

NEBRASKA NATURAL RESOURCES COMMISSION  
NOTICE OF RULEMAKING HEARINGS

NOTICE IS HEREBY GIVEN that the Nebraska Natural Resources Commission (“Commission”), will hold public rulemaking hearings pursuant to *Neb. Rev. Stat.* §§ 2-1503.02; 2-1578; 2-15,123, 46-1404; 84-907. The hearings will be held hourly beginning at 9:00 a.m. on November 3, 2020, in the main conference room at the Nebraska Department of Natural Resources (“Department”) offices located on the 4<sup>th</sup> Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, 68509.

The purpose of the hearings is to take public comments concerning the adoption of the Commission’s proposed amendments to the following rules in the *Neb. Admin. Code*: Title 257 “Administration of Small Watersheds Flood Control Fund”; Title 259 “Administration of the Water Well Decommissioning Fund”; Title 260 “Natural Resources Commission Rules of Practice and Procedure”; Title 262 “Administration of the Nebraska Soil and Water Conservation Fund”; and Title 263 “Administration of the Natural Resources Water Quality Fund.”

All proposed amendments to each of the foregoing Titles include removing the title page and table of contents, as well as removing and altering language to alter the style or form of the rule, and updating statutory references that do not alter the substance of the rule. *Neb. Rev. Stat.* § 84-907(3).

A description of the proposed amendments specific to each Title and their hearing times are as follows:

9:00 a.m. - Title 257: This title is consolidated into one chapter—Chapter 2 is moved into Section 002 of Chapter 1 and renumbered; deletes language that is duplicative of statute and references back to the relevant statute when applicable; changes the date to provide a notice of intent to acquire or retain land to the deadline in the Department’s notice; increases an agreement term from 25 to 50 years.

10:00 a.m. - Title 259: This title is consolidated into one Chapter—Chapters 2, 3, and 4 are moved into Sections 002, 003, and 004 of Chapter 1, respectively, and renumbered; deletes language that is duplicative of statute and references back to the relevant statute when applicable; deletes language from revising allocations and expiration of allocations rules that does not alter the substance of the rule.

11:00 a.m. - Title 260: This title is consolidated into one Chapter; deletes Chapter 1 General Definitions; consolidates Chapters 2, 3, 4, 5, 6, and 7 into various sections of the new Chapter 1; deletes Chapters 6 and 7 and associated Appendix “A” and adopts the Model Rules of Agency Procedure by the Nebraska Attorney General: Petitioning for Rulemaking and Regulations and Procedures Governing Agency Declaratory Orders.

1:00 p.m. - Title 262: deletes language that is duplicative of statute and references back to the relevant statute when applicable; deleted provisions related to the Department’s administration of the fund.

2:00 p.m. - Title 263: This title is consolidated into one Chapter—Chapters 2 and 3 are moved into Sections 002 and 003 of Chapter 1, respectively, and renumbered.

The rules as amended are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and on the Commission's website at <https://nrc.nebraska.gov/statutes-and-rules>. The description of the fiscal and other impacts may be inspected and obtained at the Department of Natural Resources, 4<sup>th</sup> Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. There will be no fiscal impact from the changes.

All interested persons are invited to attend and make oral or written comments at the hearings. Interested persons may also submit written comments prior to the hearings, which will be made part of the hearing record at the time of hearing if received by the Commission on or before November 2, 2020. Written comments should be sent to the Department of Natural Resources, 4<sup>th</sup> Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509.

It is encouraged if you plan to attend the rulemaking hearings in person to let the Department know so that social distancing accommodations can be made. In addition, please notify the Department if auxiliary aids or reasonable accommodations are needed to participate in the hearing. Please contact Laurie Gower at (402) 471-2363 by November 2, 2020.

## FISCAL IMPACT STATEMENT

Agency: Nebraska Natural Resources Commission	
Title: 259	Prepared by: Emily Rose
Chapter(s): all chapters	Date prepared: 9/30/2020
Subject: Admin of the Water Well Decommissioning Fund	Telephone: 402-471-1681

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( X )	( X )	( X )
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency: None

Political

Subdivision: None

Regulated

Public: None

If indeterminable, explain why: N/A

~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION~~

~~TITLE 259 — RULE REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE  
WATER WELL DECOMMISSIONING FUND~~

~~NEBRASKA ADMINISTRATIVE CODE~~

~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION~~

~~TITLE 259~~

~~RULES AND REGULATIONS GOVERNING THE ADMINISTRATION OF THE WATER  
WELL DECOMMISSIONING FUND~~

Adopted ~~9-26-2006~~

Approved by all parties on \_\_\_\_\_

Effective Date: \_\_\_\_\_

NEBRASKA ADMINISTRATIVE CODE

TITLE 259—NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION  
RULES GOVERNING THE ADMINISTRATION OF THE WATER WELL  
DECOMMISSIONING FUND

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE CHAPTERSECTION</u>
Allocation of Funds	<u>Neb. Rev. Stat. §Sec. 46-1404, R.R.S.2004 as amended by Sec. 9, LB508, 99<sup>th</sup> Nebraska Legislature, Second Session (2006)</u>	Chapter 3
General Provisions	<u>Neb. Rev. Stat. §§Sections 46-1401 to 46-1405, R.R.S.2004 as amended by Sections 9 and 10, LB508, 99<sup>th</sup> Nebraska Legislature, Second Session (2006)</u>	Chapter 1
Qualified Cost-Sharing Programs	<u>Neb. Rev. Stat. §Sec. 46-1405, R.R.S.2004 as amended by Sec. 10, LB508, 99<sup>th</sup> Nebraska Legislature, Second Session (2006)</u>	Chapter 2
Reimbursement to Districts	<u>Neb. Rev. Stat. §Sec. 46-1404, R.R.S.2004 as amended by Sec. 9, LB508, 99<sup>th</sup> Nebraska Legislature, Second Session (2006)</u>	Chapter 4

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NEBRASKA ADMINISTRATIVE CODE

TITLE 259—NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION  
RULES GOVERNING THE ADMINISTRATION OF THE WATER WELL  
DECOMMISSIONING FUND

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY</u> <u>AUTHORITY</u>	<u>CODE</u> <u>CHAPTERSECTION</u>
General Provisions	<u>Neb. Rev. Stat. §§Sections</u> <u>46-1401 to 46-1405,</u> <u>R.R.S.2004 as amended by</u> <u>Sections 9 and 10, LB508,</u> <u>99<sup>th</sup> Nebraska Legislature,</u> <u>Second Session (2006)</u>	Chapter-1
Qualified Cost-Sharing Programs	<u>Neb. Rev. Stat. §Sec. 46-</u> <u>1405, R.R.S.2006 as</u> <u>amended by Sec. 10,</u> <u>LB508, 99<sup>th</sup> Nebraska</u> <u>Legislature, Second Session</u> <u>(2006)</u>	Chapter-2
Allocation of Funds	<u>Neb. Rev. Stat. §Sec. 46-</u> <u>1404, R.R.S.2004 as</u> <u>amended by LB508, 99<sup>th</sup></u> <u>Nebraska Legislature,</u> <u>Second Session (2006)</u>	Chapter-3
Reimbursement to Districts	<u>Neb. Rev. Stat. §Sec. 46-</u> <u>1404, R.R.S. 2004 as</u> <u>amended by Sec. 9, LB508,</u> <u>Nebraska Legislature,</u> <u>Second Session (2006)</u>	Chapter-4



NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA NATURAL RESOURCES COMMISSION

~~LAST ISSUE DATE: OCTOBER 16, 2001~~

TITLE 259-~~DNR~~ - ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND

CHAPTER 1 - ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND  
~~GENERAL PROVISIONS~~

001 General Provisions.

001.01 Purpose of Rules. These rules ~~and regulations~~ are adopted for the purpose of administering the Water Well Decommissioning Fund (~~Fund~~) created by Neb. Rev. Stat. §section 46-1403, ~~R.R.S.2004 as amended.~~

001.02 General Availability of Funds. Financial assistance from the Fund shall be available only to ~~natural resources~~ districts ~~which that~~ have cost-sharing programs for decommissioning water wells consistent with Neb. Rev. Stat. §§sections 46-1401 to 46-1405, ~~R.R.S.2004 as amended~~ and these rules; ~~and regulations~~ and ~~which~~ have entered into a contract ~~ual arrangement~~ with the Department setting forth the terms for providing such financial assistance.

001.03 Definitions. As used in these rules ~~and regulations~~, unless the context otherwise requires:

001.03(A)1 ~~"Decommissioning"~~ "Decommissioning" ~~or~~ "Decommissioned" ~~or~~ shall "Decommissioning" means the act of filling, sealing, and plugging a water well in accordance with the rules and regulations of the Department of Health and Human Services, ~~Regulations and Licensure;~~ is defined under Neb. Rev. Stat. § 46-1206.01;

001.03(B)3.02 ~~"Department"~~ "Department" shall mean the Nebraska Department of Natural Resources ~~created by Section 81-101, R.R.S.2003 as amended;~~

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~~0013.03(C) - "Director" shall mean the individual holding the position of the Director of Natural Resources created by section 81-102 the Department, R.R.S. 2003 as amended;~~

~~001.003(D).04 - "District" or "Natural Resources District" shall mean a a Natural Resources District; created and operating in accordance with Chapter 2, Article 32, Reissue Revised Statutes of Nebraska;~~

001.03(E) "Fiscal Year" means July 1 of any calendar year through June 30 of the next calendar year;

~~0013.03(F)5 - "Fund" shall mean the Water Well Decommissioning Fund created by section Neb. Rev. Stat. § 46-1403, R.R.S. 2004 as amended;~~

~~0013.03(G)6 - "Licensed pump installation contractor" shall mean an individual as defined is defined under in section Neb. Rev. Stat. § 46-1209, R.R.S. 2004 as amended and holding a current license issued in accordance with Chapter 46, Article 12, Nebraska Revised Statutes;~~

~~0013.07-03(H) - "Licensed water well contractor" shall mean an individual as is defined in under section Neb. Rev. Stat. § 46-1213, R.R.S. 2004 as amended and holding a current license issued pursuant to Chapter 46, Article 12, Nebraska Revised Statutes;~~ and

~~0013.0803(I) - "Water well" it is as defined in under Neb. Rev. Stat. § 46-1212 shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.~~

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Chapter 1

001.004 Access to Files and Compliance with Agreement and Rules ~~AND~~  
~~REGULATIONS~~. The files of each participating ~~natural resources~~ District shall be available for inspection by ~~personnel of the~~ Department personnel and by representatives of the State Auditor's Office during normal business hours of the District. ~~In the event that~~ the Director becomes aware of a violation of the contract between the District and the Department or of these rules ~~and regulations~~, the Director may terminate the contract and/or demand reimbursement of any State funds related to such violation.

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Title 259 DNR — ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND

CHAPTER 2 — QUALIFIED COST-SHARING PROGRAMS.

002 Qualified Cost-Sharing Programs.

002.01 Program Eligibility. For a District to be eligible for reimbursement from the Fund, it must establish a water well decommissioning cost-share program which is consistent with the following requirements as set forth in Neb. Rev. Stat. § 46-1405.:

001.01. The district program must apply only to water wells which are decommissioned in accordance with all applicable state laws, standards, rules, and regulations and by a licensed water well contractor or licensed pump installation contractor.

001.02. The program must not exclude any category of water wells from cost-share eligibility.

002.01(A)3. For purposes of Neb. Rev. Stat. § 46-1405 (3), The program must be available for at least thirty water wells per year. the program will be considered in compliance with this requirement if the To establish and maintain eligibility, a district does not have to provide cost-share assistance to at least thirty water wells each year. For a given fiscal year a program that is otherwise consistent with these rules will be consistent with this requirement if the District has budgeted at least \$10,000 for that the program that Ffiscal Yyear. -If a natural resources District produces sufficient evidence to document that it can cost-share the decommissioning of at least thirty 30 water wells for less than \$10,000, the Director may determine that such District's program is eligible if the amount budgeted for decommissioning is equal to or greater than that lesser amount.

002.01(B)4. The district program must provide at least 60% of the cost of decommissioning water wells, except that a district may establish a maximum cost share amount of no less than \$500 for all water wells other than hand dug

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Chapter 2

~~water wells and no less than \$700 for hand-dug water wells.~~ For purposes of ~~these rules~~ Neb. Rev. Stat. § 46-1405 (4), the cost of decommissioning a water well does not include the cost of removing any exposed or buried pipes, tanks, or pumps; or any tower, wellhouse, or other apparatus or obstruction around or in the water well that might interfere with the process of decommissioning.

002.02 Program Certification by District. -Each ~~natural resources~~ District desiring reimbursement from the Fund ~~must~~ shall complete a program certification form provided by the Director. -The form ~~must~~ shall be completed and returned by July 15 of each year the ~~D~~istrict wishes to receive reimbursement from the Fund.

002.003 Approval of Programs. -The Director ~~is~~ shall be responsible for determining whether a ~~natural resources~~ District cost-sharing program for decommissioning water wells complies with the requirements of Neb. Rev. Stat. § 46-1405 and this Sectionchapter. - Before making ~~any~~ such determination, the Director may request additional information from ~~any~~ the ~~D~~istrict.

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LAST ISSUE DATE: OCTOBER 16, 2001

Title 259 DNR—ADMINISTRATION OF WATER WELL DECOMMISSIONING FUND003  
Allocation of Funds.

Chapter 3—ALLOCATION OF FUNDS

003.014 Allocation of Funds. The Director willshall allocate funds only to Districts which-that have entered into a contractual arrangement with the Department and have a water well decommissioning cost-sharing program consistent with the requirements of Neb. Rev. Stat. § 46-1405 and Chapter 2 of these rules and regulations. -Each participating District's percentage of the funds available for a Ffiscal Yyear will be determined by the Director on or before August 1 of that year and willshall be based upon that participating District's proportion of the wells decommissioned statewide with natural resource-District cost-share assistance. Each District's proportion willshall be determined as follows: (1) for any District that has had a qualified program for at least the previous three consecutive Ffiscal Yyears, the average number of wells decommissioned with assistance from that program in the three previous Ffiscal Yyears willshall be determined; (2) for any District that has had a qualified program for only the last Ffiscal Yyear or the last two consecutive Ffiscal Yyears, the number of wells decommissioned with assistance from that program in the previous Ffiscal Yyear willshall be the number used for that District; (3) all average numbers determined in accordance with (1) above willshall be added to all numbers determined in accordance with (2) above to produce the total number of wells that have been decommissioned statewide with qualified District cost-share assistance programs; and (4) each District's number as determined in accordance with (1) or (2) above willshall then be divided by the total derived in accordance with (3) above to produce that District's proportion of the funds to be allocated for the then current Ffiscal Yyear. -Funds willshall be allocated to participating Districts from those available in the Water Well Decommissioning Fund on at least a quarterly basis. -Except as provided in Rule Subsection 003.03 of this Chapter each District's share of each allocation willshall be based upon the percentages determined in accordance with this Subrulection.

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003.02002 Certifying Wells Decommissioned. -On or before July 15 of each year, each District ~~which-that~~ desires to be reimbursed from the Fund willshall certify the number of wells decommissioned with cost-sharing assistance the previous Ffiscal Yyear in accordance with this Subsection-chapter.

003.03003 Revising Allocations. ~~The percentages determined pursuant to rule 001 of this chapter may be adjusted by the Director after March 1 if the Director determines that one or more districts cannot reasonably be expected to use their full percentage of the funds available for that fiscal year.~~ To assist the Director in making ~~such~~ determinations on revising allocations, each participating District ~~shall provide~~will provide the Director with a report by March 1. -The report willshall indicate the number of wells ~~which-that~~ ~~that-the~~ District has approved for cost-share assistance and ~~which-that~~ are expected to be decommissioned and cost-shared by the District before July 1 and any other information the District desires to indicate the demand for funds in that District. ~~-If such report provides adequate evidence that the district is likely to provide sufficient decommissioning cost-share assistance to utilize all of the district's percentage of the available funds by July 1, that district's percentage will be maintained.~~ If any-the District does not provide the report, or if any-district'sthe report indicates that it cannot be expected to utilize all of its percentage by July 1, the Director may reduce that District's percentage and distribute these any-funds ~~thus made available~~-to Districts ~~which-that~~ have documented the need for additional funds in that Ffiscal Yyear.- Such distribution willshall be based on the Director's determination of the proportionate number of well decommissionings that could still be cost-shared within those Districts in the remainder of the Ffiscal Yyear.

003.04004 Expiration of Allocation. ~~Except to the extent that the Department encumbers funds at the end of the fiscal year to reimburse districts for cost share assistance paid by them in that fiscal year,~~ Allocations willshall not be carried over from one Ffiscal Yyear to the next. ~~Any unexpended but~~ Re-appropriated funds will be included in the amount allocated for the next Ffiscal Yyear. -Funds encumbered by the Department at the end of the Ffiscal Yyear willshall ~~also~~ be released if a request for reimbursement ~~for such funds~~ has not been received by the Director by July 15.

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TITLE 259 DNR -- ADMINISTRATION OF WATER WELL DECOMMISSIONING  
FUND004 Reimbursement to Districts.

Chapter 4 -- REIMBURSEMENT TO DISTRICTS

004.01001 Limit on Reimbursements. Actual reimbursements to the District for each water well decommissioned with District cost-share assistance in accordance with these rules ~~and regulations~~ will~~shall~~ not exceed the lesser of: -(1) 75 ~~percent%~~ of the cost of such decommissioning; (2) \$500 for all water wells other than hand-dug wells; (3) \$700 for hand-dug water wells; or (4) the actual amount of the cost-share assistance paid by the District.

004.02002 Requesting Reimbursement. A participating District may request reimbursement no more often than monthly, except as necessary to avoid a loss of encumbered funds in accordance with ~~Rule 004 of Chapter 3 Subsection 003.04. of these rules and regulations.~~ To be eligible for such reimbursement, the District must certify the following information for each water well for which cost-share reimbursement is being sought: -(1) the total cost of decommissioning the well; (2) the cost-share amount paid by the District; and (3) that District cost-sharing for the well was in compliance with Neb. Rev. Stat. §§sections 46-1401 through to 46-1405, R.R.S.2004, as amended, and with these rules ~~and regulations~~.

Enabling Legislation: Neb. Rev. Stat. §§ 46-1401 to 46-1405