

CHAPTER I

GENERAL RULES OF PRACTICE AND PROCEDURE

Section 1. **Authority.**

These rules are promulgated as authorized by the Wyoming Administrative Procedure Act (W.S. 94-101 through 9-4-115) and the Wyoming Environmental Quality Act (W.S. 35-11-101 through 35-11-1104). These rules shall apply in all proceedings before the Environmental Quality Council and its examiners. Existing Chapters I through IV are hereby repealed. These rules and regulations are effective upon final approval of a state program pursuant to P.L. 95-87.

Section 2. **Definitions.**

(a) All of the definitions set forth and contained in the Wyoming Environmental Quality Act and the Administrative Procedure Act are incorporated herein by reference. In addition, the following definitions are set forth:

(i) **Applicant:** Any person applying for a permit authorized under the Environmental Quality Act or any party petitioning for rulemaking in accordance with W.S. 9-4-106.

(ii) **Protestant:** Any person desiring to protest the application of a permit or any person requesting a hearing before the Environmental Quality Council in accordance with the Environmental Quality Act and who is objecting to an action of the Department of Environmental Quality and desiring affirmative relief.

(iii) **Presiding officer:** The officer designated by the Chairman of the Environmental Quality Council to conduct hearings.

(iv) **The Wyoming Administrative Procedure Act:** W.S. 9-4-101 through 9-4-115, as amended.

Section 3. **Initiation of Proceedings.**

(a) All hearings before the Council, appeals or others, shall be held pursuant to these rules, the provisions of the Environmental Quality Act W.S. 35-11-101 through 1104 and the Wyoming Administrative Procedure Act.

(b) All persons requesting a hearing or protesting a permit shall file two copies of a written petition directed to and served upon both the Chairman of the Council and the Director of the Department.

(i) Original service shall be by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.

(ii) Where protestant is objecting to a permit, he shall also serve the permit applicant with a copy of the petition and all other pleadings and motions.

(c) The petition for hearing shall set forth:

(i) Name and address of the person making the request or protest and the name and address of his attorney, if any.

(ii) The action, decision, order or permit upon which a hearing is requested or an objection is made.

(iii) A statement in ordinary, but concise language of the facts on which the request or protest is based, including whenever possible particular reference to the statutes, rules or orders that the Applicant or Protestant alleges have been violated.

(iv) A request for hearing before the Council.

(d) The filing of such petition shall constitute the commencement of the proceeding on the date filed.

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

Section 4. Notice.

(a) Notice of hearings shall conform to W.S. 9-4-107(b). The manner and time for giving notice shall be as follows:

(i) When the Council determines that it shall hold a hearing on its own motion, it shall give notice as promptly as possible in advance of the hearing date to all parties by registered or certified mail, return receipt requested.

(ii) When a party desires that a hearing be held before the Council he shall file his petition and the Council shall forthwith set a date for hearing and notify the applicant thereof.

Section 5. Attorney General Presence.

(a) In all matters before the Council, the Council may request the Attorney General of the State of Wyoming or a representative of his staff to be present throughout the hearing.

(b) The Council, upon its own motion or the motion of any party, may certify an issue of law to the Attorney General for his opinion. Such opinion shall thereafter be part of the record of any proceeding before the Council, and may, if the court so directs, constitute a finding of the Council with respect to the issuance of final orders or decisions.

Section 6. Record of Proceedings - Reporter.

(a) Unless otherwise agreed by the parties and consented to by the Council, all hearings, including all testimony, shall be reported verbatim by a competent reporter. The compensation of such reporter shall be paid as required by law and as ordered by the Council. The Council may direct any party or parties to assume the cost of the transcript.

Section 7. Record.

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

- (i) All formal and informal notices.
- (ii) Evidence received or considered including matters officially noticed.
- (iii) Questions and offers of proof, objections, and rulings thereon.
- (iv) Any proposed findings and objections thereto.
- (v) The decision and order of the Council.
- (vi) The transcript of all recorded proceedings.

(b) The record in hearings held under Chapter III shall include all relevant information presented to the Council.

(c) At the close of the hearing, the presiding officer may afford all interested parties time in which to submit additional written testimony or written proposed corrections of the transcript, pointing out errors that may have been made in transcribing the testimony. The presiding officer shall promptly thereafter order such corrections made as in his judgement are required to make the transcript conform to the testimony.

Section 8. Appeals.

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

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

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

Section 9. Pre-Hearing Conference.

(a) At a time on or before the day of any hearing, the Council may direct the parties to

appear before the Council to consider:

- (i) The implication of the issues.
- (ii) The necessity or desirability of amending the pleadings.
- (iii) The possibility of obtaining admissions of the fact and of documents to avoid unnecessary proof.
- (iv) Formulating procedures to govern the hearing.
- (v) Such other matters as may aid in the disposition of the case.

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

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

Section 10. Time.

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

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

Section 11. Settlement.

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

Section 12. Deviation and Amendment.

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

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

Section 13. Exclusion.

(a) Nothing in these Rules shall be construed as prohibiting the Environmental Quality

council and the Administrators of the Divisions of Land, Air, or Water Quality or their designee from holding informational proceedings, hearings, or conferences for the purpose of aiding the Council or the Administrator in ascertaining and determining facts necessary for the performance of their respective duties. Any person believing himself aggrieved by a determination made by the Administrator or his designee following an informational proceeding, hearing, or conference and who is otherwise entitled thereto, may upon filing a petition or complaint with the Council, obtain a full hearing or review upon the merits, which matter shall be heard and tried de novo.

(b) Disrespectful, disorderly or contumacious language or contemptuous conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct, at any hearing before the Council, shall constitute grounds for immediate exclusion before the hearing.

Section 14. Meeting of Council and Advisory Boards.

(a) All meetings of the Council and the Advisory Board shall be conducted in accordance with Robert's Rules of Order.

(b) The four regular meetings of the Council and the Advisory Boards required by W.S. 35-11-113 and W.S. 35-11111(d) of the Act shall be called by the Chairman after consultation and coordination with the Administrator or Director, respectively.

Section 15. Contested Water Discharge Permit Hearings.

Members of the Environmental Quality Council who do not comply with the requirements set forth in 40 C.F.R. 123.25 (July 2003) shall recuse themselves from contested case proceedings in which the approval of a surface water discharge permit, or portions of a permit, is being considered by the Council.

Section 16. Air Quality Division, State Implementation Plan.

(a) The following are the only requirements in these procedural rules that are part of the Air Quality Division's State Implementation Plan:

(i) The Council shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1), 42 U.S.C. § 7428(a)(1):

(ii) Members of the Council shall disclose any potential conflicts of interest in a public meeting of the Council, as required by the Clean Air Act, Section 128(a)(2), 42 U.S.C. § 7428(a)(2).

(b) All other requirements of these procedural rules, except those described in Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's State Implementation Plan.

Section 176. 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.