

**LOWER BIG BLUE NATURAL RESOURCES DISTRICT
CHEMIGATION RULES AND REGULATIONS**

June 25, 1987

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**LOWER BIG BLUE NATURAL RESOURCES DISTRICT
CHEMIGATION RULES AND REGULATIONS**

These rules and regulations are adopted pursuant to the authority granted in Neb. Rev. Stat. §§46-701-754, the Nebraska Ground Water Management and Protection Act. The Lower Big Blue Natural Resources District hereby incorporates, as part of these rules and regulations, the requirements of Title 195 of the *Nebraska Administrative Code*, as promulgated by the Nebraska Department of Environmental Quality (DEQ) and the provisions of the Nebraska Chemigation Act (Neb. Rev. Stat. §§ 46-1101 to 46-1148), as the same may be amended from time to time.

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

WHEREAS the Nebraska Chemigation Act, LB 284, adopted by the Legislature in 1986, provided the natural resources districts and the Department of Environmental Quality with the authority to document, monitor, regulate, and enforce chemigation practices in Nebraska. And WHEREAS, in accordance with 46-1135, R.R.S. 1943, the District held a public hearing on June 25, 1987 at Beatrice, Nebraska, and submitted the proposed rules and regulations to the Director of Department of Environmental Quality for approval on June 29, 1987.

IT IS SO ORDERED:

Chapter I - DEFINITIONS

- 001.00 Applicator means any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation including starting and stopping the equipment whether for themselves or on behalf of the permit holder for the land on which the chemigation will take place.
- 002.00 Chemical means any fertilizer, herbicide, or pesticide mixed with the water supply.
- 003.00 Chemigation means any process whereby chemicals are applied to land or crops in or with water through an on-farm irrigation distribution system.
- 004.00 District shall mean the Lower Big Blue Natural Resources District.
- 005.00 Council shall mean the Environmental Quality Council.
- 006.00 Department shall mean the Department of Environmental Quality.
- 007.00 Director shall mean the Director of Environmental Quality.
- 008.00 Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one of more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.
- 009.00 Herbicide means an agent used to destroy or inhibit plant growth.
- 010.00 Injection location means each site where chemicals will be applied through an irrigation distribution system.
- 011.00 Irrigation distribution system means 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.
- 012.00 Irrigation season shall mean the twelve (12) months of the calendar year.
- 013.00 Open discharge system means 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.

- 014.00 Permitholder means 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.
- 015.00 Pesticide means 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.
- 016.00 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.
- 017.00 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 2 – APPLICATION & PERMIT FEES

- 001.00 After January 1, 1987, no person who chemigates in the confines of the Lower Big Blue Natural Resources District shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless a permit is obtained from the District, except that nothing in this chapter shall require a person to obtain a permit to pump or divert water to or through an open discharge system.
- 002.00 Permit application must be filed with the District for each injection location annually. **An application will 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.** Completed applications shall contain information pursuant to Title 195-2-002.00 (DEQ) Chemigation Rules & Regulations). All forms are available from the District office. **Any incomplete, unsigned, or unpaid applications will be returned to the applicant.**
- 002.01 A permit shall expire on June 1 of each year, as per Title 195, Chapter 4, 001, except as provided with Emergency Permits. **The permitholder is solely responsible for renewal of the permit.**
- 003.00 The person making the permit application is required to list the certification number of the applicator on the application form at the time of application.
- 004.00 **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.**

- 004.01 An original new application fee of sixty (60) dollars (not to exceed one hundred fifty (150) dollars) for each new permit shall be paid to the District, of which five (5) dollars shall be paid to the Department of Environmental Quality.
- 004.02 A special permit application fee of sixty (60) dollars (not to exceed one hundred fifty (150) dollars) for each permit shall be paid to the District, of which five (5) dollars shall be paid to the Department of Environmental Quality.
- 004.03 The annual renewal fee of twenty (20) dollars (not to exceed one hundred (100) dollars) for each renewal shall be paid to the District, of which two (2) dollars shall be paid to the Department of Environmental Quality.
- 004.04 An emergency permit application fee of two hundred (200) dollars (not to exceed five hundred fifty (500) dollars) for each emergency permit shall be paid to the District, of which ten (10) dollars shall be paid to the Department of Environmental Quality.

Chapter 3 - CERTIFICATION

001.00 Pursuant to Title 195, Chapter 13, 003, Nebraska Department of Environmental Quality, all chemigation applicators must undergo and maintain certification. The Department shall contract with the University of Nebraska Cooperative Extension Service to conduct annual statewide training sessions in the safe use of chemigation. All chemigation applicators are required to attend a training session and pass a written examination acknowledging satisfactory competency in the use of chemigation after which the applicant will be issued a chemigation application certification number. Chemigation application certification shall expire on January 1 of the fourth (4th) year after the date of issuance.

Chapter 4 – PERMITS

001.00 The District shall review each completed permit application, conduct an inspection, and approve or deny the application within forty five (45) days after the application is filed, except for the cases of special permits, renewals, and/or emergency permits as described in Chapter 6 thereof.

002.00 Upon application of permit therefore, a chemigation permit shall be issued or renewed by the District unless it is determined that one of the following conditions have occurred:

002.01 The applicant has failed to provide the required information, as described in Chapter 2, 002 hereof, on the permit application form.

002.02 The irrigation distribution system does not comply with the equipment standard described in Chapter 5 thereof.

002.03 The applicator has not been certified as a chemigation applicator by the Department.

002.04 Failure of the applicant to remit the appropriate fee.

003.00 The permitholder shall notify the District within ten (10) days of any changes in the information provided on the permit application.

The District shall deny, suspend, refuse renewal of, or revoke a permit applied for or issued on any of the following grounds:

003.01 Fraud or deceit was used in obtaining a permit;

003.02 Failure to notify the District of equipment replacement or alteration within seventy two (72) hours after said replacement or alteration;

003.03 Failure of the applicator or permitholder to notify the District and Department of an actual or suspected spill or accident within twenty four (24) hours after said spill or accident;

003.04 Failure to carry out the cleanup measures developed by the Department within the time specified.

003.05 Violation of any other provisions of the Nebraska chemigation Act or any standards or rules and regulations adopted pursuant to the Act.

004.00 The District or Department shall immediately suspend the operation of a chemigation system if the District or Department concludes that there is an actual or imminent threat of danger to the public or the environment as a result of operation of a chemigation system.

005.00 The District shall notify any person found to be in violation of the Nebraska Chemigation Act or any rules or regulations issued pursuant to the Act of the reasons of said violations, and that said person has ten (10) days in which to either remedy said violation or request a hearing before the Board of Directors of the District regarding said violation. If the violation has not been corrected in the 10-day period, the District shall notify the Department of 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 establish a schedule for compliance in lieu of the ten (10)-day compliance requirement.

006.00 Renewal Permits. A permit may be renewed each year upon payment of the annual fee, completion of an application form providing all information requirements for an original new application, as described in Chapter 2 hereof, and satisfaction of the provision of Chapter 4, 002 hereof.

006.01 Permits for which renewal applications are not received by the

District on or before June 1 shall not be renewed without filing an original new application form, complete with required information and payment of the original new application fee.

007.00 Permits are not transferable.

008.00 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 permit.

009.00 Emergency Permits. A person may file an application with the District for an emergency permit as established in Title 195, Chapter 6, Nebraska Department of Environmental Quality. An emergency permit shall be issued in accordance with the conditions of Chapter 4, 002 hereof. 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.

009.01 The emergency permit application shall be accompanied by a fee as described in Chapter 2, 004 hereof.

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

009.03 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 of Environmental Quality without a hearing and shall be guilty of a Class II misdemeanor.

Chapter 5 - EQUIPMENT

001.00 Any irrigation distribution system except an open discharge system, through which chemigation is performed shall be equipped with the mechanical devices specified herein. **All such equipment listed shall be maintained in good working condition at all times of chemigation.**

001.01 Design configuration of all said equipment shall be in compliance with Title 195, Chapters 9&10, Nebraska Department of Environmental Equality, and any rules and regulations promulgated by the District.

001.02 All equipment shall be installed in accordance with manufacturer's specifications and at the location specified. This shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements set therein.

- 002.00 Irrigation pipeline check valve. Each irrigation distribution system used for chemigation shall contain a check valve located in the pipeline between the irrigation pump and the point of chemical injection into the irrigation pipeline. Its purpose is to prevent a mixture of water and chemical from draining or siphoning back into the irrigation water source.
- 002.01 Existing irrigation distribution systems which, as of the date of these rules and regulations, are equipped with a properly located check valve shall be considered in compliance if the valve provides a watertight seal against reverse flow.
- 002.02 Irrigation distribution systems which are not equipped with a check valve or contain a check valve which after repair cannot meet the requirement in 002.01 above, shall be equipped with a check valve which provides a watertight seal against reverse flow.
- 002.03 The valve body and all components must be constructed of corrosion resistant materials or otherwise coated or protected to prevent corrosion. The valve must contain a sealing mechanism designed to close prior to or at the moment water stops flowing in the downstream direction.
- 002.04 All check valves installed on an irrigation distribution system shall be in accordance with any rules and regulations adopted by the District and, after January 1, 1988, shall be models approved by the Department.
- 003.00 Vacuum relief valve. Each irrigation distribution system used for chemigation shall contain a vacuum relief valve located on the pipeline between the irrigation pump and the irrigation pipeline check valve. Its purpose is to prevent creation of a vacuum when the water flow stops. If the valve connection will also serve as the inspection port, the permitholder will ensure removal of the valve at the time of inspection.
- 004.00 Inspection port. Each irrigation distribution system used for chemigation shall contain an inspection port or other viewing device located on the pipeline between the irrigation pump and the irrigation pipeline check valve. In many cases, the vacuum relief valve connection can serve as the inspection port.
- 004.01 The inspection port or viewing device shall be situated in such a manner that the inlet to the low pressure drain can be observed.
- 004.02 A minimum four (4)-inch diameter orifice or viewing area is required for systems without an existing port or device after January 1, 1988.
- 005.00 Low-pressure drain. Each irrigation distribution system used for chemigation shall contain a low-pressure drain located on the bottom of the horizontal pipe between the irrigation pump and the irrigation pipeline check valve. Its purpose is to drain any mixture of water and chemical away from the irrigation water source.

- 005.01 The drain shall be constructed of corrosion resistant material or otherwise coated or protected to prevent corrosion.
- 005.02 The drain shall have an orifice of at least 3/4 inch diameter and shall not extend into the horizontal pipe beyond the inside surface of the bottom of the pipe.
- 005.03 If tube or pipe is used as the conduit, it will be at least 3/4 inches diameter the entire length.
- 005.04 When the pipeline water flow stops, the drain will automatically open. A tube, pipe, or similar conduit shall be used to discharge the solution at least twenty (20) feet away from the irrigation water source.
- 006.00 Chemical injection line check valve. Each irrigation distribution system used for chemigation shall contain a chemical injection line check valve located between the point of chemical injection into the irrigation pipeline and the chemical injection pump. Its purpose is to prevent flow of water from the irrigation system into the chemical supply tank, and to prevent gravity flow from the chemical supply tank into the irrigation pipeline.
- 006.01 The valve shall be constructed of chemically resistant materials.
- 006.02 The valve shall be designed to prevent irrigation water under operating pressure from entering the chemical injection line.
- 006.03 The valve shall be designed to have a minimum opening (cracking) pressure of ten (10) psi. When the chemical injection pump is shut down, the valve shall prevent any leakage from the chemical supply tank into the irrigation pipeline.
- 007.00 Simultaneous interlock device. Each irrigation distribution system used for chemigation shall contain a simultaneous interlock device located between the irrigation pumping plant and the chemical injection pump so that if the pumping plant stops, the injection pump will also stop. Its purpose is to prevent pumping chemicals into the irrigation pipeline after the irrigation pump stops.
- 008.00 Any permit holder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the District shall notify the District within seventy two (72) hours of such replacement or alteration. Thereafter, the District shall conduct an inspection of the replaced or altered equipment to determine compliance with the Nebraska Chemigation Act and these rules and regulations.

Chapter 6 - INSPECTIONS

- 001.00 Employees of the District and the Department shall have access at all reasonable times to inspect chemigation systems and otherwise carry out their duties under the Chemigation Act, all in accordance with Nebraska law, including Section 46-1124 of the Nebraska State Statutes.
- 001.01 Permitholders or applicators shall contact the District Office to set a time and date for the inspection once permit application has been made.
- 002.00 Original New Application. The District shall conduct an inspection of each injection location for which an original new application for permit has been received to determine compliance with the equipment standards described in Chapter 5 hereof.
- 002.01 Except as set forth in 003.00 and 004.00 below, inspection shall be conducted within forty five (45) days after the new permit application is filed.
- 003.00 Renewal Applications. For each renewal permit issued, an inspection shall be conducted at least once every three (3) years from the date it was last inspected. The District reserves the right to inspect any location up for renewal at any time to determine compliance with the Chemigation Act and these rules and regulations. When an inspection is made and compliance is not demonstrated, renewal shall be refused, suspended, or revoked until compliance is achieved and approval for operation is given by the District.
- 004.00 Special Permit Applications. For each special permit issued, an inspection shall be conducted on or before January 1, (prior to permit renewal). When an inspection is made and compliance is not demonstrated, the special permit shall be refused, suspended, or revoked until compliance is achieved and approval for operation is given by the District.
- 005.00 Emergency Permit Applications. For each emergency permit issued, an inspection shall be conducted during the forty five (45)-day effective period of the permit if no inspection was conducted prior to permit issuance.
- 006.00 The District shall conduct an inspection of replaced or altered equipment after being notified within seventy two (72) hours of such changes by the permitholder. When in compliance, the District shall approve the continuance of the permit. If not in compliance, the permit shall be suspended until compliance is demonstrated and approval for operation is given by the District. The District shall not collect a new fee for an inspection of previously approved injection locations.
- 007.00 The District will make area wide selective and periodic inspections to ensure compliance with the Nebraska Chemigation Act and these rules and regulations.
- 007.01 Spot Checks:
The District will make area wide selective and periodic inspections of systems with permits. The District will investigate complaints concerning systems for which a permit has been issued.

007.02 Non-Permitted Systems:

The District will make area wide selective and periodic inspections of systems for which no permit has been issued. The District will also investigate complaints concerning systems for which no permit has been issued. In cases of non-cooperation by an irrigator, the District may apply to the district or county court of the county in which the irrigation system is located for an inspection warrant to allow the employee entry onto his/her land to carry out duties under the Nebraska Chemigation Act.

- 008.00 If after an inspection, a permit is not issued, it is the responsibility of the person making the permit application to request from the District, reinspection.
- 009.00 In the event that after a minimum of two inspections have been made, the permit is denied, suspended or revoked, the District will require reapplication for an original new permit and payment of the original new application fee described in Chapter 2, 004 hereof, prior to each of the next inspections.
- 010.00 Either the applicator/permitholder is required to be present during an inspection and to operate chemigation equipment. The inspector will not operate irrigation or chemigation equipment.
- 010.01 Applicator/permitholders are responsible for removal of the vacuum relief valve, if used as inspection port, and the chemical injection check valve.
- 010.02 The inspector may assist in removal of either valve if so requested by the applicator/permitholder.
- 010.03 The District will replace, at District expense, a chemical injection check valve only if damaged during the testing process. The District will not replace a chemical injection check valve damaged in removal or reattachment thereof or by any defects in the valve.
- 011.00 A start-up and shut-down of the chemigation system during inspection is required.
- 012.00 On occasion, during an inspection for an applicator/permitholder who chemigates along Natural Resources District boundaries, it may be convenient to the Lower Big Blue Natural Resources District for neighboring District staff to cross over the boundary and inspect systems in this District. The Lower Big Blue Natural Resources District will allow such inspections of District chemigation systems by neighboring District staff as meeting the requirements of the Lower Big Blue Natural Resources District Rules and Regulations provided a reciprocity agreement has been made with the neighboring District.
- 013.00 After completion of inspection and approval is give, the inspector shall affix a label certificate to the irrigation system.

Chapter 7 – POSTING OF SIGNS

- 001.00 Signs shall be posted on chemigated fields when any herbicide or pesticide, or a chemical for which the label requires posting is used. **The signs shall conform to District rules and regulations as well as Title 195, Chapter 12, 002.04, Nebraska Department of Environmental Quality.**
- 002.00 The signs required in these rules and regulations shall meet the following requirements:
- 002.01 A sign shall be posted at each usual point of entry into a treated area, and at the point of chemical injection if located outside the treated area. Each sign shall be posted in such a manner that it is clearly visible and legible.
- 002.02 The sign shall contain the words, "KEEP OUT, CHEMICAL APPLICATION THROUGH IRRIGATION WATER SYTEM".
- 002.03 The letter on the sign shall be a color which clearly contrasts with the background and the letters shall be at least two and one half (2 ½) inches in height.
- 002.04 Each sign shall be posted and maintained during the chemigation period and until the end of re-entry period as specified by the chemical label. The sign shall be posted no sooner than forty eight (48) hours prior to the start of chemigation and shall be removed, covered, or otherwise made illegible, no later than forty eight (48) hours after the end of re-entry period.

Chapter 8 - ACCIDENT REPORTING

- 001.00 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 (24) hours of its discovery.
- 001.01 Notification shall be made by telephone to the Department (402-471-2186) and the District (402-228-3402) during office hours, from 8 a.m. to 5 p.m., Monday through Friday. After hours and holidays, reports shall be made to the Nebraska State Patrol (402/471-4545). All information known about the accident at the time of discovery is to be included, such as time of occurrence, quantity and type of material, location, and any corrective or clean-up actions presently being taken.
- 001.02 The permitholder is responsible for the actual clean-up.

Chapter 9 - ACCIDENT INVESTIGATION AND REMEDIATION

- 001.00 Any actual or suspected accident resulting from the use of chemigation will be investigated by the District and the Department. The applicator or permitholder shall supply any additional information requested in the course of the investigation regarding the amount and type of

substance(s) involved, the well and equipment involved, and any other relevant information the applicator or permit holder would reasonably be expected to know.

002.00 The Department will determine what immediate action it is necessary for the permit holder to take according to Part I of the Ground Water Remedial Action Protocol Title 118, Chapter 10 - Ground Water Quality Standards and Use Classification, and upon notification thereof, the permit holder shall immediately commence taking such action.

003.00 The Department shall perform the appropriate assessments and develop a workplan for any further (final) remedial action according to Part II of the Ground Water Remedial Action Protocol (Title 118, Chapter 10). The remedial action workplan shall be carried out by the permit holder under the supervision of the Department or the District.

Chapter 10 - COMPLIANCE WITH NEBRASKA CHEMIGATION ACT

001.00 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 procedure as follows. The District shall give three (3) days' notice to the affected person and an opportunity to be heard before issuing a cease and desist order to enforce the Groundwater Management Act. The District shall make reasonable efforts to obtain voluntary compliance before compelling compliance through the legal system.

001.01 Compliance with the Nebraska Chemigation Act shall be an affirmative defense to any civil action resulting from a person's use of chemigation.

Chapter 11 - HEARINGS

001.00 The District will notify permit holder and applicator by mail when the District denies, revokes, refuses renewal, or suspends a permit.

001.01 The District will set a time, date, and location for a hearing upon request by the person or persons so requesting before the Board of Directors of the Lower Big Blue Natural Resources District.

001.02 That hearing will be conducted in accordance with the District's Rules and Regulations governing conduct of hearings.

Chapter 12 - PENALTIES

001.00 **Emergency Permit Violation.**

Permit revocation without hearing and Class II misdemeanor.
Each day of continued violation shall constitute a separate offense.

002.00 Operating Without Required Equipment.

Class IV misdemeanor.

Each day of continued violation shall constitute a separate offense.

003.00 Operating Without a Permit.

Up to \$1,000 civil penalty or Class II misdemeanor.

Each day of continued violation shall constitute a separate offense.

004.00 Operating with a Suspended or Revoked Permit.

Up to \$1,000 civil penalty or Class II misdemeanor.

Each day of continued violation shall constitute a separate offense.

005.00 Tampering or Damaging Equipment.

Up to \$1,000 civil penalty or Class I misdemeanor.

Each day of continued violation shall constitute a separate offense.

006.00 Failure to Report an Accident.

Up to \$500 civil penalty or Class III misdemeanor.

Each day of continued violation shall constitute a separate offense.

007.00 Any other violation.

Up to \$500 civil penalty or Class IV misdemeanor.

Each day of continued violation shall constitute a separate offense.