

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 115 - Rules Of Practice And Procedure

Chapter 3 - Public Hearings

001 Unless more specific requirements in other agency Titles apply, this chapter contains minimum requirements for public hearings for:

001.01 Permit decisions which by statute or other agency regulations provide for public notice, public review and comment, and an opportunity to request a public hearing before making a final permit decision.

001.02 Fact-finding hearings afforded by statute or regulation.

002 To the extent provided by statute or other agency regulations authorizing public hearings for proposed permit decisions, any person may submit written comments on the proposed permit decision and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing is to be submitted in writing and state the nature of the issues proposed to be raised in the hearing.

003 If the director or his or her designee tentatively decides to issue or modify a permit, a draft permit shall be prepared. The draft permit will be:

003.01 Accompanied by a statement of basis described in 005;

003.02 Based on the administrative record described in 006;

003.03 Publicly noticed as described in 007; and

003.04 Made available for public review and comment.

004 If the director or his or her designee tentatively decides to deny or revoke a permit, the tentative decision will be:

004.01 Accompanied by a statement of the basis and reasons for the revocation described in 005;

004.02 Based on the administrative record described in 006;

004.03 Publicly noticed as described in 007; and

004.04 Made available for public review and comment.

005 A statement of basis will be prepared for every draft permit decision. A statement of basis will briefly describe the authority and reasons for the conditions of the draft permit, or in the case of permit denial or revocation, reasons supporting the tentative decision.

006 The administrative record for a tentative permit decision will consist of:

006.01 The application, if required, and any supporting data furnished by the applicant;

006.02 The draft permit or notice of intent to deny the application or to revoke the permit;

006.03 The statement of basis;

006.04 Other documents contained in the supporting file for the draft permit.

007 Unless more specific requirements in other agency Titles apply, the agency will provide public notice of tentative permit decisions by placing the notice on the agency webpage for a minimum of thirty days or by publication in a daily or weekly newspaper having general circulation in the area affected by the permit.

007.01 The public notice shall contain the following minimum information:

007.01A Name and address of the agency;

007.01B Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

007.01C A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

007.01D Name, address and telephone number of a person from whom interested persons may obtain further information or copies of documents; and

007.01E A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless a hearing has already been scheduled.

008 The agency will hold a public hearing whenever the director or his or her designee finds, on the basis of requests, a significant degree of public interest in the tentative permit decision exists. The director or his or her designee may also hold a public hearing at his or her discretion, whenever such a hearing might clarify one or more issues involved in the permit decision. The director may appoint a hearing officer to conduct the hearing.

008.01 The agency will provide public notice of the hearing as specified in 007.

008.02 In addition to the general public notice described in 007, the public notice of a hearing will contain the following information:

008.02A Date, time, and place of the hearing, which will be held in the area affected unless another location is specifically required; and

008.02B A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

009 All persons, including applicants, who believe any proposed condition of a draft permit is inappropriate or that the director's tentative decision to deny an application or revoke a permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period, including any public hearing. Any supporting materials which are submitted are to be included in full unless they are part of the administrative record in the same proceeding or consist of State or Federal statutes and regulations or other generally available reference materials.

010 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 final decision. Any final decision made by the director shall be governed by the standards set forth in the Nebraska Administrative Procedure Act, Neb. Rev. Stat. §84-901 et seq. and applicable statutory and regulatory authority of the agency.

011 The director or his or her designee will base the final permit decision on the administrative record described in this section which shall consist of:

011.01 The administrative record for the tentative permit decision described in 006;

011.02 All comments received during the public comment period;

011.03 The tape or transcript of any hearings held;

011.04 Any written materials submitted at such a hearing;

011.05 Any response to comments prepared by the agency; and

011.06 The final permit or permit decision.

012 The final decision to issue a permit may be reviewed by the district court in a proceeding instituted by filing a petition in error pursuant to Neb. Rev. Stat. §25-1901 and Neb. Rev. Stat. §84-917.

013 In accordance with Neb. Rev. Stat. §81-1507(3), any person who is denied a permit or had a permit revoked or modified may request a contested case under this title by filing a petition with the director within thirty days after receipt of notice of the permit decision.

014 Unless more specific requirements in other agency Titles apply, the agency will conduct fact-finding hearings in accordance with the statute or regulation authorizing the hearing. At a minimum, the agency shall:

014.01 Publish notice of the hearing, including:

014.01A Date, time, and place of the hearing, which will be held in the area affected unless another location is specifically required, and

014.01B A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

015 Rulemaking hearings before the Environmental Quality Council will be conducted in accordance with Neb. Rev. Stat. §81-1505(17) and the Administrative Procedure Act.

016 Strict rules of evidence and procedure will not apply in fact-finding hearings. The director or a hearing officer appointed by the director may admit and consider all relevant testimony and evidence having probative value in connection with the subject of the hearing.

017 No person will be required to be sworn or take an oath prior to presenting any evidence, which may be oral or written.

018 The hearing officer will among other things, open the proceedings, enter into the record the public notice given for the hearing, receive testimony, accept and properly mark exhibits, make a record of the hearing, and conduct such other related duties as necessary. Unless the final decision maker is presiding at the hearing, the hearing officer will have no power, acting alone, to take any action involving a final determination from the hearing.

Enabling Legislation: Neb. Rev. Stat. §81-1504(1)(9)(11)(13); §81-1505; §81-1505(17); §81-1507(3); §84-901 et seq.

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