

1 CHAPTER ~~11~~
2 GENERAL RULES ~~OF PRACTICE AND PROCEDURE~~
3

4 Section 1. **Authority.**

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6 (a) These rules are promulgated as authorized by the Wyoming Administrative
7 Procedure Act, ~~(W.S. 94-101-16-3-301 through 9-4-115-16-3-115,)~~ and the Wyoming
8 Environmental Quality Act ~~(W.S. 35-11-101 through 35-11-1104),~~ as defined by W.S. 35-11-
9 103(a)(xiii). These rules shall apply in all proceedings before the Department of Environmental
10 Quality and the Environmental Quality Council, ~~and its examiners. Existing Chapters I through~~
11 ~~IV are hereby repealed. These rules and regulations are effective upon final approval of a state~~
12 ~~program pursuant to P.L. 95-87.~~

13
14 (b) In case of conflict between these rules and the provisions of the Wyoming
15 Administrative Procedure Act or the Wyoming Environmental Quality Act, those acts shall
16 govern. In case of conflict between the Wyoming Administrative Procedure Act and the
17 Wyoming Environmental Quality Act, the Wyoming Environmental Quality Act shall govern.

18
19 (c) All hearings before the Council shall be held pursuant to these rules, the
20 provisions of the Wyoming Environmental Quality Act, and, to the extent they do not conflict,
21 the Wyoming Administrative Procedure Act.

22
23 Section 2. **Definitions.**

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

28
29 (i) ~~—Applicant: Any person applying for a permit authorized under the~~
30 ~~Environmental Quality Act or any party petitioning for rulemaking in accordance with W.S. 9-4-~~
31 ~~106.~~

32
33 (ii) ~~—Protestant: Any person desiring to protest the application of a permit or~~
34 ~~any person requesting a hearing before the Environmental Quality Council in accordance with the~~
35 ~~Environmental Quality Act and who is objecting to an action of the Department of Environmental~~
36 ~~Quality and desiring affirmative relief.~~

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38 (iii) ~~—Presiding officer: The officer designated by the Chairman of the~~
39 ~~Environmental Quality Council to conduct hearings.~~

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41 (iv) ~~—The Wyoming Administrative Procedure Act: W.S. 9-4-101 through 9-4-~~
42 ~~115, as amended.~~

43
44 The following definitions are intended to supplement the definitions set forth and
45 contained in the Wyoming Administrative Procedure Act and the Wyoming Environmental
46 Quality Act:

47
48 (a) “Attorney” means an attorney licensed to practice law in the State of Wyoming
49 or an attorney who is licensed to practice law in another state and who is associated with an

50 attorney licensed to practice law in the State of Wyoming;

51
52 (b) “Contested case” means a proceeding in which legal rights, duties, or privileges
53 of a party are required by law to be determined by the Council after an opportunity for hearing;

54
55 (c) “Council” means the Environmental Quality Council;

56 (d) “Hearing officer” means a person designated by the Chair of the
57 Council to conduct contested case and rulemaking hearings;

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59 (e) “Office” means the Office of Administrative Hearings;

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61 (f) “Petition” means a written request for relief, submitted to the Council, in
62 accordance with the Wyoming Environmental Quality Act;

63
64 (g) “Petitioner” means a person who submits a written request for relief to the
65 Council in accordance with the Wyoming Environmental Quality Act;

66
67 (h) “Representative” means an individual other than an attorney who is authorized
68 to function in a representative capacity on behalf of a corporate party to a contested case;

69
70 Section 3. ~~Initiation of Proceedings~~ Computation of Time.

71
72 ~~(a) — All hearings before the Council, appeals or others, shall be held pursuant to these~~
73 ~~rules, the provisions of the Environmental Quality Act W.S. 35-11-101 through 1104 and the~~
74 ~~Wyoming Administrative Procedure Act.~~

75
76 ~~(b) — All persons requesting a hearing or protesting a permit shall file two copies of a~~
77 ~~written petition directed to and served upon both the Chairman of the Council and the Director of~~
78 ~~the Department.~~

79
80 ~~(i) — Original service shall be by registered mail, return receipt requested.~~
81 ~~Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.~~

82
83 ~~(ii) — Where protestant is objecting to a permit, he shall also serve the permit~~
84 ~~applicant with a copy of the petition and all other pleadings and motions.~~

85
86 ~~(c) — The petition for hearing shall set forth:~~

87
88 ~~(i) — Name and address of the person making the request or protest and the~~
89 ~~name and address of his attorney, if any.~~

90
91 ~~(ii) — The action, decision, order or permit upon which a hearing is requested~~
92 ~~or an objection is made.~~

93
94 ~~(iii) — A statement in ordinary, but concise language of the facts on which the~~
95 ~~request or protest is based, including whenever possible particular reference to the statutes, rules~~
96 ~~or orders that the Applicant or Protestant alleges have been violated.~~

97

98 ~~(iv) — A request for hearing before the Council.~~

99
100 ~~(d) — The filing of such petition shall constitute the commencement of the proceeding~~
101 ~~on the date filed.~~

102
103 ~~(e) — A copy of the petition shall be served on any party who appeared in prior~~
104 ~~proceedings pertaining to the same matter.~~

105
106 ~~(formerly Section 10(a))~~ (a) ~~When time prescribed by these rules or by order of the~~
107 ~~Council for doing any act expires on a Saturday or legal holiday, such time shall extend to and~~
108 ~~include the next succeeding business day. In computing any period of time prescribed or~~
109 ~~allowed by these rules, by order or by any applicable statutes or regulations, the day of the~~
110 ~~act, event, or default from which the designated period of time begins to run shall not be~~
111 ~~included. The last day of the period so computed shall be included, unless it is a Saturday, a~~
112 ~~Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which~~
113 ~~weather or other conditions have made agency offices inaccessible, in which event the period~~
114 ~~runs until the end of the following day which is not one of the aforementioned days. When~~
115 ~~the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays,~~
116 ~~Sundays, and legal holidays shall be excluded in the computation. As used in this rule, “legal~~
117 ~~holiday” includes any day officially recognized as a legal holiday in this state by designation of~~
118 ~~the legislature or appointment as a holiday by the governor.~~

119
120 ~~(formerly Section 10(b))~~(b) ~~For good cause shown, extensions and continuances of~~
121 ~~time may be granted or denied in the discretion of the Council. Whenever a party has the right or~~
122 ~~is required to do some act within a prescribed period after the service of a notice or other paper~~
123 ~~upon the party, and the notice or paper is served upon the party by mail or by delivery to the~~
124 ~~agency for service, three (3) days shall be added to the prescribed period. The three-day~~
125 ~~provision does not apply to rulemaking deadlines.~~

126
127 Section 4. **Notice of Hearing.**

128
129 ~~(a) — Notice of hearings shall conform to W.S. 9-4-107(b). The manner and time for~~
130 ~~giving notice shall be as follows:~~

131
132 ~~(i) — When the Council determines that it shall hold a hearing on its own~~
133 ~~motion, it shall give notice as promptly as possible in advance of the hearing date to all parties by~~
134 ~~registered or certified mail, return receipt requested.~~

135
136 ~~(ii) — When a party desires that a hearing be held before the Council he shall~~
137 ~~file his petition and the Council shall forthwith set a date for hearing and notify the applicant~~
138 ~~thereof.~~

139
140 (a) The Council or its designee shall provide notice of any hearing, which shall
141 include:

142
143 (i) The time, place, and nature of the hearing;

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145 (ii) The legal authority and jurisdiction under which the hearing is to be held;

146
147 (iii) The particular sections of the statutes and rules involved; and

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149 (iv) A short and plain statement of the matters asserted. If the Council
150 is unable to state the matters in detail at the time the notice is provided, the initial notice may be
151 limited to a statement of the issues involved, and upon a party's request, a more definite
152 and detailed statement shall be furnished.

153
154 (b) The Council may provide notice by posting through its website, where allowed
155 by the Wyoming Administrative Procedure Act.

156
157 Section 5. ~~Attorney General Presence~~ Record of Proceedings.

158
159 ~~(a) In all matters before the Council, the Council may request the Attorney General~~
160 ~~of the State of Wyoming or a representative of his staff to be present throughout the hearing.~~

161
162 ~~(b) The Council, upon its own motion or the motion of any party, may certify an~~
163 ~~issue of law to the Attorney General for his opinion. Such opinion shall thereafter be part of the~~
164 ~~record of any proceeding before the Council, and may, if the court so directs, constitute a finding~~
165 ~~of the Council with respect to the issuance of final orders or decisions.~~

166
167 The Council or Department shall make appropriate arrangements to assure that a record
168 of the proceeding is kept pursuant to W.S. 16-3-107(o) and (p), as appropriate. Copies of the
169 transcript taken at any hearing may be obtained by any party, interested person, or entity from the
170 court reporter taking the testimony at such fee as the reporter may charge.

171
172 Section 6. ~~Record of Proceedings—Reporter~~ Contested Surface Water Discharge
173 Permit Hearings.

174
175 ~~(a) Unless otherwise agreed by the parties and consented to by the Council, all~~
176 ~~hearings, including all testimony, shall be reported verbatim by a competent reporter. The~~
177 ~~compensation of such reporter shall be paid as required by law and as ordered by the Council.~~
178 ~~The Council may direct any party or parties to assume the cost of the transcript.~~

179
180 Members of the shall recuse themselves from contested case proceedings involving the
181 review of surface water discharge permits if they derive a significant portion of their income
182 directly or indirectly from the permit holder or applicant for the permit subject to review by the
183 Council, in accordance with the Clean Water Act, Section 304(i)(d), 33 U.S.C. § 1314(i)(d), and
184 40 C.F.R. § 123.25(c).

185
186 Section 7. ~~Record~~ Air Quality Division, State Implementation Plan.

187
188 ~~(a) The record in all contested cases (Chapter II) shall include:~~

189
190 ~~(i) All formal and informal notices.~~

191
192 ~~(ii) Evidence received or considered including matters officially noticed.~~

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

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- ~~(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.~~

(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 8. Appeals to Council.

~~(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.~~

(a) Where authorized by the Wyoming Environmental Quality Act, appeals to the Council from final actions of the Administrators or Director shall be made within thirty (30) days of notification of such action.

(b) Within thirty (30) days after notification of the Director’s decision following an informal conference governed by Chapter 9, Section 2 of these rules, the applicant or any

244 person with an interest that is or may be adversely affected may appeal the decision to the
245 Council for a hearing in accordance with Chapters 1 and 2 of these rules. The Council shall
246 make a final written decision within thirty (30) days after the hearing and furnish the decision
247 to the applicant and all parties to the hearing.

248
249 (c) Where a hearing is requested under subsection (b) of this section, the Council
250 may, under such conditions as it may prescribe, grant such temporary relief as it deems
251 appropriate pending final determination of the proceedings if:

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

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256 (ii) The persons requesting that relief show that there is a substantial
257 likelihood that he will prevail on the merits of the final determination of the proceeding;

258
259 (iii) Such relief will not adversely affect the public health or safety or cause
260 significant imminent environmental harm to land, air, or water resources; and

261
262 (iv) The relief sought is not the issuance of a permit where a permit has been
263 denied by the Director.

264
265 Section 9. ~~Pre-Hearing Conference~~ **Appeals from Final Council Action.**

266
267 (a) ~~At a time on or before the day of any hearing, the Council may direct the parties~~
268 ~~to appear before the Council to consider:~~

269
270 (i) ~~The implication of the issues.~~

271
272 (ii) ~~The necessity or desirability of amending the pleadings.~~

273
274 (iii) ~~The possibility of obtaining admissions of the fact and of documents to~~
275 ~~avoid unnecessary proof.~~

276
277 (iv) ~~Formulating procedures to govern the hearing.~~

278
279 (v) ~~Such other matters as may aid in the disposition of the case.~~

280
281 (b) ~~Such conferences shall be conducted informally. An order will be prepared which~~
282 ~~recites the actions taken at the conference, amendments allowed, agreements of the parties and~~
283 ~~agreements of counsel and the parties. The pre-hearing order will control the court of the hearing~~
284 ~~unless modified by the presiding officer to prevent manifest injustice.~~

285
286 (i) ~~If a party determines an order does not fully cover the issues presented,~~
287 ~~or is unclear, he may petition for a further ruling within ten days after receipt of the order.~~

288
289 Any party to an action before the Council may seek judicial review of the Council's
290 final decision, in accordance with applicable law and court rules.

291
292 Section 10. ~~Time~~ **Incorporation by Reference.**

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~~(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.~~

(a) These rules incorporate by reference the following statutes, rules, and regulations, as in effect of July 1, 2016:

(i) Section 128(a) of the Clean Air Act, 42 U.S.C. § 7428(a), available at: <https://www.gpo.gov/fdsys/>;

(ii) Section 304(i)(d) of the Clean Water Act, 33 U.S.C. § 1314(i)(d), available at: <https://www.gpo.gov/fdsys/>; and

(iii) 40 C.F.R. § 123.25(c), available at: <http://www.ecfr.gov>.

(b) These rules do not incorporate later amendments or editions of the incorporated matter.

(c) All incorporated matter is available for public inspection at the Department’s Cheyenne office. Contact information for the Cheyenne Office may be obtained at <http://deq.wyoming.gov> or from (307) 777-7937.

~~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~~

342 ~~complaint with the Council, obtain a full hearing or review upon the merits, which matter shall be~~
343 ~~heard and tried de novo.~~

344
345 ~~(b) — Disrespectful, disorderly or contumacious language or contemptuous conduct,~~
346 ~~refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to~~
347 ~~reasonable standards of orderly and ethical conduct, at any hearing before the Council, shall~~
348 ~~constitute grounds for immediate exclusion before the hearing.~~

349
350 ~~Section 14. Meeting of Council and Advisory Boards.~~

351
352 ~~(a) — All meetings of the Council and the Advisory Board shall be conducted in~~
353 ~~accordance with Robert's Rules of Order.~~

354
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 ~~Section 15. Contested Water Discharge Permit Hearings.~~

360
361 ~~Members of the Environmental Quality Council who do not comply with the requirements set~~
362 ~~forth in 40 C.F.R. 123.25 (July 2003) shall recuse themselves from contested case proceedings in~~
363 ~~which the approval of a surface water discharge permit, or portions of a permit, is being~~
364 ~~considered by the Council.~~

365
366 ~~Section 16. Air Quality Division, State Implementation Plan.~~

367
368 ~~(a) — The following are the only requirements in these procedural rules that are part of~~
369 ~~the Air Quality Division's State Implementation Plan:~~

370
371 ~~(i) — The Council shall have at least a majority of members who represent the~~
372 ~~public interest and do not derive a significant portion of their income from persons subject to~~
373 ~~Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1),~~
374 ~~42 U.S.C. § 7428(a)(1);~~

375
376 ~~(ii) — Members of the Council shall disclose any potential conflicts of interest~~
377 ~~in a public meeting of the Council, as required by the Clean Air Act, Section 128(a)(2), 42~~
378 ~~U.S.C. § 7428(a)(2).~~

379
380 ~~(b) — All other requirements of these procedural rules, except those described in~~
381 ~~Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's~~
382 ~~State Implementation Plan.~~

383
384 ~~Section 17. Appeals to Council.~~

385
386 ~~(a) — Unless otherwise provided by these Rules or the Environmental Quality Act, all~~
387 ~~appeals to Council from final actions of the Administrators or Director shall be made within sixty~~
388 ~~(60) days of such action.~~

389
390 ~~(b) — Within 30 days after notification of any administrative decision following an~~

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