

NEBRASKA ADMINISTRATIVE CODE

Title 196 - ~~NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~ GROUND WATER MANAGEMENT AREAS

Chapter 1 - DEFINITIONS

~~001~~ For the purposes of this title, the following definitions apply: "~~Background~~" means the levels of chemical, physical, biological, and radiological constituents or parameters prior to an activity or pollution event, as determined by methods acceptable to the Department.

~~002~~ ~~001.01~~ "~~Beneficial use~~" means any ground water quality dependent use deemed beneficial by the Department. ~~Beneficial uses of ground water include, but are not limited to, drinking water (municipal and domestic), irrigation, livestock watering, industrial and commercial purposes, and maintaining assigned beneficial uses of surface water~~ is defined in Neb. Rev. Stat. § 46-706(19).

~~003~~ ~~001.02~~ "~~Best management practice~~" means ~~schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper timing of fertilizer and pesticide application, and other fertilizer and pesticide management programs~~ is defined in Neb. Rev. Stat. § 46-706(13).

~~004~~ ~~001.03~~ "~~Department~~" means the ~~Nebraska~~ Department of Environmental Quality.

~~005~~ "~~Director~~" means the ~~Director of the Nebraska Department of Environmental Quality or his or her designee.~~ ~~006~~ ~~001.04~~ "~~District~~" means a natural resources district created pursuant to Neb. Rev. Stat. § 2-3203.

~~007~~ ~~001.05~~ "~~Ground water contamination~~" means ~~nitrate-nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses~~ is defined in Neb. Rev. Stat. § 46-706(3).

~~008~~ ~~001.06~~ "~~Management area~~" means ~~any area so designated by a district pursuant to Neb. Rev. Stat. §46-656.20 or by the Director of Environmental Quality pursuant to §46-656.39 for the management of ground water quality. Management area shall include a special ground water quality protection area designated prior to July 19, 1996~~ is defined in Neb. Rev. Stat. § 46-706(7).

~~009~~ "~~Nonpoint source~~" means ~~any source of pollution other than those defined as a point source.~~

~~010~~ ~~001.07~~ "~~Person~~" means a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States is defined in Neb. Rev. Stat. § 46-706(1).

~~011~~ ~~001.08~~ "~~Point source~~" means ~~any discernible confined and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or any other conveyance, over which the Department~~

~~has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged is defined in Neb. Rev. Stat. § 46-706(14). Nonpoint source is any source other than one defined as a point source.~~

~~012-001.09 "Political subdivision" means villages, cities of all classes, counties, school districts, public power districts, natural resources districts, and all other units of local government.~~

~~013 "Pollutant" means any gas, liquid, or solid introduced into the ground water that causes pollution.~~

~~014 "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.~~

~~002 The Department may conduct studies, as described in Neb. Rev. Stat. § 46-722, if there is reason to believe ground water contamination is occurring or likely to occur.~~

~~002.01 If the contamination is caused by one or more point sources, the director of the department shall use the procedures in the Environmental Protection Act to address the contamination.~~

~~002.02 If the contamination is the result of nonpoint sources, the director of the department may consider designation of a management area in accordance with Neb. Rev. Stat. §46-724 and §46-725.~~

~~003 If a management area is designated with an action plan to be developed, the provisions of Neb. Rev. Stat. §46-726 through §46-733 apply.~~

~~Enabling Legislation: Neb. Rev. Stat §§ 46-656.03 through 46-656.0446-734 Legal Citation: Title 196, Ch. 1, Nebraska Department of Environmental Quality~~

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~~Title 196 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Chapter 2 – POTENTIAL PROBLEM AREAS; IDENTIFICATION, STUDY, AND PRIORITIZATION~~

~~001 If the Director has reason to believe that (1) contamination of ground water is occurring, or likely to occur in the reasonably foreseeable future, or (2) the natural resources district or districts in which the area is located have not designated a management area or have not implemented adequate controls to prevent such contamination from occurring, the Department shall identify the area as a potential problem area.~~

~~002 Each State agency and political subdivision shall promptly report to the Department any information which indicates that contamination is occurring. Such documentation should be in letter form explaining the ground water contamination potential. The Department will preliminarily investigate this information and any other information available, including studies by the Department, and the evaluation of areas regarding the potential for ground water contamination.~~

~~003 The Department shall, in cooperation with any appropriate State agency and district, conduct a study of identified potential problem areas. The purpose of the study shall be to determine the source or sources of contamination and the area affected by such contamination. The Department shall consider the relevant water quality portions of the management plan developed by the respective district pursuant to Neb. Rev. Stat. § 46-656.12 to 46-656.16, whether the district has designated a management area encompassing the area studied, whether the district has adopted any controls for the area, and any other relevant information that district may have during the study. The Department shall issue a written report within one year of the initiation of the study. The study of identified potential problem areas will be initiated as departmental resources allow.~~

~~004 To utilize departmental resources fully, identified potential problem areas shall be prioritized (ranked) based on factors including but not limited to vulnerability to nonpoint source ground water contamination, existing ground water quality, whether or not a management area has been or will be established, and other administrative factors. Additional factors identified by the Department may be considered as necessary.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 46-656.35 and 46-656.36~~

~~Legal Citation: Title 196, Ch. 2, Nebraska Department of Environmental Quality~~

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~~Chapter 3 – DESIGNATION OF MANAGEMENT AREAS~~

~~001 – If the Director determines from the studies conducted pursuant to Chapter 2, Section 003 that one or more sources of contamination are nonpoint sources and if a management area, a purpose of which is protection of water quality, has been established, he or she shall consider whether to:~~

~~001.01 – Require the district which established the management area to adopt an action plan; or~~

~~001.02 – Modify the boundaries of the management area.~~

~~002 – If the Director determines that one or more of the sources are nonpoint sources and if such a management area has not been established, he or she shall consider whether to designate a management area.~~

~~003 – The Director shall, within thirty days after completion of the written report, consult with the district within whose boundaries the area of contamination is located and fix a time and place to hold a public hearing to obtain testimony on whether a management area shall be designated, an action plan shall be required, or an existing management area's boundaries shall be modified. The public hearing shall:~~

~~003.01 – Be conducted pursuant to Title 115 – Rules of Practice and Procedure;~~

~~003.02 – Collect any other relevant evidence regarding the designation of a management area, requirement of an action plan, or modification of an existing management area's boundaries;~~

~~003.03 – Be held within one hundred twenty days after completion of the written report;~~

~~003.04 – Be located within or in reasonable proximity to the area considered in the report;~~

~~003.05 – Provide opportunity for all interested persons to appear and present testimony; and~~

~~003.06 – Include presentations by the Conservation and Survey Division of the University of Nebraska, Department of Health and Human Services Regulation and Licensure, Department of Natural Resources, and the appropriate district of any~~

~~information in their possession which they deem relevant to the purpose of the hearing.~~

~~004 Notice of the hearing shall be published by the Department in newspapers which provide for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the management area.~~

~~005 The Director may, if necessary, after hearing evidence presented at the hearing, commission additional studies or investigations to gather information to determine whether a management area shall be designated.~~

~~006 When determining whether to designate or modify the boundaries of a management area or to require a district which has established a management area, a purpose of which is protection of water quality, to adopt an action plan for the affected area, the Director shall consider:~~

~~006.01 Whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future;~~

~~006.02 Whether ground water users, including but not limited to, domestic, municipal, industrial, and agricultural, are experiencing, or will experience within the foreseeable future, substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to nonpoint source contamination of ground water within the area;~~

~~006.03 Whether methods are available and technically feasible to stabilize or reduce the level of contamination; and~~

~~006.04 Whether, if a management area has been established that includes the affected area, the controls adopted, administered and enforced by the district are sufficient to address the ground water quality issues in the management area; and~~

~~006.05 Administrative factors directly affecting the ability to implement and carry out regulatory activities.—~~

~~007 If the Director determines that no management area should be established, a management area's boundaries should not be modified, or no action plan should be required, he or she shall issue an order to that effect.~~

~~008 If the Director determines that a management area shall be established, that the boundaries of an existing management area shall be modified, or that the district shall be required to adopt an action plan, he or she shall:~~

~~008.01 Define the geographic and stratigraphic boundaries of the area to be designated. In defining these boundaries the Director shall:~~

~~008.01A Consult with the Conservation and Survey Division and any other relevant state agencies and the district or districts affected; and~~

~~008.01B Consider the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water quality management. They could include, but are not limited to, financial resources, zoning authorities, and enforcement capabilities.~~

~~008.02 Prepare a report which includes the specific reasons for the creation of the management area, modification of its boundaries, or the requiring of an action plan for a management area, and a full disclosure of the possible causes of conditions necessitating such action. Possible causes could include, but are not limited to, fertilizer and pesticide application, irrigation practices, hydrogeologic factors, and overland runoff.~~

~~008.03 Issue an order designating the area as a management area, specifying the modified boundaries of the management area, or requiring an action plan. The order shall include a geographic and stratigraphic definition of the area.~~

~~Enabling Legislation: Neb. Rev. Stat. § 46-656.38 and 46-656.39~~

~~Legal Citation: Title 196, Ch. 3, Nebraska Department of Environmental Quality~~

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~~Chapter 4 – ACTION PLANS; DEVELOPMENT~~

~~001 – An action plan shall be prepared by the district or districts within whose boundaries a management area is located. Whenever a management area encompasses portions of two or more districts, the responsibilities and authorities delegated to the districts shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected. The district or districts shall:~~

~~001.01 – Prepare an action plan within one hundred eighty days after issuance of the designation order for a management area or after the Director requires an action plan for a management area;~~

~~001.02 – Hold a public hearing pursuant to Neb. Rev. Stat. § 46-656.40(2) and Title 115 – Rules of Practice and Procedure within thirty days after an action plan has been prepared. Such hearing shall be held in reasonable proximity to the area to be affected. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas to be affected by the proposed action plan and shall provide the text of all controls proposed for adoption by the district;~~

~~001.03 – Adopt and submit an action plan to the Department within thirty days after the public hearing held in accordance with 001.02 above; and~~

~~001.04 – If appropriate, provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.~~

~~002 – The action plan shall define a program to stabilize, reduce or prevent the level of ground water contamination within the designated management area and prevent its increase or spread. The action plan shall include:~~

~~002.01 – The details of an educational program to be instituted by the district to inform persons of methods available to stabilize or reduce the level, or prevent the increase or spread of, ground water contamination;~~

~~002.02 – One or more of the controls authorized by Neb. Rev. Stat. § 46-656.25.~~

~~002.03 – A time schedule for implementation of the protective measures identified pursuant to 002.02 above.~~

~~003 Protection measures adopted by the district may vary within the area based on varying water uses or varying climatic, hydrologic, or soil conditions.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 46-656.40, 46-656.42 and 46-656.44~~

~~Legal Citation: Title 196, Ch. 4, Nebraska Department of Environmental Quality~~

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~~Title 196 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Chapter 5 – ACTION PLANS; DEPARTMENTAL APPROVAL OR DENIAL~~

~~001 The Director shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after the date the plan is submitted by the district. The date of submittal shall be the date the Department receives the plan.~~

~~002 The Director may hold a public hearing, pursuant to Title 115 – Rules of Practice and Procedure, to consider testimony prior to issuing an order approving or disapproving the adoption or amendment of an action plan.~~

~~003 In reviewing the action plan for adoption or amendment, the Director's considerations shall include, but not be limited to:~~

~~003.01 Whether it reasonably appears the education program and protective measures, including best management practices, identified in the plan will mitigate or eliminate the condition causing ground water contamination which led to the designation of a management area, modification of the boundaries of a management area, or the requirement of an action plan for a management area;~~

~~003.02 Whether the adoption or amendment of the plan will improve the administration of the area;~~

~~003.03 The feasibility of administratively implementing the plan or amendment; and~~

~~003.04 Whether the time schedule is reasonable to implement the protective measures.~~

~~004 If the Director approves the plan, it shall become effective on the date of his or her signature.~~

~~005 If the action plan is not approved, the Director shall issue an order listing the reason or reasons why the action plan was not approved. If the action plan is not approved, a district may submit a revised action plan within sixty days after denial of its original action plan to the Director for approval.~~

~~Enabling Legislation: Neb. Rev. Stat. § 46-656.42~~

~~Legal Citation: Title 196, Ch. 5, Nebraska Department of Environmental Quality~~

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~~Chapter 6 – ACTION PLANS; IMPLEMENTATION~~

~~001~~ In implementing an approved action plan, the district shall cause a copy of each protective measure adopted to be published once each week for three consecutive weeks in a local newspaper of general circulation in the area involved, the last publication of which shall be not less than seven days prior to the date when the action plan becomes effective.

~~002~~ The district shall make all reasonable attempts to implement the protective measures according to the time schedule identified in the approved action plan.

~~003~~ The protective measures identified in the approved action plan shall be implemented by the district for the period of time necessary to stabilize or reduce the level of contamination and prevent the increase or spread of ground water contamination.

~~004~~ The district shall make regular reports to the Director of the district's progress to implement the approved action plan.

Enabling Legislation: ~~Neb. Rev. Stat. §§ 46-656.03, 46-656.43, and 46-656.46~~

Legal Citation: ~~Title 196, Ch. 6, Nebraska Department of Environmental Quality~~

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~~Chapter 7 – ACTION PLANS; AMENDMENT~~

~~001 – An action plan may be amended by the same methods (Chapters 4 and 5) utilized in the adoption of the action plan.~~

~~002 – The Department may request the district to amend its action plan based on any one of the following:~~

~~002.01 – Protective measures being implemented are not effectively stabilizing or reducing contamination levels or preventing the increase or spread of ground water contamination in the area;~~

~~002.02 – New ground water contamination problems have been identified;~~

~~002.03 – New best management practices have been developed that may more effectively stabilize or reduce contamination levels or prevent the increase or spread of ground water contamination; or~~

~~002.04 – Any reasonable circumstance unforeseen at the development of the original action plan.~~

~~Enabling Legislation: Neb. Rev. Stat. § 46-656.46~~

~~Legal Citation: Title 196, Ch. 7, Nebraska Department of Environmental Quality~~

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~~Chapter 8 – REMOVAL OF MANAGEMENT AREA DESIGNATION~~

~~001 The district may petition the Director to remove the designation of an area as a management area, remove the requirement of an action plan for a management area, or remove the modification to the boundaries of a management area. The petition shall present evidence that contamination in the management area has stabilized at or been reduced to a level which is not detrimental to the beneficial use of the ground water.~~

~~002 If the Director determines that the level of ground water contamination in a management area meets the above (001) conditions, he or she may remove the designation, action plan requirement, or modification of the boundaries of the management area.~~

~~Enabling Legislation: Neb. Rev. Stat. § 46-656.47~~

~~Legal Citation: Title 196, Ch. 8, Nebraska Department of Environmental Quality~~

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~~Chapter 9 – DEPARTMENTAL DEVELOPMENT AND IMPLEMENTATION OF PROTECTIVE MEASURES~~

~~001 The power to specify protective measures within a designated management area shall vest in the Director if:~~

~~001.01 The appropriate district does not complete an action plan for a designated management area within one hundred eighty days of its designation or the requiring of an action plan for a management area,~~

~~001.02 A district does not submit a revised action plan within sixty days after denial of its original action plan, or~~

~~001.03 The district submits a revised action plan which is not approved by the Director.~~

~~002 If the power to specify protective measures is vested in the Director, he or she shall:~~

~~002.01 Within ninety days of assuming the responsibility, adopt and promulgate by rule and regulation such measures as he or she deems necessary to fulfill the intent of the Nebraska Ground Water Management and Protection Act;~~

~~002.02 Conduct one or more public hearings, pursuant to Title 115 – Rules of Practice and Procedure, prior to the adoption of protective measures; and~~

~~002.03 Give notice for any public hearing as is specified in Chapter 3, Section 004.~~

~~003 The enforcement of protective measures adopted by the Director shall be the responsibility of the Department.~~

~~Enabling Legislation: Neb. Rev. Stat. § 46-656.45~~

~~Legal Citation: Title 196, Ch. 9, Nebraska Department of Environmental Quality~~

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~~Chapter 10 – MONITORING PROGRAM~~

~~001 Each district in which a management area has been designated or an action plan for a management area has been required shall, in cooperation with the Department and as resources allow, establish a program to sample and monitor as appropriate the quality of the ground water in the designated area.~~

~~002 The purpose of the monitoring program shall be to monitor ground water quality for nonpoint source contamination and to allow evaluation of the effectiveness of the district's action plan in controlling nonpoint source contamination.~~

~~Enabling Legislation: Neb. Rev. Stat. § 46-656.44~~

~~Legal Citation: Title 196, Ch. 10, Nebraska Department of Environmental Quality~~

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~~Title 196—NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY~~

~~Chapter 11—GENERAL PROVISIONS~~

~~001—Failure to comply with the requirements of these regulations may be grounds for enforcement proceedings or injunctive relief by the county attorney or Attorney General.~~

~~002—If any clause, paragraph, subsection, or section of these regulations shall be held invalid, it shall conclusively be presumed that the Environmental Quality Council would have enacted the remainder of these regulations not directly related to such clause, paragraph, subsection, or section.~~

~~003—Any person aggrieved may appeal any order of the Director issued pursuant to these regulations as provided by the Administrative Procedure Act.~~

~~004—These rules and regulations may be amended or repealed pursuant to Title 115, Rules of Practice and Procedure, which shall, in all respects, conform to Neb. Rev. Stat. §84-901 et seq.~~

~~005—These rules and regulations shall become effective five days after filing with the Secretary of State and shall supersede the “Rules and Regulations Pertaining to Special Protection Areas,” effective on March 9, 1988.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 84-901 et seq., 46-656.48, 46-656.66, 81-1505(11)(16)(17), 81-906 et seq., and 81-505 (11)(17)~~

~~Legal Citation: Title 196, Ch. 11, Nebraska Department of Environmental Quality~~

