

Upper Elkhorn NRD Chemigation Rules and Regulations For the Enforcement of the Nebraska Chemigation Act

Chapter 1 Section 1: Area Designation and Boundaries

- 1.1.1 The area subject to these rules and regulations for the enforcement of the Nebraska Chemigation Act (Neb. Rev. Stat. §§ 46-1101 to 46-1148) is the entire Upper Elkhorn Natural Resources District.

Chapter 2 Section 1: Title 195 N.A.C. and Nebraska Chemigation Act Incorporation

- 2.1.1 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. The Upper Elkhorn Natural Resources District hereby incorporates, as part of these rules and regulations, the requirements of Title 195 of the *Nebraska Administrative Code*, and the provisions of the Nebraska Chemigation Act (Neb. Rev. Stat. §§ 46-1101 to 46-1148), as the same may be amended from time to time.

- 2.1.1.1 Nothing in these rules shall be construed as exempting any person from the provisions of Title 195 N.A.C. or the Nebraska Chemigation Act (Act).

Chapter 3 Section 1: Definitions

- 3.1.1 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 himself or herself or on behalf of the permitholder for the land on which the chemigation will take place.
- 3.1.2 Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.
- 3.1.3 Chemigation shall mean any process whereby chemicals are applied to land or crops in or with water through an on-farm irrigation distribution system.
- 3.1.4 Council shall mean the Environmental Quality Council.
- 3.1.5 Department shall mean the Department of Environment and Energy.
- 3.1.6 Director shall mean the Director of the Department of Environment and Energy.
- 3.1.7 District shall mean Upper Elkhorn NRD.
- 3.1.8 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.
- 3.1.9 Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.
- 3.1.10 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 is constructed so that an interruption in water flow automatically prevents any backflow to the water source.
- 3.1.1 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.

- 3.1.12 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.
- 3.1.13 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.
- 3.1.14 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.
- 3.1.15 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 4 Section 1: Chemigation Application

- 4.1.1 No person within the boundaries of the Upper Elkhorn NRD 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 District. Each permit expires on June 1 of each year, and the permit holder is solely responsible for renewal.
- 4.1.2 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 permitholder, and the permitholder has paid the requisite fee (see Chapter 11 Section 1: Chemigation Permit Fee Schedule). Any incomplete, unsigned, or unpaid applications will be returned to the applicant; or the applicant will be contacted directly by the District.

Chapter 5 Section 1: Certification

- 5.1.1 Pursuant to Title 195, Chapter 13, Nebraska Department of Environment and Energy, all chemigation applicators must undergo and maintain certification. Training programs shall be offered through the University of Nebraska Cooperative Extension Service. The director shall issue a certificate acknowledging the competency, determined through the use of a written examination prepared and administered by the department. 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 6 Section 1: New Permit Process

- 6.1.1 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.
- 6.1.2 No chemigation permit, except a Special permit, shall be issued or renewed by the district, if any of the following conditions occur:
 - 6.1.2.1 The applicant has failed to provide the required information, as specified in Title 195, Chapter 1, 002, Nebraska Department of Environment and Energy on the application form;

- 6.1.2.2 The irrigation distribution system does not comply with the equipment standards set forth in Title 195, Chapter 3, Nebraska Department of Environment and Energy;
- 6.1.2.3 The applicator has not been certified as a chemigation applicator by the Department; or
- 6.1.2.4 Failure of the applicant to remit the appropriate fee.

6.1.3 Changes in application information shall be provided to the District within 10 days.

Chapter 7 Section 1: Renewal Process

- 7.1.1 All permits must be renewed annually. If a renewal form has not been completed and filed with the requisite fee (see Chapter 11 Section 1: Chemigation Permit Fee Schedule), the permit shall not be renewed without filing a new application. Since permits expire on June 1, all renewable applications must be on file with the District by June 1. Each application for renewal is subject to inspection of equipment and site to determine compliance with the Chemigation Act and these rules and regulations. If an inspection reveals noncompliance, renewal shall be refused, suspended, or revoked until compliance is achieved, as determined by the District. Under no circumstances may a permit be transferred.

Chapter 8 Section 1: Special Permits

- 8.1.1 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. If the Department agrees with the District's inspection, the Department shall grant the District authority to issue a special permit. Before issuing any special permit, the District shall obtain information for special permits specified by N.A.C. Title 195, Ch. 2. Sec. 004.

Chapter 9 Section 1: Emergency Chemigation Permit Approval

- 9.1.1 A person may file an application for an emergency permit as established in Neb. Rev. Stat. §§ 46-1119. The District shall have two working days to review the permit before issuing or denying. The day the District receives the permit application is not included in the two working days. 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.
- 9.1.2 Emergency permits shall be valid for a period of forty five (45) days from the date of issuance.
- 9.1.3 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 10 Section 1: Permit Revocation

- 10.1.1 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.
- 10.1.2 The District shall suspend or deny any and all permits if: a permit was obtained fraudulently; a permitholder fails to notify the district of equipment replacement or alteration within seventy-two hours; applicator or permitholder fails to notify the District and Department of actual or suspected spill or accident within 24 hours; permitholder fails to carry out cleanup measures developed by the Department within the time specified.

10.1.3 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. The violator has 10 days to remedy the violation or request a hearing before the District's Board of Directors. If the violation has not been corrected in the 10-day period, the District shall notify the Department of the violation. If after a preliminary investigation, the Department determines there is a violation, then the person's permit shall be revoked until compliance is met. For systems operated by a permit holder, the District may, but shall not be required to, establish a compliance schedule in lieu of the 10-day compliance deadline.

Chapter 11 Section 1: Chemigation Permit Fee Schedule

11.1.1 As required by Neb. Rev. Stat. §§ 46-1117, the District shall review applications, conduct inspections, and approve or deny permits. No permit may be approved without payment of the requisite permit fee, which shall reflect the cost of administration and inspections.

11.1.1.1 A new application fee of \$100.00 (not to exceed \$150) for each new permit shall be paid to the District, of which \$5.00 shall be paid to the Department of Environment and Energy.

11.1.1.2 A special permit application fee of \$30.00 (not to exceed \$150) shall be paid to the District, of which \$5.00 shall be paid to the Department of Environment and Energy.

11.1.1.3 The annual renewal fee of \$30.00 (not to exceed \$100) shall be paid to the District, of which \$2.00 shall be paid to the Department of Environment and Energy.

11.1.1.4 An emergency permit application fee of \$250.00 (not to exceed \$500) shall be paid to the District, of which \$10.00 shall be paid to the Department of Environment and Energy.

Chapter 12 Section 1: Inspections

12.1.1 District and Department employees shall have reasonable access to inspect all chemigation systems and to otherwise carry out their duties pursuant to the Nebraska Chemigation Act; specifically, Neb. Rev. Stat. § 46-1124. District staff shall obtain landowner permission to conduct this inspection. Should it become necessary, pursuant to Neb. Rev. Stat. §46-1124, the District will obtain a warrant to inspect the property should the landowner or operator refuse to grant access. 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, Chapter 3, Nebraska Department of Environment and Energy.

12.1.1.1 The Upper Elkhorn NRD will make scheduled appointments with the permit holder/applicator.

12.1.1.2 No re-inspection will be required if so desired by the Upper Elkhorn NRD staff for replacement of the chemical injection line check valve if replaced with an injection line check valve marked, tested, and approved by the Upper Elkhorn NRD. This will allow for application of a chemical without re-inspection.

12.1.1.3 (Spot Checks) The Upper Elkhorn NRD staff will make district wide selective and periodic inspections of non-permitted as well as permitted chemigation systems on an annual basis. The district will investigate complaints concerning permitted as well as non permitted chemigation systems.

- 12.1.1.4 (Renewals) The district will inspect up to 50% of the renewal permits annually on a scheduled rotation basis.
- 12.1.1.5 After the inspection has been completed and approved by the inspector, a certification sticker will be placed at the injection site.
- 12.1.1.6 In the event that an initial inspection and two reinspections are made and the permit is denied, revoked, or suspended the district will have the applicant reapply for the permit and include payment of the appropriate fee.
- 12.1.1.7 The permitholder/applicator or their representative is required to be present during the inspection and to operate the chemigation equipment. The permitholder/applicator or their representative will be required to start –up and shutdown the irrigation system during the inspection. The inspector will not operate the irrigation or chemigation equipment.
- 12.1.1.8 It is the responsibility of the permitholder to supply sufficient evidence that a chemigation site qualifies for a special permit. If evidence is not submitted to the Upper Elkhorn NRD and to the Department of Environment and Energy, the chemigation site must meet equipment standards specified by law.
- 12.1.2 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. The District shall not collect a new fee for an inspection of previously approved injection locations.
- 12.1.3 Timing of inspections:
- 12.1.3.1 Inspections for new applications shall be conducted within 45 days of filing.
- 12.1.3.2 Inspections for special permits shall be conducted prior to permit renewal.
- 12.1.3.3 Inspections for an emergency permit shall be conducted during the 45 day effective period if no inspection was conducted prior to the permit issuance.
- 12.1.3.4 The District has the right to inspect any location up for renewal to determine compliance.
- 12.1.3.5 Should an inspection determine noncompliance with the Act, the District shall refuse the application until compliance with the Act is demonstrated.

Chapter 13 Section 1: Equipment

- 13.1.1 Irrigation distribution systems with chemigation capabilities shall be equipped with the following devices:
- A. Check valve
 - B. Vacuum relief valve
 - C. Inspection port
 - D. Low pressure drain
 - E. Chemical injection line check valve
 - F. Simultaneous interlock device
- 13.1.2 Equipment shall be in compliance with Title 195, Chapter 3, Nebraska Department of Environment and Energy and any rules and regulations promulgated by the District.

- 13.1.3 All permitholders shall maintain the above listed equipment in good working condition at all times of chemigation.
- 13.1.4 When the vacuum relief valve is to be used as the inspection port the permitholder/applicator is responsible for the removal and replacement of the vacuum relief if so requested by the inspector.
- 13.1.5 (Mainline Check Valve) If during the period of inspection of the irrigation pipeline check valve, leakage of the valve seat is evident it will be up to the permitholder/applicator to remove any gravel, sand or other obstacle from the seat either by reaching through the inspection port or removing the check valve from the pipeline. Again, assistance from the inspector is allowed if requested by the permitholder/applicator. No mainline check valve will be portable as to its use on more than one field.
- 13.1.6 (Chemical injection line check valve) Removal of the chemical injection check valve from the pipeline is the responsibility of the permitholder/applicator. The inspector may assist in removal if so requested by the permitholder/applicator.
- 13.1.7 The District will replace the chemical injection line check valve if damaged during the testing process only. Replacement by the district will not result from damage due to removal or attachment or any defects in the valve itself.
- 13.1.8 (Interlock) When testing the simultaneous interlock system between the pumping plant and chemical injection plant, if any rewiring is to be done it will be the duty of the permitholder/applicator to do so to meet the specifications in Chapter 3 of the Nebraska Department of Environment and Energy Title 195.
- 13.1.9 If the permitholder/applicator uses the injector pump for more than one injection site, they will have an option to take that injector pump to the next injection site or the Upper Elkhorn NRD can use a volt tester to test the interlock device system.

Chapter 14 Section 1: Posting

- 14.1.1 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 injection if such point is outside the treated area. The signs shall conform to District rules and regulations as well as Title 195, Chapter 1, 005, Nebraska Department of Environment and Energy.

Chapter 15 Section 1: Enforcement

- 15.1.1 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. Absent an immediate threat, the District shall give 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.

15.1.2 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 and recovery plan pursuant to Neb. Rev. Stat. §46-1131.

15.1.3 The District shall make reasonable efforts to obtain voluntary compliance before compelling compliance through the legal system.

Chapter 16 Section1: Reporting

16.1.1 The applicator or permit holder shall report any actual or suspected accident related to the use of chemigation in his or her system to the Department and the District within twenty-four hours of its discovery. Notification shall be made by telephone to the Department and the District during office hours 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 any corrective or cleanup actions presently being taken.

16.1.2 Permitholders shall notify the District and the Department of any actual or suspected accident resulting from the use of chemigation within 24 hours. Failure to do so may result in a civil penalty of not more than one thousand dollars or a guilty verdict of a Class II misdemeanor for the first violation. Subsequent violations may result in a penalty of at least one thousand dollars to no more than five thousand dollars pursuant to Neb. Rev. Stat. §46-1140. Permitholders shall note the District and Department consider each day a single, separate violation.

16.1.3 Permitholders who either replace or alter or authorize such replacement or alteration of chemigation equipment previously approved by the District shall notify the District within 72 hours of such replacement or alteration. The District shall conduct an inspection of the replaced or altered equipment.