it is 2-stoke, 4-stoke, rich burn, or lean burn;
 - (3) The type of fuel(s) (natural gas, LPG, gasoline, fuel oil) combusted;

- (4) If fuel oil is combusted, indicate the grade, such as No. 2, the sulfur content (% by weight); the cetane index, and the aromatic content. If gasoline is combusted, indicate the sulfur content; and
- (5) A site plan showing the location of the stationary non-emergency generator(s) and the location of any adjacent habitable structures, such as businesses, schools, and residences. The height of each 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.
- Owner/operators who are planning to install stationary emergency generators or currently have existing stationary emergency generators that will be used for the kind of non-emergency purpose described here in Subsection (P) should be aware that several rules promulgated by the U.S.E.P.A. may be applicable to the internal combustion engines associated with these generators. In order to assess the applicability of these rules and to evaluate possible requirements, owner/operators are advised to contact the Department and to request the document. "Summary of Requirements for Stationary Internal Combustion Engines (ICE): 40 CFR Part 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition ICE; Part 60 Subpart JJJJ - Standards of Performance for Stationary Spark Ignition ICE; and Part 63 Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Stationary Reciprocating Internal Combustion Engines (RICE)."
- (2) The owner/operator who has been issued a construction permit for a stationary non-emergency generator(s) that will be operated in accordance with the requirements of this subsection is not required to obtain an operating permit for the unit provided that emissions from the unit in combination with those of other emissions units at the facility do not make the facility subject to the requirements of Article 2, Section 5 of these Regulations and Standards. The emissions from emergency generators operated in conjunction with non-emergency generators at a facility must also be included in determining the need for an operating permit. A non-emergency generator shall not be considered an insignificant activity and it must be included as an emission unit in the operating permit for facilities required to have this permit.
- (3) Construction permits issued under this subsection shall not be subject to the affected states review or the public participation provisions of Article 2, Sections 13 or 14 of these Regulations and Standards, respectively.
- (Q) Construction Permit Requirements for Commercial, Industrial, and Institutional Electrical Generators Used for Purposes Other Than Those Pertaining to paragraphs (O) and (P) of this Section. These generators, powered by fuel oil, natural gas, LPG or gasoline, shall be required to obtain a construction permit if the provisions of paragraph (A) of this Section apply. Additionally, these units may be subject to any or all of the operating permit requirements of Article 2, Sections 5, 9, and 10 of these Regulations and Standards. Owners/operators who are planning to install stationary electrical generators for purposes other than those described in paragraphs (O) and (P) of this section should be aware that the internal combustion engines associated with these generators, in particular those intended for non-emergency purposes, will likely be subject to the rules promulgated by the U.S.E.P.A. that are applicable to stationary internal combustion engines. In order to assess the applicability of these rules and to evaluate possible requirements, owner/operators should contact the Department and request the document. "Summary of Requirements for Stationary Internal Combustion Engines (ICE): 40 CFR Part 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition ICE; Part 60 Subpart JJJJ - Standards of Performance for Stationary Spark Ignition ICE; and Part 63 Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Stationary Reciprocating Internal Combustion Engines (RICE)."
- (R) Any person or source issued a construction permit under this section shall pay annual emission fees as required under Article 1, Section 6 of these Regulations and Standards.

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

v. ~~November 2010~~ September 2011

SECTION 29. OPERATING AND CONSTRUCTION PERMIT EMISSION FEES.

- (A) Applicability--The provisions of this section of the Regulations and Standards shall apply to any person who owns or operates a source that is required to obtain a Class I or Class II operating permit in accordance with Article 2, Section 5 of these Regulations and Standards, or is required to obtain a construction permit in accordance with Article 2, Section 17 of these Regulations and Standards.
- (B) Calculation of Fee--Beginning July 1, 1995, owners or operators of sources, identified in paragraph (A) above, shall pay an annual emission fee for each ton of a regulated air pollutant for fee purposes emitted to the air by the facility. Any temporary source issued an operating permit under Article 2, Section 10 of the Regulations and Standards shall pay an annual emission fee for emissions during the time period the source was located and operated in Lincoln or Lancaster County. The fee shall be based on the actual emission tonnage and as established in the emission inventory for the previous calendar year, beginning with calendar year 1994. For purposes of this section, a pollutant which may be regulated under more than one provision of these Regulations and Standards, need only be counted once.
- (1) The emission fee shall be determined by multiplying \$25 per ton of regulated air pollutant for fee purposes reported in the annual emission inventory report required in Article 2, Section 6 of these Regulations and Standards. The emission fee shall be increased or decreased annually by the Department in each year, beginning after 1991, by the percentage difference between the Consumer Price Index (CPI) for the most recent year ending before the beginning of such year and the CPI for the year 1989; or
- (2) The emission fee shall be as required to pay all reasonable direct and indirect costs of developing and administering the air quality permit programs identified in these Regulations and Standards.
- (3) The emission fee for each ton of actual emissions shall be established annually in Article 1, Section 6, paragraph (A)(2) of these Regulations and Standards.
- ~~(2)(4)~~ The emission fee is due and payable on Actual actual emissions up to and including 4,000 tons per year for each regulated air pollutant for fee purposes.
- ~~(C) Any person subject to the requirements of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.~~
- ~~(D) Payment of Fees--Any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with calendar year 1995, with submission of the annual emission inventory report form. All fees paid in accordance with this section shall be non-refundable.~~
- ~~(E) Failure to submit the fees required by this section, in addition to other relief allowed by law, shall be cause for:~~
- ~~(1) Revocation of the source's operating and or construction permit; and~~
- ~~(2) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D), above.~~
- ~~(F) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (D), above.~~
- ~~(G) The rate structure will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health shall recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure will be adopted by Resolution of the two governing bodies:~~

ARTICLE 2
SECTION 29

OPERATING PERMIT EMISSION FEES

(H) ~~All money collected from the permit fees, and air quality service charges herein provided for shall be payable to the Lincoln-Lancaster County Health Department and shall be credited to the Air Pollution Control Fund.~~

Ref: Title 129, Chapter 29, Nebraska Department of Environmental Quality

SECTION 30. CONSTRUCTION PERMIT FEE.

- (A) ~~For the following activities, a fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00. Any person or source required to obtain a construction permit in accordance with the requirements of Article 2, Section 17 of these Regulations and Standards shall pay a fee as prescribed under Article 1, Section 6, paragraph (D) for the following activities:~~
- (1) Review of an application for a permit for the construction, installation, modification, or reconstruction of processing machines, equipment or devices, fuel burning equipment, and waste incinerators;
 - (2) Development of a draft permit to construct, install, modify, or reconstruct;
 - (3) Review of an application or request to modify an existing permit to construct, install, modify, or reconstruct, whereas the modification(s) is defined as neither an "Administrative Permit Amendment", nor a "Minor Permit Modification" as provided in Article 2, Section 15 of these Regulations and Standards;
 - (4) Development of a modified draft permit to construct, install, modify, or reconstruct;
 - (5) Development of a statement of basis to issue an initial, or modified, permit to construct, install, modify, or reconstruct;
 - (6) Development of a document to provide notice for public participation as provided in Article 2, Section 14 of these Regulations and Standards.
 - (7) Issuance of a construction permit for a non-emergency electrical generator as referenced in Article 2, Section 17 (P), paragraph (1)(h) of these Regulation and Standards.

~~Payment of Fees -- any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after receipt of issuance of the permit.~~