

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 1 - DEFINITIONS OF TERMS

001 "Applicant" means a person on whose behalf applications are made or petitions are filed for authority or permission from the department.

002 "Council" means the Nebraska Environmental Quality Council.

003 "Department" means the Nebraska Department of Environmental Quality.

004 "Director" means the director of the Nebraska Department of Environmental Quality or any authorized representative he or she designates under applicable law.

005 "Interested Person" means a person who has or claims any interest, legal right, duty or privilege directly affected by a contested case or declaratory ruling.

006 "Person" means 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.

007 "Petitioner" means a person who has filed a petition with the department in a contested case or declaratory ruling proceeding.

008 "Respondent" means a party in a contested case whose legal rights, duties, or privileges are subject to petitioner's demands. The director shall be the respondent in cases involving appeals of departmental decisions or actions.

Legal Citation: Title 115, Ch. 1, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 2 - FILINGS AND CORRESPONDENCE

001 The Nebraska Department of Environmental Quality is located at 1200 "N" Street, Suite 400, Lincoln, Nebraska. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday except State holidays.

002 No person shall be required to perform official acts or file pleadings or other documents on any Saturday, Sunday or State holiday. When the law requires a pleading or other document to be filed or any act to be performed on or before a date falling on one of these days, the time to file the pleading or perform the act is the next work day.

003 All filings and correspondence shall be sent to the State of Nebraska Department of Environmental Quality, Box 98922 State House Station, Lincoln, Nebraska 68509 or delivered to the Lincoln office.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(13); 84-1001

Legal Citation: Title 115, Ch.2, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 3 - PUBLIC RECORDS AVAILABILITY

001 Any person may examine public records maintained by the department during the department's business hours subject only to the provisions of Chapter 4.

001.01 Such person may gain access at the Lincoln office and may obtain a reasonable number of copies at the time. Charges for copies shall be at a rate determined under 003.

001.02 For complex copy requests, the department will provide the copies as soon as possible but no later than 20 business days after the request date. Charges for copies and postage shall be at a rate determined under 003.

002 Any person may request copies of public records from the department by specific written request to the Lincoln office. The department will provide the copies as soon as possible but no later than thirty business days after the request is received. Charges for copies and postage shall be determined under 003.

002.01 Written request must specify the records that are being requested and cannot request the department to conduct research to determine the records to be provided.

003 Any person requesting photographic or other copies of public records must pay for the cost of reproduction in an amount determined by the department.

004 On request the department must give any person a certified copy of such records on payment of the legal fees.

004.01 The fee shall be thirty cents per hundred words if the copy is typewritten, or the cost of a photographic copy.

004.02 A fee of one dollar shall be charged for the certificate of the officer.

005 On request the department must provide a copy of tape recordings for the cost of reproduction of such tapes, unless the subject matter is the property of a court reporter.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Enabling Legislation: Neb. Rev. Stat. §§84-712; 84-712.01;
25-1280

Legal Citation: Title 115, Ch. 3, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 4 - PUBLIC RECORDS CONFIDENTIALITY

001 A claim of confidentiality or trade secrets must be raised at the time of submission of the record or information or the claim is waived unless the claimant establishes a just reason for the claim subsequent to submission of the record or information. The claimant shall certify the record or information and the director shall determine whether the record or information relates to processes or methods entitled to protection.

001.01 In making such determination which shall be on the record, the director shall consider whether:

001.01A The source has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;

001.01B The source has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information or record, and that it intends to continue to take such measures;

001.01C The information or record is not, and has not been, reasonably obtainable without the business' consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);

001.01D No statute specifically requires disclosure of the information or record; and

001.01E The source has satisfactorily shown that disclosure of the information or record is likely to cause substantial harm to the business's competitive position.

002 The director may not withhold records as confidential if they have been disclosed in an open court, open administrative proceeding, open meeting or disclosed by the department in its duties.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

003 All other provisions of Nebraska's public records law shall apply including the enumeration in Neb. Rev. Stat. §84-712.05 and §81-1527 of types of records which may be withheld from the public.

004 Any person denied a public records request may seek remedies as provided in Neb. Rev. Stat. §84-712.03.

Enabling Legislation: Neb. Rev. Stat. §§81-1527;84-712.05

Legal Citation: Title 115, Ch. 4, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 5 - PUBLIC HEARINGS

001 During the public comment period as provided in any departmental regulations, any person may submit written comments on the proposed action. He or she may also request or petition the director, in writing, for a hearing and state the nature of the issues to be raised. The Council shall conduct all rule-making proceedings and hearings, in accordance with the Nebraska Environmental Protection Act, Neb.Rev.Stat. §81-1501 et seq.; the Nebraska Administrative Procedures Act, Neb.Rev.Stat. §84.901 et seq. and Title 115, Chapter 10. This Chapter applies only to administrative hearings conducted by the department to carry out its duties.

002 The director may hold a public hearing if the comments, requests or petitions raise legal, policy or discretionary questions of general application, not pertaining solely to a particular party, and significant public interest exists.

003 Notice of any hearing shall be issued, circulated and mailed in the same manner as public notice of pending permit issuance or denial as provided in other departmental regulations. Any party of record shall be notified at least thirty days before hearing.

004 The department may conduct public hearings necessary for the proper performance of its duties or the efficient enforcement of its authority.

005 Strict rules of evidence and procedure shall not apply in public hearings. The hearing officer shall admit and consider all relevant testimony and evidence having probative value in connection with the subject of the hearing.

006 Public hearings shall proceed as follows:

006.01 The hearing officer opens the hearing;

006.02 The hearing officer states the subject matter and issues involved;

006.03 The department staff gives testimony and evidence;

006.04 Witnesses give testimony and evidence;

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

006.05 The department staff gives closing comments; and

006.06 The hearing officer closes the hearing.

007 Upon conclusion of the public hearing the hearing officer, if one was appointed, shall forward the transcript or recording of the hearing and any other evidence to the director for a determination. The director may request other reports or information from the hearing officer. Any determination made by the director shall be governed by the standards set forth in the Nebraska Administrative Procedures Act, Neb.Rev.Stat. §84-901 et seq. and applicable statutory and regulatory authority of the department.

Enabling Legislation: Neb. Rev. Stat.
§81-1504(1) (5) (9) (11) (13) (20)

Legal Citation: Title 115, Ch. 5, Nebraska Department of
Environmental Quality.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 6 - VOLUNTARY COMPLIANCE

001 The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

Enabling Legislation: Neb. Rev. Stat. §81-1510(1)

Legal Citation: Title 115, Ch. 6, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 7 - CONTESTED CASES

001 Persons Requesting Hearings.

001.01 Any person entitled to request a hearing under Neb. Rev. Stat. §81-1507 or applicable regulations of the department shall follow procedures for contested case hearings as set out in these regulations. The timing of such requests shall be as follows:

001.01A Any person entitled to a hearing in 001 may petition the director for a contested case hearing on the notice of intent to deny, issuance, revocation, modification or denial of a permit. Such petition shall be filed within thirty days of the date that the action occurred which gave rise to the petition or, in the case of an applicant or permittee, within thirty days of receipt of notice from the director of the director's action on the application or permit.

001.01B In the case of the issuance of an administrative order under §81-1507 or other authority of the department, each person named in such order shall request a contested case hearing no later than thirty days after the date such order is served.

001.01C All other actions or decisions from which a contested case hearing may otherwise be requested shall be filed within thirty days of the occurrence of the action or decision.

002 Filing Requirements.

002.01 Method. Pleadings, documents and correspondence required to be filed with the department shall be properly filed in one of the following ways:

002.01A Personal delivery to the office of the department by required date.

002.01B Mailed to the department by certified or registered mail by required date. If the document is not received by the department, proof of mailing will be required to accept a duplicate filing.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

002.01C Mailed to the department by regular mail, postmarked by required date, and actually received by the department. If not received, a duplicate will not be accepted.

002.02 Form. Pleadings may be rejected by the department if they are not in the following form:

002.02A Typewritten

002.02B On 8 1/2 by 11 inch paper.

002.02C Styled substantially similar to Appendix A.

002.03 Answer. Within thirty days from receipt of a compliant or petition, unless extended by the director for good cause, the respondent shall answer in writing and shall:

002.03A State the nature of each defense;

002.03B Admit or deny each material allegation of the complaint or petition; and

002.03C Be in a form substantially similar to Appendix A.

002.04 Withdrawal. A filing may not be withdrawn without approval from the Director or Hearing Officer.

002.05 Amendment. Pleadings, documents and correspondence filed with the department may be amended by the party making the filing, provided such amendment would not prejudice any party and the Director or Hearing Officer approves such amendment.

002.06 Content. Pleadings shall set forth facts upon which they are based, a request for whatever action is being sought and a reference to the applicable laws, rules and regulations; together with whatever statement shall be required by provisions of law.

002.07 Copies. One copy of all pleadings shall be served on all parties or their attorneys, unless otherwise ordered by the Director or Hearing Officer.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

003 Participation in Proceedings.

003.01 Parties. A person becomes a party to a proceeding when:

003.01A The Director initiates an action involving such person;

003.01B The person files a request to be made a party to the proceeding and meets the requirements of Neb. Rev. Stat. §25-328;

003.01C The Director grants a request to be made a party to a pending proceeding following consideration of:

003.01C1. Reason for not becoming a party at the commencement of the proceeding.

003.01C2. Degree of interest alleged by party;

003.01C3. Whether the interest is being represented by another party;

003.01C4. Whether the person's participation will be helpful in rendering a decision; and

003.01C5. Whether the person's participation at the time of filing would unduly disrupt or delay the proceeding.

003.02 Nonparties. Any person who does not wish to be made a party to the proceeding but who desires to make a statement may be permitted to do so. Such persons shall be designated as nonparty participants. Nonparty participants making oral statements at the hearing shall be subject to questioning at the hearing; however, nonparty participants may not question any other nonparty participants nor may they cross-examine any of the witnesses presented by the parties. Apart from the opportunity to testify at the hearing, nonparty participants shall have no further rights or obligations with respect to either the hearing, or to any facet of the decision-making process which follows the hearing.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

003.03 Continuances. Any party needing a continuance shall, immediately upon receipt of notice of hearing, or as soon thereafter as facts requiring such continuance come to his or her knowledge, file a motion, in writing, with the Director or Hearing Officer stating in detail the reasons why a continuance is necessary. The party may be required to submit affidavits or other evidence in support of the request. For showing good cause on his or her own motion, the Director or Hearing Officer may grant a continuance.

003.04 Consolidation of Hearings. The Director or Hearing Officer may order two or more proceedings which are legally or factually related to be heard and considered together on a consolidated record, unless any party makes a showing sufficient to satisfy the Director or Hearing Officer that prejudice would result.

003.05 Waiver. The Director or Hearing Officer may procure waiver of any notice or waiting period required by these rules from all parties to a proceeding.

003.06 Subpoenas. In all proceedings wherein the department has authority to subpoena witnesses, a subpoena requiring the attendance of a witness may be issued by the Director or Hearing Officer on written request of any party, or on order of the Director or Hearing Officer, if such request is received at least six days prior to the hearing. Subpoenas for the production of accounts, books, documents, or papers unless directed by the Director or Hearing Officer on his motion, will be issued by the Director or Hearing Officer only on written request by a party stating specifically which accounts, books, documents, or papers are required and the facts expected to be proved thereby. All parties directed to produce accounts, books, documents, or papers shall furnish and deliver the same at the time and to the place specified in the subpoena. A subpoena issued pursuant to this rule shall be served in person or by certified mail, return receipt requested. In the case of disobedience to a subpoena, the Director or Hearing Officer may invoke the aid of any court of this state in requiring the attendance and testimony of the witnesses and/or the production of accounts, books, documents, or papers. Charges for service of a subpoena shall be paid prior to the date set for the hearing by the parties requesting the subpoena.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

003.07 Witness Fees. Any witness who is summoned and appears is entitled to the same fee as paid for like service in the district courts of Nebraska. Subpoenas shall be accompanied by a certified check, payable to the order of the witness, and equal in amount to the witness traveling fee and a fee for one day's attendance at the hearing. Said check shall be tendered the witness when the subpoena is served upon him. Additional fees due the witness, if any, shall be paid at the close of the hearing by the party subpoenaing the witness.

003.08 Depositions. The taking of depositions in proceedings before the department shall be in the manner prescribed by law for taking depositions in civil actions in the district courts.

003.09 Briefs. Any party may request to submit a brief concerning a matter presented at a hearing to the Director or Hearing Officer at or before the hearing. The time in which briefs will be filed and the number of copies required will be fixed by the Director or Hearing Officer. Submission of briefs may be required by the Director or Hearing Officer upon his or her own motion.

003.10 Evidence. The Hearing Officer shall admit and give effect to all relevant testimony and evidence presented which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may utilize his or her experience and specialized knowledge in the evaluation of the testimony and evidence presented. The Hearing Officer shall rule on any motions or objections presented and may interrogate any witnesses. The Hearing Officer may exclude incompetent, irrelevant, immaterial and cumulative evidence.

003.11 Pre-hearing Conference. At the discretion of the Director or Hearing Officer or upon the request of any party, a pre-hearing conference shall be held pursuant to the scope and procedure of the Nebraska Rules of Civil Procedure.

003.12 Discovery. The use of discovery techniques in proceedings before the department shall be in the scope and manner prescribed by the Nebraska Supreme Court for actions in the district courts.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

003.13 Motions. Any party or the Director may file written motions as permitted under the rules of procedure applicable to civil cases in the district courts.

003.14 Cross Examination. Any party to a contested case hearing shall have the right of cross-examination of witnesses.

004 Burden of Proof.

004.01 The burden of proof in contested cases is on the moving party.

005 Rules of Evidence.

005.01 Any party to a contested case hearing, from which the decision may be appealed to state courts, may request that the hearing officer be bound by the rules of evidence applicable in district court. The requesting party shall:

005.01A At least three days before the hearing request, in writing, that the rules of evidence be applied in the hearing;

005.01B Agree to be liable for the payment of costs incurred; and

005.01C Upon appeal or review, agree to pay the cost of court reporting services he or she shall obtain for the hearing.

006 Official Notice.

006.01 In any proceeding the hearing officer may consider legal facts and special knowledge of the department or hearing officer. Either before or during the hearing, the hearing officer must notify the parties that he or she will consider the special knowledge and give the parties a chance to contest its use.

006.01A If parties question the accuracy of such facts or special knowledge, the hearing officer may require the department to produce an expert witness on the subject. Parties may cross-examine and take exception to such testimony.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

007 Informal Disposition.

The director may dispose of a contested case informally by stipulation, agreed settlement, consent order or default. He or she is not bound by such disposition for more than two years.

008 Amicus Curiae

A person not a party to the contested case may move the hearing officer for leave to file a brief. The motion shall state the interest of the amicus curiae and the reasons such a brief is desirable. Unless the hearing officer directs otherwise, an amicus brief is due the same date as the party's brief in support.

009 Hearing Official. The director may conduct a contested case hearing as a hearing officer or may appoint a hearing officer.

009.01 If the director is the hearing officer, counsel may advise him or her during the hearing.

009.02 The hearing officer, when one has been appointed, must not have investigated the case or prepared pleadings in it.

010 Hearing Officer Duties. The hearing officer has three main duties:

010.01 To help all persons who testify to present complete and accurate evidence;

010.02 To keep the hearing orderly and to the point; and

010.03 To make a record of the hearing, including findings of fact and conclusions of law, that contains sufficient evidence for the director to make decision.

011 Hearing Procedure. The hearing officer shall:

011.01 Open the hearing;

011.02 Enter the notice of hearing into the record;

011.03 Take appearance;

011.04 Act on pleadings not previously filed or resolved;

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

011.05 Rule on exhibits offered;

011.06 Hear the evidence;

011.07 Rule on motions and objections; and

011.08 Close the hearing.

012 Hearing Officer Authority. The hearing officer may:

012.01 Exclude irrelevant evidence;

012.02 Ask for additional evidence or witnesses;

012.03 Question witnesses;

012.04 Dismiss witnesses for good reason;

012.05 Subpoena witnesses;

012.06 Administer oaths; and

012.07 Dismiss the petition for, but not limited to, the following reasons;

012.07A The petitioner fails to appear without good reason, and

012.07B Frivolous actions.

013 Interpretation of Regulations. The hearing officer shall construe Title 115 liberally to secure a just, speedy and inexpensive determination of the issues.

014 Hearing Record. The hearing officer shall prepare the record. It shall include:

014.01 All pleadings, motions, and intermediate rulings;

014.02 Evidence received or considered, including testimony and exhibits;

014.03 A statement of evidence officially noticed;

014.04 Questions and offers of proof and objections and rulings on them; and

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

014.05 Findings of fact and conclusions of law of the hearing officer, with a concise statement of conclusions on each contested issue.

015 Record of Proceedings. A verbatim, untranscribed record of the proceedings shall be filed with the director.

015.01 Any party may request a court reporter to record the proceedings. All costs for any later request for a transcript shall be paid by the party making such request or by a party perfecting an appeal.

015.02 When the department tapes the proceedings, the fee for a transcript shall be thirty cents per hundred words. The department shall also charge one dollar for the certificate of the director.

016 Final Order. If a party appeals the director's final order, the department shall prepare and file a transcript with the appropriate court. The transcript shall consist of the record as stated in 013.

016.01 The hearing officer may hold the record open for submission of evidence not available or presented at the hearing. The hearing officer shall close the records after including any evidence submitted and accepted, no later than ten days after the formal hearing.

017 Deadline of Hearing Determination. The hearing officer, including the director when he or she acts in that capacity, shall make his or her findings of fact and conclusions of law within 30 days of hearing. The director may extend the time because of the technical, specialized nature of the case.

018 Notice of Filing.

018.01 Upon the completion of the findings and conclusions, the director shall include that information in Notice of Filing to be served on all parties

018.02 The parties shall have fifteen days from receipt of the Notice of Filing to file exceptions with the director.

018.03 The director shall render his or her final decision after the time for filing exceptions has expired.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

019 Rehearing.

019.01 Any party aggrieved by any decision issued at the conclusion of a hearing, may, within fifteen days after receipt of such decision, file with the department a motion for a rehearing. The motion shall state the grounds relied upon for rehearing. The filing of a motion for rehearing shall not toll the time for appeal, or limit the director's discretion regarding enforcement of an order.

Enabling Legislation: Neb. Rev. Stat. §§84-913; 84-914; 84-915 and 81-1505

Legal Citation: Title 115, Ch. 7, Nebraska Department of Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 8 - EMERGENCY PROCEEDING HEARINGS

001 Hearings required in emergencies, as provided in Neb. Rev. Stat. §81-1507(4), shall be conducted within ten days of the application for hearing.

002 Failure to request a hearing within thirty days from and after service of emergency order shall constitute a waiver of the right to a hearing.

003 The procedure in emergency cases shall be the same as provided in the Administrative Procedure Act and these rules for Contested Cases except as ordered by the Director as necessary to expedite the case or conform to the nature of the emergency.

Enabling Legislation: Neb. Rev. Stat. §§81-1507;81-1509;84-917

Legal Citation: Title 115, Ch. 8, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 9 - DECLARATORY RULINGS

001 An interested person may file a petition with the department for a declaratory ruling that concerns how any law, standard, rule or regulation applies to any person, property, or statement of facts.

002 The Director shall review the petition and may refuse to issue a declaratory ruling where such ruling would not terminate the uncertainty or controversy giving rise to the proceeding, or where the department lacks jurisdiction.

003 The Director may issue a declaratory order after argument, or may order a hearing to be held on the petition.

004 For any declaratory ruling hearing, the Director or the Hearing Officer shall prepare a notice setting forth the time and place of hearing. The notice shall fairly explain the legal and factual issues and state the purpose of the hearing. In addition, the Director may cause notice of the hearing to be published for the benefit of the public.

005 Any hearing shall be held in accordance with the procedures set forth herein for contested cases.

006 Any interested person may file a response to a petition for a declaratory ruling with the Department. A response shall advise all parties of the nature of any objection to the petition.

006.01 Responses shall be filed within 21 calendar days of receipt of notice of the petition, unless waived by the Department for good cause shown. A copy of the response shall be served on the petitioner by regular first class mail, postage prepaid, and a certificate of service attached to the response.

007 The Declaratory Ruling of the Director shall be in the form of an order with findings of fact and conclusions of law.

Enabling Legislation: Neb. Rev. Stat. §84-912

Legal Citation: Title 115, Ch. 9, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 10 - RULE-MAKING

001 Rule Making Petition.

001.01 Petition. An interested person may petition the Council requesting the promulgation, amendment, or repeal of a rule. Such petition must be filed 45 or more days prior to the next regular council meeting.

001.02 Decision. At the next regular council meeting following the filing of a petition, the Council shall make a determination of whether to deny the petition or initiate rule making proceedings.

002 Form.

002.01 A petition for rule-making shall include the following statement at the top of the first page:

002.01A "BEFORE THE NEBRASKA ENVIRONMENTAL QUALITY COUNCIL";

002.01B Be entitled "THE CASE OF" (specifying the name and address of the petitioner and the subject matter);

002.01C State the precise wording of the proposed standard, rule or regulation sought to be adopted or the precise wording of the present standard, rule or regulation to be repealed or amended, along with the proposed amendment;

002.01D Contain a specific statement showing the legal capacity of the petitioner to instigate the proceedings or why he or she is an interested party; and

002.01E State the reason for the proposal in clear, concise language.

003 Be signed by:

003.01 The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number; or

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

003.02 A duly authorized officer of the petitioner, if it is a corporation or other legal entity.

004 Subsequent Petitions.

004.01 Unless good cause is shown the council shall not consider any petition for rule-making if a petition on substantially the same subject was heard and denied in whole or in part, less than one hundred eighty days before the filing of the second petition.

005 All grant award, rule-making and regulatory proposals offered by the department shall receive a public hearing before the Council after notice as required in Neb.Rev.Stat. §81-1505.

005.01 The Council may not adopt a rule or regulation that is substantially different from the proposed rule or regulation contained in the published notice of proposed rule adoption. However, the Council may terminate a rule-making proceeding and commence a new rule making proceeding for the purpose of adopting a substantially different rule or regulation.

005.02 In determining whether an adopted rule or regulation is substantially different from the published proposed rule or regulation upon which is required to be based, the following must be considered:

005.02A The extent to which all persons affected by the adopted rule or regulation should have understood that the published proposed rule or regulation would affect their interest;

005.02B The extent to which the subject matter of the adopted rule or regulation or the issues determined by that rule or regulation are different from the subject matter or issues involved in the published proposed rule or regulation; and

005.02C The extent to which the effects of the adopted rule or regulation differ from the effects of the published proposed rule or regulation had it been adopted instead.

005.03 The Council shall either adopt, amend or table rule-making or grant award proposals after such hearing.

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

006 Forty days before a hearing before the Council, the Chairperson shall appoint a hearing officer.

007 The hearing officer shall preside over each hearing held before the council. He or she shall maintain order and decorum and take care that persons wishing to be heard are given that opportunity. In cases where many people wish to speak, the hearing officer may set a time limit so everyone may be heard.

008 The hearing officer shall offer and accept into evidence at each hearing the order appointing him or her as hearing officer and the affidavits of publication of notice of the hearing. He or she shall accept any written statements by witnesses on the subject of the hearing, and deliver to the council members for consideration letters or written statements received by the hearing officer by the start of the hearing if such witnesses are not in attendance and planning to offer oral testimony.

009 After opening the hearing and receiving any relevant exhibits, the hearing officer shall:

009.01 Permit a member of the departmental staff or the petitioning party to speak.

009.02 Allow all persons wishing to be heard to testify.

010 Before each hearing is closed, the hearing officer may allow the Council to ask questions of any witness.

011 After all discussion is complete, the hearing officer closes the hearing and turns the conduct of the hearing back to the chairperson of the Council for action on the proposal.

012 The Council may adopt bylaws to further define the conduct of the Council and procedures used in the rule-making process.

Enabling Legislation: Neb. Rev. Stat. §84-910

Legal Citation: Title 115, Ch.10, Nebraska Department of Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 11 - VARIANCES

001 Any person given the right to apply for a variance under §81-1513 may do so in accordance with that section's requirements.

002 The granting or denial of variance or a renewal shall be final order of the director. Any appeal of the final order shall be to a court of appropriate jurisdiction in accordance with the Administrative Procedure Act.

003 Applications for renewals shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the director shall give public notice of such application. Notice shall be published in a newspaper of general circulation in the area affected for a period of at least thirty days. Any person may comment or request a public hearing during that time. If such comment period or the conduct of a hearing exceeds beyond the expiration of a variance, the director may grant an extension pending the outcome of those proceedings.

Enabling Legislation: Neb. Rev. Stat. §81-1513

Legal Citation: Title 115, Ch. 11, Nebraska Department of
Environmental Quality

Title 115 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

APPENDIX A

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF _____) Case No. _____
(inserting the Respondent(s))) (when assigned by the Department)
)
)
) PETITION (or other
) appropriate designation
) of the pleading)

(Substance of the pleading)

Name of party
Name of pleader
Address of pleader
Tel. # of pleader

(signature of pleader)

CERTIFICATE OF SERVICE

(When other parties have entered the case a statement is required describing the time and method of service of the pleading on all parties to the proceeding)

