

Overview of DNR rulemaking

Good morning

- Elizabeth Carlson, Strategic Planning and Policy Administrator at the Dept of Natural Resources. One of my responsibilities is managing the DNR's portfolio of rulemaking activities.
- This presentation will give you an overview of DNR rulemaking. There are actually several rulemaking processes that the DNR can use, depending on the topic and nature of the rule.

Permanent rulemaking by the DNR

- From July 2007 to June 2013, the DNR completed 13 permanent rulemakings. Three of those were high profile topics with widespread public interest and so the DNR went ahead and held multiple hearings. The other ten were non-controversial and we were able to adopt them without a hearing.
- The DNR finishes about two permanent rulemaking packages each year. Most of that rulemaking updates existing rules rather than creating brand new rules. Game and fish rules tend to be updated more frequently than other DNR rules.
- We take what I call a "go slow to go fast" approach. We want to unearth all issues, challenges, and ideas early in the process and not have surprises later on when it is harder to make adjustments. The formalities of rulemaking procedure go more smoothly when problems and discussions have already been sorted out – not just between the DNR and stakeholders, but among stakeholders too.
- It's going to take extra effort to make sure that rules adopted by three agencies are in sync.

Major steps in permanent rulemaking

1. The major stages of a permanent rulemaking process are:

a) RULE DEVELOPMENT

b) PUBLIC NOTICE OF THE AGENCY'S INTENT TO ADOPT PROPOSED RULES

c) REVIEW AND APPROVAL AS TO FORM AND LEGALITY

A general rule of thumb is that it can take 18 to 24 months to complete a permanent rulemaking process. Rule development can take 6 to 12 months and sometimes longer for complex or controversial rules. The procedures for notice, review, and approval of proposed rules can take at up to 12 months if the agency has to deal with adverse findings by the administrative law judge.

2. In the DNR, the rule development phase is led by subject matter experts in the responsible divisions. That includes drafting rule language and writing the Statement of Need and Reasonableness. After those materials have received preliminary approval by the commissioner and governor's office, the work shifts into rulemaking procedure and I have most of the lead from that point on. The subject matter experts continue to be responsible for reviewing and responding to public and staff comments and representing the DNR at hearing. In other words, they deal with the content of the rules and I deal with the rulemaking process.
3. Publication of a Request for Comments in the State Register is the first formal step in the rulemaking process and it does not have to include a set of proposed rules. The DNR usually prefers to publish a Request for Comments early in rule development before any rule drafting takes place, in order to hear all relevant ideas unconstrained by preconceived language. It is a signal to the public that we are getting started and it is not the only way the DNR gets input for rules.

4. The DNR places a high value on consulting with the public. Much of our rulemaking is informed by ongoing interactions and relationships with a widely varied and active citizenry and business community, along with any specific public input during formal rulemaking. Sometimes an advisory panel can provide input while drafting possible rule language, but the greatest help may lie in illuminating how possible rules may impact citizens, businesses, and local govts and the pros and cons and potential costs of alternative approaches.
 - Our stakeholders and interested publics cover a wide range of interests, values, and perspectives.
 - The DNR strives to adopt rules that are necessary and reasonable to carry out the responsibilities of its public mission.
 - We do care about how DNR rules affect people, businesses, and local government units. We listen to the range of information and wisdom that they contribute and we care about their needs, concerns, and hopes where rulemaking is concerned.
 - A voice of wisdom may come unexpectedly and it can indeed help make better rules. We value that possibility in DNR rulemaking.
5. During the rule development phase, the DNR begins posting project information on its website. For noncontroversial rules it might just be the rulemaking documents. Webpages for more complicated or potentially controversial rules may provide a great deal more background information as part of a public communication and participation strategy.
6. When the DNR settles on a final set of proposed rules, a Statement of Need and Reasonableness (SONAR) is prepared and signed by the commissioner. The SONAR contains a summary of the evidence and argument that the DNR is relying on to justify that the rules are needed and reasonable.
7. The DNR gives notice of its intent to adopt rules and makes the proposed rules available to the public through publication in the State Register (as required) and delivering notice to interested parties according to an Additional Notice Plan.

8. For these mineland reclamation rules, the DNR is planning to go hearing. The Notice of Hearing will direct interested persons to send comments to the administrative law judge at the Office of Administrative Hearings (OAH). We will coordinate with that office to share copies of comments.
9. The DNR submits a required set of exhibits to the Administrative Law Judge, including all comments received in response to the notice of intent. The purpose of the exhibits is to present DNR's case for adopting the rules and to demonstrate compliance with all procedural requirements. If there is a hearing, it is conducted by the judge.
10. The DNR will likely choose to have the services of a court reporter to create a record of testimony at the hearing.
11. Upon review and approval of the rules by the Administrative Law Judge, the Commissioner of Natural Resources signs an Order Adopting Rules and the rules are filed with the Secretary of State. The Office of Revisor of Statutes prepares a Notice of Adoption for the DNR to submit to the State Register for publication. That completes the rulemaking process.

In closing

- Our objectives for DNR rulemaking are: to be guided by science and informed by public participation, and to go about it in a responsible and responsive manner — including using the most efficient process that is appropriate to the subject matter and its public policy context, and with proper statutory authority.