

**UPPER BIG BLUE NATURAL RESOURCES DISTRICT
RULE 7
CEMIGATION RULES AND REGULATIONS SUPPLEMENTAL TO
NEBRASKA ADMINISTRATIVE CODE -
DEPARTMENT OF ENVIRONMENTAL QUALITY
TITLE 195 – CHEMIGATION REGULATIONS**

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CHAPTER 1 – AUTHORITY

1.1 These rules and regulations are adopted pursuant to the authority granted in Neb. Rev. Stat. §§46-701-754, the Nebraska Ground Water Management and Protection Act, and Neb. Rev. Stat. §§46-1101-1148, the Nebraska Chemigation Act and Title 195 N.A.C. These regulations are intended to apply district-wide.

CHAPTER 2 - DEFINITIONS

2.1 Applicator shall mean any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation whether for him or her own self or on behalf of the permit holder for the land on which the chemigation will take place.

2.2 Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.

2.3 Chemigation shall mean any process whereby chemicals are applied to land or crops in or with water through an on farm irrigation distribution system.

2.4 Council shall mean the Environmental Quality Council.

2.5 Department shall mean the Department of Environmental Quality.

2.6 Director shall mean the Director of Environmental Quality.

2.7 District shall mean Upper Big Blue Natural Resources District

2.8 Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.

2.9 Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.

2.10 Irrigation distribution system shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which

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is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

- 2.11 Open discharge system shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.
- 2.12 Permitholder shall mean the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.
- 2.13 Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- 2.14 Restricted Use Pesticide shall mean a pesticide classified as a restricted-use pesticide by the United States Environmental Protection Agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq., has been granted.
- 2.15 Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

CHAPTER 3 - CHEMIGATION APPLICATION

- 3.1 No person shall chemigate or authorize the application of chemicals to land or crops through the use of chemigation, unless such person obtains authorization from the District, via permit, authorizing such chemigation. No permit is required to pump or divert water to or through an open discharge system. Each injection location must be permitted on an annual basis, using forms provided by the

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District. Each permit expires on June 1 of each year, and the permit holder is solely responsible for renewal.

- 3.2 An application for a chemigation permit shall be considered received by the District on the date it is either hand delivered or received by mail, so long as the application is properly completed as per Nebraska Administrative Code Title 195, signed by the permit holder, and the permit holder has paid the requisite fee. (See Rule 7, Chapter 10 - Chemigation Permit Fee Schedule). Any incomplete, unsigned, or unpaid applications will be returned to the applicant.

CHAPTER 4 – CERTIFICATION

- 4.1 Pursuant to Title 195, Chapter 13, Nebraska Department of Environmental Quality, all chemigation applicators must undergo and maintain certification.
- 4.2 Training programs shall be offered through the University of Nebraska Cooperative Extension Service.
- 4.3 The director shall issue a certificate acknowledging the competency, determined through the use of a written examination prepared and administered by the department.
- 4.4 Each applicator's certificate, shall be valid for a period of four years, and shall expire on January 1 of the fourth year after the date of issuance.

CHAPTER 5 - ORIGINAL PERMIT PROCESS

- 5.1 The District shall review each completed permit application, conduct an inspection, and approve or deny the application within 45 days after the application is filed.
- 5.2 No chemigation permit, except a Special permit, shall be issued or renewed by the District, if any of the following conditions occur:
- 5.2.1 The applicant has failed to provide the required information, as specified in Title 195, Chapter 2, 002, Nebraska Department of Environmental Quality on the application form;
- 5.2.2 The irrigation distribution system does not comply with the equipment standards set forth in Title 195, Chapters 9 and 10, Nebraska Department of Environmental Quality;

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- 5.2.3 The applicator has not been certified as a chemigation applicator by the Department; or
 - 5.2.4 Failure of the applicant to remit the appropriate fee
- 5.3 Changes in application information shall be provided to the District within ten (10) days.

CHAPTER 6 - RENEWAL PROCESS

- 6.1 All permits must be renewed annually.
- 6.2 If a renewal application has not been completed and filed by June 1 with the requisite fee (See Rule 7, Chapter 10 - Chemigation Permit Fee Schedule), the permit shall not be renewed.
- 6.2.1 If a renewal was not been filed by June, the permit holder may submit a new applications as provided in Rule 7, Chapter 3.
- 6.3 Each application for renewal is subject to inspection of equipment and site to determine compliance with the Chemigation Act and Rule 7.
- 6.3.1 If an inspection reveals noncompliance, renewal shall be refused, suspended, or revoked until compliance is achieved, as determined by the District.
- 6.4 Under no circumstances may a permit be transferred.

CHAPTER 7 - SPECIAL PERMITS

- 7.1 If the chemigation system does not need all the safety equipment, as determined by District inspection, the District shall forward such information to the Department for review.
- 7.2 If the Department agrees with the District's inspection, the Department shall grant the District authority to issue a special permit. Before issuing a special permit, the District shall obtain information for special permits specified by N.A.C. Title 195, Ch. 5.

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CHAPTER 8 - EMERGENCY CEMIGATION PERMIT APPROVAL

- 8.1 A person may file an application for an emergency permit as established in Title 195, Chapter 6, Nebraska Department of Environmental Quality.
- 8.2 The District shall have two working days to review the permit before issuing or denying.
- 8.2.1 “Two working days” shall mean Monday through Friday, but does not include Saturday, Sunday or a federal or state holiday. The day the District receives the permit application is not included in the two working days.
- 8.3 On the second working day, the District shall complete its review and either issue or deny the permit. If the District has not denied the permit within two working days, the permit shall be deemed issued.
- 8.4 Emergency permits shall be valid for a period of forty five (45) days from the date of issuance.
- 8.5 Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of the Nebraska Chemigation Act or standards, rules and regulations adopted under it, shall have such permit automatically revoked by the District or the Department, without a hearing and shall be guilty of a Class II misdemeanor

CHAPTER 9 - PERMIT REVOCATION

- 9.1 The District shall immediately suspend any and all permitted chemigation systems if there is an actual or imminent threat of danger to the public or environment due to the operation of the chemigation system.
- 9.2 The District shall suspend or deny any and all permits if:
- 9.2.1 A permit was obtained fraudulently, or
- 9.2.2 A permitholder fails to notify the District of equipment replacement or alteration within seventy-two hours, or
- 9.2.3 The applicator or permitholder fails to notify the District and Department of actual or suspected spill or accident within twenty four (24) hours, or
- 9.2.4 The permitholder fails to carry out cleanup measures developed by the Department within the time specified.

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- 9.3 Should a violation of the Nebraska Chemigation Act or rules and regulations promulgated pursuant to the Act occur, the District shall notify the person in violation.
- 9.4 The violator has ten (10) days to remedy the violation or request a hearing before the District's Board of Directors.
- 9.5 If the violation has not been corrected in the ten (10) day period, the District shall notify the Department of the violation.
- 9.6 If after a preliminary investigation, the Department determines there is a violation, then the person's permit shall be revoked until compliance is met.
- 9.7 For systems operated by a permit holder, the District may, but shall not be required to, establish a compliance schedule in lieu of the ten (10) day compliance deadline.

CHAPTER 10 - CHEMIGATION PERMIT FEE SCHEDULE

- 10.1 As required by Title 195, Chapter 3, Nebraska Department of Environmental Quality, the District shall review applications, conduct inspections, and approve or deny permits.
- 10.2 No permit may be approved without payment of the requisite permit fee, which shall reflect the cost of administration and inspections.
- 10.3 An original application fee of sixty (\$60) dollars (not to exceed \$150) for each new permit shall be paid to the District, of which five (\$5) dollars shall be paid to the Department of Environmental Quality.
- 10.4 A special permit application fee of sixty (sixty (\$60) dollars) dollars (not to exceed \$150) shall be paid to the District, of which five (\$5) dollars shall be paid to the Department of Environmental Quality.
- 10.5 The annual renewal fee of twenty (\$20) dollars (not to exceed \$100) shall be paid to the District, of which two (\$2) shall be paid to the Department of Environmental Quality.

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10.6 An emergency permit application fee of two hundred fifty (\$250) dollars (not to exceed \$500) shall be paid to the District, of which ten (\$10) dollars shall be paid to the Department of Environmental Quality.

CHAPTER 11 – INSPECTIONS

11.1 District and Department employees shall have reasonable access to inspect all chemigation systems and to otherwise carry out their duties pursuant to the Act; specifically, Neb. Rev.Stat. § 46-1124.

11.2 The District shall conduct an inspection of each injection location for which the permit is sought in order to ensure compliance with the equipment standards set forth herein and in Title 195, Chapters 9 and 10, Nebraska Department of Environmental Quality.

11.3 The District shall conduct an inspection of replaced or altered equipment and shall approve the continuance of chemigation so long as the inspected equipment is deemed to be in compliance with the Act.

11.4 The District shall not collect a new fee for an inspection of previously approved injection locations.

11.5 Timing of inspections:

11.5.1 Inspections for original applications shall be conducted within 45 days of filing.

11.5.2 Inspections for special permits shall be conducted prior to permit renewal.

11.5.3 Inspections for an emergency permit shall be conducted during the forty five (45) day effective period if no inspection was conducted prior to the permit issuance.

11.5.4 The District has the right to inspect any location up for renewal to determine compliance. Should an inspection determine noncompliance with the Act, the District shall refuse the application until compliance with the Act is demonstrated.

11.6 The permitholder or applicator must be present during the inspection.

11.6.1 Failure of the permitholder or applicator to keep an appointment without reasonable cause shall be treated in the same manner as an inspection in which the safety equipment has not passed.

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- 11.6.2 If the inspector is unable to make a scheduled appointment, every reasonable effort will be made to notify the permitholder.
- 11.6.3 A second inspection of any safety equipment which did not meet the requirements of Title 195 during the first inspection or was not inspected because the permitholder missed an appointment as provided in ¶ 11.6.1, shall be conducted within fifteen (15) days after the permitholder has notified the District that the equipment has been repaired or replaced
- 11.6.4 If, upon completion of the second inspection, the safety equipment does not meet the requirements of Title 195 or the permitholder or applicator does not appear for the inspection as provided in ¶11.6.1, the permit shall be denied or revoked
- 11.6.5 If a permit is denied or revoked, the permitholder may make application for a new permit in the manner proved in Title 19 and Rule 7.
- 11.7 The inspector shall conduct a safety inspection with the assistance of the permitholder or applicator. The inspector shall determine that actual steps based on the equipment being inspected on a case by case basis. The following steps are normally necessary during the inspection.
- 11.7.1 The irrigation system must be started, brought up to normal operating pressure and shut off as directed by the inspector in order to determine the proper function of the low pressure drain and the pressure relief valve.
- 11.7.2 The mainline check valve inspection port must be opened for inspection of the check valve.
- 11.7.3 The chemical injection valve must be removed for inspection and tested for the appropriate seal and opening pressure (10 psi minimum).
- 11.7.4 It may be necessary to open electrical boxes to conduct inspection of the interlock between the injection equipment and irrigation well.
- 11.8 The inspector will not operate any irrigation or chemigation equipment, nor will the inspector open any electrical control boxes.
- 11.8.1 The inspector may assist in removal and/or reattachment of the mainline check valve inspection port and the chemigation check valve, if requested by the permitholder or applicator.
- 11.9 The District shall not be responsible for damage done to equipment during removal or reattachment or for any valve defect.

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CHAPTER 12 – EQUIPMENT

- 12.1 Irrigation distribution systems with chemigation capabilities shall be equipped with the following devices:
- 12.1.1 Check valve
 - 12.1.2 Vacuum relief valve
 - 12.1.3 Inspection port
 - 12.1.4 Low pressure drain
 - 12.1.5 Chemical injection line check valve
 - 12.1.6 Simultaneous interlock device
- 12.2 Equipment shall be in compliance with Title 195, Chapters 9 &10, Nebraska Department of Environmental Quality and any rules and regulations promulgated by the District.
- 12.3 All permitholders shall maintain the above listed equipment in good working condition at all times of chemigation.

CHAPTER 13 – POSTING

- 13.1 All permitholders shall post signs on chemigated fields when using any herbicide or pesticide, or a chemical for which the label requires posting. A sign with the words, “KEEP OUT, CHEMICAL APPLICATION THROUGH IRRIGATION WATER SYSTEM” shall be posted by the permitholder at each point of entry into the treated area, adjoining farmstead, or residential area, along any public road where public exposure may occur, and at the point of chemical inject if such point is outside the treated area. The signs shall conform to Title 195, Chapter 12, 002.04, Nebraska Department of Environmental Quality.

CHAPTER 14 - ENFORCEMENT

- 14.1 The District shall enforce the provisions of Neb. Rev. Stat. §§ 46-601, 46-602.01, the Groundwater Management and Protection Act, the Nebraska Chemigation Act, and all its own orders and rules and regulations adopted pursuant thereto through the issuance of a formal notice of an alleged violation, cease and desist orders issued and enforced against operators or landowners, as determined by the Board of Directors, and/or by bringing an appropriate action in the district court in the county where the violation occurs for the reasons and by the procedures as follows.

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- 14.2 Absent of an immediate threat, the District shall give three (3) days' notice to the affected person and an opportunity to be heard before issuing a cease and desist order to enforce the Ground Water Management Protection Act or the Chemigation Act.
- 14.3 In the event the District finds an adverse effect caused by an actual or suspected accident related to chemigation, the District may require the permit holder to carry out a cleanup recovery plan pursuant to Neb. Rev. Stat. §46-1131.

CHAPTER 15 – REPORTING

- 15.1 A permit applicant shall notify the District within ten (10) days of any changes in the information provided on the permit application.
- 15.1.1 Failure to report changes in the information provided on a permit application may result in the application being denied or revoked.
- 15.2 The applicator or permit holders shall report an actual or suspected accident related to the use of chemigation in his or her system to the Department and the District within twenty-four (24) hours of its discovery. Notification shall be made by telephone to the Department and the District during office hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday. After hours, weekdays, and holidays, reports shall be made to the Nebraska State Patrol. All information known about the accident at the time of discovery shall be included, such as time of occurrence, quantity and type of material, location and corrective or cleanup actions presently being taken.
- 15.2 Permit holders shall notify the District and the Department of any actual or suspected accidents resulting from the use of chemigation within twenty-four (24) hours. Failure to do so may result in a civil penalty of not more than five hundred (500) dollars or a guilty verdict of a Class III misdemeanor. Permit holders shall note the District and Department consider each day a single, separate violation.
- 15.3 Permit holders who either replace or alter or authorize such replacement or alteration of chemigation equipment previously approved by the District shall notify the District within seventy two (72) hours of such replacement or alteration. The District shall conduct an inspection of the replaced or altered equipment.

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