

Lower Platte North NRD – Chemigation R&R Draft Proposal December 27, 2017



Chapter 1 : 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 N.A.C. These rules and regulations are intended to apply district-wide.

Chapter 2 : Definitions

- A. 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.
- B. Chemical** shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.
- C. Chemigation** shall mean any process whereby chemicals are applied to land or crops in or with water through an on farm irrigation distribution system.
- D. Council** shall mean the Environmental Quality Council.
- E. Department** shall mean the Department of Environmental Quality.
- F. Director** shall mean the Director of Environmental Quality.
- G. District** shall mean Lower Platte North Natural Resources District.
- H. 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.
- I. Injection location** shall mean each site where chemicals will be applied through an irrigation distribution system.
- J. 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.
- K. Inspector** shall mean any authorized employee of the District.
- L. Natural Resources District Operator Certification** shall mean all operators within the District, who use any type of fertilizer either commercial or organic, are required to obtain NRD certification by attending NRD education classes or by passing a take home test designed by LPNNRD and in agreement with applicable other agency input every four (4) years. Certification will be consistent with the District's chemigation program and applicable to the State FIFRA program.
- M. 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.

- N. 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.
- O. 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.
- P. Registered well** shall mean any well which is properly registered with the Nebraska Department of Natural Resources.
- Q. 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.
- R. Working day** shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

Chapter 3: Chemigation Permit Application

Rule 1: Authorization for Chemigation Permit from the District

No person shall chemigate, or authorize the application of chemicals to land or crops through the use of chemigation, unless such person obtains authorization from the District, via permit, authorizing such chemigation. No permit is required to pump or divert water to or through an open discharge system. Each injection location must be permitted on an annual basis, using forms provided by the District. Each permit expires on June 1 of each year, and the permit holder is solely responsible for renewal.

Rule 2: Authorized Date on Chemigation Permit

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

Rule 3: Required Information on Chemigation Permit

An application must be filed with the District for each injection location on forms provided by the District. The following information is the minimum requirement of the District.

- A.** Name, address and telephone number of applicant.
- B.** Calendar year for which application is being made.
- C.** Legal description of the injection location site, defined to the quarter of quarter section (forty-acre increment).
- D.** Whether the application is for an initial, renewal or emergency permit.
- E.** The name(s) of the certified chemigation applicator(s), their certification number and the expiration date of their certification.

- F. Whether the chemical injection equipment to be used is stationary or portable.
- G. Signature of the permit applicant and date of signing. The signature must be that of the proposed permitholder or a person holding power of attorney from the applicant.
- H. If the application is for a renewal permit, in addition to the information required in 1 through 7 above, the applicant shall list the names and estimated amounts of all the chemicals that were used in the chemigation system the previous year.
- I. On chemigation renewal forms, the name(s) of the operator that is NRD Operator Certified, their NRD certification number, and the expiration date. This applies for renewal chemigation permits only, not new, emergency, or special chemigation permit applications.

Chapter 4 : Certification of Chemigation Applicators

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 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.

The LPNNRD shall also require that all operators of chemigation irrigation systems within the District obtain NRD operator certification by attending NRD education classes, or by passing a take home test designed by LPNNRD, every four years. NRD certification shall be valid for four years and shall expire on April 1 of the fourth year after the date of issuance.

Chapter 5 : 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. Applications for a new or renewal chemigation permit received by the District during the calendar year shall be inspected and approved by November 1st of that same calendar year. This does not apply to renewal permits that are not subject for inspection during that calendar year or when new applications are received by the district with less than forty-five days remaining in the calendar year.
- C. No chemigation permit, except a Special permit, shall be issued or renewed by the district, if any of the following conditions occur:
 - 1. The applicant has failed to provide the required information, as specified in Title 195, Chapter 2, 002, Nebraska Department of Environmental Quality on the application form;
 - 2. The irrigation distribution system does not comply with the equipment standards set forth in Title 195, Chapters 9 and 10, Nebraska Department of Environmental Quality;
 - 3. The applicator has not been certified as a chemigation applicator by the Department; or
 - 4. Failure of the applicant to remit the appropriate fee.
- D. Changes in application information shall be provided to the District within 10 days.

Chapter 6 : Renewal Process of Chemigation Permits

All permits must be renewed annually. If a renewal form has not been completed and filed with the requisite fee (see Section Chapter 10: Chemigation Permit Fee Schedule), 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 District 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 7 : Special Chemigation 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.

Issuance of a special permit shall not relieve the permit holder, applicator, or operator of a chemigation system from compliance with all the other responsibilities of the District rules and regulations.

Chapter 8 : Emergency Chemigation Permit Approval

- A. 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. "Two working days" shall mean Monday through Friday, but does not include Saturday, Sunday, or a federal or state holiday. The day the District receives the permit application is not included in the two working days. 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.
- B. Emergency permits shall be valid for a period of forty five (45) days from the date of issuance.
- C. Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of the Nebraska Chemigation Act or standards, rules and regulations adopted under it, shall have such permit automatically revoked by the district or the Department, without a hearing and shall be guilty of a Class II misdemeanor

Chapter 9 : Permit Revocation

Rule 1: District Suspension of Chemigation Permit

- A. 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.
- B. The District shall suspend or deny any and all permits if:
 1. A permit was obtained fraudulently;
 2. A permit holder fails to notify the district of equipment replacement or alteration within twenty-four hours;
 3. Applicator or permit holder fails to notify the District and Department of actual or suspected spill or accident within 24 hours;
 4. Permit holder fails to carry out cleanup measures developed by the Department within the time specified;
 5. Failure to have the well properly registered with the Department of Natural Resources, however a six month grace period (one time only per injection site) will be granted to allow time for registration;
 6. Violation of any provisions of the Lower Platte North NRD Ground Water Management Rules and Regulations;

Rule 2: Notification of Violation

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.

Rule 3: Chemigation Violation Policy

Staff will follow LPN Chemigation Violation Policy for handling chemigation violations.

Chapter 10 : 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. **New Permit:** An original application fee of ~~\$60.00~~ \$90.00 for each new permit shall be paid to the District, of which \$5.00 shall be paid to the Department of Environmental Quality.
- B. **Special Permit:** A special permit application fee of \$60.00 shall be paid to the District, of which \$5.00 shall be paid to the Department of Environmental Quality.
- C. **Renewal Permit:** The annual renewal fee of \$30.00 shall be paid to the District, of which \$2.00 shall be paid to the Department of Environmental Quality.

- D. **Emergency Permit:** An emergency permit application fee of ~~\$120.00~~ **\$300.00** shall be paid to the District, of which \$10.00 shall be paid to the Department of Environmental Quality.

Chapter 11 : Inspections

Rule 1: Access for Chemigation Inspections

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

Rule 2: Timing of inspections

- A. Inspections for original applications shall be conducted within 45 days of filing.
- B. Inspections for special permits shall be conducted prior to permit renewal.
- C. Inspections for an emergency permit shall be conducted during the 45 day effective period if no inspection was conducted prior to the permit issuance.
- D. The district will inspect each renewal permit at least once every three years.
- E. If the system was not inspected the year it was due for re-inspection, the permit will be suspended. A renewal application for a suspended permit will not be approved until the system has been inspected and all requirements are met. The permit will be revoked if re-inspection does not occur prior to December 31 of the inspection year.
- F. If District Staff is required to make a second trip to complete a chemigation inspection, a \$50.00 fee can be charged to the permit holder/applicator. If a third trip is required the fee would increase to \$100.00.

Rule 3: Inspection Procedures

- A. Functional operation of the irrigation and chemigation system, to include start-up and shutdown, is required during the inspection process.
- B. Permitholder/applicators are required to be present during the inspection and to operate the chemigation equipment. The inspector will not operate such systems.
- C. Permitholder/applicator is responsible for removal of the vacuum relief valve, if used as an inspection port, and the chemical injection check valve. The inspector may assist in removal of either valve if so requested by the permitholder/applicator.
- D. The district will replace chemigation injection check valves if damaged during the testing process only. The district will not replace valves damaged as a result of removal or attachment or any defects in the valve.
- E. District inspectors may have for sale, at district cost, a limited number of chemical injection check valves and other pieces of chemigation equipment as needed to improve the inspection process. The permitholder/applicator will not be required or encouraged to purchase such equipment from the inspector but may do so for ease of the inspection process.

- F. If a permit is not issued after inspection, it is the responsibility of the person making the permit application to request re-inspection.
- G. If two inspections to a site have been made and the permit request is still denied based on equipment requirements or failure of the landowner, permitholder, applicator, or designated person to be present at the scheduled appointment, the district will require reapplication for a new permit and will require the resubmittal of the initial \$60 fee prior to the next inspection.
- H. The district will inspect all permit application requests in the district boundaries. Special cases involving neighboring districts will be handled on a case by case basis.

Rule 4: Inspections for Chemigation Compliance

- A. 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 replaced or altered equipment of previously approved injection locations.
- B. 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.
- C. The district will make area wide, selective, and periodic inspection of permitted systems on an annual basis. The district will investigate complaints concerning permitted systems.
- D. The district will make area wide selective and periodic inspections of non-permitted systems annually. The district will investigate complaints concerning non-permitted systems. Any person believed by the district to be chemigating without a required permit shall be notified of the district's right and intent to inspect the premises concerned. If consent for inspection is denied, such authorized representatives may apply to the district or county court of the county in which the chemigation system is located for an inspection warrant to allow inspector entrance to the systems for purposes of the Chemigation Act. No person shall refuse entry or access to any authorized representative of the district or department who requests entry for purposes of inspection and who presents appropriate credentials and an inspection warrant. Nothing in this chapter shall be construed to prevent prompt inspection without consent or appropriate warrant in emergency situations when there is neither sufficient time nor opportunity to obtain an inspection warrant.

Chapter 12 : Equipment

Rule 1: Chemigation Equipment

- A. Irrigation distribution systems with chemigation capabilities shall be equipped with the following devices:
 - 1. Pipeline (or called Mainline) Check valve
 - 2. Vacuum relief valve
 - 3. Inspection port
 - 4. Low pressure drain
 - 5. Chemical injection line check valve
 - 6. Simultaneous interlock device

- B. 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.
- C. All permitholders shall maintain the above listed equipment in good working condition at all times of chemigation.
- D. For each new chemigation permit application submitted after March 1, 2015 the District shall require a dedicated irrigation pipeline check valve, vacuum relief valve, inspection port, low-pressure drain, and simultaneous interlock devices for each chemigation injection site.

Rule 2: Subsurface Drip Irrigation

A person is hereby authorized by rule to inject chemicals for maintenance of a subsurface drip irrigation system once each calendar year, provided such system:

- A. Is equipped with an irrigation pipeline check valve, and
- B. Is permitted under Title 122 – Rules and Regulations for Underground Injection and Mineral Production Wells.

Chapter 13 : Posting of Chemigation Signs

- A. All permitholders shall post signs on chemigated fields when using any herbicide or pesticide, or a chemical for which the label requires posting.
- B. 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.
- C. Each sign shall be posted that it is clearly visible and legible prior to becoming wetted by the irrigation spray. The lettering on the sign(s) shall be a color which clearly contrasts with the background and the letters shall be two and one-half inches in height. Each sign shall be posted and maintained during the chemigation period and until the end of reentry period as specified by the chemical label. The sign(s) shall be posted no sooner than 48 hours prior to the start of chemigation and shall be removed, covered, or otherwise made illegible, no later than 48 hours after the end of reentry period.
- D. The signs shall conform to District rules and regulations as well as Title 195, Chapter 12, 002.04, Nebraska Department of Environmental Quality.

Chapter 14 : Chemigation Enforcement

- A. 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.
- B. 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.

- C. If there is an actual or imminent threat of danger to the public or environment due to the operation of a permitted or non-permitted chemigation system, the District shall order immediate suspension of any chemigation operations.
- D. 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.
- E. The District shall make reasonable efforts to obtain voluntary compliance before compelling compliance through the legal system.

Chapter 15 : Reporting Requirements

Rule 1: Reporting Accidents

- A. 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, 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.
- B. 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.

Rule 2: Reporting Chemigation Equipment Replacement

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 24 hours of such replacement or alteration. The District shall conduct an inspection of the replaced or altered equipment.