

NOTICE OF PUBLIC HEARINGS
AND PUBLIC MEETING
STATE OF NEBRASKA
DEPARTMENT OF ENVIRONMENTAL QUALITY (NDEQ)
ENVIRONMENTAL QUALITY COUNCIL

Notice is hereby given pursuant to Neb. Rev. Stats. §81-1505(17), §84-907, and §84-1411, the Nebraska Environmental Quality Council (EQC) will hold a meeting and public hearings on March 30, 2018 beginning at 10:00 A.M. Central Time (CT) at the Cornhusker Hotel, 333 South 13th St., Lincoln, Nebraska. Preceding the hearings will be business items on the agenda. The hearings are scheduled to begin at 10:00 A.M. CT or as soon thereafter as can reasonably be heard. The purpose of the hearings is to take testimony and evidence about the proposed amendment of NDEQ regulations, as outlined in this notice.

The meeting agenda and a draft copy of the proposals scheduled for hearing are available at the NDEQ's Lincoln office, 1200 N St., Suite 400, Lincoln, NE and on the NDEQ website at <http://deq.ne.gov>. The meeting agenda and a draft copy of the proposed regulations scheduled for hearing are also available at the Office of the Secretary of State, Regulations Division, 1201 N St., Suite 120, Lincoln, NE, 68508. The description of the fiscal impact of the proposed regulations on state agencies, political subdivisions, or persons regulated is also available at these locations.

All interested persons may attend and testify orally or by written submission at the public hearing. Any person may provide advance notice of intent to testify by contacting Carla Felix, Hearing Officer, NDEQ, 1200 N St., Suite 400, P.O. Box 98922, Lincoln, NE 68509-8922. Unscheduled testimony will be heard following scheduled testimony. Interested persons may also submit written comments to Carla Felix prior to the hearing, which will be entered into the hearing record if received at the Lincoln office by 5:00 P.M. CT, March 29, 2018.

Please notify the NDEQ at least one week in advance of the EQC meeting if auxiliary aids or reasonable accommodations or alternate formats of materials are needed. Contact phone number is 402-471-2186. TDD users call 800-833-7352 and ask the relay operator to call us at 402-471-2186.

A public hearing will be held on the following:

1. Title 116 – Code of Ethics. Chapters 1-14 are proposed for repeal to avoid duplication and confusion or conflict with other statutory requirements. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.
2. Title 194 – Rules and Regulations for the Disposal of Low-Level Radioactive Waste. Chapters 1-15 are proposed for repeal. These regulations adopted requirements for the licensing of a low-level radioactive waste disposal site pursuant to the Central Interstate

Low-Level Radioactive Waste Compact, and are no longer applicable or necessary once Nebraska's withdrawal from the Compact became effective in 2004. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

ENVIRONMENTAL QUALITY COUNCIL MEETING AGENDA

DATE:

MARCH 30, 2018
The Cornhusker Marriott Hotel
333 S. 13th Street
Lincoln, Nebraska

10:00 AM CST

- 001** Roll Call
- 002** Announcements
- 003** Minutes of November 15, 2017 Meeting
- 004** Reports of EQC Members
- 005** Report of DEQ Director
- 006** Old Business
- 007** New Business
- 008** Next Meeting
- 009** Public Hearing on Title 116 – Code of Ethics
- 010** Public Hearing on Title 194 – Rules and Regulations
for the Disposal of Low-Level Radioactive Waste
- 011** Adjournment

RECEIVED

FEB 27 2017

Gov's Policy Research

**PROPOSED REGULATION
GPRO COVERPAGE
(ATTACH TO PRE-REVIEW INFORMATION)**

Agency: Department of Environmental Quality
Title, Chapter of Rules submitted: Title 116, Ch. 1 through 14
Subject: Code of Ethics
Prepared by: Annette Kovar
Telephone: 471-3194
Date submitted to Governor: _____

REPEAL

Projected dates for public hearings June 15, 2017

Projected deadline for final approval None projected

N/A A copy of the section of laws or federal regulations that triggered these changes is attached.

FOR GOVERNOR OFFICE RECORDS

Advisor Assigned: Cheryl Wolff
Date approved to proceed: 3-9-2017
Options for proceeding: _____

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.



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Pete Ricketts, Governor

TITLE 116 – CODE OF ETHICS

CERTIFICATION TO SECRETARY OF STATE

Pursuant to Neb. Rev. Stat. §84-907 and §84-907.09, the undersigned hereby certifies that on the 22nd day of February 2018, a CD containing the following documents was sent to the Bess Boesiger, Rules and Regulations Officer with the Secretary of State's Office:

The legal notice and agenda for the Environmental Quality Council meeting and hearings scheduled to be held March 30, 2018, in Lincoln, Nebraska;

A copy of the proposed repeal and fiscal impact statement for Title 116 – Code of Ethics;

A copy of the Proposed Regulation Policy Pre-Review Checklist and GPRO approval; and

A memorandum giving a one-line description for online rules tracking.

A handwritten signature in cursive script that reads "Annette Kovar".

Annette Kovar, Legal Counsel

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Pete Ricketts, Governor

MEMORANDUM

TO: Environmental Quality Council

FROM: Annette Kovar, Legal Counsel *AK*

DATE: February 20, 2018

RE: Title 116 – Code of Ethics
Explanatory Statement

SHORT DESCRIPTION:

Title 116 is entitled the *Department of Environmental Control Code of Ethics*. All of the chapters cite the Nebraska Political Accountability and Disclosure Act (NPADA), Neb. Rev. Stat. §49-1401 et seq. as enabling legislation. However, the NPADA does not specifically authorize the Department to promulgate regulations under this Act. The Director of State Personnel has also promulgated rules and regulations applicable to the conduct of state employees. The Department is proposing to repeal Title 116 to avoid duplication and any confusion or conflict between the NPADA and state personnel rules.

RATIONALE:

The Department is proposing the repeal of Title 116 for the following reasons:

1. The NPADA does not specifically authorize the Department to promulgate regulations under this Act;
2. The NPADA applies to the agency and its employees and includes provisions on conflicts of interest, use of public resources, receipt of gifts and improper influence, which are also currently included in Title 116;
3. The Director of State Personnel has adopted rules and regulations pertaining to personnel policy that are applicable to the agency;

4. The requirements of Title 116 apply internally to the agency and govern the actions of agency employees and would be better addressed as internal agency personnel policy; and
5. Repealing Title 116 would avoid duplication and potential confusion with other existing state laws and personnel regulations.

ANALYSIS OF IMPACT:

Repealing Title 116 should have no adverse impact to the Department and its employees. Avoiding duplicative requirements that already exist in the NPADA and personnel regulations would have a positive impact by eliminating potential conflicts or confusion with these existing authorities.

SECTION-BY-SECTION DESCRIPTION:

CHAPTERS 1-14

Proposed for deletion.



FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Environmental Quality
Prepared by: Annette Kovar *AK*
Date Prepared: February 20, 2018
Phone: (402) 471-3194
Title: 116
Chapter: 1-14
Name: Code of Ethics

State Status: Hearing Draft

Type of Fiscal Impact:

	State Agency	Political subdivision	Regulated Public
No Fiscal Impact	X	n/a	n/a
Increase Costs			
Decrease Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

State Agency: There is no fiscal impact. The underlying requirements governing conflicts of interest, use of public resources, receipt of gifts, and improper influence are currently applicable to agency employees under the Nebraska Political Accountability and Disclosure Act or the rules and regulations that have been promulgated by the Director of State Personnel.

Political Subdivision: No impact

Regulated Public: No impact

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Pete Ricketts, Governor

TO: John Gale, Nebraska Secretary of State of Nebraska
FROM: Annette Kovar, Legal Counsel *AK*
RE: Proposed Amendments to Title 116 – Code of Ethics
DATE: February 20, 2018

Attached are proposed amendments to Title 116 of the Nebraska Administrative Code. Also included in this filing is the notice of hearing and other documentation required by the Administrative Procedure Act.

Please use the following as the One Line Description for Online Rules Tracking:

Repeal of Title 116 – Code of Ethics.

The contact person for the proposed repeal is Annette Kovar. Her email address is: Annette.Kovar@nebraska.gov.

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116 — Code of Ethics~~

~~Chapter 1 — Definitions~~

~~001. As used in this section:~~

~~———— 001.01 The term “Agency” shall mean the Department of Environmental Control~~

~~———— 001.02 The term “employee” shall mean any officer, employee, or director of the Agency~~

~~Legal Citation: Chapter 1, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116—Code of Ethics~~

~~Chapter 2—Conflicts of Interest Generally~~

~~001. No employee of the agency shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 49-1499 (Reissue 1978)~~

~~Legal Citation: Chapter 2, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116 — Code of Ethics~~

~~Chapter 3 — Conflicting Employment Impairing Judgment~~

~~001. No employee of the Agency shall accept other employment which will impair his independence of judgment in the exercise of his official duties.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 49-14, 104 (Reissue 1978)~~

~~Legal Citation: Chapter 3, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116 — Code of Ethics~~

~~Chapter 4 — Conflicting Employment Causing Confidential Disclosures~~

~~001. No employee of the Agency shall accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 19-14,101(2) (Reissue 1978)~~

~~Legal Citation: Chapter 4, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116 — Code of Ethics~~

~~Chapter 5 — Disclosure of Confidential Information Acquired in Course of Official Duties~~

~~001. No employee of the Agency shall disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interest.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 49-14.101(3) (Reissue 1978)~~

~~Legal Citation: Chapter 5, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 116 — Code of Ethics

Chapter 6 — Unwarranted Privileges

~~001. No employee of the Agency shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.~~

Enabling Legislation: ~~Neb. Rev. Stat. §§ 49-14, 101(4) (Reissue 1978)~~

Legal Citation: ~~Chapter 6, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 116 — Code of Ethics

Chapter 7 — Transactions with Business Entity While Agent of State

~~001. No employee of the Agency shall engage in any transaction as representative or agent of the State with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of this official duties.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 49-14,102 (Reissue 1978)~~

~~Legal Citation: Chapter 7, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116—Code of Ethics~~

~~Chapter 8—Improper Influence~~

~~001. Any employee of the Agency shall not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is improperly affected by the kinship, rank, position or influence of any party or person. The above shall not in any way prohibit political donations or political activity allowed under the Hatch Act.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 49-14,104(4) (Reissue 1978)~~

~~Legal Citation: Chapter 8, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 116 — Code of Ethics

Chapter 9 — Investment in Interested Enterprises

~~001.~~ An employee of the agency shall abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

Enabling Legislation: Neb. Rev. Stat. §§ 49-14,102 (Reissue 1978)

Legal Citation: Chapter 9, Title 116

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116 — Code of Ethics~~

~~Chapter 10 — Sales to Interested Enterprises~~

~~001. No employee of the Agency employed on a full-time basis, nor any firm or association of which such an employee is a member, nor any corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such employee, shall sell goods or services to any person, firm, corporation, or association which is licensed or whose rates are fixed by the Agency in which such employee serves or is employed.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 49-14,102 (Reissue 1978)~~

~~Legal Citation: Chapter 10, Title 116~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 116 — Code of Ethics

Chapter 11 — Transactions with Interested Enterprises

~~001. An employee of the Agency shall not accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person regarding a licensing or regulatory matter, before any State board or agency which is established by law. Therefore, no employee of the Agency shall enter into any private business transaction with any person or entity that has a matter pending or to be pending upon which the employee is or will be called upon to render a decision or pass judgment upon the same.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 49-14,104 (Reissue 1978)~~

~~Legal Citation: Chapter 11, Title 116, Nebraska Department of Environmental Control~~

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 116 — Code of Ethics

Chapter 12 — Gifts from Interested Enterprises

~~001. An employee of the Agency shall not accept gifts of value or loans from any person doing business with the State, excluding social favors given in the ordinary course of business, such as meals.~~

Enabling Legislation: Neb. Rev. Stat. §§ 49-14,101 (Reissue 1978)

Legal Citation: Chapter 12, Title 116, Nebraska Department of Environmental Control

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 116 — Code of Ethics

Chapter 13 — Adjudicatory Hearing before the Department

~~001.~~ In order to avoid all possibilities of prejudice, real or apparent, to the public interest and persons involved in proceedings pending before the Agency, the following rules of ethics shall be observed after the initiation of hearing proceedings:

~~001.01~~ The Director and members of the Agency shall not submit, and any other parties at an adjudicatory hearing are requested not to submit any ex parte, off the record communication to the Director, or to the Agency staff, or to the Hearing Examiner, about any matter in issue in an adjudicatory proceeding; and the Director, the Agency staff participating in the proceeding; and the Hearing Examiner shall not request or entertain any such ex parte, off the record communication.

~~001.02~~ All communications prohibited by 001.01 above, shall be reported immediately to the Hearing Examiner who shall place the communication or a memorandum thereof in public files associated with the case, but separate from the record material upon which the Agency will rely in reaching a decision. The Hearing Examiner shall take such additional action as he deems advisable which may include recommending entry of a default on the part of the party guilty of the malfeasance.

~~001.03~~ The Director and members of the Agency staff shall not offer opinions about any matter in issue in an adjudicatory proceeding to any other party thereto or such party's attorneys, at any time after hearing proceedings have been initiated.

~~001.04~~ The Director and members of the Agency shall not submit, and any other parties are requested not to submit, any comments to news media concerning cases presently the subject of an adjudicatory hearing, or cases being tried in court, or an appeal from either.

Enabling Legislation: Neb. Rev. Stat. §§ 49-14, 101 (Reissue 1978)

Legal Citation: Chapter 13, Title 116, Nebraska Department of Environmental Control

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

~~Title 116 — Code of Ethics~~

~~Chapter 14 — Violations~~

~~001. In addition to any penalty contained in any other provision of law, any such employee who shall knowingly and intentionally violate any of the provisions of this code may be fined, suspended or removed from office or employment in the manner provided by law.~~

~~————— Adopted for the DEPARTMENT OF ENVIRONMENTAL CONTROL.~~

Dan T. Drain, Director
Department of Environmental Control
State of Nebraska
November 5, 1981