

1
2 WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

3
4 WYOMING ENVIRONMENTAL QUALITY COUNCIL

5
6 CHAPTER 1 I

7
8 GENERAL RULES OF PRACTICE AND PROCEDURE

9
10 Section 1. Authority, Purpose, and Construction.

11
12 (a) These rules are promulgated as authorized by the Wyoming Administrative
13 Procedure Act (APA) (W.S. ~~§9-4-101~~16-3-101 through ~~9-4-115~~16-3-115) and the Wyoming
14 Environmental Quality Act (Act) (W.S. §35-11-101 through ~~35-11-1104~~ 1904). These rules
15 shall apply in all proceedings before the Environmental Quality Council (Council) ~~and its~~
16 ~~examiners or the Department of Environmental Quality (DEQ) as herein provided. Existing~~
17 ~~Chapters I through IV are hereby repealed. These rules and regulations are effective upon~~
18 ~~final approval of a state program pursuant to P.L. 95-87.~~

19
20 (b) For purposes of these rules words of any gender are generic, and include
21 feminine, masculine, and neutral genders.

22
23 (c) These rules shall be interpreted and liberally construed to promote fairness
24 and justice. The conduct, demeanor and dress of the parties, attorneys, representatives and
25 witnesses when present during any Department or Council proceedings shall reflect respect
26 for the dignity and authority of the Department, the Council, and their staff members, and,
27 the proceedings shall be maintained as an objective search for the applicable facts and the
28 correct principles of law.

29
30 (d) Unless otherwise directed by statute or more specific rule the following shall
31 apply in all contested case hearings, rule making proceedings and proceedings to designate
32 land as rare or uncommon.

33
34 Section 2. **Definitions.**

35
36 (a) All of the definitions set forth and contained in the ~~Wyoming Environmental~~
37 ~~Quality Act and the APA Administrative Procedure Act~~ are incorporated herein by reference.
38 In addition, the following definitions are set forth. In case of conflict, the provisions of the
39 APA and Act shall govern.

40
41 (i) Administrator: The administrator of each division of the Department
42 of Environmental Quality, excluding the Abandoned Mine Lands Division and Industrial
43 Siting Division.

45 (ii) Applicant: Any person applying for a permit authorized under the
46 Environmental Quality Act ~~or any party petitioning for rulemaking and~~ in accordance with
47 the Act and the APA W.S. §9-4-106.
48

49 (iii) Council: The Environmental Quality Council established by the Act.

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51 (iv) Chairman: The Chairman of the Environmental Quality Council.

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53 (v) Executive Secretary: The Executive Secretary of the Environmental
54 Quality Council.

55
56 (vi) Director: The Director of the Wyoming Department of Environmental
57 Quality.

58
59 (vii) Department: The Wyoming Department of Environmental Quality.

60
61 (viii) Electronic: Relating to technology having electrical, digital, magnetic,
62 wireless, optical, electromagnetic or similar capabilities.

63
64 (ix) Hearing Officer: A licensed attorney employed by the Office of
65 Administrative Hearings or the Executive Secretary of the Environmental Quality Council if
66 that person is licensed to practice law in the State of Wyoming or a member of the Council
67 designated by the chairperson.

68
69 (x) Matter: Concerning the merits or critical elements, rather than mere
70 formalities; and also means all final decisions regarding an allegation forming the basis of a
71 claim or defense. Issues of law and fact not form.

72
73 (xi) OAH: Office of Administrative Hearings

74
75 (xii) Parties: The parties to a contested case proceeding are the Petitioner,
76 the Respondent, the any Third Party Respondent and any Intervenors.

77
78 (xiii) Petition: A written request presented to the Council seeking relief. Is
79 Petitions are used to initiate a contested cases, a rule making proceeding or a
80 proceeding to designate land as rare or uncommon.

81
82 (xiv) Protestant Petitioner: Any person desiring to protest the application of
83 a permit or any person, company, political subdivision, or limited liability company or other
84 corporate entity requesting a hearing before the Environmental Quality Council in
85 accordance with the Environmental Quality Act and who is objecting to an final action of the
86 Department of Environmental Quality and desiring affirmative relief, and . aAny party
87 petitioning for rulemaking or designation of land as very rare or uncommon.
88

89 (xv ~~iii~~) Presiding officer: The ~~officer~~ Chairman of the Council or other
90 person designated by the Chairman ~~person~~ of the Environmental Quality Council to conduct a
91 specific hearings before the Council.

92
93 (xvi) Respondent: The Department of Environmental Quality in any
94 contested hearing action before the Council.

95
96 (xvii) Third Party Respondent: The permit holder of any permit involved in
97 any contested hearing action before the Council in which the permit holder/applicant is not
98 the petitioner.

100 Section 3. **Initiation of Proceedings.**

101
102 (a) All hearings, appeals, or other similar proceedings before the Council, ~~appeals~~
103 ~~or others,~~ shall be held pursuant to these rules, the provisions of the Environmental Quality
104 Act W.S. § 35-11-101 through 1104 and the APA Wyoming Administrative Procedure Act.
105 And such other standards of review as specified in 3(f).

106
107 (b) All persons requesting a hearing ~~or protesting a permit~~ shall file ~~two copies of~~
108 ~~a written petition directed to and served upon both the Chairman of the Council and the~~
109 ~~Director of the Department~~ a petition with the Council. The petitioner shall file the original
110 petition with the Council; a copy shall also be served upon the Director, the Administrator of
111 the appropriate division and the Office of the Attorney General. All subsequent filings shall
112 consist of the original and eight copies. The date of receipt of a filing by the Council, and
113 not the date of deposit in the mail, is the receipt or filing date for all purposes in these rules,
114 except as provided in W.S. 16-4-301-304. All filings made with the Council shall be typed,
115 printed or otherwise legibly reproduced, so far as practicable, on 8 1/2 by 11 inch paper with
116 sufficient margins for use in loose-leaf ring binders.

117
118 (iii) Where ~~protestant~~ petitioner is objecting to a final action of the
119 Department on a permit or permit application, and the petitioner is not the permit holder or
120 applicant, he the petitioner shall also serve the permit applicant or holder, with a copy of the
121 petition and all other pleadings and motions. The permit applicant or holder, if not the
122 petitioner, shall be designated in the caption of all pleadings identified in the petition as the a
123 Third Party Respondent.

124
125 (ii) The filing of the petition shall be by mail, hand delivery or electronic
126 filing as hereinafter provided, received at the office of the Council. Original service shall be
127 by registered mail, return receipt requested. Thereafter, all service shall be proved in
128 accordance with the Wyoming Rules of Civil Procedure. Any paper filed by electronic
129 means must be followed by an identical signed otherwise duly executed original, or copy of
130 any electronic transmission other than facsimile transmission, together with the fee as set
131 forth in Rule 4 of the Rule For Fees and Costs For Circuit Court, mailed within 24 hours of
132 the electronic transmission. The Council upon receiving the original or copy shall note its

133 date of actual delivery, and shall replace the facsimile or other electronic transmission in the
134 Council's file. A paper filed by electronic means in compliance with this rule constitutes a
135 written paper for the purpose of applying these rules. No document which exceeds ten (10)
136 pages in length may be filed by facsimile. All format requirements contained in applicable
137 rules must be followed. The Council may reject any paper filed not in compliance with this
138 rule.

139
140 (iii) The petition shall be served on the respondent and third party
141 respondent by certified mail return receipt requested. Except as otherwise provided in these
142 rules, every order to be served, every pleading subsequent to the original petition, every paper
143 relating to discovery required to be served upon a party and every written notice, appearance,
144 demand, offer of judgment, designation of record on appeal, and similar paper shall be served
145 upon each of the parties. For cases involving objections to a permit under 35-11-406(k)
146 refer to Chapter 2.

147
148 (iv) Whenever under these rules service is required or permitted to be
149 made upon a party represented by an attorney the service shall be made upon the attorney.
150 Service upon the attorney or upon a party shall be made by delivering a copy to the attorney
151 or party or by transmitting it to the attorney or party at the attorney's or party's last known
152 address by mail or by other equally reliable means, including facsimile transmission. Service
153 by mail or transmission by other equally reliable means is complete upon mailing or
154 dispatch; provided, however, transmission by facsimile must be received by 4:00 p.m. of the
155 date of transmission, otherwise service is not complete until the next business day.

156
157 (v) All pleadings, affidavits or briefs which make use of acronyms in
158 place of the full words associated with a term shall include an index a glossary with
159 definitions for all Acronyms used within the document.

160
161 (c) The petition for hearing shall set forth:

162
163 (i) Name, ~~and~~ address, phone, and, if available, a fax number, and email
164 address of the ~~person~~ petitioner, respondent or third party respondent, their the petitioner's
165 designated representative and their the petitioner's attorney, if any ~~making the request or~~
166 protest.

167
168 (ii) The action, decision, order or permit upon which a hearing is
169 requested or an objection is made. Any pertinent order, letter or permit shall be attached to
170 the petition for hearing. If the pertinent order, letter or permit document is ten pages or less
171 the entire permits shall be attached to the petition. If the pertinent order, letter or permit is
172 more than 10 pages the first page of the permitdocument, all pages containing contested
173 language and the signature page shall be attached to the petition.

174
175 (iii) A statement in ordinary, but concise language of the facts on which the
176 request or protest is based, including whenever possible particular reference to the statutes,

177 rules or orders that the ~~Applicant or Protestant~~ Petitioner alleges have been violated or may
178 be at issue.

179
180 (iv) A request for hearing before the Council.

181
182 (d) The filing of such petition with the Council shall constitute the
183 commencement of the proceeding on the date filed.

184
185 ~~(e) A copy of the petition shall be served on any party who appeared in prior~~
186 ~~proceedings pertaining to the same matter.~~

187
188 (e) The Respondent and the Third Party Respondent have 30 days from receipt of
189 the petition to file an answer or otherwise plead. (i) For good cause shown the Respondent
190 and or the Third Party Respondent may move the Council for an order extending their time to
191 respond.

192
193 (f) Unless otherwise set forth by statute all contested case proceedings
194 shall be a de novo review consistent with Supreme Court Decisions.

195 Accordingly, when we review the DEQ's interpretations of regulations promulgated under
196 Wyoming's Environmental Quality Act, we apply the same standard the Council was required to
197 use: we accept those interpretations unless they are clearly erroneous or inconsistent with the plain
198 language of the rules. POWDER RIVER BASIN RESOURCE COUNCIL and SIERRA CLUB, Appellants
199 (Petitioners), v. WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY, and BASIN
200 ELECTRIC POWER COOPERATIVE, 2010 WY 25 pg.2

201
202 (g) The burden of proof is a preponderance of the evidence in all proceedings
203 before the Council unless a different burden is required pursuant to statute.

204
205 (h) The burden of persuasion is on the proponent of the order issued by the
206 Department.

207
208 **Section 4 46. Appeals to Council.**

209
210 (a) Unless otherwise provided by these Rules or the Environmental Quality Act,
211 all appeals to Council from final actions of the Administrators or Director shall be filed with
212 the Council within sixty (60) days of such action.

213
214 (b) Within 30 days after notification of any administrative decision following an
215 informal conference relating to a surface coal mining operation, the applicant or any person
216 with an interest which is or may be adversely affected who participated in the informal
217 conference may appeal the decision to the Council for a hearing in accordance with Chapters
218 1 I and 2 H.

219
220 **Section 54. Notice.**

221
222 (a) Notice of hearings shall conform to W.S. § 16-3-107(b) ~~9-4-107(b)~~. The

223 manner and time for giving notice shall be as follows:
224

225 (i) When the Council determines that it shall hold a hearing on its own
226 motion, it shall give notice as promptly as possible in advance of the hearing date to all
227 parties personally, or U.S. Mail, First Class, postage prepaid or by registered or certified
228 mail, return receipt requested.
229

230 (ii) When a party desires that a hearing be held before the Council he shall
231 file his petition or motion and the Council shall forthwith set a date for hearing and notify the
232 applicant Petitioner, Respondent and Third Party Respondent and any other parties of said
233 hearing date thereof.
234

235 Section 7 6. **Record of Proceedings - Reporter.**
236

237 (a) Unless otherwise agreed by the parties and consented to by the Council, all
238 hearings, excluding pre-trial conferences or scheduling hearings, including all testimony,
239 shall be reported verbatim by a competent reporter. Pre-trial conferences and scheduling
240 hearings shall be recorded by electronic means. The compensation of such reporter shall be
241 paid as required by law and as ordered by the Council. The Council may direct any party or
242 parties to assume the cost of the transcript. The party bringing the action pays for the ~~recorder~~
243 reporter, unless the council rules otherwise as a result of an appeal by the party.
244

245 ~~Section 7. **Record.**~~
246

247 ~~(a) The record in all contested cases (Chapter II) shall include:~~
248

249 ~~(i) All formal and informal notices.~~
250

251 ~~(ii) Evidence received or considered including matters officially noticed.~~
252

253 ~~(iii) Questions and offers of proof, objections, and rulings thereon.~~
254

255 ~~(iv) Any proposed findings and objections thereto.~~
256

257 ~~(v) The decision and order of the Council.~~
258

259 ~~(vi) The transcript of all recorded proceedings.~~
260

261 ~~(b) The record in hearings held under Chapter III shall include all relevant~~
262 ~~information presented to the Council at the hearing.~~
263

264 ~~(c) At the close of the hearing, the presiding officer may afford all interested~~
265 ~~parties time in which to submit additional written testimony or written proposed corrections~~
266 ~~of the transcript, pointing out errors that may have been made in transcribing the testimony.~~

267 ~~The presiding officer shall promptly thereafter order such corrections made as in his~~
268 ~~judgment are required to make the transcript conform to the testimony.~~

269

270 ~~Section 8. Appeals.~~

271

272 (a) ~~Appeals to the District Court from decisions of the Council are governed by §~~
273 ~~W.S. 9-4-114 Rule 12 of the Wyoming Rules of Appellate Procedure, and W.S. § 35-11-~~
274 ~~1001, and 1002.~~

275

276 (b) ~~In case of an appeal of the District Court as above provided, the party~~
277 ~~appealing shall secure and file a transcript of the testimony and all other evidence offered at~~
278 ~~the hearing.~~

279

280 ~~The compensation of the reporter for making the transcript of the testimony~~
281 ~~and all other costs involved in such appeal shall be borne by the party prosecuting such~~
282 ~~appeal.~~

283

284 ~~Section 9. Pre-Hearing Conference.~~

285

286 (a) ~~At a time on or before the day of any hearing, the Council may direct the~~
287 ~~parties to appear before the Council to consider:~~

288

289 (i) ~~The implication of the issues.~~

290

291 (ii) ~~The necessity or desirability of amending the pleadings.~~

292

293 (iii) ~~The possibility of obtaining admissions of the fact and of documents~~
294 ~~to avoid unnecessary proof.~~

295

296 (iv) ~~Formulating procedures to govern the hearing.~~

297

298 (v) ~~Such other matters as may aid in the disposition of the case.~~

299

300 (b) ~~Such conferences shall be conducted informally. An order will may be~~
301 ~~prepared which recites the actions taken at the conference, amendments allowed, agreements~~
302 ~~of the parties and agreements of counsel and the parties. The pre-hearing order will control~~
303 ~~the court course of the hearing unless modified by the presiding officer to prevent manifest~~
304 ~~injustice.~~

305

306 (i) ~~If a party determines an order does not fully cover the issues presented,~~
307 ~~or is unclear, they may petition for a further ruling within ten days after receipt of the order.~~

308

309 ~~Section 10 7. Time Deviation.~~

310

311 (a) ~~When time prescribed by these rules or by order of the Council for doing~~
312 ~~any act expires on a Saturday or legal holiday, such time shall extend to and include the~~
313 ~~next succeeding business day.~~

314
315 (a) The Council may permit deviations from these rules insofar as it may find
316 compliance therewith to be impossible or impracticable.

317
318 (b) For good cause shown, extensions and continuances of time may be granted or
319 denied atin the discretion of the Council.)

320
321 (b) ~~Any amendments to these rules shall become effective as provided by W.S. 9-~~
322 ~~4-103 and 9-4-104.~~

323
324 ~~Section 11. Settlement.~~

325
326 (a) ~~Informal dispositions may be made of any hearing by stipulation, agreed~~
327 ~~settlement, consent order or default, upon approval of the Council.~~

328
329 Section 8 13. **Exclusion.**

330
331 (a) Nothing in these Rules shall be construed as prohibiting the ~~Environmental~~
332 ~~Quality Council, the Director and the Administrators of the Divisions of Land, Air, or Water~~
333 ~~Quality or Hazardous and Solid Waste~~ or their designee from holding informational
334 proceedings, hearings, or conferences for the purpose of aiding the Council, ~~the Director~~ or
335 the Administrator in ascertaining and determining facts necessary for the performance of
336 their respective duties. Any person believing himself aggrieved by a determination made by
337 the ~~Director~~, Administrator or his designee following an informational proceeding, hearing,
338 or conference and who is otherwise entitled thereto, may upon filing a petition ~~or complaint~~
339 with the Council, obtain a full hearing or review upon the merits.

340
341 (b) Disrespectful, disorderly or contumacious language or contemptuous conduct,
342 refusal to comply with directions, continued use of dilatory tactics, ~~or~~ refusal to adhere to
343 reasonable standards of orderly and ethical conduct, or use of electrical equipment that is
344 disruptive, at any hearing or meeting of before the Council, shall constitute grounds for such
345 action and sanctions as the Council may direct including, immediate exclusion before from
346 the hearing.

347
348 Section 9 14. **Meeting of Council and Advisory Boards.**

349
350 (a) All meetings of the Council ~~and the Advisory Board~~ shall be conducted in
351 accordance with these rules, Robert's Rules of Order, the Act and the APA as they may be
352 applicable. The Council shall on or before May 1 of each year elect a Chairperson, Vice
353 Chairperson and a Secretary.

355 (b) ~~The four regular meetings of the Council and the Advisory Boards required by~~
356 ~~W.S. § 35-11-113 and W.S. § 35-11-111(d) of the Act shall be called by the Chairman after~~
357 ~~consultation and coordination with the Administrator or Director, respectively.~~
358

359 (c) All persons interested in participating in a meeting of the Council must
360 request inclusion on the agenda, in writing or via telephone, at least fourteen (14) days prior
361 to the meeting date. No matter shall be considered at a meeting of the Council unless it is on
362 the agenda and eight copies of related written materials have been submitted to the Council
363 office in accordance to the schedule set by the Council; provided, however, the Council, on
364 its own motion, may consider other matters of significant importance or emergency.
365

366 (d) The Council shall send a copy of the proposed agenda to all interested persons
367 who request a copy for each Council meeting as soon as practicable before the scheduled
368 meeting. The proposed agenda shall be posted and kept continuously current at the office of
369 the Council and on the web site of the Council located at the time of adoption of this rule at
370 <http://eqc.wyo.gov> . The agenda may be amended up to 24 hours prior to the meeting. In the
371 event of an emergency the agenda may be amended at any time
372

373 (e) Executive Sessions will be conducted pursuant to W.S. § 16-4-405 of the
374 Laws of the State of Wyoming set forth in full below:
375

376 (i) A governing body of an agency may hold executive sessions not open
377 to the public:
378

379 (A) With the attorney general, county attorney, district attorney,
380 city attorney, sheriff, chief of police or their respective deputies, or other officers of the law,
381 on matters posing a threat to the security of public or private property, or a threat to the
382 public's right of access;
383

384 (B) To consider the appointment, employment, right to practice or
385 dismissal of a public officer, professional person or employee, or to hear complaints or
386 charges brought against an employee, professional person or officer, unless the employee,
387 professional person or officer requests a public hearing. The governing body may exclude
388 from any public or private hearing during the examination of a witness, any or all other
389 witnesses in the matter being investigated. Following the hearing or executive session, the
390 governing body may deliberate on its decision in executive sessions;
391

392 (C) On matters concerning litigation to which the governing body
393 is a party or proposed litigation to which the governing body may be a party;
394

395 (D) On matters of national security;
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397 (E) When the agency is a licensing agency while preparing,
398 administering or grading examinations;

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(F) When considering and acting upon the determination of the term, parole or release of an individual from a correctional or penal institution;

(G) To consider the selection of a site or the purchase of real estate when the publicity regarding the consideration would cause a likelihood of an increase in price;

(H) To consider acceptance of gifts, donations and bequests which the donor has requested in writing be kept confidential;

(I) To consider or receive any information classified as confidential by law;

(J) To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations;

(K) To consider suspensions, expulsions or other disciplinary action in connection with any student as provided by law.

(ii) Minutes shall be maintained of any executive session. Minutes and proceedings of executive sessions shall be confidential and produced only in response to a valid court order except for those parts of minutes of an executive session reflecting a members' objection to the executive session as being in violation of this act.

(iii) Unless a different procedure or vote is otherwise specified by law, an executive session may be held only pursuant to a motion that is duly seconded and carried by majority vote of the members of the governing body in attendance when the motion is made.

(f) All matters shall be decided by a majority vote of those on the council.

(g) All hearings, except as established by statute, shall be held in Cheyenne, Wyoming, unless otherwise ordered by the presiding officer.

(h) No single member of the Council shall request a legal opinion from the Attorney General. All requests for legal opinions from the Attorney General shall require a majority vote of the Council and such request shall be forwarded to the Attorney General by the Executive Secretary of the Council. Said request shall indicate whether the Council is requesting informal legal advice or a formal Attorney General Opinion.

Section 9. Conflicts of Interest: Generally

(a) Section 9-13-106 of the Laws of the State of Wyoming govern conflicts of interest generally.

444 (b) A public official, public member or public employee shall not make an
445 official decision or vote on an official decision if the public official, public member or public
446 employee has a personal or private interest in the matter. In determining whether he has a
447 personal or private interest in a matter the public official shall recognize the importance of
448 his right to represent his constituency and shall abstain from voting only in clear cases of a
449 personal or private interest as defined in this subsection. A public official or public member
450 shall not vote to give money or any direct financial benefit to himself except for tax
451 reductions affecting the general public. For the purposes of this section, a personal or private
452 interest:

453
454 (i) Is, with respect to the public official, public employee or public
455 member, an interest which is direct and immediate as opposed to speculative and remote; and
456

457 (ii) Is an interest that provides the public official, public employee or
458 public member, a greater benefit or a lesser detriment than it does for a large or substantial
459 group or class of persons who are similarly situated.
460

461 (c) A public official, public member or public employee described by subsection
462 (b) of this section shall abstain from voting on the decision and from making any official
463 decision in the matter. The public official's, public member's or public employee's abstention
464 from voting must be recorded in the governmental entity's official records.
465

466 (d) This section shall not be construed to supersede W.S. §§15-9-220, 16-6-118
467 or 16-9-203(f). Those provisions shall control to the extent inconsistent with this section.
468

469 **Section 10. Conflicts of Interest Specifically: Contested Water Discharge Permit**
470 **Hearings.**
471

472 (a) Any Members of the Environmental Quality Council, who receives, or has
473 during the previous 2 years received, a significant portion of income directly or indirectly
474 from permit holders or applicants for a permit shall recuse themselves from any contested
475 water discharge permit hearing in which the permit holder or applicant for a permit is the
476 entity from which the Member received a significant portion of their income. In any
477 contested water discharge permit hearing in which the permit holder or applicant for a permit
478 is from the same government, business or industry sector from which the Member received a
479 significant portion of their income the Member is subject to recusal from such hearing upon
480 motion of any party and an affirmative vote of four (4) of the remaining members of the
481 Council.

482
483
484 (i) Significant portion is defined as 10 percent or more of gross personal
485 income for a calendar year, except that it means 50 percent or more of gross personal income
486 for a calendar year if the recipient is over 60 years of age and is receiving that portion under
487 retirement, pension, or similar arrangement.

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(ii) Permit holders or applicants for a permit do not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(iii) Income includes retirement benefits, consultant fees, and stock dividends.

(iv) For the purposes of this section, income is not received directly or indirectly from permit holders or applicants for a permit when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

Section 106. Appeals to Council.

(a) Unless otherwise provided by these Rules or the ~~Environmental Quality Act~~, all appeals to Council from final actions of the Administrators or Director shall be made within sixty (60) days of such action.

(b) Within 30 days after notification of any administrative decision following an informal conference relating to a surface coal mining operation, the applicant or any person with an interest which is or may be adversely affected may appeal the decision to the Council for a hearing in accordance with Chapters I and II. The Council shall make a final written decision within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to the hearing.

532 CHAPTER 2 H

533
534 RULES OF PRACTICE AND PROCEDURE APPLICABLE TO
535 HEARINGS IN CONTESTED CASES
536

537 Section 1. ~~Answer or appearance.~~

538
539 (a) ~~Within thirty (30) days of receipt of the petition (The Director or and Permit~~
540 ~~Applicant, if the Permit Applicant is not the Petitioner, shall promptly file an answer or~~
541 ~~otherwise plead responsive pleading to the petition for hearing directed to and served upon~~
542 ~~the all opposing parties and the Council, not later than five days before the hearing date.~~

543
544 Section 2. **Docket.**

545
546 (a) When a ~~hearing case is instituted~~ initiated, it shall be assigned a number and
547 entered with the date of its filing ~~on a separate page of a~~ on the docket provided for such
548 purpose. This docket may be maintained in an electronic format. The Council shall establish
549 a separate file for each such docketed case, in which shall be systematically placed all papers,
550 pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such
551 items shall have noted thereon the docket number assigned, and the date of filing.

552
553 Section 3. **Motions.**

554
555 (a) The Council or presiding officer may, upon reasonable notice to all parties,
556 hear orally, or otherwise, any motion filed in connection with hearings under these rules.
557 The ruling by the Chair or the presiding officer on procedural motions are rulings of the
558 Council and are not reviewable by the Council as a whole. The proponent of a Motion shall
559 file a Proposed Order at the time of the filing of the Motion.

560
561 Section 4. Pre-Hearing Conference.

562
563 (a) At a time on or before the day of any hearing, the Council or presiding officer
564 may direct the parties to appear before the Council or presiding officer to participate in pre-
565 trial hearings and matters, including any of the following:

566
567 (i) To review statement of facts, legal issues, final witness lists, exhibit
568 lists and pending motions;

569
570 (ii) The necessity or desirability of amending the pleadings or stipulated
571 facts and exhibits;

572
573 (iii) The possibility of obtaining admissions of the fact and of documents
574 to avoid unnecessary proof;
575

576 (iv) Formulating procedures to govern the hearing:

577

578 (v) Such other matters as may aid in the settlement of the case or hearing
579 procedures; and

580

581 (vi) Estimated time needed for presentation during the hearing.

582

583 (b) Such conferences shall be conducted informally. An order may be prepared
584 which recites the actions taken at the conference, amendments allowed, agreements of the
585 parties and agreements of counsel and the parties. The pre-hearing order will control the
586 course of the hearing unless modified by the presiding officer to prevent manifest injustice.

587

588 (i) If a party determines an order does not fully cover the issues presented,
589 or is unclear, they may petition for a further ruling within ten days after receipt of the order
590 setting forth the specific objections and proposed changes.

591

592 Section 45. **Order of Procedure at Hearings.**

593

594 (a) As nearly as possible, hearings shall be conducted in accordance with the
595 following order of procedure:

596

597 (i) The presiding officer shall announce that the Council is open to
598 transact business and call by docket number and title the case to be heard.

599

600 (ii) The parties will each be allowed an opening statement to briefly
601 explain their position to the Council and outline the evidence they propose to offer together
602 with the purpose thereof.

603

604 (iii) The pParties' evidence will be heard. Witnesses may be cross-
605 examined by the opposing party or his attorney, and by members of the Council, and legal
606 counsel for the Council.

607

608

609 (iv) The presiding officer or Council staff may offer any evidence
610 necessary on behalf of the Council subject to cross examination or objection. The presiding
611 officer may offer any evidence necessary on behalf of the Council subject to cross
612 examination or objection.

613

614

615 (v) The presiding officer or hearing officer may allow, in his discretion,
616 evidence to be offered in any order, with due regard to which party has the burden of proof or
617 the burden of going forward.

618

619 (vi) The Council may allow, after service of copies on all parties of record,

620 and subject to timely objections, the direct testimony of a witness to be in writing, either
621 narrative or question and answer form, upon the witness being sworn and identifying the
622 written testimony. It may be received into the record as if read, in accordance with W.S. § 9-
623 4-16-3-108. The witness giving such testimony in writing shall be subject to cross-
624 examination and such evidence shall be received into the record subject to a motion to strike.
625 The written testimony must be served on all other parties no less than 30 days prior to the
626 hearing at which the written testimony is to be offered unless otherwise ordered by the
627 Council in advance to allow a reasonable time to prepare cross-examination. In the event the
628 witness is not available for cross examination either prior to or at the hearing the written
629 testimony shall not be received by the Council.

630
631 (vii) Closing arguments of the parties will be made in the manner set by the
632 ~~hearing-presiding~~ officer.

633
634 (viii) Reasonable Time for opening and closing statements and oral
635 argument may be set by limited by the presiding officer.

636
637 (ix) The presiding officer may recess the hearing from time to time as
638 required.

639
640 (x) After all interested parties have been offered the opportunity to be
641 heard, the presiding officer shall declare the evidence closed and excuse all witnesses. The
642 evidence may be reopened at a later date, for good cause shown, by order of the Council or
643 the presiding officer, upon motion by a party or on the Council's own motion and subject to
644 any objections.

645
646 (b) The presiding officer may, at his discretion, require parties to tender written
647 briefs, stipulated agreements as to Controverted and Uncontroverted Facts, and proposed
648 findings of fact and conclusions of law, and set the time for filing thereof such ~~briefs.~~

649
650 (c) The presiding officer may declare that the matter is taken under advisement
651 and that the decision and order of the Council will be announced at a later date.

652
653 ~~(d) The Council may, at its discretion, appoint a presiding officer, who will then~~
654 ~~preside during the course of such hearing.~~

655
656 ~~(d i)~~ The presiding officer shall, for purposes of ~~that~~ the hearing, have all necessary
657 powers normally vested in the Chairman and all of the powers and authority of a hearing
658 officer authorized under the Wyoming Administrative Procedures Act.

659
660 **Section ~~65.~~ Witnesses at Hearings to be Sworn.**

661
662 (a) All persons testifying at any hearing before the Council shall stand and be
663 administered the following oath ~~or affirmation~~ by the presiding officer: "Do you swear (or

664 affirm) to tell the truth, the whole truth, and nothing but the truth in the matter now before
665 the Council, ~~so help you God?~~”

666
667 (b) ~~(i)~~ No testimony will be received from a witness except under oath or
668 affirmation.

669
670 Section ~~7~~6. **Appearance.**

671
672 (a) Appearances and representation of parties shall be made as follows:

673
674 (i) An individual may appear and be heard ~~in his~~ on their own behalf.

675
676 (ii) A ~~co~~-partnership may appear and be represented by a ~~co~~-partner.

677
678 (iii) A corporation may appear and be represented by an authorized
679 corporate officer or an authorized full-time employee of said corporation.

680
681 (iv) A municipal corporation or its Board of Public Utilities may appear
682 and be represented by an authorized municipal officer, an authorized member of said Board
683 or an authorized ~~full-time~~ employee of said municipality or Board.

684
685 (v) An unincorporated association may appear and be represented by any
686 bona fide and authorized general officer or full-time employee of such association.

687
688 (vi) The Department of Environmental Quality (DEQ) may appear and be
689 represented by the DEQ Director, ~~or~~ the Administrator of the relative division or their
690 designated representative, or by the Attorney General or his representative.

691
692 (vii) Any party to a proceeding may appear and be represented therein by an
693 attorney at law who is duly licensed and admitted to practice in Wyoming and an active
694 member of the Wyoming State Bar. Any attorney who is not duly licensed to practice law in
695 Wyoming shall not be entitled to enter his appearance, participate in, prosecute or defend any
696 action or proceeding pending before the Council unless ~~he shall have associated with him in~~
697 ~~such action or proceeding an active member of the Wyoming State Bar,~~ pursuant to the
698 authority conferred upon this adjudicative body by Supreme Court Rule 11.1, the attorney
699 complies with Supreme Court Rule 11 which states:

700
701 (A) Members of the bar of any other state, district or territory of the
702 United States may be admitted to practice pro hac vice, in compliance with Rule 104 of the
703 Uniform Rules for the District Courts of the State of Wyoming or Rule 19.01 of the
704 Wyoming Rules of Appellate Procedure.

705
706 (B) Admission pro hac vice under this rule and any other rule
707 concerning admission pro hac vice is discretionary with the court in which the application is

708 made. A judge, hearing officer or person presiding over an administrative hearing or other
709 state tribunal is not obligated to admit an applicant pro hac vice nor is a judge, hearing
710 officer or person presiding over an administrative hearing bound by a prior decision to admit
711 an applicant pro hac vice. Admission pro hac vice may be revoked by the court or tribunal
712 upon its own motion or the motion of a party if, after notice and a hearing, the court or
713 tribunal determines that admission pro hac vice is inappropriate. Admission pro hac vice will
714 be denied or, if granted, will be revoked if the court or tribunal determines that the process is
715 being used to circumvent the normal requirements for the admission of attorneys to the
716 practice of law in this state.

717

718 (C) In determining whether to enter or revoke the order of
719 admission pro hac vice, the court or tribunal may consider any information it considers
720 relevant, including but not limited to whether the applicant:

721

722 (I) Is familiar with Wyoming rules of evidence and
723 procedure, including applicable local rules;

724

725 (II) Is available to opposing parties;

726

727 (III) Has particular familiarity with the legal affairs of the
728 party relevant to the case;

729

730 (IV) Complies with the rulings and orders of the court;

731

732 (V) Has caused delay or been disruptive; and

733

734 (VI) Has been disciplined in any other jurisdiction within the
735 prior seven years.

736

737 (D) The applicant must submit the following to the Wyoming State
738 Bar for each case in which the applicant seeks pro hac vice admission:

739

740 (I) Application on a form prescribed by the Wyoming
741 State Bar;

742

743 (II) Certificate(s) of good standing from the state(s) in
744 which the applicant is licensed, dated no more than 30 days prior to the date of the
745 application; and

746

747 (III) An application fee, determined by and payable to, the
748 Wyoming State Bar.

749

750 (E) Upon approval of the application for admission pro hac vice,
751 the Wyoming State Bar will issue a certificate of compliance with Rule 11. This certificate

752 must be filed in the court or tribunal, along with the motion of the local counsel to admit the
753 applicant pro hac vice and entry of appearance of local counsel.

754
755 (F) Local counsel will perform all duties and satisfy all
756 requirements set forth in Rule 104 of the Uniform Rules for the District Courts of the State of
757 Wyoming or Rule 19.01 of the Wyoming Rules of Appellate Procedure.

758
759 (G) An attorney admitted pro hac vice shall comply with and is
760 subject to Wyoming statutes, rules of the Wyoming Supreme Court, including but not limited
761 to, the Rules of Professional Conduct, the Disciplinary Code for the Wyoming State Bar, the
762 Rules of the Supreme Court providing for the organization and government of the Bar
763 Association and Attorneys at Law, and the rules of the court, tribunal or agency in which the
764 attorney appears.

765
766 Section 87. Intervention.

767
768 (a) Any person interested in obtaining the relief sought by a party or otherwise
769 interested in the determination of a proceeding, ~~relating to other than surface coal mining~~
770 ~~operations pending before the Council may petition for leave to intervene in such proceeding~~
771 ~~prior to or at the date of hearing, no later than 30 days prior to the hearing date,~~ but not
772 thereafter except for good cause shown. The petition shall set forth the grounds of the
773 proposed intervention, the position and interest of the petitioner in the proceeding, and if
774 affirmative relief is sought, the same should conform to the requirements for a formal
775 petition. Leave will not be granted unless the Council shall determine that the party
776 ~~requesting to intervene~~ intervention is adversely affected by the action, has a legal right under
777 the Environmental Quality Act or the Wyoming Administrative Procedure Act. If granted,
778 the leave to intervene may be allowed in a limited capacity.

779
780 (b) For proceedings related to surface coal mining operations, any person may
781 petition for leave to intervene as a full party or, if desired in a limited capacity, at any stage
782 of a proceeding conducted by the Council. The petition shall include the basis for
783 intervention and shall be granted to any person who either could have initiated the
784 proceeding or has an interest which may be adversely affected by the outcome of the
785 proceeding. Regardless of these bases, intervention may be granted whenever appropriate,
786 after consideration of the nature of the issues, the adequacy of the existing parties
787 representation of petitioner's interest, the ability of the petitioner to present relevant evidence
788 and argument, and the effect of intervention on the implementation of the Act. The extent
789 and terms of participation by an intervenor in a limited capacity shall be determined by the
790 Council.

791
792 (c) ~~If leave~~ intervention is granted, the ~~petitioner~~ person requesting intervention
793 becomes an intervenor and has the following rights subject to limitations: a party to the
794 proceeding with the right to have notice, the right to appear at the taking of testimony, the
795 right to produce and cross examine witnesses, and the right to be heard on the argument of

796 the case.

797

798 (d) ~~The party intervening must give notice of such intervention to~~ Any petition to
799 intervene shall be served on all other parties to the appeal proceedings.

800

801 Section ~~98~~. **General Hearing Rules.**

802

803 (a) Unless otherwise limited by the Council or the presiding officer, ~~Every party~~
804 ~~shall be accorded the right to appear and testify in person or by be represented by counsel or~~
805 ~~other duly qualified representative. If testifying on behalf of another person or several~~
806 ~~persons, such person shall present to the hearing presiding officer evidence he is a qualified~~
807 ~~representative thereof.~~

808

809 (b) Every person testifying shall, at the Council's discretion, be qualified prior to
810 testifying. Such qualification may will include, as appropriate, ascertaining the residency,
811 occupation, background, education, and expertise or other relevant information ~~of said~~
812 ~~person.~~

813

814 (c) Subject to reasonable limitations and restrictions of the Council or presiding
815 officer, ~~All~~ parties shall have the right to respond and present evidence and argument on all
816 issues involved.

817

818 (d) No person shall be required to report, inspect, or perform any investigative act
819 except as may be required or authorized by law.

820

821 (e) ~~All persons required to submit data or evidence shall be either entitled to~~
822 ~~retain the data or evidence~~ Unless confidential or privileged material or otherwise restricted
823 by law, or upon payment of a reasonable cost any other party may procure a copy of data or
824 evidence. thereof. All Exhibits or other evidence offered and/or received shall be a
825 permanent part of the record and shall be disposed of according to law. ~~All persons required~~
826 ~~to submit data or evidence shall be entitled to retain the data or evidence at such time as the~~
827 ~~data or evidence is no longer required to be maintained in the record of the case.~~

828

829 (f) All irrelevant, immaterial, or unduly repetitious evidence may be excluded.

830

831 (g) Effect to the rules of privilege shall be given as recognized by law.
832 Documentary evidence may be received in the form of copies ~~of~~ or excerpts, if the original is
833 not available and subject to proper objection thereto. All copies are subject to being
834 compared with the original.

835

836 (h) The Council may, in its discretion, allow any pleadings to be amended or
837 corrected, or any omission therein to be supplied.

838

839 (i)(h) The presiding officer shall:

- 840
- 841 (i) Administer oaths and affirmations.
- 842
- 843 (ii) Issue subpoenas.
- 844
- 845 (iii) Rule upon offers of proof, objections and receive ~~relevant~~ evidence
- 846 that is relevant and complies with the Rules of Evidence as promulgated by the Wyoming
- 847 Supreme Court.
- 848
- 849 (iii ~~iv~~) Take or cause to be taken depositions or other discovery.
- 850
- 851 (iv ~~v~~) Preside over the hearing and regulate its proceedings.
- 852
- 853 (v ~~vi~~) Preside over and set the time for hearings, such pre-hearing
- 854 conferences and other proceedings as he deems necessary.
- 855
- 856 (vi ~~vii~~) Dispose of procedural requests with or without legal assistance. The
- 857 presiding officer may be assisted by a representative of the Attorney General's Office when
- 858 such assistance is deemed necessary. The disposition of procedural motions or requests by
- 859 the presiding officer is the action of the Council and is not reviewable by the Council as a
- 860 whole.
- 861
- 862 (vii ~~viii~~) The presiding officer shall officially open and officially close the
- 863 hearing.
- 864

865 **Section 10. Documentary Evidence.**

866

- 867 (a) Documentary evidence or exhibits shall be marked for identification as
- 868 directed by the Council.
- 869
- 870 (b) Documentary evidence claimed to be confidential by any party shall be
- 871 marked "CONFIDENTIAL" by any party desiring to use the documentary evidence,
- 872 segregated from the other documentary evidence and submitted in such a manner that the
- 873 confidential nature of the documentary evidence is protected. The party submitting
- 874 documentary evidence claimed to be confidential shall submit an index generally identifying
- 875 the documents and stating the basis for the claim of confidentiality. The presiding officer
- 876 shall appoint a hearing officer from OAH to conduct a hearing to whether a document shall
- 877 be deemed confidential. The hearing officer shall forward to the Council their recommended
- 878 Findings of Fact, Conclusions of Law and Decision.
- 879
- 880 (c) Exhibits introduced by the parties to a hearing must be submitted on 8.5 x 11
- 881 size, or a size that can be folded into this size for retention in the record. The Council or
- 882 presiding officer may make exceptions for unusual exhibits. Exhibits may be filed
- 883 electronically after review and approval by the Council.

884

885 (d) An original and eight copies of exhibits are required to be submitted.

886 (e) Any documents offered for the Council's consideration such as paper copies
887 of power point presentations shall contain, on the front page of the document, the name of
888 the person offering the document.

889

890

891 Section 11 9. **Subpoenas.**

892

893 (a) Subpoenas requiring the attendance of witnesses from any place in the State of
894 Wyoming at any designated place of hearing or for the production of books, papers, or other
895 documents may be issued by the Council or presiding officer upon written application of any
896 party or upon their own motion ~~of the presiding officer~~ in accordance with the Wyoming
897 Rules of Civil Procedure and Administrative Procedure Act.

898

899 (i) Items or information sought shall be set forth with particularity.

900

901 (ii) All subpoenas shall be served by personal delivery or by certified mail
902 return receipt required, to the party served.

903

904 (iii) Cost of the subpoenas shall be paid by the party requesting the service.

905

906 (iv) The format for subpoenas shall follow the acceptable format under the
907 Wyoming Rules of Civil Procedure.

908

909 Section 12 10. **Depositions.**

910

911 (a) In all contested matters areas coming before the Council, the taking of
912 depositions and discovery shall be available to the parties and to the Council on its own
913 motion in accordance with the provisions of W.S. § ~~9-4-16-3-107(g)~~ and the Wyoming Rules
914 of Civil Procedure.

915

916 (b) The Council, for the purposes of allowing orderly presentation of evidence,
917 may govern the conduct of discovery and the time limitations involved.

918

919 Section 13. **Expert Witnesses.**

920

921 If scientific, technical, or other specialized knowledge will assist the Council to
922 understand the evidence or to determine a fact in issue, a witness qualified as an expert by
923 knowledge, skill, experience, training, or education, may testify thereto in the form of an
924 opinion or otherwise. To warrant the use of expert testimony, the following conditions must
925 be met: the proffered expert must be sufficiently qualified to express the proffered opinions;
926 the proposed testimony must reflect scientific knowledge; and the proposed testimony must
927 aid the Council. Expert testimony must be related to scientific, technical, or other

928 specialized knowledge.

929

930 Section ~~14~~4. **Witness Fees.**

931

932 ~~(a)~~ Witnesses who are summoned before the Council are entitled to the same fees
933 as are paid for like service in the District Courts of the State of Wyoming. Such fees shall be
934 paid by the party at whose insistence the testimony was taken or may be assessed against any
935 party as part of the approved costs of the hearing except the DEQ.

936

937 Section ~~12~~5. **Decision and Order.**

938

939 ~~(a)~~ The Council shall make a written decision and order in all cases, within the
940 time prescribed by law, unless otherwise extended, and which decision shall contain findings
941 of fact and conclusions of law based exclusively on the record and include how each Council
942 member~~the~~ voted on the decision. The decision and order of the Council shall be placed in
943 the record of the case which shall be retained by the Council. The Council or presiding
944 officer may direct the parties to prepare and submit to the Council proposed findings of fact
945 and conclusions of law, and set time limits thereon.

946

947 ~~Section 13.~~

948

949 ~~(a) The Council may, in its discretion, allow any pleadings to be amended or~~
950 ~~corrected, or any omission therein to be supplied.~~

951

952 Section ~~16~~14. **Applicability of Rules of Civil Procedure.**

953

954 (a) The rules of the Wyoming Rules of Civil Procedure contained in Appendix A
955 of these rules are hereby adopted for use by the Council in contested
956 case hearings. Upon motion of any party or upon the Council's own
957 motion, the Council may adopt for use in a particular contested case
958 hearing any other of the rules from the Wyoming Rules of Civil
959 Procedure that are not contained in Appendix A, insofar as the same
960 may be applicable and not inconsistent with the laws of the state and
961 these rules shall apply to matters before the Council.

962

963 (b) A contested case may be expedited if the case is:

964

i) A matter in which there are no disputed issues of material
965 fact; or

966

ii) A matter in which the parties agree to an expedited
967 proceeding, provided the Council retains the authority to
968 convert at any time the proceeding to a regular contested case
969 when it appears essential facts must be determined in order to
970 permit adequate presentation and disposition of the case.

968

969

970

971

iii) Any party shall have fifteen (15) days from the date of the

972 Council order scheduling a matter as an expedited case to
973 request reconsideration.

974 iv) An expedited contested case shall consist of review of any
975 written arguments and evidence. Limited oral argument to the
976 Council after submission of all written material shall be
977 permitted upon the written request of a party.

978
979 **Section 17. Signing of pleadings, motions, and other papers; representations to**
980 **Council; sanctions.**

981
982 (a) Signature. Every pleading, written motion, and other paper shall be signed by
983 at least one attorney of record in the attorney's individual name, or, if the party is not
984 represented by an attorney, shall be signed by the party or a duly authorized officer, employee
985 or representative. Each paper shall state the signer's representative capacity, address and
986 telephone number, if any. Except when otherwise specifically provided by rule or statute,
987 pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be
988 stricken unless omission of the signature is corrected promptly after being called to the
989 attention of the attorney or party.

990
991 (b) Representations to Council. By presenting to the Council (whether by signing,
992 filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney
993 or unrepresented party is certifying that to the best of the person's knowledge, information,
994 and belief, formed after an inquiry reasonable under the circumstances:

995
996 (i) It is not being presented for any improper purpose, such as to harass or
997 to cause unnecessary delay or needless increase in the cost of litigation;

998
999 (ii) The claims, defenses, and other legal contentions therein are warranted
1000 by existing law or by a nonfrivolous argument for the extension, modification, or reversal of
1001 existing law or the establishment of new law;

1002
1003 (iii) The allegations and other factual contentions have evidentiary support
1004 or, if specifically so identified, are likely to have evidentiary support after a reasonable
1005 opportunity for further investigation or discovery; and

1006
1007 (iv) The denials of factual contentions are warranted on the evidence or, if
1008 specifically so identified, are reasonably based on a lack of information or belief.

1009
1010 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the
1011 Council determines that subdivision (b) has been violated, the Council may, subject to the
1012 conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or
1013 parties that have violated subdivision (b) or are responsible for the violation.

1014
1015 (i) How initiated.

1016
1017 (A) By motion. A motion for sanctions under this rule shall be
1018 made separately from other motions or requests and shall describe the specific conduct
1019 alleged to violate subdivision (b). It shall be served as provided in Chapter 1, Section 3, but
1020 shall not be filed with or presented to the Council unless, within 21 days after service of the
1021 motion (or such other period as the Council may prescribe), the challenged paper, claim,
1022 defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If
1023 warranted, the Council may award to the party prevailing on the motion the reasonable
1024 expenses and attorney's fees incurred in presenting or opposing the motion. Absent
1025 exceptional circumstances, a law firm shall be held jointly responsible for violations
1026 committed by its partners, associates, and employees.

1027
1028 (B) On Council's initiative. - On its own initiative, the Council may
1029 enter an order describing the specific conduct that appears to violate subdivision (b) and
1030 directing an attorney, law firm, or party to show cause why it has not violated subdivision (b)
1031 with respect thereto.

1032
1033 (ii) Nature of sanction; limitations. A sanction imposed for violation of
1034 this rule shall be limited to what is sufficient to deter repetition of such conduct or
1035 comparable conduct by others similarly situated. Subject to the limitations in subparagraphs
1036 (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an
1037 order to pay a penalty to the Council, or, if imposed on motion and warranted for effective
1038 deterrence, an order directing payment to the movant of some or all of the reasonable
1039 attorney's fees and other expenses incurred as a direct result of the violation.

1040
1041 (A) Monetary sanctions may not be awarded against a represented
1042 party for a violation of subdivision (b)(ii).

1043
1044 (B) Monetary sanctions may not be awarded on the Council's
1045 initiative unless the Council issues its order to show cause before a voluntary dismissal or
1046 settlement of the claims made by or against the party which is, or whose attorneys are, to be
1047 sanctioned.

1048
1049 (iii) Order. When imposing sanctions, the Council shall describe the
1050 conduct determined to constitute a violation of this rule and explain the basis for the sanction
1051 imposed.

1052
1053 (d) Inapplicability to discovery. Subdivisions (a) through (c) of this rule do not
1054 apply to discovery requests, responses, objections, and motions that are subject to the
1055 provisions of Wyoming Rules of Civil Procedure Rules 26 through 37.

1056
1057 **Section 18: Surface Coal Mining.**

1058
1059 To the degree these rules are not inconsistent with Wyoming Statutes 35-11-437

1060 et.seq. they shall be used in contested cases arising under 35-11-437 et.seq.
1061

CHAPTER 3 III

RULES OF PRACTICE AND PROCEDURE APPLICABLE
TO RULE-MAKING HEARINGS ~~OR HEARINGS BY~~
~~AN ADMINISTRATOR OF A DIVISION OF DEQ~~

Section 1. **Applicability of Rules.**

(a) Except as otherwise directed by the Council, the provisions of the Rules contained in this Chapter ~~(III), (Sections 1 et seq.)~~, shall govern:

(i) ~~(a)~~ Any hearings conducted pursuant to a petition (within the meaning of W.S. ~~9-4-16-3-06~~) for the promulgation, amendment, or repeal of any rules (as defined in W.S. ~~9-4-16-3-101(a)(vii)~~);

(ii) ~~(b)~~ Any hearings conducted pursuant to W.S. ~~9-4-16-3-103~~ for the promulgation of rules and regulations recommended by the Director and respective Advisory Board or Administrator;

(c) ~~Any hearings by the Administrator on land, air or water quality or solid waste management permits held because of significant public comment.~~

(iii) ~~(d)~~ Any hearings by the ~~Administrator~~ Council for a variances under W.S. 35-11-601(d), ~~excluding SO₂ variances~~;

(iv) Any hearings conducted by the Council for the classification of surface waters the designation of Class I surface waters of the State of Wyoming.

(e) ~~Any hearings by the Council to consider the designation of areas of unique and irreplaceable rare and uncommon historical, archaeological, scenic or natural value pursuant to W.S. 35-11-112(a)(v).~~

(f) ~~Any informal conference held by the administrator of Land Quality on a permit application. However, a record shall be made of the conference, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the performance bond.~~

Section 2. **Citizen Petition.**

(a) Any ~~party~~ citizen of the State of Wyoming may petition the Council to promulgate, amend, or repeal any rule or rules relating to the administration of the statutes governing the Department of Environmental Quality, Land, Air, Water and Solid Waste Divisions, pursuant to W.S. 16-3-106 and may accompany the petition with relevant data,

1106 views and arguments, and a fee to cover the expense of the rule making.

1107

1108 (b) (a) Eight copies of the petition must be submitted with the proposed language,
1109 rule, or change Each petition must be submitted in duplicate to the Chairman of the
1110 Environmental Quality Council and one copy to the DEQ Director of the Department of
1111 Environmental Quality.

1112

1113 (c) (b) Except as otherwise provided by the Council, the filing of a petition under this
1114 section shall not stay the effectiveness of any rule or rules.

1115

1116 (e) After filing of the petition, the Council may hold a prehearing conference to
1117 review the petition and its persuasiveness.

1118

1119 (d) Upon submission of a petition, the Council shall As soon as practicable, the
1120 Council shall either accept or deny the petition in writing (stating its reasons therefore for the
1121 denial). or If the Council accepts the petition the Council shall request that the department
1122 initiate rule-making procedures in consultation with the Attorney General and in accordance
1123 with Section 4 and W.S. 16-3-103. The Petitioner may withdraw the petition from Council
1124 consideration until such time as a public hearing has been scheduled for the receipt of public
1125 comments. After such time the petition can only be withdrawn upon a motion by the
1126 petitioner and a majority vote of the Council

1127

1128 (e) Upon acceptance of a petition for rule making the Council may forward a
1129 request to the Director to have such petition scheduled by the appropriate Advisory Board for
1130 hearing pursuant to Chapter IX.

1131

1132 (f) The Council shall schedule at least one public hearing on the proposed rule.

1133

1134 (g) The Department of Environmental Quality shall publish notice of the date,
1135 place and time of the public hearing in a newspaper of general circulation in the State of
1136 Wyoming for four consecutive weeks prior to the public hearing. The last notice shall not be
1137 any less than 7 days before the public hearing. The notice shall contain a general statement
1138 regarding the contents of the rule and the recommendations of the Advisory Board and the
1139 Director, the date, place and time of the public hearing.

1140

1141 (h) The Council may establish time lines for written comments, may limit the
1142 time for oral comments. A digital copy of any proposed electronic presentations, such as
1143 power point presentations, shall be delivered to the Council no less than seventy-two (72)
1144 hours prior to the day of the public hearing at which the presentation is to be made. Failure
1145 to provide a digital copy in accordance with the time line set forth in this rule shall result in
1146 the presentation not being allowed. Any documents offered for the Council's consideration
1147 shall contain, on the front page of the document, the name of the person offering the
1148 document.

1149

1150 (i) The Council, upon its own motion or upon the motion of any party, to
1151 promote the orderly presentation of evidence, may adopt one or more of the provisions
1152 contained in Chapter 2 of these Rules governing procedures in contested cases. Such action
1153 by the Council shall not constitute an agreement or designation that the proceeding before the
1154 Council is in the nature of a contested case.

1155
1156 (j) The Council, in order to facilitate an orderly presentation of information to the
1157 Council may identify specific individuals or groups to provide testimony at a specific time so
1158 long as the public in general has an opportunity to provide testimony at a reasonable time
1159 during the proceeding to adopt the rule. The Council, through staff, may enter information
1160 from staff research conducted at the request of any Council member into the record for
1161 consideration by the Council. Information obtained by staff research shall be made available
1162 to the public for viewing by entry onto the web page of the Council under a separate link not
1163 a part of the official record until such time as it is offered at a subsequent hearing.

1164
1165 (k) Prior to holding a public hearing on the rule that is for the public in general to
1166 provide testimony, the Council may hold a public meeting in which the purpose of the
1167 hearing is to allow the Department the opportunity to present the rule and their reasons for
1168 implementation of the rule.

1169
1170 (l) The provisions of W.S. 16-3-107 through 16-3-112 (relating to the conduct of
1171 hearings for contested cases) do not apply to hearings held under this Chapter. As a fact-
1172 finding legislative proceeding, each hearing is non-adversarial and there are no formal
1173 pleadings or adverse parties.

1174
1175 (m) The presiding officer may recess the hearing from time to time as required.

1176
1177 Section 3. Informal Conference.

1178
1179 (a) ~~Any request that the Administrator hold an informal conference on any~~
1180 ~~application for a surface coal mining permit shall briefly state the issues to be discussed,~~
1181 ~~whether the requester desires the conference to be held in the locality of the proposed mining~~
1182 ~~operation, and whether access to the proposed permit area is desired. If requested, the~~
1183 ~~Administrator may arrange with the applicant to grant parties to the conference access to the~~
1184 ~~permit area for the purpose of gathering information relative to the conference. The~~
1185 ~~conference shall be held in the locality of the operation or at the state capitol, at the option of~~
1186 ~~the requester, within 20 days after the final date for filing objections unless a different period~~
1187 ~~is stipulated to by the parties. If all parties requesting the conference reach agreement and~~
1188 ~~withdraw their request, the conference need not be held.~~

1189
1190 (b) ~~Where a hearing is requested pursuant to Chapter I, Section 16(b), the Council~~
1191 ~~may, under such conditions as it may prescribe, grant such temporary relief as it deems~~
1192 ~~appropriate pending final determination of the proceedings if:~~
1193

1194 (i) All parties to the proceedings have been notified and given an
1195 opportunity to be heard on a request for temporary relief;

1196
1197 (ii) The person requesting that relief shows that there is a substantial
1198 likelihood that he will prevail on the merits of the final determination of the proceeding;

1199
1200 (iii) Such relief will not adversely affect the public health or safety or cause
1201 significant imminent environmental harm to land, air or water resources; and

1202
1203 (iv) The relief sought is not the issuance of a permit where a permit has
1204 been denied by the Administrator.

1205

1206 Section 3 4. **Department Initiated Rule Making Proceedings.**

1207

1208 (a) The Department may initiate rule making proceedings before the Council by
1209 filing an original recommendation of the Director and the Advisory Board along with the
1210 requested rule package that shows deletions and insertions. Other documents that the
1211 Department shall provide are as follows:

1212

1213 (i) Transcripts of all Advisory Board hearings and meetings regarding the
1214 proposed rule package;

1215

1216 (ii) All written comments filed with the Department or the Advisory
1217 Board and the Department's responses thereto;

1218

1219 (iii) Clean copy of the rule package as proposed;

1220

1221 (iv) Proposed notice for public comment and for public hearing; and

1222

1223 (v) Proposed Notice of Intent and Statement of Principal Reasons.

1224

1225 (b) (a) The provisions of W.S. 9-4-16-3-107 through 9-4-16-3-112 (relating to the
1226 conduct of hearings for contested cases) do not apply to hearings held under this Chapter ~~(H)~~
1227 ~~of these Rules~~. As a fact-finding legislative proceeding, each hearing is ~~nonadversary~~ non-
1228 adversarial and there are no formal pleadings or adverse parties.

1229

1230 (c) (b) Prior to the adoption, amendment or repeal of any rules, other than
1231 interpretive rules or statements of general policy, the Department shall publish notice of its
1232 intended action, including the date, time and place of any public hearing, in a newspaper of
1233 general circulation in the state, and afford a ~~thirty (30)~~ forty-five (45) day written public
1234 comment period after the last publication. The notice shall be published one time per week
1235 for two consecutive weeks with the last publication to be no less than seven days prior to the
1236 hearing. In addition, the eCouncil will hold at least one public hearing on the proposed
1237 action, unless by a majority vote of the Council such public hearing is waived. All

1238 information will be received by the ~~e~~Council without regard to rules of evidence.

1239

1240 (d) ~~(e)~~ The public hearing is directed to receiving factual evidence and testimony and
1241 expert opinion testimony relative to the issues in the proceeding. The Director may withdraw
1242 the petition from Council consideration until such time as a public hearing has been
1243 scheduled for the receipt of public comments. After such time the petition can only be
1244 withdrawn upon a motion by the Director and a majority vote of the Council

1245

1246

1247 (e) ~~(d)~~ The Council, upon its own motion or upon the motion of any party, to
1248 promote the orderly presentation of evidence, may adopt one or more of the provisions
1249 contained in Chapter 2 H of these Rules governing procedures in contested cases. Such action
1250 by the Council shall not constitute an agreement or designation that the proceeding before the
1251 Council is in the nature of a contested case.

1252

1253 (f) ~~(e)~~ The Council ~~or Administrator~~ may impose time limitations upon oral
1254 presentations. A digital copy of any proposed electronic presentations, such as power point
1255 presentations, shall be delivered to the Council no less than seventy-two (72) hours prior to
1256 the day of the public hearing at which the presentation is to be made. Failure to provide a
1257 digital copy in accordance with the time line set forth in this rule shall result in the
1258 presentation not being allowed. Any documents offered for the Council's consideration shall
1259 contain, on the front page of the document, the name of the person offering the document.

1260

1261 (g) The Council, in order to facilitate an orderly presentation of information to the
1262 Council may identify specific individuals or groups to provide testimony at a specific time so
1263 long as the public in general has an opportunity to provide testimony at a reasonable time
1264 during the proceeding to adopt the rule.

1265

1266 (h) Prior to holding a public hearing on the rule that is for the public in general to
1267 provide testimony, the Council may hold a public meeting in which the purpose of the
1268 hearing is to allow the Department the opportunity to present the rule and their reasons for
1269 implementation of the rule.

1270

1271 (i) The presiding officer may recess the hearing from time to time as required.

1272

1273 Section 4 5. **Witnesses.**

1274

1275 (a) The Council, ~~or designated hearing presiding officer, or Administrator~~ may
1276 direct that summaries ~~to~~ of the testimony of witnesses be prepared in advance of the hearing.
1277 If so directed, the original and eight copies of such summaries shall be served upon the
1278 members of the Council and ~~or~~ Administrator or upon any other party as the Council or the
1279 designated hearing presiding officer may direct.

1280

1281 (b) Witnesses will be permitted to read summaries of their testimony into the

1282 record or make other oral statements as they so desire and subject to reasonable limitations
1283 imposed by the Council or presiding officer. Witnesses shall not be available for cross-
1284 examination, but will be permitted to answer questions directed to them by members of the
1285 Council, presiding officer, the Director or his designee ~~or Administrator.~~

1286
1287 (c) When necessary to prevent undue prolongation of the hearing, the Council or
1288 the presiding officer may limit the number of times or length of time any witness may testify.

1289
1290 (d) The council, except for good cause shown, shall not to accept evidence or
1291 testimony from parties which fail to participate, comment or provide written remarks in the
1292 advisory board hearing on the rules under consideration.

1293
1294 Section 6. **Comments.**

1295
1296 (a) The Council or presiding officer may set time limits for the submittal and
1297 form of comments. All timely comments shall be considered by the Council before final
1298 action is taken on any proposal to promulgate, amend, or repeal any rule. Late ~~filed~~
1299 ~~comments may submittals shall not~~ be considered so far as possible without incurring
1300 additional expenses or delay by Council members unless the Council votes to reopen the
1301 record.

1302
1303 Section 7. **Decision.**

1304
1305 (a) As soon as practicable after receipt of the official transcript or as soon as
1306 practicable after the expiration of the time set for the submittal of written public comments,
1307 the Council ~~or Administrator~~ shall render a written decision on the issues presented at the
1308 hearing.

CHAPTER 4 ~~IV~~

REHEARING

Section 1. Motion for Reconsideration ~~Petition for Rehearing~~.

(a) Any party seeking any change in any decision of the Council may file a motion for reconsideration ~~petition for rehearing~~ within twenty (20) days after the written decision of the Council has been issued.

(b) Any motion for reconsideration ~~petition for rehearing~~ filed under this section must be confined to new questions raised by the decision or new evidence and upon which the petitioner had no opportunity to argue before the Council.

(c) Any motion for reconsideration ~~petition for rehearing~~ must specify whether the prayer is for reconsideration, rehearing, further hearing, modification of effective date, vacation, suspension or otherwise.

(d) Except as the Council may otherwise direct, the filing of a ~~petition~~ motion under this section shall not stay the effectiveness of any decision respecting the promulgation, amendment, or repeal of any rule or rules.

(e) Rule 59 and 60 of the Rules of Civil Procedure are not applicable to this provision and are not grounds for reconsideration, rehearing, modification, vacation or suspension of an order entered by the Council.

Section 2. **Scope.**

(a) A motion for reconsideration ~~petition for rehearing~~ may be filed in hearings conducted under Chapter 2 ~~II~~ or Chapter 3 ~~III~~.

(b) The granting of a ~~petition~~ motion to rehear ~~reconsider~~ is solely within the discretion of the Council.

CHAPTER 5 ~~Ψ~~

PETITIONS ~~MOTIONS~~ FOR AWARD OF COSTS AND
EXPENSES UNDER W.S. 35-11-437(f) SURFACE COAL MINING

Section 1. ~~Petition and Answer~~ Motions and Responses.

(a) ~~As described in~~ Pursuant to W.S. 35-11-437(f), any ~~person-party~~ may file a petition motion for award of costs and expenses within forty-five (45) days of receipt of a final order from the Council. Any person served with a copy of the petition motion shall have thirty (30) days from service within which to file ~~an answer response~~ to the petition motion. Failure to make a timely filing of the petition motion or ~~answer~~ may constitute a waiver of the right to such an award or objection.

(b) The petition motion shall contain the petitioner's name and a detailed accounting, including receipts, of all costs and expenses authorized under W.S. 35-11-437(f). Where attorneys' fees are claimed, the petition motion shall include evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual(s) performing the services.

Section 2. **Who May Receive an Award.**

(a) Appropriate costs and expenses including attorneys' fees may be awarded:

(i) From the permittee to any person if the person ~~he~~ initiates or participates in any administrative proceeding reviewing enforcement actions or failure to enforce actions, but only if the Council finds that:

(A) A violation of the Act, regulations or permit has occurred, or that an imminent hazard existed; and

(B) The petitioner substantially contributed to a full and fair determination of the issues.

(ii) To a permittee from any person, but only if the Council finds that:

(A) The person initiated or participated in an enforcement action or failure to enforce action in bad faith for the purpose of harassing or embarrassing the permittee.

(iii) If permitted by law, ~~To~~ any person, other than a permittee or his representative, from the Department if the person initiates or participates in any contested case proceeding under the Act as it provides for regulation of surface coal mining and

1386 reclamation operations in accordance with P.L. 95-87, who prevails in whole or part,
1387 achieving at least some degree of success on the merits and the Council finds that the person
1388 substantially contributed to a full and fair determination of the issues.

1389
1390 (iv) If permitted by law, ~~To~~ a permittee from the Department when the
1391 Council finds that the Department issued an order of cessation, a notice of violation or an
1392 order to show cause why a permit should not be suspended or revoked, in bad faith and for
1393 the purpose of harassing or embarrassing the permittee.

1394
1395 (v) To the Department where it demonstrates that a person initiated or
1396 participated in reviewing of any enforcement action in bad faith for the purpose of harassing
1397 or embarrassing the Department.

1398
1399 **Section 3. Awards.**

1400
1401 (a) An award under this chapter may include:

1402
1403 (i) All costs and expenses, including attorneys' fees and expert witness
1404 fees, reasonably incurred as a result or initiation and/or participation in a proceeding under
1405 the Act as it provides for regulation of surface coal mining and reclamation operations in
1406 accordance with P.L. 95-87.

1407
1408 (ii) All costs and expenses, including attorneys' fees and expert witness
1409 fees, reasonably incurred in seeking the award before the eCouncil.

CHAPTER 6 VI

REVIEW BY THE-DIRECTOR OR ADMINISTRATOR

Section 1. **Review by the Director.**

(a) Pursuant to the supervisory authority recognized in W.S. 35-11-110, and subject to any applicable law and to any right of appeal to the Council, the Director may review by informal conference or otherwise and affirm, modify, terminate or vacate any decision, order, notice by the Administrator, or assessment of penalty by the agency. The review includes but is not limited to:

(i) Any hearings by the Administrator on land, air or water quality or solid waste management permits held because of significant public comment;

(ii) Any hearings by the Administrator for a variance under W.S. 35-11-601; and

(iii) Any informal conference held by the administrator of Land Quality on a permit application. However, a record shall be made of the conference, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the performance bond.

(b) Such review and action shall be taken by the Director when required by law. Apart from this, the Director may grant a petition for review filed with him by any interested person after considering the following factors:

(i) the need for a consistent policy in the area;

(ii) the final nature of the decision;

(iii) the amount of discretion statutorily vested with the Administrator;

(iv) any potentially adverse environmental or public health or safety related impacts; and

(v) consistency of the Administrator's decision with law or regulations.

Section 2. **Initiation of Review.**

(a) The petition for review by the Director shall set forth in writing those items required by Chapter 1 I, Section 3, ~~(c)~~-(i) through (iv). Upon receipt, the Director shall forward a copy thereof to the affected Administrator and to any party who appeared in prior proceedings pertaining to the same matter. A petition for review of a notice of abatement or

1454 the amount of the penalty under W.S. 35-11-437 shall be filed within ~~thirty (30)~~ fifteen (15)
1455 days. All other notices shall be filed within fifteen (15) days.

1456
1457 (b) Within thirty (30) days the Director shall grant or deny the petition and
1458 schedule any requested conference.

1459
1460 (c) Notice of the decision on the petition shall be sent to the petitioner, the
1461 affected Administrator, any person served with the petition and all district offices. If the
1462 petition is denied, the ~~DEQ~~ Director shall give a brief statement of the reasons for the denial.

1463
1464 Section 3. **Informal Conference for Coal Mining Permitting Applications.**

1465
1466 (a) Any request that the ~~Administrator~~ Director hold an informal conference
1467 under W.S. 35-11-406 on any application for a surface coal mining permit shall briefly state:

1468
1469 (i) The issues to be discussed,

1470
1471 (ii) Whether the requester desires the conference to be held in the locality
1472 of the proposed mining operation, and whether access to the proposed permit area is desired.
1473 If requested or necessary, the ~~Administrator~~ Director may arrange with the applicant to grant
1474 interested parties to the conference access to the permit area for the purpose of gathering
1475 information relative to the conference.-

1476
1477 (iii) Be filed with the administrator no later than thirty (30) days after the
1478 last publication of the newspaper notice as required by W.S. 35-11-406(j).

1479
1480 (b) The conference shall be held within 20 days after the final date for filing
1481 objections unless a different period is stipulated to by the parties. The conference shall be
1482 held in the locality of the operation or at the state capitol, at the option of the requester,
1483 ~~within 20 days after the final date for filing objections unless a different period is stipulated~~
1484 ~~to by the parties.~~

1485
1486 (c) The Director shall publish notice of the time, date, and location of the
1487 conference in a newspaper of general circulation in the locality of the proposed operation
1488 once a week for two (2) consecutive weeks immediately prior to the conference.

1489
1490 (d) If all parties requesting the conference reach agreement and withdraw their
1491 request, the conference need not be held.

1492
1493 (e) If in the event a petitioner simultaneously files a request for an informal
1494 conference with the Director and a request for a hearing before the Council, the Council shall
1495 not take jurisdiction unless a party to the informal conference appeals the Director's decision
1496 to the Council.

1497

1498 Section ~~4~~ 3. **Conduct of Conference and Decision.**

1499
1500 (a) If an informal conference is held, any ~~interested~~ person has the right to attend
1501 ~~and participate in~~ the conference. The Department shall give sufficient notice of such
1502 informal conference schedule to the permittee and any known parties of interest. The
1503 procedure shall be informal, with no pre-hearing conference, discovery or cross-examination.
1504 The Director may accept oral or written statements and any other relevant information from
1505 any participant to the conference. An electronic or stenographic record shall be made of the
1506 conference proceeding, unless waived by all the participants. The record shall be maintained
1507 and shall be accessible to the participants of the conference.
1508

1509 (b) Following the Director's review, including any informal conference, the
1510 Director shall give each participant and the Administrator a brief written statement of
1511 findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of
1512 the agency's discretion, together with a notice of any available appeal to the Council.
1513

1514 Section ~~5~~ 4. **Appeal to the Council.**

1515
1516 (a) Where an appeal to the Council of the ~~Administrator's~~ Director's decision is
1517 afforded, a petition must ~~should~~ be filed with the Council within sixty (60) days of the final
1518 action being contested unless otherwise provided by law ~~the time provided by law.~~ ~~and~~
1519 ~~these Rules of Practice and Procedure~~ ~~This proceeding will be stayed if an informal~~
1520 ~~conference with the Director is requested until the Director has made his determination. If~~
1521 ~~the petitioner is not satisfied with the Director's determination, he shall inform the Council~~
1522 ~~that he wishes to proceed with appeal to the Council.~~ The Council shall conduct the hearing
1523 as if the informal hearing had not occurred, provided however, that the Director's decision
1524 may be introduced into evidence.
1525

1526 (c) At formal review proceedings before the Council, no evidence as to
1527 statements made or evidence produced by one participant at a
1528 conference shall be introduced as evidence by another participant.

1529 (d)

1530 Section ~~5~~ 5. **Miscellaneous.**

1531
1532 (a) This Chapter shall not be construed to allow the Director to review matters or
1533 issues and grant relief either in areas which are within the exclusive jurisdiction of the
1534 Council, ~~or from any informal conference proceeding requested and held pursuant to W.S.~~
1535 ~~35-11-406(k).~~
1536

1537 (b) Unless review by the Director is required by law, failure to seek review shall
1538 not be construed as a failure to exhaust administrative remedies.
1539

1540 (e) ~~For the purposes of this Chapter, "Administrator" shall also include the~~
1541 ~~Solid Waste Management Program Supervisor.~~

1542 CHAPTER 7 VII
1543

1544 DESIGNATION OF AREAS PURSUANT TO W.S. §35-11-112(a)(v)
1545

1546 Section 1. **Authority.**
1547

1548 These rules are promulgated by authority of the Environmental Quality Act, W.S.
1549 §35-11-112 and W.S. §16-3-103.
1550

1551 Section 2. **Purpose.**
1552

1553 These rules are intended to provide a process to implement W.S. §35-11-112(a)(v) of
1554 the Environmental Quality Act which provides that the Council shall designate those areas of
1555 the state that are very rare or uncommon and have particular historical, archaeological,
1556 wildlife, surface geological, botanical or scenic value. These rules apply only to the Land
1557 Quality Article, Article 4., of the Environmental Quality Act. The scope of these rules is
1558 limited to areas sought to be designated for purposes related to the permit approval and
1559 denial process contained in W.S. §35-11-406(m) for non-coal mining operations. Included in
1560 these rules are criteria to be used in evaluating lands of the state that are being considered for
1561 this designation. The hearing procedure is similar to that of Chapter 3 III of these rules, and is
1562 authorized by W.S. §16-3-103.
1563

1564 Section 3. **Applicability.**
1565

1566 (a) Areas designated pursuant to these rules are subject to the limitation contained
1567 in ~~Section~~ W.S. §35-11-406(m). A designation under Chapter 7 VII shall not bar issuance of
1568 a coal mining permit under ~~Section~~ W.S. 35-11-406(n).
1569

1570 (b) No areas subject to existing mining operations for which the Department of
1571 Environmental Quality shall have issued a permit shall be affected by a designation so long
1572 as the permit remains in effect.
1573

1574 (c) No area subject to an application for a noncoal mining permit shall be
1575 considered for designation if the petition to designate is filed after the close of the public
1576 comment period allowed by ~~Section~~ W.S. §35-11-406(k).
1577

1578 (d) A designation as very rare or uncommon shall not restrict non-mining
1579 agricultural operations. Nor shall such designation restrict activities excluded from the
1580 Environmental Quality Act, ~~Section~~ W.S. §35-11-401(e) and ~~Section~~ W.S. §35-11-1104.
1581

1582 Section 4. **Definitions.**
1583

1584 (a) “Critical habitat” as defined in ~~Section~~ W.S. 35-11-103(e)(xxix) Land
1585 Quality Division Coal Rules and Regulations Chapter 1, Section 2(v) means those areas

1586 ~~essential to the survival and recovery of species listed only that fish and wildlife habitat~~
1587 ~~designated as critical by the United States Secretary of the Interior or Secretary of~~
1588 ~~Commerce, as threatened or endangered under the authority of 50 CFR, Part 17, for the~~
1589 ~~survival and recovery of listed threatened and endangered species.~~

1590
1591 (b) “Crucial habitat” as defined in LQD coal Rules and Regulations, Chapter 1,
1592 Section 2(w), means those areas, designated as such by the Wyoming Game and Fish
1593 Department, which determine a population’s ability to maintain and reproduce itself at a
1594 certain level over the long term.

1595
1596 ~~(b c) “Important habitat” or “Crucial habitat” as defined in Section §W.S. 35-11-~~
1597 ~~403(e)(xxx) LQD Coal Rules and Regulations, Chapter 1, Section 2(ax), means that fish and~~
1598 ~~wildlife habitat, exclusive of agricultural lands, which in limited availability, increases the~~
1599 ~~species diversity of a localized area and fulfills one (1) or more of the essential living~~
1600 ~~requirements of important wildlife species. that habitat which, in limited availability,~~
1601 ~~supports or encourages a maximum diversity of wildlife species or fulfills one or more living~~
1602 ~~requirements of a wildlife species. Examples of important habitat include, but are not~~
1603 ~~limited to, wetlands, riparian areas, rimrocks, areas offering special shelter or protection,~~
1604 ~~reproduction and nursery areas, and wintering areas.~~

1605
1606 (e d) “Fragile lands” means geographic areas containing natural, ecologic, scientific
1607 or aesthetic resources that could be damaged or destroyed by mining operations. For
1608 examples of fragile lands see Section 1-(a), Chapter XXVIII, Land Quality Rules and
1609 Regulations 17, Coal Rules and Regulations of the Land Quality Division.

1610
1611 (e) “Scenic Values” means a physiographic area composed of land, water, biotic, and
1612 cultural elements which may be viewed and mapped from one or more viewpoints and which
1613 has natural beauty and/or aesthetic values.

1614
1615 (f) UNCOMMON:--not ordinarily encountered, unusual 2: remarkable,
1616 exceptional

1617
1618 (g) VERY RARE: Marked to a high degree of unusual quality, merit or
1619 appeal, exceedingly distinctive. In actual fact, truly seldom occurring or found.

1620
1621

1622 **Section 5. General Procedure.**

1623

1624 (a) The rules in this Chapter shall supersede the rules of Chapter 3 III, Section
1625 1-e. for petitions for designation of lands pursuant to W.S. '35-11-112(a)(v).

1626
1627 (b) The hearing under this chapter is not a contested case proceeding but is a non-
1628 adversarial legislative proceeding except where the surface and/or mineral owner objects to
1629 the designation. Under those circumstances all parties shall be entitled to cross-examine

1630 ~~witnesses and proceed under contested case procedures.~~

1631

1632 (c) The Council, on its own motion or on the motion of any person, in the
1633 interests of developing information about the area considered for designation, may adopt one
1634 or more of the provisions contained in Chapter 2 II of the rules governing procedures in
1635 contested cases. Such action by the Council shall not constitute a finding that the proceeding
1636 before the Council is in the nature of a contested case.

1637

1638 Section 6. **Initiation of Proceedings.**

1639

1640 (a) Any ~~person~~ resident of the State of Wyoming who has attained the age of
1641 majority, may file a petition to designate lands as very rare or uncommon pursuant to W.S.
1642 §35-11-112(a)(v) or a petition to modify or terminate an existing designation. The petition
1643 shall contain the following:

1644

1645 (i) The name, address, phone number, and fax number for the petitioner;

1646

1647 (ii) The location by legal description, including section, township and
1648 range, of the area the petitioner is proposing for designation;

1649

1650 (iii) The names, if any, by which an area may be known locally;

1651

1652 (iv) The distance of the area to the nearest city or town, and the county in
1653 which the area is located;

1654

1655 (v) An original USGS topographic map showing the area in question
1656 which reflects the surface land ownership pattern (private, state, federal) in the area;

1657

1658 (vi) A list of the names and addresses of the surface and mineral owners
1659 whose lands are included within the area proposed for designation, modification, or
1660 termination with a description of the ownership interest of each surface and mineral owner,
1661 including a legal description of the lands in which each person has an interest;

1662

1663 (vii) A concise statement of the reasons the area is alleged to be very rare or
1664 uncommon and a description of the archaeological, surface geological, historical, wildlife,
1665 botanical, or scenic attributes of the area, or, if the petition seeks to modify or terminate an
1666 existing designation, a concise statement of the reasons for the modification or termination
1667 including an explanation of the substantial change in circumstances that has occurred since
1668 the designation;

1669

1670 (viii) A description of the current and historical land use in the area;

1671

1672 (ix) A list of any special designations or descriptions of the area made by
1673 other governmental agencies, including, but not limited to, designations by the Department of

1674 Interior Bureau of Land Management or Office of Surface Mining, designations by the U.S.
1675 Fish and Wildlife Service, and designations by the Wyoming Department of Game and Fish;

1676
1677 (x) The names and addresses of all expert witnesses whose work or whose
1678 testimony may be offered by the petitioner to support the petition;

1679
1680 (xi) ~~The names and addresses of the surface owners of lands contiguous to~~
1681 ~~the area proposed for designation, modification, or termination;~~

1682
1683 (xii) A list of any scientific documents to be offered by the petitioner to
1684 support the petition that discuss the area to be designated, modified, or terminated; and

1685
1686 (xiii) At the time of filing, original and eight (8) copies of the petition shall
1687 be submitted to the ~~Chairman of the Environmental Quality~~ Council at the Council's office in
1688 ~~Cheyenne, Wyoming~~. The petition shall be considered to be filed ~~in the Council's office~~ as of
1689 the date it is received in that office. The petitioner only needs to file one copy of the USGS
1690 topographic map required under subsection (v) of this section with the original petition.

1691
1692 (b) Upon receipt of a petition under these rules the Council shall consider the
1693 petition at a regularly scheduled Council meeting and shall notify the petitioner and surface
1694 and mineral owners whose lands or minerals are within the area proposed for designation of
1695 the time, date, and location of the meeting. The Council's consideration shall be limited to
1696 whether the petition should be accepted or dismissed. Grounds for denial include but are not
1697 limited to:

1698 i. Failure to supply any information set forth in section (a) i-xiii.

1699
1700 ii.

1701
1702 iii.

1703
1704 (c) Service shall be by certified mail return receipt requested. All return receipts
1705 will be filed with a certificate of service within 10 days of service of the petition. The
1706 surface and mineral owners shall respond to the petition within 30 days of receipt of the
1707 Petition by the owner. The Council may dismiss a petition if, after a review of the petition,
1708 the Council determines that it does not provide the information required by these rules or that
1709 the petition does not provide sufficient information to support the conclusion that the area
1710 may be designated, modified, or terminated if the Council were to proceed.

1711
1712 (d) Within 30 days of receipt of the last response timely filed with the Council,
1713 the Council shall schedule a public hearing on the petition. If the Council votes to dismiss
1714 the petition, a brief statement of the reasons for dismissal of a petition shall be served on the
1715 petitioner. The petitioner may file an amended petition at any time.

1716
1717 (e) ~~If the Council votes to consider a petition, the Council shall initiate formal~~

1718 ~~hearing procedures in accordance with these rules.~~

1719

1720 Section 7. **Hearing and Notice.**

1721

1722 (a) The Council shall:

1723

1724 (i) Set the time, date, and location of a hearing on the petition, and

1725

1726 (ii) Schedule the hearing within the county in which the lands or a
1727 major portion thereof are located.

1728

1729 (b) Subject to the review and approval of the form of the public notice by the
1730 Council, the petitioner shall:

1731

1732 (i) Publish notice of the hearing once per week for four (4) consecutive
1733 weeks with the last notice published no less than seven (7) days and no more than ten (10)
1734 ~~beginning 45~~ days in advance of the hearing in a newspaper of statewide circulation and a
1735 newspaper of general circulation in the vicinity of the area proposed for designation,
1736 modification, or termination;

1737

1738 (ii) Serve notice of the hearing by personal service or by certified mail;
1739 ~~which notice shall include a copy of the petition;~~ to all surface and mineral owners whose
1740 lands and/or mineral interests are included within the area proposed for designation,
1741 modification, or termination;

1742

1743 (iii) ~~Serve notice of the hearing by regular mail to all surface owners whose~~
1744 ~~lands are contiguous to the area proposed for designation, modification, or termination;~~

1745

1746 (iii) ~~(iv)~~ Serve notice of the hearing by regular mail to the county
1747 commissioners of the counties wherein lands proposed to be designated lie, or a designation
1748 may be modified or terminated, ~~lie~~, the Attorney General's Office, and the Governor's
1749 Office; and

1750

1751 (iv) ~~(v)~~ Except as otherwise provided in these rules, notice shall be served in
1752 accordance with the Wyoming Rules of Civil Procedure.

1753

1754 (c) Costs of the publication and mailing of notice of the proceedings shall be
1755 borne by the petitioner.

1756

1757 (d) If the Council denies a petition to designate, modify or terminate a designation
1758 of very rare or uncommon pursuant to W.S. §35-11-112(a)(v) on the merits no petition shall
1759 be considered by the council regarding the same parcels of land or a petition regarding a
1760 substantial portion of the same parcel of land within 12 months of the decision declining to
1761 designate, modify or terminate a designation of very rare or uncommon pursuant to W.S.

1762 §35-11-112(a)(v).

1763

1764 Section 8. **Witnesses.**

1765

1766 (a) Any person may comment on a proposed designation, modification, or
1767 termination either by appearing at the hearing and entering comments into the record orally,
1768 or by submitting written comments within a time period set by the Council.

1769

1770 (b) Witnesses submitting testimony in writing shall submit ~~one (1) copy, and are~~
1771 ~~requested to submit~~ eight (8) copies; of their complete testimony to the Council.

1772

1773 (c) Witnesses will not be cross-examined except by the Council, or other persons
1774 designated by the Council.

1775

1776 (d) Whenever the Council allows testimony to be submitted in writing, the
1777 testimony shall be considered to be timely filed if it is received in the office of the
1778 Environmental Quality Council by the end of the business day on the date set by the Council.
1779 Late submittals shall not be considered by Council members unless the Council votes to
1780 reopen the record.

1781

1782 (e) Witnesses may be called by the Council; and expenses of these witnesses will
1783 be paid by the Council.

1784

1785 (f) The Council may impose time limitations on oral presentations at hearings. A
1786 digital copy of any proposed electronic presentations, such as power point presentations,
1787 shall be delivered to the Council no less than seventy-two (72) hours prior to the day of the
1788 public hearing at which the presentation is to be made. Failure to provide a digital copy in
1789 accordance with the time line set forth in this rule shall result in the presentation not being
1790 allowed.

1791

1792 Section 9. **Record.**

1793

1794 The hearing proceedings, including all testimony, shall be reported verbatim
1795 ~~stenographically~~ or by a certified court reporter or by other appropriate means determined by
1796 the Council. A copy of the proceedings will be furnished to any person upon written request
1797 and the payment of a reasonable fee. If a person elects to have the hearing transcribed by a
1798 certified court reporter, he or she must make the necessary arrangements and bear the cost
1799 thereof.

1800

1801 Section 10. **Decision.**

1802

1803 (a) The Council, in its discretion, may direct the petitioner, the Council's staff, or
1804 others to analyze the oral and written comments.

1805

1806 (b) An analysis of comments shall be in writing, ~~shall be~~ submitted at a time to be
1807 set by the Council, and ~~shall~~ be a part of the record of the designation proceedings. The
1808 analysis may include recommendations to modify the petition to designate.

1809
1810 (c) The Council shall issue a written decision outlining the Findings of Facts and
1811 Conclusions of Law. The decision may be to designate all or a portion of the area or to deny
1812 the petition. ~~The Council shall issue a written statement of reasons for the decision.~~

1813
1814 (d) The petitioner shall be served with a copy of the Council's decision and
1815 statement of reasons.

1816
1817 **Section 11. Criteria for Designation.**

1818
1819 (a) In considering designations, the Council shall follow a two-tiered review
1820 process. First, the Council must determine whether the area is eligible for designation by
1821 virtue of the existence of one or more of the particular values specified in the statute.
1822 Secondly, the Council must determine whether any particular value that is found to exist is
1823 very rare or uncommon.

1824
1825 (b) For an area to be eligible for designation, the Council must make an initial
1826 finding that the area at issue possesses particular historical, archaeological, wildlife, surface
1827 geological, botanical or scenic value. For purposes of making the initial finding, or refusing
1828 to make the initial finding, the Council shall consider the significance and the weight of all
1829 specifically identified factors that are set forth in these criteria.

1830
1831 (c) For purposes of determining whether an area of the State may be considered
1832 to have particular historical, prehistorical, or archaeological value the Council shall consider
1833 the following factors:

1834
1835 (i) Whether the area is mentioned prominently in historic journals or
1836 other historic literature;

1837
1838 (ii) Whether the area is important because it is associated with cultural or
1839 religious traditions and practices;

1840
1841 (iii) Whether the area has received designation pursuant to state or federal
1842 laws that provide for special protection and management due to outstanding historic or
1843 prehistoric values such as national historic landmarks, national historic sites, or the National
1844 Register of Historic Places; or

1845
1846 (iv) Whether the area contains buildings, structures, artifacts, or other
1847 features that are significant in the history or prehistory of the state and are not protected
1848 under any other local, state or federal programs, designations or laws .

1849

1850 (d) For purposes of determining whether an area has particular wildlife value the
1851 Council shall consider the following factors:

1852
1853 (i) Whether the area includes lands that are considered irreplaceable fish
1854 or wildlife habitat;

1855
1856 (ii) Whether the area includes preserves or easements which have been
1857 established and used for the protection for habitat for wildlife;

1858
1859 (iii) Whether the area includes lands that the Game and Fish Department
1860 has designated as crucial or vital habitat for resident species;

1861
1862 (iv) Whether the area contains or may affect fisheries classified as class I
1863 by the Wyoming Game and Fish Department;

1864
1865 (v) Whether the area includes fragile lands that offer unique wildlife or
1866 scientific values;

1867
1868 (vi) Whether the area includes federally designated critical habitat for
1869 threatened or endangered plant or animal species which is determined by the U.S. Fish and
1870 Wildlife Service or the Wyoming Game and Fish Department to be of essential value and
1871 where the presence of threatened or endangered species has been scientifically documented;

1872
1873 (vii) Whether the area contains a bald or golden eagle nest or nest site that
1874 is determined to be active and includes all or a portion of a buffer zone of land around the
1875 nest which has been evaluated and approved by the U.S. Fish and Wildlife Service;

1876
1877 (viii) Whether the area includes bald and golden eagle roost and
1878 concentration areas used during migration and wintering;

1879
1880 (ix) Whether the area contains a falcon (excluding kestrel) cliff nesting site
1881 with an active nest and a buffer zone around the nest site which has been evaluated and
1882 approved by the U.S. Fish and Wildlife Service; or

1883
1884 (x) Whether the area includes lands which are high priority habitat for
1885 migratory birds of high federal interest on a regional or national basis as determined by the
1886 U.S. Fish and Wildlife Service.

1887
1888 (e) For purposes of determining whether an area has particular surface geological
1889 value the Council shall consider the following factors:

1890
1891 (i) Whether the area has unique surface geological formations that expose
1892 upheavals and faults that are indicative of sub-surface geological features;

1893

- 1894 (ii) Whether the area has significant paleontological resources; or
1895
1896 (iii) Whether the area has geologic features with unusual or substantial
1897 recreational, aesthetic, or scientific value.
1898
1899 (f) For purposes of determining whether an area has particular botanical value the
1900 Council shall consider the following factors:
1901
1902 (i) Whether the area is critical habitat for endangered or threatened plant
1903 species as designated by state or federal agencies;
1904
1905 (ii) Whether the area contains stands of a rare native vegetation type, or
1906 contains stands of a native vegetation type that is now rare, or contains stands of a native
1907 vegetation type in pristine condition for which pristine stands are unusual; or
1908
1909 (iii) Whether the area contains plant species and habitat determined to be
1910 crucial or vital for resident wildlife species.
1911
1912 (g) For purposes of determining whether an area has particular scenic value the
1913 Council shall consider the following factors:
1914
1915 (i) Whether the area includes lands within or adjacent to a corridor for a
1916 river designated as a National Wild and Scenic River or a corridor for a National Scenic
1917 Byway;
1918
1919 (ii) Whether the area has been the subject of substantial artistic attention
1920 in the works of artists, sculptors, photographers, or writers; or
1921
1922 (iii) Whether the area has substantial aesthetic value and its value would be
1923 apparent to a reasonable person.
1924
1925 (h) An area shall be designated pursuant to W.S. §35-11-112(a)(v) if, in addition
1926 to finding that the area is eligible for designation pursuant to Section 11.a., the Council finds
1927 that the area is very rare or uncommon. For purposes of determining if an area is very rare or
1928 uncommon the Council shall consider the following:
1929
1930 (i) Whether the area exhibits historical, archaeological, wildlife, surface
1931 geological, botanical, or scenic values that are very rare of uncommon when compared with
1932 other areas of the state or a region therein;
1933
1934 (ii) Whether the area contains historical, archaeological, wildlife, surface
1935 geological, botanical, or scenic values seldom found within the state or a region therein; or
1936
1937 (iii) Whether the area contains historical, archaeological, wildlife, surface

1938 geological, botanical, or scenic values known or suspected to be declining which, if left
1939 unprotected, could become extinct or extirpated.

1940

1941 Section 12. **Burden.**

1942

1943 The burden of proof, persuasion and going forward is the burden of the Petitioner.
1944 The standard for the burden of proof will be by a preponderance of the evidence. At the
1945 close of the Petitioner's evidence if the Council believes the Petitioner has established a
1946 prima facie case for designation the Council shall receive any evidence that any other person
1947 wishes to provide in opposition to the designation. If the at the close of the Petitioner's
1948 evidence the Council does not believe the Petitioner has established a prima facie case for
1949 designation the Council may close the hearing and deny the petition without taking any
1950 evidence in opposition to the petition.

1951

1952 Section 13. **Map.**

1953

1954 The Council shall work with the ~~United States Geologic Service~~ State Geological
1955 Survey or the Department to construct a certified map of the lands designated very rare or
1956 uncommon under this Chapter and shall maintain such map at the Council offices.

CHAPTER 8 VIII

SMALL BUSINESS VOLUNTARY DISCLOSURE INCENTIVE

Section 1. **Purpose.**

This Rule sets forth the requirements for waiving penalties against small businesses that voluntarily disclose environmental non-compliance to the Department or discover violations through compliance assistance or outreach seminars, and then, correct those violations in accordance with this rule. It is the Department's objective to provide small businesses with an incentive to approach the agency for assistance by reducing the fear of penalties.

Section 2. **Definition of a Small Business.**

(a) A small business includes any person, as defined in W.S. § 35-11-103(vi), with 100 or fewer employees in all of its facilities or operations, whether located in or outside of the State of Wyoming, except that:

(i) Businesses seeking a penalty waiver for air quality violations under Article 2 of the Environmental Quality Act, W.S. §§ 35-11-201 through 212, must meet the definition of a small business stationary source found in W.S. § 35-11-209 and cannot be a major source of hazardous pollutants under W.S. § 35-11-203(a)(i)(B);

(ii) Businesses regulated under Article 5 of the Environmental Quality Act, W.S. §§ 35-11-501 through 520, are not entitled to a penalty waiver under this rule for violations of W.S. §§ 35-11-501 through 520 if they are a large quantity generator or are classified as a treatment, storage or disposal facility under the state hazardous waste regulations; and

(iii) Businesses under control or ownership of a large parent organization that does not qualify under this rule, are not small businesses.

(b) The number of employees shall be calculated by determining the full-time equivalents on an annual basis and does not include contractors and consultants. The Department shall not consider employees who work less than 35 hours per week as full-time equivalents.

Section 3. **Qualifications for Penalty Waiver.**

1997 (a) The Department will not seek civil penalties from a small business that
1998 voluntarily discloses in writing to the Department non-compliance with the Act, any rule,
1999 regulation or standard promulgated under the Act, within 60 days of discovering the
2000 violation, provided that the business has corrected the violation or corrects the violation in
2001 accordance with a compliance schedule approved by the Department. The burden will be on
2002 the business to demonstrate that it has disclosed the violation within 60 days of discovery. If
2003 the business is unable to correct the violation within 180 days or violates a compliance
2004 schedule issued by the Department establishing a shorter period for correcting the violation,
2005 the business will no longer qualify for the penalty waiver. Upon good cause shown by the
2006 small business, the Director may grant an extension of the deadline for correcting the
2007 violation.
2008

2009 (b) The Department will not seek civil penalties from a small business that has
2010 made a good faith effort to operate in compliance prior to discovery of the violation, as
2011 evidenced by a request for compliance assistance from the Department or attendance at one
2012 or more compliance assistance seminars; and as evidenced by prompt correction of any
2013 violations discovered through such efforts and implementation of good environmental
2014 management practices. To qualify for the waiver, the business must document its
2015 participation in compliance assistance or outreach seminars and the steps it has taken as a
2016 result to improve compliance or correct the violations. In the event that the Department
2017 believes the small business needs to take further steps to correct a violation, the Department
2018 shall issue a compliance schedule. The small business must meet the requirements of the
2019 compliance schedule to maintain the penalty waiver.
2020

2021 Section 4. **Exceptions to Penalty Waiver.**

2022 (a) The penalty waiver is unavailable if:

2023 (i) The Department has previously issued a warning letter, a notice of
2024 violation or taken other enforcement action against the small business for violation of the
2025 same standard disclosed to the Department;
2026
2027

2028 (ii) The small business has been subject to three or more enforcement
2029 actions for any non-compliance of environmental regulations within the last 5 years;
2030

2031 (iii) The small business violates a Department permit or order of the
2032 Council;
2033

2034 (iv) The small business is under investigation for any violation of the Act
2035 at the time it discloses the violation to the Department, seeks compliance assistance from the
2036 Department or participates in an outreach seminar;
2037

2038 (v) The violation involves criminal conduct;
2039
2040

2041 (vi) The violation results in a significant economic advantage for the
2042 business;

2043 (vii) The violation was committed willfully; or

2044 (ix) The violation presents a significant threat or imminent and substantial
2045 endangerment to public health or the environment; or

2046
2047
2048 **Section 5. Mandatory Disclosure.**

2049
2050 Notwithstanding Sections 1 through 4 above, disclosure of a violation is mandatory
2051 and not subject to a penalty waiver under this rule when the Environmental Quality Act, any
2052 rule, regulation, standard, federal law or regulation, local ordinance, order of the Council or
2053 any court, or any Department permit requires reporting of the violation to the Department.

2054
2055 **Section 6. Limitations of the Rule.**

2056
2057 (a) Nothing in this rule diminishes the Department's authority to conduct
2058 investigations, investigate complaints, or to issue notices of violation and orders under
2059 Article 7 of the Environmental Quality Act, W.S. § 35-11-701, or to seek injunctive relief
2060 under W.S. § 35-11-115 or Article 9 of the Environmental Quality Act, W.s. §§ 35-11-901
2061 through 904.

2062
2063 (b) Nothing in this rule prohibits a small business that otherwise qualifies for a
2064 penalty waiver from declining to exercise the waiver and allowing the Department to seek a
2065 penalty.