

**THE WYOMING ENVIRONMENTAL QUALITY COUNCIL**

**STATE OF WYOMING**

IN THE PETITION TO AMEND )  
WYOMING DEPARTMENT OF ) Docket No. 15-1101  
ENVIRONMENTAL QUALITY RULES )

**ORDER DENYING PETITION FOR RULEMAKING**

THIS MATTER came before the Wyoming Environmental Quality Council on September 9, 2015, for the Council's consideration. Petitioners Powder River Basin Resource Council and Citizens United for Responsible Energy Development request that the Council initiate rulemaking to require that the Department of Environmental Quality accept electronic comments on all rulemaking, including via email. This Order represents the formal order of the Council and constitutes the reasons for denying the Petition.

**I. JURISDICTION**

Wyoming law permits any interested person to request that an agency initiate rulemaking. Wyo. Stat. Ann. § 16-3-106. On April 21, 2015, Petitioners filed the rulemaking petition directed at the Council. Accordingly, the Council has jurisdiction to hear the matter, despite its conclusion that only one action on the Petition is available. *See JA v. State of Wyo., Dep't of Fam. Svcs.*, 2008 WY 15, ¶ 10, 176 P.3d 633, 636 (Wyo. 2008) (subject-matter jurisdiction means the power to hear a matter).

## II. ANALYSIS

### **The Environmental Quality Act**

The Wyoming Administrative Procedure Act includes within the definition of agency “any authority, bureau, board, [or] commission” other than governing bodies of municipalities, the legislature, or the University of Wyoming. Wyo. Stat. Ann. § 16-3-101(b)(i). The Wyoming Environmental Quality Council is a “separate operating agency of state government” created by state statute. Wyo. Stat. Ann. § 35-11-111(a). Accordingly, the Council is an agency under the Administrative Procedure Act. Consequently, any person may petition the Council “requesting the promulgation, amendment, or repeal of any rule.” Wyo. Stat. Ann. § 16-3-106. When presented with a petition under this section, an agency may either deny the petition or initiate rulemaking. *Id.*

The Council is in a position unique to state government. Under the Environmental Quality Act, it may promulgate rules and regulations only “after recommendation from the director of the department [of environmental quality], the administrators of the [department’s] various divisions and their respective advisory boards.” Wyo. Stat. Ann. § 35-11-112(a)(i). The Environmental Quality Act is, by design, structured in a manner that requires both independent agencies to assent before rules may be effective. The Council is responsible for adopting rules, and the Director of the Department is required to “[p]erform any and all acts necessary to promulgate, administer and enforce . . . any rules . . . and [] exercise all incidental powers as necessary to carry out the purposes of this act.” Wyo. Stat. Ann. § 35-11-109(a)(i). As the Wyoming Attorney General recently

stated in a published opinion, “[t]he Legislature created a system of checks and balances that envisions a mutually dependent relationship between the separate agencies. The Council cannot adopt rules without the Department, and the Department cannot finalize rules without the Council.” *Wyo. Atty. Gen. Op. No. 2015-1* at 6 (Sep. 8, 2015) (available at <https://drive.google.com/open?id=0B-uookG6TajHa3huTHB5QII3ZEE>).

That opinion goes on to address the Council’s authority to “initiate rulemaking proceedings” under Wyo. Stat. Ann. § 16-3-106. Specifically, the Attorney General advised that the Council may not initiate rulemaking—that is the Department’s role. *Id.* “The Council therefore cannot initiate rulemaking in response to a petition. Any other result would alter the delegated management structure established by the Legislature under the Environmental Quality Act.” *Id.* Consequently, the Council must deny Petitioner’s rulemaking petition because the Council does not have the statutory authority to initiate rulemaking under the Environmental Quality Act.

### **Electronic Filing System**

In addition to the issue of statutory authority, the Council is aware of the Department’s current efforts to implement a method of electronically gathering public comments. As the Department explains, this system will offer a website portal where any person with internet access may fill out a web form to offer comments. While we acknowledge that Petitioner would prefer a system that allows comments to be received via email, the Council is confident that the proposed system meets the underlying concerns that Petitioner raises about increasing public access to the notice and comment process. Because the Department is proceeding to implement an electronic comment

system, the Council finds that further action is not warranted at this time. This basis for the Council's decision is wholly independent and not related to the issue of its authority discussed above.

### III. DECISION

For the reasons articulated above and in the Wyoming Attorney General's published opinion number 2015-1, which is hereby incorporated by reference into this order, the Environmental Quality Council finds that it may not initiate rulemaking, and would not even if that action were available.

### IV. ORDER

**IT IS ORDERED** that Petitioner's petition to amend Wyoming Department of Environmental Quality rules, filed with the Council on April 21, 2015 in Docket No. 15-1101, is **DENIED**.

DONE this 2<sup>nd</sup> day of March 2016 ~~November, 2015~~.

**WYOMING ENVIRONMENTAL  
QUALITY COUNCIL**

By: \_\_\_\_\_

  
Meghan Lally, Hearing Examiner