

DEPARTMENT OF ENVIRONMENT AND
ENERGY

TITLE 135, RULES AND REGULATIONS FOR
MINERAL EXPLORATION HOLES

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Title 135 - Rules And Regulations For Mineral Exploration Holes

Chapter 1 - Definitions

When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers.

001 "Aquifer" shall mean a geological "formation", group of formations or part of a formation that is capable of yielding a useable amount of water to a well or spring.

002 "Council" shall mean Environmental Control Council.

003 "Department" is the Department of Environmental Control.

004 "Director" is the Director of the Department of Environmental Control.

005 "Formation" shall mean a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

006 "Groundwater" is that water which occurs, moves, seeps, filters or percolates through the ground beneath the land surface.

007 "Lithology" shall mean the description of rocks on the basis of their physical and chemical characteristics.

008 "Log" shall mean a record by depth of the "lithology" surrounding a mineral exploration hole obtained from formation samples and/or geophysical methods.

009 "Mineral Exploration Hole" shall mean a hole bored, drilled, driven, or dug in the act of exploring for a "mineral resource" other than oil or gas.

010 "Mineral Resource" shall mean mineral substances found in the form of consolidated rock or unconsolidated material, commingled, in solution, or otherwise occurring beneath the surface or in the waters of the State from which any product useful to humans may be produced, extracted, or obtained, but excluding oil and gas.

011 "Operator" shall mean the "person" to whom the permit is issued.

012 "Person" shall mean any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality, or other governmental subdivision, public agency, officer, or governing or managing body of any municipality, governmental subdivision, or public agency, or any other legal entity except the Department of Environmental Control.

013 "Plug (or Plugging)" shall mean the act or process of sealing the flow of fluid into or out of a "formation" through a hole penetrating that formation.

014 "Restoration" shall mean the employment, during and after an activity, of procedures reasonably designed to control, minimize, and eliminate hazards to humans, animals, and the environment, to protect the public health and welfare and air, land, water, and subsurface resources, and to return each resource to a quality of use consistent with the "uses for which the resource was suitable" prior to the activity.

015 "Total dissolved solids (TDS)" shall mean the concentration of all dissolved matter and is generally expressed in milligrams per liter (mg/l).

016 "Trade Secret" shall mean a formula, pattern, device or compilation of information which is used in one's business and which gives one the opportunity to obtain advantage over competitors who do not know or use it. A plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide. A secret formula or process not patented, but known only to certain individuals using it and compounding some article of trade having a commercial value.

017 "Uses for which the resource was suitable" shall mean, with respect to this Title, the pre-exploration quality conditions.

Legal Citation: Title 135, Ch. 1, Nebraska Department of Environmental Control

Title 135 - Rules And Regulations For Mineral Exploration Holes

Chapter 2 - Authorization; By Permit; When Required

001 No person shall conduct drilling, driving, boring or digging of any mineral exploration hole(s) without authorization by a permit from the Department.

002 Any person conducting the drilling, driving, boring, or digging of mineral exploration holes on the effective date of these regulations who would have been required to apply for a permit under this Title may continue operations but shall, within thirty days thereafter, file an application with information required in Chapter 3. A report to indicate the requirements of Chapter 5 have been or are being met shall be required if operations cease between the effective date of these regulations and the thirty day filing requirement of this section.

Enabling Legislation: Neb. Rev. Stat. §§ 81-1505(9)(16); 81-1505.02; 81-1506(3)
(b)

Legal Citation: Title 135, Ch. 2, Nebraska Department of Environmental Control

Title 135 - Rules And Regulations For Mineral Exploration Holes

Chapter 3 - Permit Application; Information Requirements, Confidentiality

001 An application shall be filed at least thirty days prior to any mineral exploration hole(s) activity.

002 An application will include:

002.01 The name and legal mailing address of the operators and their lessees, assignees, or designees.

002.02 A map showing the township, range and section(s) in which the mineral exploration hole activity will take place and a description of the activities which will include the number of exploration holes and the disturbed area per exploration hole; and

002.03 Information sufficient to describe or identify the type of operations proposed and how they would be conducted, including the approximate depth of each test hole, the period during which the proposed activity will take place, and the measures to be taken to meet the requirements for environmental protection in Chapter 5.

003 The application will cover the requirements set forth in Chapter 5 for the entire operation for the full period of activity.

004 All information and data submitted by the applicant shall be available for examination by the public except specifically identified information and data submitted in writing by the applicant as confidential concerning trade secrets as determined by the Director.

Enabling Legislation: §§ 81-1505(9); 81-1506(3)(b); 81-1527

Legal Citation: Title 135, Ch. 3, Nebraska Department of Environmental Control

Title 135 - Rules And Regulations For Mineral Exploration Holes

Chapter 4 - Permit Conditions; General

001 The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of Neb. Rev. Stat. §§ 81-1501 to 81-1533, and is grounds for enforcement action and/or for permit termination.

002 If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for an extension of the permit at least seven days prior to the expiration date.

003 The permittee shall at all times properly operate and maintain all facilities and systems to meet the requirements of Chapter 5 and all conditions of the permit.

004 The permittee shall maintain financial responsibility (Chapter 7) to permanently plug the exploratory holes and restore the associated pits and the affected resources in accordance with Chapter 5.

Enabling Legislation: §§ 81-1505(9)

Legal Citation: Title 135, Ch. 4, Nebraska Department of Environmental Control

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Chapter 5 - Requirments for Environmental Protection

001 All operations shall be conducted so as to minimize adverse impacts on the State's air, water, land and subsurface resources, by consideration of the following:

001.01 Air Quality. Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.);

001.02 Water Quality. Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and section 002.01 of this Chapter;

001.03 Land Quality. Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes and section 002.02 of this Chapter. All garbage, refuse, or waste shall either be removed or disposed of or treated so as to minimize its impact on the environment. All cuttings, dumpage, deleterious materials or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment; and

001.04 Fisheries and Wildlife Habitat. In addition to compliance with all water quality standards and solid waste disposal activities required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations. Conditions of the permit shall be specified to protect these resources through consultation with the Nebraska Game and Parks Commission.

002 All mineral exploration holes sunk (drilled, driven, bored, or dug) shall be plugged pursuant to the requirements of this section immediately following collection of the geological and geophysical information.

002.01 Any mineral exploration hole permit application must contain a plugging plan to protect against ground water contamination from surface contamination, subsurface contamination, and commingling of aquifer fluids. Such plan shall indicate to the Department the specific procedures and materials to be used for plugging based on the knowledge of the area geology.

002.02 Any mineral exploration hole activities affecting land resources of the State shall ensure restoration to a condition consistent with the land use existing prior to the exploration. The restoration shall include, but not be limited to, the following:

002.02A Topsoil to be removed shall be stockpiled for final backfill cover;

002.02B Any pits, mud pits, or other disturbances shall be backfilled and graded to blend with the surrounding surface;

002.02C If vegetative cover was disturbed or destroyed, an appropriate seed mix shall be used in the first normal period favorable for planting;

002.02D If necessary to assure successful revegetation, the drill site area shall be scarified, mulched, and the seed covered, or the permittee shall contract with the local Natural Resources District to provide the assurance of this subsection and subsection 002.02C above; however, the permittee remains responsible for the successful revegetation; and

002.02E If necessary, any drill cuttings shall be spread to a depth no greater than one-half inch or buried in an approved disposal pit.

Enabling Legislation: §§ 81-1505(9); 81-1505.02

Legal Citation: Title 135, Ch. 5, Nebraska Department of Environmental Control

Title 135 - Rules And Regulations For Mineral Exploration Holes

Chapter 6 - Final Report

001 On or before March 31, of each calendar year, the operator conducting the exploration shall submit to the Director a report on all activities conducted from January 1 through December 31 of the previous year including:

001.01 The date of completion of plugging of each hole;

001.02 A plat or map at a scale, approved by the Department prior to the submittal of the report, showing the location of each mineral exploration hole;

001.03 For holes having artesian flow at the surface, the estimated rate of flow; and

001.04 A geophysical description which shall include:

001.04A A lithologic description of each hole comprising:

001.04A1. Identification of aquifers and the formation penetrated, excluding information regarding mineral occurrence or zonation.

001.04A2. A representative sample of any mechanical, electrical, or radiological survey logs but upon request, the permittee shall make available all logs existing for the permit area.

001.04A3. Any permittee shall have available upon request any geophysical data regarding the hole.

001.04B A description of the plugging techniques used:

001.04B1. When abandonment mud is used to plug the exploration hole, a description of each hole shall include the viscosity of the mud when the exploration hole reached bottom, the trade name of the plugging mud utilized, and the final viscosity of the plugging mixture.

001.04B2. When cement is used to plug the exploration hole, a description of the cement grout mixture shall be included.

001.05 The permittee shall furnish a list of surface owners, the holes drilled on each owner's land and the owner's address and telephone number.

002 In the case of closely spaced drill holes having similar geologic and hydrologic characteristics, the operator may, with the approval of the Director, submit a single consolidated final report including the locations of all mineral exploration holes, the plugging technique used and typical lithologic description. Upon request by the Department, the permittee shall make available any additional information for any or all holes in the permit area.

003 All information and data submitted in the final report by the permittee shall be available for examination by the public except specifically identified information and data submitted in writing by the applicant as confidential concerning trade secrets as determined by the Director. Trade secrets as determined by the Director shall be held confidential for three years.

004 The report shall be signed by the operator conducting the exploration operation, attesting to the accuracy of the information contained therein.

Enabling Legislation: §§ 81-1505(9); 81-1505(16)

Legal Citation: Title 135, Ch. 6, Nebraska Department of Environmental Control

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Chapter 7 - Financial Responsibility

001 General Requirements

001.01 Each application for a mineral exploration hole permit or a renewal shall be accompanied by a written estimate of the costs to undertake measures necessary to prevent contamination of ground water having 10,000 mg/l or less TDS during and after cessation of operations, including, but not limited to, the proper plugging of a hole(s).

001.02 After the submission of the estimate and as a prerequisite to commencing operations, the Department shall require the applicant to provide evidence, to its satisfaction, of financial responsibility that monies are available in an amount estimated by the Director to be sufficient to:

001.02A Undertake the measures specified in 001.01 above; and

001.02B Cover the additional estimated costs to the State which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area to complete the restoration after its abandonment by the permittee.

001.03 Each permittee shall keep its evidence of financial responsibility on file with the Department current and accurate. Any change in the form or nature of a permittee's method of maintaining the financial responsibility required shall be filed with and approved by the Department prior to any such change.

001.04 Evidence of financial responsibility does not operate to any extent as a limitation upon the obligation of the permittee to comply with its permit or complete any restoration.

001.05 Failure of the permit applicant to provide evidence of financial responsibility shall be sufficient cause for withholding issuance of a permit or the revocation of an existing permit.

002 Methods of Providing Financial Responsibility

The applicant shall choose among the following options in establishing financial responsibility:

002.01 A surety bond, payable to the State, and conditioned that, to the amount of such bond, the State shall be reimbursed for all costs arising in connection with the abandonment, default or other inability of the permittee to meet the requirements of these regulations and/or permit conditions and upon determination of forfeiture by the Director pursuant to section 005 below. The bond shall be executed by a responsible surety company authorized to do business in the State of Nebraska.

002.02 A collateral bond, in which case the applicant shall deposit, with a bank acceptable to the Department, cash, negotiable bonds issued by the United States or the State; or negotiable certificates of deposit; or deliver to the Department an irrevocable letter of credit of any bank or other savings institution organized or transacting business in the United States. The bank shall receive and hold any collateral bond in the name of the State, in trust, for the purposes for which the deposit is posted. The applicant shall pay all costs of the trust, and shall be paid all interest accruing to the account of the trust.

002.03 Any combination of the above.

003 Terms and Conditions of the Bond

003.01 Replacement of Bonds

003.01A The Department may allow the permittee to replace an approved bond with another type of bond described in 002 above, if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.

003.01B The Department shall not release existing bonds until the permittee has submitted and the Department has approved acceptable replacement bonds.

003.02 Surety bonds shall be subject to the following conditions:

003.02A The bond may be subject to cancellation by the surety company; provided that, no such cancellation, nor release of the surety company's liability under the bond, shall be effective sooner than one hundred twenty days following receipt by the Department and the permittee of written notice of cancellation sent by certified mail, return receipt requested. Such one hundred twenty day period shall be measured from the later of the receipt by the Department or permittee of such notice. In the event of cancellation, the permittee must provide a replacement bond in accordance with subsection 003.01 no later than forty-five days prior to the effective date of cancellation specified in the notice. Failure of the permittee to obtain a replacement bond shall result in revocation of its bond.

003.02B The bond shall provide that the surety and the permittee shall be jointly and severally liable to the amount of such bond.

003.02C The bond shall provide that:

003.02C1. The surety will give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violation of regulatory requirements that could result in suspension or revocation of the surety's license to do business;

003.02C2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the Department; and

003.02C3. Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall obtain a replacement bond within sixty days. Failure of the permittee to obtain a replacement bond shall result in revocation of its permit.

003.03 Collateral bonds, except for letters of credit, shall be subject to the following conditions:

003.03A The Department shall value collateral at its current market value, not face value; and

003.03B The Department shall only accept certificates of deposit which are automatically renewable.

003.04 Irrevocable letters of credit shall be subject to the following conditions:

003.04A The letter shall be payable to the State of Nebraska in part or in full upon demand and receipt from the Department of a notice or forfeiture pursuant to section 005.03 below;

003.04B The letter shall contain terms which authorize the Department to draw upon the letter, in full, to obtain cash collateral in the event the permittee has failed to furnish a replacement bond at least thirty days prior to the expiration of the letter; and

003.04C The total amount of letters of credit that will be accepted from any bank for any permittee, on all permits held by the permittee, shall not exceed the bank's maximum legal lending limit as required by the appropriate Nebraska or Federal banking regulatory agency.

003.04D The letter of credit shall provide that:

003.04D1. The bank shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation to the bank's charter or license to do business;

003.04D2. In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Department; and

003.04D3. Upon the incapacity of a bank by reason or bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall obtain a replacement bond within sixty days. Failure

of the permittee to obtain a replacement bond shall result in revocation of its permit.

004 Release of the Bonds

The permittee may file a request with the Department for the release of all or part of a bond. Following public notice, the Department shall release a bond, in whole or in part, when it is satisfied any restoration covered by the bond or portion thereof has been accomplished as required by these regulations.

005 Forfeiture of Bonds

005.01 The Director shall declare all or any appropriate part of a bond for any permit as forfeited if the Department determines that:

005.01A The permittee has violated any of the terms or conditions of the bond and has failed to take adequate corrective action; or

005.01B The permittee has failed to conduct its operations in accordance with the Nebraska Environmental Protection Act, these regulations and the permit within the time period required, and that it is necessary, in order to fulfill the requirements of the permit and any restoration, to have someone other than the permittee correct or complete such work.

005.02 The Director may withhold declaration of forfeiture if the permittee and surety, if any, agree to a compliance schedule to comply with the violations of the bond or permit conditions.

005.03 In the event a determination to forfeit bond is made, the Director shall:

005.03A Send written notification by certified mail, return receipt requested, to the permittee and the surety, if any, on the bond, of the Department's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;

005.03B The permittee may request a hearing on the issue of whether the bond shall be forfeited in accordance with the procedures specified in Neb. Rev. Stat. §§ 8101507(1)(2) and Title 115 of the Department's Rules of Practice and Procedure.

005.03C An appeal from a final decision of the Director shall be in accordance with Neb. Rev. Stat. §§ 81-1509.

Enabling Legislation: §§ 81-1505(9)(c)

Legal Citation: Title 135, Ch. 7, Nebraska Department of Environmental Control

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Chapter 8 - Fees

001 Permit Processing Fees

001.01 A fee shall be assessed from permit applicants to process, issue, modify or reissue permits. A permit shall not be issued to any applicant until the fees, assessed by the Department, have been paid.

001.02 In determining the fees, the Department shall calculate and itemize the direct costs associated with permit evaluation, processing, and monitoring, including application review, meetings and correspondence with the permit applicant, permit research and drafting time, necessary travel, technical and administrative review of the drafted permit, clerical preparation of the permit and related tasks, advertising costs for public notice, review of public comments on the draft permit, hearing costs, if applicable, permit processing fee billing, and final permit issuance. The Department shall apply the current indirect rate to the total direct wages and salary expenses recovered on a quarterly basis. This method is the approved agency-wide procedure for recovering indirect costs from its federal programs.

001.03 The Department shall maintain itemized records of staff time and costs incurred in the processing of a permit application. Permit processing fees shall apply without regard to whether a permit is issued, denied or requested to be inactivated prior to issuance or thereafter.

001.04 Each application for a new or reissued permit shall be accompanied by a filing fee of five hundred dollars.

001.05 All fees shall be made payable to the State of Nebraska and shall be paid within thirty days of receipt of the Department's billing statement. All fees shall be collected by the Department.

001.05A Where the fees assessed in accordance with 001.02 above are less than the filing fee set forth in 001.04 above, the Department shall refund the balance to the applicant.

001.05B Where the fees assessed in accordance with 001.02 above exceed the filing fee set forth in 001.04 above, the applicant shall be billed the balance.

002 Annual Permit Administration Fees

002.01 An annual administration fee shall be assessed to permittees based upon direct and indirect costs.

002.02 In determining the annual fees, the Department shall calculate and itemize the costs of monitoring, inspections or other site visits, reviewing the compliance to the associated permit conditions, general legal costs incurred by the Department, or other tasks related to administering the

permit program.

002.03 The Department shall maintain itemized records of staff time and costs incurred in the administration of a permit.

002.04 Permittees shall be billed quarterly. All fees shall be made payable to the State of Nebraska and shall be paid within thirty days of receipt of the Department's billing statement. Annual fees not received on the due date shall be subject to a late charge of Twenty-five Dollars and an additional ten percent per month. All fees shall be collected by the Department. Failure of a permittee to pay the annual fee by the end of the fiscal year (June 30) is a violation of the permit and may result in the revocation of such permit.

003 The fees subject to this Chapter shall be applicable upon the effective date of these regulations.

Enabling Legislation: Neb. Rev. Stat. §§ 81-1505(9)(b); 81-1505.01

Legal Citation: Title 122, Ch. 8, Nebraska Department of Environmental Control

