

Agenda Item: 10.

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Paul Woodward, Groundwater Management Engineer

SUBJECT: Policy Manual Update – Chemigation Certification Program Revision

DATE: March 2, 2015

In December of 2014, the Board approved changes to 17.22 District Programs – Chemigation Certification Program and adopted Appendix U Chemigation Certification Program Rules and Regulations. These changes were pursuant to changes to the Nebraska Chemigation Act and the subsequent changes to Nebraska Administrative Code Title 195.

District staff just recently submitted our approved rules and regulations to the Nebraska Department of Environmental Quality (NDEQ) for final approval by their Director. During their review, it was discovered that a change in one of the dates from January 1 to December 31 actually altered the valid certification period for an applicator. This date in the rules and regulations must be changed to comply with state requirements before it can be approved by the Director of NDEQ. The enclosed version of Appendix U shows the proposed changes.

The Chemigation Certification Program Rules and Regulations also set forth the fee schedule to be charged by the District for processing annual chemigation permits. District staff reviewed past years of effort and costs and determined that the previous minimum fees charged were adequate to cover the District's implementation of the program. Therefore, the fees listed below have remain unchanged:

- \$30 for each new permit, of which \$5 is paid to NDEQ
- \$30 for each special permit, of which \$5 is paid to NDEQ
- \$10 for each annual renewal, \$2 of which is paid to NDEQ
- \$100 for each emergency permit, \$10 of which is paid to NDEQ

Staff recommends that the subcommittee recommend to the Board that the proposed changes to Appendix U – Chemigation Certification Program Rules and Regulations be adopted and incorporated into the District's Policy Manual.



RECEIVED

MAR 2 2015

STATE OF NEBRASKA

Pete Ricketts
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

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FEB 26 2015

John Winkler, General Manager
Papio-Missouri River NRD
8901 S. 154th Street
Omaha, NE 68138-3621

Re: Draft Chemigation Rules and Regulations

Dear John:

Thank you for an opportunity to review and provide comments on your draft Chemigation Rules and Regulations submitted February 26, 2015.

We have no comments on the rules as presented in the draft.

We look forward to seeing a copy of the Chemigation rules, as passed by your board. When you submit them to NDEQ for approval by the director, please include the following:

- An indication of any changes made to the rule during the public hearing process.
- An affidavit of publication of the public notice.
- A copy of the board meeting minutes, indicating board action on the rule.

We also suggest the minutes specifically document the board's decision that the amount of the fee established is sufficient to cover the reasonable costs of administering the permit program under the Chemigation Act.

Thank you for continuing to help protect the State's natural resources with your attention to the Chemigation program. If you have any questions, please contact Tom Trehwitt at 402/471-4255 or tom.trehwitt@nebraska.gov.

Sincerely,

Marty Link
Acting Water Quality Division Administrator

/trt

APPENDIX U
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
CHEMIGATION CERTIFICATION PROGRAM
RULES AND REGULATIONS

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RULES AND REGULATIONS FOR THE CHEMIGATION CERTIFICATION PROGRAM

Authority

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 Nebraska Administrative Code. These rules and regulations are intended to apply district-wide.

Definitions

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.
2. Chemical shall mean any Fertilizer, herbicide, fungicide, or other Pesticide used to prevent, destroy, or repel pests mixed with the Irrigation Water Supply.
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.
4. Council shall mean the Environmental Quality Council.
5. Department shall mean the Nebraska Department of Environmental Quality.
6. Director shall mean the Director of the Nebraska Department of Environmental Quality.
7. District shall mean the Pappio-Missouri River Natural Resources District
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.
9. Injection Location shall mean each site where Chemicals will be mixed with the Irrigation Water Supply through an Irrigation Distribution System.
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 groundwater 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.
11. Irrigation Water Supply shall mean the water supply used in an Irrigation Distribution System.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

Chemigation Application

No person shall Chemigate, or authorize the application of Chemicals to land or crops through the use of Chemigation, unless such person obtains from the District, via permit, authorization for 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 Permitholder is solely responsible for renewal.

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 or electronic 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 Chemigation Permit Fee Schedule section). Any incomplete, unsigned, or unpaid applications will be returned to the applicant.

Applicator Certification

Pursuant to Title 195, Chapter 13, Nebraska Department of Environmental Quality, 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 Chemigation Applicator's certification, ~~shall be valid for a period of four years, and~~ shall expire on ~~December 31~~January 1 of the fourth year after the date of issuance.

Original Permit Process

- A. 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.
- B. No Chemigation permit, except a Special Permit (see Special Permit section), shall be issued or renewed by the District, if any of the following conditions occur:
 - a. 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;
 - b. 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;
 - c. The Applicator has not been certified as a Chemigation applicator by the Department; or
 - d. Failure of the applicant to remit the appropriate fee
- C. Changes in application information shall be provided to the District within 10 days.

Renewal Process

All permits must be renewed annually. If a renewal form has not been completed and filed with the requisite fee (see Chemigation Permit Fee Schedule section), the permit shall not be renewed without filing an original application. Since permits expire on June 1, all renewable applications must be on file with the District by May 31. 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.

Special Permits

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. 5.

Emergency Chemigation Permit Approval

A person may file an application for an emergency permit as established in Title 195, Chapter 6, Nebraska Department of Environmental Quality. The District shall have two Working Days to review the permit before issuing or denying. If the District has not denied the permit within two Working Days, the permit shall be deemed issued.

Emergency permits shall be valid for a period of forty five (45) days from the date of issuance.

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.

Permit Revocation

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(s).

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.

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 Permitholder, the District may, but shall not be required to, establish a compliance schedule in lieu of the 10-day compliance deadline.

Chemigation Permit Fee Schedule

As required by Title 195, Chapter 3, Nebraska Department of Environmental Quality, 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.

- A. An original application fee of \$30.00 for each new permit shall be paid to the District, of which \$5.00 shall be paid to the Department of Environmental Quality.
- B. A Special Permit application fee of \$30.00 shall be paid to the District, of which \$5.00 shall be paid to the Department of Environmental Quality.
- C. The annual renewal fee of \$10.00 shall be paid to the District, of which \$2.00 shall be paid to the Department of Environmental Quality.
- D. An emergency permit application fee of \$100.00 shall be paid to the District, of which \$10.00 shall be paid to the Department of Environmental Quality.

Inspections

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. 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.

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.

Timing of inspections:

- Inspections for original applications shall be conducted within 45 days of filing.
- Inspections for Special Permits shall be conducted prior to permit renewal.
- Inspections for an emergency permit shall be conducted during the 45 day effective period if no inspection was conducted prior to the permit issuance.
- 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.

Equipment

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

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.

All Permitholders shall maintain the above listed equipment in good working condition at all times of Chemigation.

Posting

All Permitholders shall post signs on chemigated fields when using any Fertilizer 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.

Enforcement

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.

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.

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

Reporting

The Applicator or Permitholder 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, 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 any corrective or cleanup actions presently being taken.

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 five hundred dollars or a guilty verdict of a Class III misdemeanor. Permitholders shall note the District and Department consider each day a single, separate violation.

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.

Adopted by the Board of Directors – December 11, 2014

Revised by the Board of Directors – March 12, 2015