

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF REVISIONS TO CHAPTERS)	
ONE, TWO, THREE, FIVE, AND SEVEN, AND)	
REPEAL OF CHAPTERS FOUR AND SIX AND)	STATEMENT OF
ADDITION OF CHAPTER NINE OF THE RULES OF)	PRINCIPAL REASONS
PRACTICE AND PROCEDURE,)	FOR ADOPTION

1. The Environmental Quality Council (“Council”), pursuant to the authority vested in it by the Wyoming Environmental Quality Act (“Act”) at W. S. § 35-11-112(a)(i), has revised the following chapters of the Rules of Practice and Procedure: Chapter 1, General Rules; Chapter 2, Hearings in Contested Cases; Chapter 3, Rulemaking; Chapter 5, Petitions for Award of Costs and Expenses Under W.S. § 35-11-437(f); and Chapter 7, Very Rare or Uncommon Areas. The Council has repealed Chapter 4, Rehearing. The Council has Repealed Chapter 6, Review by the Director and renamed and renumbered it as Chapter 9, Director Review of Actions Involving Surface Coal Mining Operations and All Hearings Before the Department.
2. On October 17, 2014, the Office of Administrative Hearings promulgated uniform contested case rules for the use of all state agencies, as required by W. S. § 16-3-102(d) (“Uniform Rules”).
3. In consideration of Governor Mead’s Streamlining Government Initiative, the Council has evaluated the total number of pages and the total number of chapters affected by the proposed revisions. Chapter 1 decreased from six pages to four. Chapter 2 increased from six pages to ten as a result of incorporating the Uniform Rules. Chapter 3 increased from four pages to five. Chapter 4 decreased from one page to zero as it is proposed for repeal. Chapter 5 stayed at two pages. Chapter 6 decreased from two pages to zero as it is proposed for repeal. Chapter 7 decreased from eight pages to six. Chapter 9 is a new chapter of five pages. In total the page count increased from 29 pages to 32. The total number of chapters was reduced by one.
4. Chapters 1 and 2 of the Rules of Practice and Procedure have been revised to adopt the Uniform Rules to the extent they do not conflict with the specific and distinct requirements of the agencies and applicable state and federal law, as required by W.S. § 16-3-103(j). To maintain consistency with previous versions of these regulations, portions of the Uniform Rules have been placed in both Chapters 1 and 2. Certain portions of the Uniform Rules conflict with requirements necessary for the State to retain regulatory primacy over programs delegated under the Clean Air Act, the Clean Water Act, the Surface Mine Control and Reclamation Act, and the Resource Conservation and Recovery Act. Those conflicting portions have not been adopted. Certain portions of the Uniform Rules are inapplicable to the Environmental Quality Council and the

Department of Environmental Quality (“Department”). Those inapplicable portions have not been adopted. General references in the Uniform Rules were replaced with specific references.

- a. Section 1 was not adopted because it is specific to the authority of the Office of Administrative Hearings;
- b. Section 2 was placed in Chapter 2, Section 25, with a corrected electronic web address;
- c. Definitions from Section 3 were placed in Chapter 1, Section 2, with more specific references where applicable;
- d. Section 4 was placed in Chapter 2, Section 3. Subsection (a) was not included because it could conflict with more specific rules related to informal hearings before the Department. The phrase “informal conference” in subsection (b) was deleted because it has a specific meaning under the Surface Mining Control and Reclamation Act. The phrase “settlement conference” was similarly deleted from subsection (c). The 30 day timeline in subsection (b) was deleted because it conflicts with 20-day hearings under W.S. § 35-11-406(k);
- e. Section 5, Subsection (a) was placed in Chapter 2, Section 4. Subsection (b) was placed in Chapter 1, Section 4;
- f. Section 6 was placed in Chapter 2, Section 6;
- g. Section 7 was not adopted because it is not applicable to the Council;
- h. Section 8 was placed in Chapter 2, Section 7. Subsection (a) was clarified to acknowledge that a hearing officer from the Office of Administrative Hearings may only provide a recommended decision. Subsection (b) was not adopted because it is inconsistent with the Act. Section (c) was altered to allow verbal motions of recusal to avoid conflict with specific requirements of the Council, which is a citizen body and not a full-time adjudicative body;
- i. Section 9 was placed in Chapter 2, Section 8;
- j. Section 10 was placed in Chapter 2, Section 10;
- k. Section 11 was placed in Chapter 2, Section 5. Subsection (b) was altered to include information specific to the Council’s electronic docketing system;
- l. Section 12 was placed in Chapter 1, Section 3. Subsection (b) was altered to clarify that certain aspects were inapplicable to rulemaking hearings;
- m. Section 13 was placed into Chapter 2, Section 11;

- n. Section 14 was placed into Chapter 2, Section 12. Subsection (e) was deleted because it conflicts with the specific requirements of the Council and the Department. Under W.S. 35-11-112(d), the Department assists the Council in scheduling locations for hearings;
- o. Section 15 was placed in Chapter 2, Section 13;
- p. Section 16, subsections (a) and (b) were placed in Chapter 2, Section 14. Subsection (c) was placed in Chapter 2, Section 11. The word “request” in subsection (a) was changed to “motion” to avoid potentially confusing citizen practitioners before the Council. The five-day timeline in subsection (a) was not adopted because it could conflict with timings associated with 20-day hearings under W.S. 35-11-406(k). Similarly, subsection (d) was not adopted;
- q. Section 17 was placed in Chapter 2, Section 15;
- r. Section 18 was placed in Chapter 2, Section 16;
- s. Section 19 was placed in Chapter 2, Section 17;
- t. Section 20 was placed in Chapter 2, Section 18;
- u. Section 21 was Placed in Chapter 2, Section 19;
- v. Section 22 was placed in Chapter 2, Section 20;
- w. Section 23 was placed in Chapter 2, Section 21;
- x. Section 24 was placed in Chapter 2, Section 22;
- y. Section 25 was placed in Chapter 2, Section 3(c). This language was altered to reflect specific requirements of the Council and ensure that they receive timely notification of settlements;
- z. Section 26 was placed in Chapter 2, Section 23. Language in subsection (a) related to summary suspensions was not adopted because it is not applicable to the Council or Department;
- aa. Section 27 was placed in Chapter 2, Section 24;
- bb. Section 28 was placed in Chapter 2, Section 25; and
- cc. Section 29 was placed in Chapter 1, Section 5.

5. In addition to changes to adopt the Uniform Rules, Chapter 1 also includes the following changes:
 - a. Updated and additional definitions in section 2;
 - b. Clarifications regarding temporary relief pending appeal in section 8;
 - c. Section 8 also changes the timeline to submit an appeal to the Council from final actions of the Department from sixty days to thirty days. This change will create consistent timelines for review of final agency action, whether pursued before the Council under these regulations, through judicial review under the Act at W. S. § 35-11-1001, or through judicial review under the Administrative Procedure Act at W. S. § 16-3-114;
 - d. Incorporation by reference updates in Section 10;
 - e. Removal of superfluous sections related to the Attorney General's presence, pre-hearing conferences, settlements, deviation and amendment from rules, excluding disorderly attendees, and Robert's Rules of Order.
6. Chapter 3 has been updated to incorporate conclusions from the September 8, 2015 Attorney General Opinion on rulemaking under the Act. The updates to the chapter clarify the rulemaking process and explain how the Department recommends rules to the Council and how the Council adopts rules. The chapter also contains a new definition section.
7. Chapter 4 has been repealed. The chapter, which provided the option of rehearing, was repealed because rehearing was very rarely used and could create confusion when seeking judicial review of final agency actions.
8. Chapter 5 has been updated to reflect that hearings for costs and expenses under W.S. § 35-11-437(f) will be conducted in accordance with the adopted portions of the Uniform Rules. The chapter was revised to provide that these hearings, which occur after contested case hearings, will follow the same procedures as the contested case that preceded them.
9. Chapter 6 has been repealed, but some portions of Chapter 6 were retained and renumbered as Chapter 9. The repealed sections of the chapter provided rules for director review, and the sections were repealed because director review is an informal process permitted by statute that could be complicated by formal rules.
10. Chapter 7 has been updated to reflect the July 1, 2011 amendments to W.S. § 35-11-112(a)(v). Because the Council no longer has the authority to designate very rare or uncommon areas, the portions of Chapter 7 that described this authority were removed.

11. Chapter 9 has been created to provide rules for hearings other than contested case hearings before the Department. The sections of Chapter 6 which provided rules for informal conferences and director review of actions related to surface coal mining operations were relocated to Chapter 9. Additions to the new Chapter 9 include provisions for conducting other hearings before the Department such as variance hearings, water quality standard hearings, public comment hearings, and other types of hearings permitted by the Act.

The Council finds that these regulations are necessary to accomplish the policy and purpose of the Act and that they have been promulgated in accordance with rulemaking provisions of the Wyoming Administrative Procedure Act.

Dated this _____ day of _____, 2016.

Hearing Examiner - *Printed Name*
Wyoming Environmental Quality Council

Hearing Examiner - *Signed Name*
Wyoming Environmental Quality Council