

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 November 15 and 16, 2018 beginning at 1:00 P.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 1:00 P.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 Fiscal Year 2019 Funding Percentage Allocations for the Litter Reduction and Recycling Grant Program and 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, November 14, 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. Litter Reduction and Recycling Grant Program, 2019 Funding Percentage Allocations. The NDEQ administers the Litter Reduction and Recycling Grant Fund in percentage amounts to grantees for projects within three categories: public education, cleanup, and recycling. Neb. Rev. Stat. §81-1561 requires the EQC to annually determine the percentages for each category. A statewide litter fee is the source of revenue for the fund. At this hearing, the EQC will take action on the NDEQ recommendations for percentage amounts. For the Year 2019, the NDEQ recommends the following percentage

allocations: recycling 52.5%, public education 43.6%, and cleanup 3.9% with additional approval to adjust these percentages by up to 10%. All persons affected by the proposed allocations are hereby notified that modifications may be offered to the proposed percentage allocations or the EQC may propose new allocations. 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 197 – Rules and Regulations for Certification of Wastewater Treatment Operators in Nebraska. Chapters 10 and 11 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

3. Title 198 – Rules and Regulations Pertaining to Agricultural Chemical Containment. Chapters 10 through 14 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

4. Title 133 – Litter Reduction and Recycling Grant Program. Changes to Chapter 1 modify and delete definitions; describe and consolidate eligibility, application, grant agreement, and reasons for denial, termination, and disqualification for grants; and rename chapter. Chapters 2 through 6 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

5. Title 199 – Waste Reduction and Recycling Incentive Grants Program. Changes to Chapter 1 modify and delete definitions; describe and consolidate eligibility, application, grant agreement, and reasons for denial, termination, and disqualification for grants; and rename chapter. Chapters 2 through 11 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

6. Title 120 – Rules and Regulations on 401(1)(A) Certification. Repeal Chapter 1 definitions. Changes to Chapter 2 consolidate provisions from Chapter 3 and 4; make public notice consistent with federal notice; and update, simplify, and modernize language and delete language that is duplicative of or merely repeats statute. Chapter 2 is renumbered Chapter 1. Repeal Chapter 5. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.



FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Environmental Quality
Prepared by: Annette Kovar *AK*
Date Prepared: September 27, 2018
Phone: (402) 471-3194
Title: 120
Chapter: 1 through 5
Name: *Rules and Regulations Pertaining to Certification by the State of Nebraska*

State Status: Hearing Draft

Type of Fiscal Impact:

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

Description of Impact:

State Agency: There is no fiscal impact related to the consolidation and updating of chapters in Title 120, Chapters 1 through 5.

Political Subdivision: No fiscal impact

Regulated Public: No fiscal impact

~~Title 120—NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL~~

~~Chapter 1—DEFINITIONS~~

~~001—"Applicant" means a person on whose behalf an application is made for certification by the Department pursuant to section 401 of the federal Clean Water Act, 33 U.S.C. §1251 et seq., of activities requiring a federal license or permit which may result in a discharge into navigable waters.~~

~~002—"Department" means the Nebraska Department of Environmental Control.~~

~~003—"Director" means the director of the Department of Environmental Control.~~

~~004—"Fill material" means a particular discharge as defined in 33 C.F.R. §323.2(k) (1985) as refined by the Memorandum of Agreement Between the Assistant Administrators for External Affairs and Water, U.S. Environmental Protection Agency, and the Assistant Secretary of the Army for Civil Works Concerning Regulations of Discharge of Solid Waste Under the Clean Water Act, published in 51 Federal Register 8871-73, March 14, 1986. This Agreement is attached at Appendix I.~~

~~005—"Navigable waters" means all navigable "waters of the United States including the territorial seas,"; and includes, but is not limited to: (1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term "wetlands" as used in this regulation shall include those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas; the term "adjacent" means bordering, contiguous or neighboring; (2) tributaries of navigable waters of the United States, including adjacent wetlands; (3) interstate waters, including wetlands; and (4) all other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats, and wetlands, the use, degradation or destruction of which affect interstate commerce including but not limited to: (i) Intrastate lakes, rivers, streams and wetlands which are utilized by interstate travelers for recreational or other purposes; and (ii) intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and (iii) intrastate lakes, rivers, streams and wetlands which are utilized for industrial purposes by industries in interstate commerce.~~

~~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, public agency or any other legal entity.~~

~~007 "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.~~

~~Legal Citation: Title 120, Ch. 1, Nebraska Department of Environmental Control~~

Title 120 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL ~~CONTROL~~QUALITY

Chapter ~~2-1~~ - CERTIFICATION

001 The ~~Department~~department ~~shall~~will provide certification pursuant to section 401 (~~33 U.S.C. 1341~~) of the federal Clean Water Act, 33 U.S.C. 1251 et seq., to an applicant for a federally issued and administered permit or license to conduct any activity including, but not limited to,~~for~~ the construction or operation of facilities, which may result in a discharge into navigable waters, if the discharge will not violate Title 117, ~~Nebraska Administrative Code (NAC), Nebraska~~ Surface Water Quality Standards ~~for Surface Waters of the State.~~

002 Certification provided under this Chapter may specify any special conditions necessary to assure that the applicant for a federal license or permit will comply with ~~001~~Title 117.

~~003 Final certification or denial thereof shall be accomplished no later than one year after filing of the application with the Department.~~

~~004-003 Certification may be withdrawn by the department when it is determined that there is no longer reasonable assurance that there will be compliance with the applicable provisions of Title 117, (NAC), Nebraska Water Quality Standards for Surface Waters of the State.~~

~~004.01~~003.01 Notification ~~shall~~will be given to the applicant by certified mail, return receipt requested, of the intent to withdraw certification and the reason therefor. The withdrawal ~~shall~~will become effective unless the applicant requests in writing a hearing before the director no later than ten days after the date the notice is received.

~~004.02~~003.02 If a hearing is held, procedure ~~shall~~will be governed by Title 115, ~~(NAC), Rules and Practice and Procedure of the Department, Chapter 16-55, Contested Cases.~~ The ~~Sole~~only issue to be determined is whether there is still reasonable assurance that there will be compliance with Title 117, ~~(NAC), Nebraska Water Quality Standards for Surface Waters of the State.~~

~~004.03~~003.03 If the applicant does not make a timely request for a hearing before the director, or if, after hearing, the director determines that certification ~~shall~~should be withdrawn, notice of ~~this or her~~the decision ~~shall~~will be given ~~within five days thereof~~as soon as practicable by certified mail, return receipt requested, to the applicant and the Federal agency to whom certification had originally been made for an operating license or permit.

004 In the case of individual permits under section 404 of the federal Clean Water Act, the department's notice of filing will be issued jointly with the Corps of Engineers.

005 In all other cases involving certification, the director will, within thirty days of review of a completed application for certification, provide notice on the department webpage of the filing and recommended approval, approval with conditions, or denial.

006 The notice will include:

006.01 The name and address of the applicant;

006.02 A description of the applicant's proposed action;

006.03 Purpose of the action proposed;

006.04 The basis which may be used in determining if certification is to be given;

006.05 Where a person may write to request a public hearing; and

006.06 The legal basis for certification, if made.

007 The public may comment to the director or request a hearing by the end of the public comment period which shall be at least thirty days. Public comments, requests for hearing and notice of hearing will be governed by the procedures in Title 115 applicable to permits. If any information or public comment is received during the comment period which appears to raise significant issues, the director may revise the certification and reissue notice.

Enabling Legislation: Neb. Rev. Stat. §81-1505(2)(e)

Legal Citation: Title 120, Ch. 21, Nebraska Department of Environmental ~~Control~~Quality

~~Title 120—NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL~~

~~Chapter 3—PUBLIC NOTICE~~

~~001—In the case of individual permits under section 404 of the federal Clean Water Act, the Department's notice of filing shall be issued jointly with the Corps of Engineers.~~

~~002—In all other cases involving certification, the director shall, within thirty days of review of a completed application for certification, publish notice of the filing and recommended approval or denial.~~

~~002.01—The notice shall include:~~

~~002.01A—The name and address of the applicant;~~

~~002.01B—A description of the applicant's proposed action;~~

~~002.01C—Purpose of the action proposed;~~

~~002.01D—The basis which may be used in determining if certification is to be given;~~

~~002.01E—Where a person may write to request a public hearing; and~~

~~002.01F—The legal basis for certification, if made.~~

~~002.02—Notice of filing and recommended action on certification shall be published at least once in a newspaper or newspapers regularly published or circulated in the county where the proposed discharge will be occurring.~~

~~003—The public may comment to the Director or request a hearing within thirty days of publication. If any information or public comment is received during the thirty day comment period which appears to raise substantial major issues concerning the certification, the Director may republish the public notice as in 002 above.~~

~~Enabling Legislation: §401(a)(1) and §404, C.W.A., 33 U.S.C. 1251 et seq.; 81-1505(2)(e)~~

~~Legal Citation: Title 120, Ch. 3, Nebraska Department of Environmental Control~~

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~~Title 120—NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL~~

~~Chapter 4—PUBLIC COMMENTS, REQUESTS FOR HEARING, AND NOTICE OF HEARING~~

~~001—Public comments, requests for hearing and notice of hearing shall be governed by Title 115, (NAC), Chapters 86 and 87, as in the case of application for permits.~~

~~Enabling Legislation: §401(a)(1), C.W.A., 33 U.S.C. 1251 et seq.; 81-1505(2)(e)~~

~~Legal Citation: Title 120, Ch. 4, Nebraska Department of Environmental Control~~

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~~Title 120—NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL~~

~~Chapter 5—EFFECTIVE DATE~~

~~001—These rules and regulations shall become effective five days after filing with the Secretary of State.~~

~~Enabling Legislation: Neb. Rev. Stat. §84-906~~

~~Legal Citation: Title 120, Ch. 5, Nebraska Department of Environmental Control~~

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