

~~NEBRASKA ADMINISTRATIVE CODE~~

~~TITLE 260, NEBRASKA ADMINISTRATIVE CODE, CHAPTERS 1-74~~

~~NEBRASKA NATURAL RESOURCES COMMISSION~~

~~RULES OF PRACTICE AND PROCEDURE~~

~~2012 AMENDMENT~~

~~APPROVED BY GOVERNOR ON DECEMBER 17, 2012~~

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~~Chapter~~ HAPTER 1 – GENERAL RULES OF PRACTICE AND PROCEDURE DEFINITIONS

001 General Provisions. ~~Unless otherwise specifically defined in any Chapter of this Title, the following definitions apply:~~

~~—~~ 001.01

~~—~~ 0041.04 ~~Neb. Rev. Stat. §49-801(16)n individual, partnership, limited liability company, corporation, association, district, governmental subdivision, agency, or public or private organization of any character.~~

~~0051.05~~ Support Staff Employees of the Department who are assigned either temporarily or permanently to assist the Commission.

~~Chapter 3~~ 001.012 The Office of the Commission.

0012.01(A) Location. -The office of the Commission is located within the Department of ~~Natural Resources~~ in Lincoln, Nebraska, at 301 Centennial Mall South on the 4th floor of the Nebraska State Office Building.

0012.01(2B) Mailing Address. -The mailing address of the Commission is:

Nebraska Natural Resources Commission
P.O. Box 94676
Lincoln, Nebraska 68509-4676

0012.01(C)3 Official Hours. -The official hours of the Commission are from 8:00 A.M. to 5:00 P.M., Monday through Friday, except legal holidays.

0023. Filing Requirements.

The following filing requirements apply unless more specific requirements are stated in statute or within the Commission's rRules.

0023.01 Method. Pleadings, documents, and correspondence required to be filed with the Commission will be considered properly filed when they are:

~~0023.01(A)- Delivered to~~Received by the office of the Commission by the required date by either: ~~Delivery is defined as:~~

~~0023.01(A)(1i) p~~Personal delivery by required date;

~~0023.01(A)(ii2) m~~Mail delivery; ~~ed to and received by the Commission by the required date;~~

~~0023.01(A)(iii3) t~~Telefaxed to and received by the Commission by the required date, and the original signed document filed in the office of the Commission within five days of ~~the receipt of the telefax; or~~

~~0023.01(A)(iv4) e~~Electronically scanned and electronically mailed to and received by the Commission by the required date, and the original signed document filed in the office of the Commission within five days of ~~the receipt of the electronic mail.~~ Electronic filings must be sent to DNR.legalfile@nNebraska.gov.

~~0023.01(BA)(v)~~ Accompanied by proper fees, if applicable.

~~003.02 Required Date. When the filing of a pleading or the performing of an act is required by a certain date which falls during nonofficial hours as described in Chapter 1 of these rules the date for filing or performing is extended to the next succeeding date that which falls within official hours.~~

~~0023.023 Form.~~

Pleadings filed with the Commission must be in the following form:

~~0023.023(A) -Size a~~And Paper. The pleading must be made on white, letter-sized (8-1/2 x 11 inch) paper;

~~0023.023(B) Print. The pleading must be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the pleading must be written in ink. Only one side of a page may contain any writing;~~

~~0023.023(C) -Margins. The first page of the pleading must have a top or bottom margin of not less than 2 inches for the stamp of the Department; and~~

~~0023.023(D) -Attachment. Any documents attached to a pleading must be securely fastened to the pleading and meet the requirements of Subsections 0022.02(A)† and~~

0022.02(B)2, and, when possible, be reproduced on 8 1/2 x 11 inch paper or placed in an 9 x 12 inch envelope and clearly marked as an attachment to the pleading; and;

0023.023(E) -Copies. One copy of all pleadings, documents, and correspondence is required unless otherwise ordered by the Commission or Hearing Officer.

0034. Proceedings.

Definitions:—The following definitions shall apply:

0034.01 “Proceeding” means the form and manner of conducting business before the Commission. Types of Proceedings include:

0034.01(A) Informal Proceedings. The Commission may accept informal requests for actions by the Commission unless there is a formal proceeding before the Commission on the same matter. The Commission may investigate such requests and depending upon the facts determined, may proceed either in an informal or formal manner, at the discretion of the Commission. ~~Informal proceeding shall mean any business conducted other than through a formal proceeding.~~

0034.01(B) Formal Proceedings shall include, but not be limited to, business conducted under the provisions of:

0034.01(B)(1i) ~~Chapter~~Subsection 004.013 of these rules, Petitioning for Rulemaking;

0034.01(B)(ii2) ~~Chapter~~ Subsection 004.02 of these rules, Regulations and Procedures Governing Agency Declaratory Orders;

0034.01(B)(iii3) ~~Subsection 005~~Chapter 2 of these rules, Conduct of Public Hearings; and

0034.01(B)(4iv) Any application or petition filed pursuant to the Commission’s jurisdiction.

004 Adoption of Model Rules.

The Commission hereby adopts by reference the following Model Rules of Agency Procedure promulgated as Title 53 NAC by the Nebraska Attorney General.

004.01 53 NAC Chapter 2- Petitioning for Rulemaking

004.02 53 NAC Chapter 3- Regulations and Procedures Governing Agency Declaratory Orders

~~004.02 Informal Proceedings. The Commission may accept informal requests for actions by the Commission unless there is a formal proceeding before the Commission on the same matter. The Commission may investigate such requests and depending upon the facts determined, may proceed either in an informal or formal manner, at the discretion of the Commission.~~

~~004.03 Formal Proceedings. The Commission will take formal action on:~~

~~004.03(A) Any application or petition filed pursuant to 001.02.~~

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; §49-801 (16); § 61-204 to 61-206; § 84-909

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~~Chapter~~ ~~HAPTER 2005~~ ~~Conduct of Public Hearings.~~ ~~— CONDUCT OF PUBLIC HEARINGS~~

~~005.014~~ Calling Public Hearings. -The Commission may at any time on its own motion order any public hearing ~~which-that~~ the Commission is authorized, either by law or by inherent authority, to conduct and, after giving notice, conduct such hearing in the manner as hereinafter provided.

~~005.022~~ Notice. -Notice ~~willshall~~ be given of all public hearings held by the Commission. Except as otherwise specified by law, such notice ~~willshall~~ be published at least once in a newspaper or newspapers of general circulation in the area or areas ~~which-are~~ affected by the business of the hearing, and the publication ~~willshall~~ be made at least five ~~(5)~~ days prior to the date of the hearing. -The published notice ~~willshall~~ contain information as to the date, time, place, and purpose of the hearing. -When a hearing or series of hearings ~~sessions~~ is for a purpose of statewide interest, notice ~~willshall~~ be sufficient if published in a newspaper of general circulation.

~~005.03~~ Presiding Officer or Hearing Officer. -The Chair of the Commission or his or her delegate ~~willshall~~ serve as presiding officer over the hearing; however, the presiding officer ~~mustshall~~, in all cases, be a member of the Commission. -The presiding officer may appoint a hearing officer for the purpose of assisting in the conduct of the hearing.

~~005.04~~ Powers of Officer. -The presiding officer or hearing officer ~~willshall~~, among other things, open the ~~P~~proceedings; enter into the record the notice given of the hearing; take the appearances; accept and assure that exhibits are properly numbered; answer questions asked or call upon other ~~person~~ ~~person~~s present to answer questions asked; and close the ~~P~~proceedings. -The presiding officer and hearing officer have no power, acting alone, to take any action involving a final determination. The record in any hearing ~~willshall~~ not be

affected by any change of presiding officer or hearing officers during the conduct of that hearing.

~~005 Oath Not Required. No person will~~shall be required to be sworn or taken an oath prior to presenting any information, which may consist of any oral or written question or statement and any document.

005.056 Receipt of Information. -Information at a public hearing will ordinarily be received in the following sequence: (1) Commission member and/or ~~support staff~~support staff; (2) federal agencies; (3) state agencies; (4) political subdivisions; (5) all other ~~person~~persons in the order as the presiding or hearing officer ~~may~~shall in his/her discretion choose. -All ~~person~~persons ~~will~~shall be given the opportunity to be heard on matters relevant to the business and purpose of the hearing.

~~005.06007~~ Presentation of Information. -All ~~person~~persons presenting information at a hearing ~~must~~shall first state their full name and address, and declare whether they are appearing on their own behalf or on behalf of another ~~person~~person or organization, in which case such ~~person~~person or organization represented ~~must~~shall be named.

~~005.07008~~ Propriety of Information. -All information presented at the hearing is to be directed at the business and purpose of such hearing.

005.089 Support Staff Information. -In addition to statements and other information presented by any other ~~person~~person, the Commission may, through the ~~support staff~~support staff or otherwise, secure and present such information as it may consider necessary or desirable. -Information ~~will~~shall include a copy of notice given for the public hearing and a statement explaining the business and purpose of the hearing.

005.09

~~010~~ Record Made. A record ~~will~~shall be made of the ~~hearing~~Proceedings with the information presented being a part thereof. Such record may consist of written statements and

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any other documentary information along with ~~tape~~ recordings of oral statements or such transcripts as deemed necessary by the Commission.

~~005.10011~~ Record Held Open. -The record of public hearings may be held open at the discretion of the presiding or hearing officer for submission of any information not available or presented at the time of the hearing.

~~STATUTORY AUTHORITY~~Enabling Legislation: Neb. Rev. Stat. §§ 2-3210, 2-1501, 49-801 (16), 61-204, 61-206, § 84-907, 84-909, 84-909.01, 84-912.01.

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~~Chapter 4—FILING REQUIREMENTS~~

~~The following filing requirements apply unless more specific requirements are stated in statute or within the Commission's Rules.~~

~~001—Method. Pleadings, documents and correspondence required to be filed with the Commission shall be properly filed in accordance with these rules when they are:~~

~~001.01—Delivered to the office of the Commission. Delivery is defined as:~~

~~001.01A—Personal delivery by required date; or~~

~~001.01B—Mailed to and received by the Commission by the required date; or~~

~~001.01C—Telefaxed to and received by the Commission by the required date, and the original signed document filed in the Commission within five days of the receipt of the telefax; or~~

~~001.01D—Electronically scanned and electronically mailed to and received by the Commission by the required date, and the original signed document filed in the Commission within five days of the receipt of the electronic mail. Electronic filings shall be sent to DNR.legalfile@Nebraska.gov.~~

~~001.01E—Accompanied by proper fees.~~

~~001.02 Required Date.—When the filing of a pleading or the performing of an act is required by a certain date which falls during nonofficial hours [as described in Chapter 3 of these rules] the date for filing or performing shall be extended to the next succeeding date which falls within official hours.~~

~~002—Form. Pleadings filed with the Commission shall be in the following form:~~

~~002.01—Size and Paper. The pleading shall be made on white, letter-sized (8-1/2 x 11 inch) paper;~~

~~002.02—Print. The pleading shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the pleading must be written in ink. Only one side of a page shall contain any writing;~~

~~002.03—Margins. The first page of the pleading shall have a top or bottom margin of not less than 2 inches for the stamp of the Department; and~~

~~002.04—Attachment. Any documents attached to a pleading shall be securely fastened to the pleading and shall meet the requirements of 002.01 and 002.02 and, when possible, be reproduced on 8-1/2 x 11 inch paper or placed in an 9 x 12 inch envelope and clearly marked as an attachment to the pleadingetition.~~

~~002.05—Copies. One copy of all pleadings, documents and correspondence is required unless otherwise ordered by the Commission or Hearing Officer.~~

STATUTORY AUTHORITY: ~~Neb. Rev. Stat. § 2-1501; § 61-204; § 84-909~~

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~~Chapter 5—PROCEEDINGS~~

~~Definitions: The following definitions shall apply:~~

~~001—Proceeding shall mean the form and manner of conducting business before the Commission. Types of proceedings include:~~

~~001.01—Informal proceeding shall mean any business conducted other than through a formal proceeding.~~

~~001.02—Formal proceedings shall include, but not be limited to, business conducted under the provisions of:~~

~~001.02A—Chapter 6 of these rules, Petitioning for Rulemaking;~~

~~001.02B—Chapter 7 of these rules, Declaratory Orders;~~

~~001.02C—Chapter 2 of these rules, Public Hearings;~~

~~001.02D—Any application or petition filed pursuant to the Commission's jurisdiction.~~

~~002—Informal Proceedings. The Commission may accept informal requests for actions by the Commission unless there is a formal proceeding before the Commission on the same matter. The Commission may investigate such requests and depending upon the facts determined, may proceed either in an informal or formal manner, at the discretion of the Commission.~~

~~003—Formal Proceedings. The Commission will take formal action on:~~

~~003.01—Any application or petition filed pursuant to 001.02.~~

~~STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 84-909~~

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~~CHAPTER 63—PETITIONING FOR RULEMAKING~~
~~The Natural Resources Commission hereby adopts by reference the Attorney General's model rule for petition for rulemaking Title 53 Chapter 2, 002 and 003.~~

~~Definitions: Rule Making Petition.~~

~~001—Petition. Any person may petition the Commission requesting the promulgation, amendment, or repeal of a rule.~~

~~001.01—Form. The petition shall:~~

~~001.02—Be clearly designated as a petition for a rules change;~~

~~001.02A—In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;~~

~~001.02B—In the case of a petition for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by Commission rule number;~~

~~001.02C—Describe the reason for the rule change;~~

~~001.02D—Include an address and telephone where the petitioner can be reached during regular work hours; and~~

~~001.02E—Be signed by:~~

~~001.02E (1)—The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number;~~

~~001.02E (2)—A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.~~

~~STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 84-907.08~~

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~~Chapter~~HAPTER 74—~~PETITIONING FOR DECLARATORY ORDERS~~

~~The Natural Resources Commission hereby adopts by reference the Attorney General's model~~
~~rule for Petitioning for Declaratory Orders Title 53 Chapter 3, 002 through 010.~~

~~Definitions: Declaratory Orders.~~

~~001 General Information.~~

~~STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 84-912.01~~

Appendix "A"

STATE OF NEBRASKA
NEBRASKA NATURAL RESOURCES COMMISSION

In the Matter of _____)
_____) PETITION FOR
_____) DECLARATORY ORDER
_____)

- _____ 1. Petitioner's name and address;
- _____ 2. The name and address of all persons who or entities which may have a specific interest in the applicability of the statute, rule, or order or who may be adversely affected by the issue sought to be resolved;
- _____ 3. All material facts and specific circumstances;
- _____ 4. All rules of law which apply;
- _____ 5. Petitioner's demand for relief;

DATED on this _____ day of _____, 20____.

Signature of Petitioner (Required)

Petitioner's Name Printed or Typed
(Required)

Petitioner's Full Mailing Address
(Required)

City, State, Zip Code (Required)

Petitioner's Telephone Number With
Area Code (Required)

Petitioner's Email Address
(Required if Available)

VERIFICATION

STATE OF _____)
_____) ss.
COUNTY OF _____)

_____[name], being first duly sworn, states that he/she is the petitioner/petitioner's agent in the above entitled matter; that he/she has read the foregoing Petition For Declaratory Order; and that the allegations of fact therein are true.

Petitioner's Signature

SUBSCRIBED and sworn to before me on this ____ day of _____, 20__.

Notary Signature

NOTARY SEAL