

## Digest for Adopted Regulation R\_135-11

Existing regulations provide for the rules of practice before the State Environmental Commission concerning hearings to appeal certain decisions of the State Department of Conservation and Natural Resources. (NAC 445B.875-445B.899) In general, this regulation clarifies, amends and establishes regulations with respect to such rules of practice.

**Section 2** of this regulation authorizes the Commission to conduct a prehearing conference before a hearing to appeal a final decision of the Department to address certain preliminary matters and to streamline the hearing process. **Section 2** also provides that any action taken or agreement reached at a prehearing conference is binding on each party unless otherwise stipulated by the parties with the consent of the Commission.

**Section 3** of this regulation requires each party to a hearing to provide every other party to the hearing with notice of the identity of each person who intends to offer direct oral testimony and a copy of each exhibit which the party intends to offer as evidence in support of the party's position. **Section 3** further authorizes the Commission to disregard or refuse to enter into evidence any testimony or exhibit which is prejudicial to a party. **Section 3** also prohibits, with limited exceptions, the Commission from considering evidence at certain hearings which was not submitted to the Department before the issuance of the decision being reviewed and requires all evidence offered at a hearing before the Commission to be relevant.

Existing regulations require a person who wishes to appeal a final decision of the Department to file a form 3 with the Commission not later than 10 days after notice of the decision of the Department. (NAC 445B.890) **Section 5** of this regulation establishes the grounds for such an appeal. **Section 5** also requires that a person filing a form 3 provide certain information pertaining to the legal authority and jurisdiction of the Commission to conduct the

hearing and the legal basis for the appeal. **Section 5** further authorizes the Commission to dismiss a request for a hearing if the person requesting the hearing fails to submit a completed form 3.

Existing regulations require the Secretary of the Commission to schedule a hearing within 20 days after receiving the hearing request or order to appear before the Commission. (NAC 445B.891) **Section 6** of this regulation authorizes the parties to such a hearing to waive the right to a hearing within the specified 20-day period. **Section 6** additionally requires that a notice of hearing include a reference to each legal basis for the appeal and, if applicable, a reference to each NRS and NAC section allegedly violated.

Existing regulations authorize the Commission to order the parties to a hearing to file briefs before or after the hearing. (NAC 445B.8925) **Section 7** of this regulation additionally authorizes the Commission to require the parties to a hearing to file an opening brief, response brief and reply brief. For any brief which is so ordered by the Commission, **section 7** requires the Commission to prescribe the period during which the brief must be filed and served and further prescribes the format in which the brief must be filed and served.

**Section 8** of this regulation authorizes the Commission to dismiss an appeal for want of prosecution if the person who filed the appeal fails to bring the appeal to hearing within a certain period. (NAC 445B.894) **Section 9** of this regulation establishes the qualifications for an attorney who represents a party before the Commission. (NAC 445B.895)