

SECTION 4. APPEAL PROCEDURE.

- (A) In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing or it subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable. Opportunity shall be afforded all parties to present evidence and argument with respect thereto. The Director shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purpose of rehearing, in which event the transcript and record shall be furnished by the Director upon request and tender of the cost of preparation. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (B) In contested cases:
- (1) The Director may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. The Director shall give effect to the rules of privilege recognized by law. The Director may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Any party to a formal hearing before the Director, from which a decision may be appealed to the courts of this state, may request that such Director be bound by the rules of evidence applicable in district court by delivering to such Director at least three (3) days prior to the holding of such hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;
  - (2) The Director may administer oaths and request to either the City Council or the County Board to issue subpoenas to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses residing either within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;
  - (3) All evidence including records and documents in the possession of the Director of which the Director desires to use shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;
  - (4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence; and
  - (5) The Director may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within the Department's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The Director may utilize the Director's own experience, technical competence, and specialized knowledge in the evaluation of the evidence.
- (C) Every decision and order adverse to a party to the proceeding, rendered by the Director in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.
- (D) If the Director orders a civil penalty for any violation, the Director shall comply with the following:
- (1) After the order finding a violation under Article 1, Section 3 and before issuing the final decision assessing the penalty, the Director shall give written notice to the person to be assessed a civil penalty including the amount of the penalty for the violation and an opportunity to request, within fifteen (15) days of the date the notice of penalty is received, a separate hearing on the civil penalty. The requested hearing shall be limited to the civil penalty and the factors related to the penalty, and not the underlying violation.

- (2) In determining the amount of a civil penalty, the Director shall take into account the nature, circumstances, extent, and gravity of the violation or violations and the violator's ability to pay, ability to continue to operate, prior history of violations, degree of culpability, and such other matters as justice may require.
  - (3) At the separate hearing, the Director may compromise, modify, or remit, with or without conditions, any civil penalty imposed.
- (E) Civil penalties shall be paid in accordance with the Nebraska Constitution, Article VII Section 5.
- (F) Any person jointly or severally aggrieved by any final decision or order by the Director may appeal to district court as provided in Neb. Rev. Stat. §15-1201 et. Seq. An aggrieved person includes a permit applicant, a person who participated in a public comment process, and any other person authorized by law to obtain judicial review of a final decision of the Director.
- (G) If the Director fails to take final action within: four-hundred fifty (450) days on permit applications; ninety (90) days on minor permit modifications; one-hundred eighty (180) days on group processed minor modifications; or ninety (90) days on any other required action, the failure to take final action shall be a final decision subject to judicial review.
- (H) Neb. Rev. Stat. §15-1202 requires that a person appealing a final decision must file a notice of appeal within thirty (30) days from the date of the order or decision.
- (I) Except if ordered by court, if the Director issues a permit, the permit is not stayed during the pendency of any appeal.