

In the Matter Of:

Department of Natural Resources & Environmental Control

SHELLFISH SANITATION REGULATIONS HEARING

October 05, 2021



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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Proposed Revisions to 7 DE)
Admin. Code 7402 Shellfish)
Sanitation Regulations)
Docket #2021-R-WS-0003)

..

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Event Number: 179 119 1725

Tuesday, October 5, 2021
6:00 p.m.

..

BEFORE: Lisa Vest, Hearing Officer
FOR THE DIVISION: Michael Bott, DNREC

-- Transcript of Proceedings --

WILCOX & FETZER
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1 MS. VEST: Good evening. I believe
2 that everyone involved in this hearing matter
3 is connected and ready, so we are going to
4 begin tonight's proceedings.

5 I want to thank everyone that may
6 be tuning in, so to speak, and taking your
7 time out of your busy schedules to attend
8 tonight's event.

9 The date is Tuesday, October 5th,
10 2021. And we are here this evening to
11 provide a virtual platform for DNREC to
12 conduct its public hearing regarding the
13 Proposed Amendments to Delaware's Shellfish
14 Sanitation Regulations.

15 For those of you who may not know
16 me, my name is Lisa Vest, and Secretary
17 Garvin has designated me to serve as the
18 hearing officer for tonight's proceedings.

19 To set the stage for tonight's
20 hearing, specifically with regard to DNREC's
21 standard hearing protocols, this hearing is
22 being conducted virtually. Staff is not
23 gathered together in the same room. Rather,
24 everyone is participating independently at

1 their own respective locations.

2 While there are no physical sign-in
3 sheets to document a physical attendance
4 tonight, WebEx does generate a list of those
5 that are virtually attending tonight's
6 hearing, so the Department will still
7 maintain a verifiable record of those who
8 have electronically joined us tonight. And,
9 again, I thank everybody for doing so.

10 At the conclusion of these
11 introductory remarks, I will be turning the
12 hearing over to Michael Bott, who will be
13 making a formal presentation regarding
14 DNREC's proposed regulatory amendments.
15 Those comments will be made for the benefit
16 of the hearing record being generated
17 tonight.

18 There is still a court reporter
19 virtually present, and she will prepare a
20 verbatim transcript of the hearing tonight,
21 pursuant to DNREC's statutory requirement to
22 do so. And as always, that transcript will
23 be posted on the hearing webpage dedicated to
24 this matter as soon as it has been received.

1 It should be noted that we do have
2 a preregistration protocol for members of the
3 public that may wish to offer comment for the
4 record live at the time of the hearing. That
5 is available for people to register on the
6 web or to call us on the phone.

7 In this particular regulatory
8 matter, we had no members of the public
9 utilize that pre-registration process, so
10 there will be no live comment offered at the
11 hearing tonight.

12 But, as is the case with all DNREC
13 hearings, the Department wants to make sure
14 that everyone who may wish to have a comment
15 submitted for the record and for the
16 Secretary's consideration has the ability to
17 do so.

18 Therefore, the record is not going
19 to close at the conclusion of this hearing,
20 but the record will remain open to receive
21 comment through October 20th. That way, the
22 public will have an opportunity to submit
23 comment for the record and for the
24 Secretary's consideration, should they wish

1 to do so.

2 I would encourage anyone attending
3 tonight to visit DNREC's public hearing
4 webpage under the Administrative Law Section
5 of the website for more details concerning
6 this pending regulatory action.

7 The Department's presentation that
8 Mr. Bott will be giving in a second, along
9 with all exhibits and all other documentation
10 concerning this particular matter, are all
11 posted on that hearing page dedicated to this
12 matter, and the public can gain a wealth of
13 information by reviewing the same.

14 Of course, all mechanisms that have
15 always been available to members of the
16 public to submit comment remain in effect.
17 That is electronic links, email, and, of
18 course, the United States Postal Service.

19 Also, the following protocols
20 remain in place for all DNREC hearings:

21 Number one: All comment received
22 must be limited solely to the subject matter
23 of tonight's hearing. Comments germane to
24 the subject matter of this hearing will be

1 incorporated into the record that is being
2 generated in this matter.

3 Number two: As previously stated,
4 in order to ensure that everyone who wishes
5 to offer comment for the Secretary's
6 consideration is accommodated, the record
7 will remain open through October 20, 2021.

8 Number three: There is only one
9 authentic record of this formal proceeding
10 tonight, and it is the official court
11 reporter's verbatim transcript.

12 Number four: The statutory purpose
13 of tonight's hearing is to build the record
14 with regard to the Department's proposed
15 regulatory actions.

16 The record, which consists of the
17 transcript of the hearing tonight, all
18 written comments that may be received, all
19 exhibits, and eventually the Hearing
20 Officer's Report, will all be reviewed by
21 Secretary Garvin.

22 Upon conclusion of that review, the
23 Secretary will issue an order following his
24 process. That order will contain his

1 decision on the matter and the reasons
2 therefor.

3 Number five: It is important to
4 note that absolutely no decision has been
5 made about these proposed regulatory
6 amendments at this time, nor will any
7 decision be made by the Department during the
8 course of this hearing.

9 The record will remain open for the
10 next 15 days, closing at the conclusion of
11 October 20, 2021. So, again, members of the
12 public will have ample opportunity to offer
13 written comment for the Secretary's
14 consideration, should they wish to do so.

15 Comments may be submitted through
16 the comment form link on the hearing webpage,
17 via e-mail to
18 DNRECHearingComments@delaware.gov, or via the
19 United States Postal Service at the physical
20 address for DNREC indicated on the hearing
21 page and/or the other public notices
22 previously issued in this matter.

23 Please note that written comment to
24 DNREC may not be submitted using standard

1 social media platforms such as Twitter,
2 Facebook, YouTube, or text messaging.

3 Lastly, please note that whether
4 comments were received prior to the hearing
5 tonight, whether they were received in
6 realtime at the hearing tonight, which, as I
7 have previously said is not going to be the
8 case, since no one signed up to do so, or if
9 they are received between now and the time
10 that the record closes on October 20th, as
11 long as they are germane to the subject
12 matter of tonight's hearing, and as long as
13 they are received on or before October 20,
14 2021, all comments bear exactly the same
15 weight, and all will be considered equally by
16 the Secretary prior to his making his final
17 decision in this matter.

18 Again, the ultimate decision
19 regarding this regulatory proposed action is
20 made by Secretary Garvin. We are here
21 tonight, and this formal hearing exists
22 mainly just to air and vet all of the
23 proposed amendments to the public and make
24 sure that the public is offered a means by

1 which they can submit comments for the
2 record, should they wish to do so.

3 That being said, I am now going to
4 turn the floor over to Mr. Bott so he can
5 begin the Department's presentation.

6 Michael, whenever you are ready,
7 you can take it away.

8 MR. BOTT: Thank you very much,
9 Lisa.

10 My name is Michael Bott. I work
11 with DNREC's Shellfish and Recreational Water
12 Programs.

13 And you are here tonight for the
14 DNREC virtual public hearing, October 5,
15 2021, for 7 DE Admin Code 7402, Shellfish
16 Sanitation Regulations, Docket Number
17 2021-RWS-0003.

18 Welcome. Any visual content that
19 is part of this hearing will appear in this
20 window. You can use your computer audio to
21 listen to this hearing. Use the computer
22 audio connections menu to turn audio on, on
23 or off. And you can dial into the hearing
24 using the following information: Dial-in

1 number: 1-408-418-9388. Event Number is
2 1791191725. Password is ShellfishSanRegs.

3 Verbal and written comments will be
4 accepted during this public hearing.
5 Comments will be accepted through Wednesday,
6 October 20, 2021.

7 Please see de.gov\dnrehearings
8 for more information on submitting comments.

9 This is our agenda. I just made
10 the formal introductions, followed by going
11 through the regulation promulgation schedule,
12 the current shellfish sanitation regulations,
13 proposed regulations, entry of Department
14 exhibits into the record, public comments.

15 Regulation Promulgation Schedule:
16 Publication of proposed amendment:
17 September 1, 2021. Legal notice for
18 August 29, 2021. Public hearing is occurring
19 this evening, October 5, 2021. The hearing
20 record closes October 20, 2021. Publication
21 of final regulations is anticipated for
22 December 1, 2021. And the new regulations
23 take effect with an anticipated date
24 December 11, 2021.

1 Current Shellfish Sanitation
2 Regulations: The Shellfish Sanitation
3 Regulations, 7 DE Admin Code 7402, were last
4 updated in 2019.

5 They regulate the harvest, sale,
6 and transport of bi-valve molluscan shellfish
7 within Delaware and in interstate commerce.

8 The proposed regulation would add
9 additional approved methods to analyze
10 bacteriological water quality. Add the
11 membrane-Thermotolerant Escherichia coli
12 [mTEC] method as an approved bacteriological
13 standard for the classification of shellfish
14 growing areas.

15 In drafting this proposal,
16 Department staff considered input from the
17 Delaware Shellfish Advisory Council, Delaware
18 Aquaculture Association, and Delaware
19 Shellfish Dealers.

20 At this time I would like to
21 describe the Department exhibits. The
22 Department has submitted eight exhibits into
23 the record for these proceedings:

24 Exhibit 1 is the Start Action

1 Notice 2021-01 to amend 7 DE Code 7402
2 Shellfish Sanitation Regulations, signed on
3 May 12, 2021.

4 Exhibit 2: Notice of the public
5 hearing scheduled for October 5, 2021 as
6 posted on the Statewide Public Meeting
7 Calendar on August 26, 2021.

8 Exhibit 3: Copy of legal notice
9 regarding the Proposed Amendments to 7 DE
10 Admin Code 7402, Regulations for Shellfish
11 Sanitation, as posted on DNREC's public
12 notices website starting August 29, 2021.

13 Exhibit 4: Affidavit of
14 publication, Delaware State News, dated
15 August 29, 2021, legal notice advertising the
16 October 5, 2021 public hearing on the
17 proposed amendments to Shellfish Sanitation
18 Regulations.

19 Exhibit 5: Affidavit of
20 publication, the News Journal, dated
21 August 29, 2021, for the legal notice
22 advertising the October 5, 2021 public
23 hearing on the proposed amendments to the
24 Shellfish Sanitation Regulations.

1 Exhibit 6: Copy of the Register
2 Notice, proposed strike-through language,
3 Regulatory Flexibility Analysis, and Impact
4 Statement Form as it appeared in the
5 September 1, 2021, Delaware Register of
6 Regulations, Volume 25, Issue 3, Page 268.

7 Exhibit 7: The Department Power
8 Point presentation for the October 5, 2021
9 public hearing on Shellfish Sanitation
10 Regulations.

11 MS. VEST: Mr. Bott, does that
12 conclude the Department's presentation with
13 regard to this matter?

14 MR. BOTT: Yes, it does.

15 MS. VEST: Okay. A little
16 housekeeping just for the benefit of the
17 record: Are the exhibits that you just read
18 through right now the same as those exhibits
19 that have been posted on the hearing webpage
20 dedicated to this matter.

21 MR. BOTT: Yes, they are.

22 MS. VEST: And have they been
23 changed or altered in any way since their
24 posting there?

1 MR. BOTT: No, they have not.

2 MS. VEST: Okay. Very good. Let
3 the record reflect that Department's proposed
4 exhibits, as identified just now by the
5 Department, are hereby entered and
6 incorporated into the formal hearing record
7 being generated in this matter.

8 Thank you, Mr. Bott. Does the
9 Department have any further statements that
10 they wish to offer for the record at this
11 time?

12 MR. BOTT: No, we do not.

13 MS. VEST: Excellent. Thank you
14 again for that presentation.

15 At this point, as I said in my
16 introductory remarks, we did not have any
17 members of the public preregister to offer
18 live comment for the hearing record, so that
19 portion of the hearing will not be done
20 tonight for this particular matter.

21 That being said, as we previously
22 discussed, DNREC wishes to make sure that
23 everyone who wishes to offer comment for the
24 record ultimately for the Secretary's

1 consideration has the ability to do so.

2 Therefore, the record will not
3 close at the conclusion of tonight's
4 proceedings. Rather, it's going to remain
5 open for the next 15 days and will close on
6 October 20, 2021.

7 All comment bears the same weight,
8 whether it had been offered live tonight at
9 the time of the hearing, whether it was
10 received prior to the hearing, or whether
11 it's received in the next 15 days.

12 As long as it is received and
13 related to the subject matter of this
14 hearing, which again are the Proposed
15 Amendments to Delaware Shellfish Sanitation
16 Regulations, as long as they are all received
17 on or before October 20, 2021, they will be
18 incorporated into the hearing record. They
19 will be posted on the hearing webpage so that
20 anybody that logs on can see it, and they can
21 read all the comments, if they wish to do so,
22 before making their own comment.

23 And all will be included as part of
24 the record, and the record will be reviewed

1 by Secretary Garvin prior to his making a
2 decision in this matter.

3 That being said, I want to thank
4 everybody for tuning in tonight and for being
5 a part of this hearing.

6 Again, if you want to make a
7 comment, you have got until October 20th to
8 do so. Thank you very much. This meeting is
9 adjourned.

10 (Concluded at 6:11 p.m.)

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1 CERTIFICATE

2 I, Lorena J. Hartnett, a Notary Public and
3 Registered Professional Reporter, do hereby certify
4 that the foregoing is an accurate and complete
5 transcription of the proceeding held at the time and
6 place stated herein, and that the said proceeding
7 was recorded by me and then reduced to typewriting
8 under my direction, and constitutes a true record of
9 the testimony given by said witnesses.

10 I further certify that I am not a relative,
11 employee, or attorney of any of the parties or a
12 relative or employee of either counsel, and that I
13 am in no way interested directly or indirectly in
14 this action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my seal of office on this 10th day
17 of October 2021.

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23 Lorena J. Hartnett
24 Registered Professional Reporter

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