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 2 CHAPTER 2
 3 ~~RULES OF PRACTICE AND PROCEDURE APPLICABLE TO~~
 4 ~~HEARINGS IN CONTESTED CASES~~
 5 CONTESTED CASE HEARINGS

6 Section 1. ~~Answer or appearance~~ Purpose and Scope.

7
 8 (a) ~~—The Director or Applicant shall promptly file a responsive pleading to the~~
 9 ~~petition directed to and served upon the opposing party and the Council, not later than five days~~
 10 ~~before the hearing date.~~

11
 12 These rules are promulgated with the intent to adopt as much of the uniform contested
 13 case rules that the Office of Administrative Hearings adopted under W.S. 16-3-102(d) as is
 14 consistent with the specific and distinct requirements of the Department and the Council and
 15 applicable law. These rules shall govern all contested case proceedings before the Council.

16
 17 Section 2. ~~Docket~~ Applicability of the Wyoming Rules of Civil Procedure.

18
 19 (formerly Section 2(a)) ~~When a hearing is instituted, it shall be assigned a number and~~
 20 ~~entered with the date of its filing on a separate page of a docket provided for such purpose. The~~
 21 ~~Council shall establish a separate file for each such docketed case, in which shall be~~
 22 ~~systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits~~
 23 ~~pertaining thereto, and all such items shall have noted thereon the docket number assigned, and~~
 24 ~~the date of filing.~~

25
 26 (Formerly Section 14(a)) ~~The Wyoming Rules of Civil Procedure, insofar as the same~~
 27 ~~may be applicable and not inconsistent with the laws of the state and these rules shall apply to~~
 28 ~~matters before the Council.~~ The Council shall conduct all contested case hearings with reference
 29 to the Wyoming Rules of Civil Procedure. Section 25 of this chapter specifically incorporates
 30 Rules 12(b)(6), 24, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure.

31
 32 Section 3. ~~Motions~~ Informal Proceedings and Alternative Dispute Resolution.

33
 34 (a) Parties to a contested case are encouraged to resolve the contested case through
 35 settlement, mediation, arbitration, or other means throughout the duration of a contested case. If
 36 the parties choose to engage in mediation or arbitration, they shall file a joint request for
 37 continuance pending outcome of the mediation or arbitration. If the parties choose to engage in
 38 informal settlement discussions, they may file a joint request for continuance pending outcome of
 39 the informal settlement discussions.

40
 41 (b) With the consent of all parties, the hearing officer may assign a contested case to a
 42 mediating hearing officer on limited assignment for the purpose of nonbinding alternative dispute
 43 resolution methods. Such methods shall be conducted in accordance with the procedures
 44 prescribed by the mediating hearing officer.

45
 46 (c) Parties shall promptly notify the hearing officer of all settlements, stipulations,
 47 agency orders, or other action eliminating the need for a contested case hearing. The hearing
 48 officer shall forward such notice to the Council. Upon such notice, the Council shall enter an
 49 order dismissing the case.

50
51 Section 4. ~~Order of Procedure at Hearings~~ Initiation of Contested Case.
52

53 ~~(a) — As nearly as possible, hearings shall be conducted in accordance with the~~
54 ~~following order of procedure:~~

55
56 ~~(i) — The presiding officer shall announce that the Council is open to transact~~
57 ~~business and call by docket number and title the case to be heard.~~

58
59 ~~(ii) — The parties will each be allowed an opening statement to briefly explain~~
60 ~~their position to the Council and outline the evidence they propose to offer together with purpose~~
61 ~~thereof.~~

62
63 ~~(iii) — Parties' evidence will be heard. Witnesses may be cross-examined by the~~
64 ~~opposing party or his attorney and by members of the Council and legal counsel for the Council.~~

65
66 ~~(iv) — The presiding officer may offer any evidence necessary on behalf of the~~
67 ~~Council subject to cross examination.~~

68
69 ~~(v) — The presiding officer may allow, in his discretion, evidence to be offered~~
70 ~~in any order.~~

71
72 ~~(vi) — The Council may allow, after service of copies on all parties of record,~~
73 ~~the direct testimony of a witness to be in writing, either narrative or question and answer form,~~
74 ~~upon the witness being sworn and identifying the written testimony. It may be received into the~~
75 ~~record as if read, in accordance with W.S. 9-4-108. The witness giving such testimony in writing~~
76 ~~shall be subject to cross-examination and such evidence shall be received into the record subject~~
77 ~~to a motion to strike. The written testimony must be served on all other parties in advance to~~
78 ~~allow a reasonable time to prepare cross-examination.~~

79
80 ~~(vii) — Closing arguments of the parties will be made in the manner set by the~~
81 ~~hearing officer.~~

82 ~~(viii) — Time for oral argument may be limited by the presiding officer.~~

83
84 ~~(ix) — The presiding officer may recess the hearing as required.~~

85
86 ~~(x) — After all interested parties have been offered the opportunity to be heard,~~
87 ~~the presiding officer shall declare the evidence closed and excuse all witnesses. The evidence~~
88 ~~may be reopened at a later date, for good cause shown, by order of the Council upon motion by a~~
89 ~~party or on the Council's own motion.~~

90
91 ~~(b) — The presiding officer may, at his discretion, require parties to tender written~~
92 ~~briefs and set the time for filing such briefs.~~

93
94 ~~(c) — The presiding officer may declare that the matter is taken under advisement and~~
95 ~~that the decision and order of the Council will be announced at a later date.~~

96
97 ~~(d) — The Council may, at its discretion, appoint a presiding officer, who will then~~
98 ~~preside during the course of such hearing.~~

99 ~~(i) The presiding officer shall, for purposes of that hearing, have all~~
100 ~~necessary powers normally vested in the Chairman.~~

101
102 (a) All persons requesting a contested case hearing or protesting a permit shall file
103 the original written petition with the Council and serve additional copies to the Director of the
104 Department and any other parties.

105
106 (i) A person initiating a contested case shall serve the petition by registered
107 mail, return receipt requested. Thereafter, all service shall be proved in accordance with the
108 Wyoming Rules of Civil Procedure.

109
110 (ii) Where a person is objecting to a permit, service of all documents shall
111 include the permit applicant when serving the petition and all other pleadings and motions.

112
113 (b) The petition for hearing shall set forth:

114
115 (i) Name, phone number, electronic mail address, and physical address of
116 the petitioner and, if applicable, the petitioner's attorney;

117
118 (ii) The action, decision, order, or permit upon which a hearing is requested;

119
120 (iii) A statement in ordinary but concise language of the specific allegations
121 on which the petition is based, including references to the statute, rule, or order that the petitioner
122 alleges has been violated, and

123
124 (iv) A request for hearing before the Council.

125
126 (c) The contested case shall be deemed commenced on the date of filing the petition
127 with the Council.

128
129 (d) No responsive pleadings are mandatory prior to the prehearing scheduling
130 conference.

131
132 Section 5. ~~Witnesses at Hearings to be Sworn~~ Filing and Service of Papers

133
134 ~~(a) All persons testifying at any hearing before the Council shall stand and be~~
135 ~~administered the following oath or affirmation by the presiding officer:~~

136
137 ~~"Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in~~
138 ~~the matter now before the Council, so help you God?"~~

139
140 ~~(i) No testimony will be received from a witness except under oath or~~
141 ~~affirmation.~~

142
143 (a) In all contested case proceedings, the parties shall file all original documents,
144 pleadings, and motions with the Council and serve all other parties with true and correct copies of
145 the particular document, pleading, or motion. The original and all copies shall be accompanied by
146 a certificate of service. The Council shall maintain the complete original file, and all parties and
147 the hearing officer shall be provided copies of all contested case documents, pleadings, and

148 motions contained therein.

149
150 (b) Filing and service under this rule shall be made by hand delivery, U.S. mail
151 transmittal to the last known address, or electronically uploaded to the relevant docket at
152 http://wyomingeqc.wyo.gov/. Where all parties have not consented to receive electronic service,
153 the party electronically filing shall otherwise serve the documents to the parties who have not
154 consented to receive electronic service. Parties may file by means other than those described in
155 this Section upon approval from the hearing officer.

156
157 Section 6. **Appearance Referral to Office.**

158
159 (a) Upon referral to the Office to conduct a contested case in accordance with W.S.
160 35-11-112(a), the Council shall transmit to the Office copies of appropriate documents reflecting
161 the dispute and the basis thereof, including any written challenge(s) initiating the contested case
162 and a reference to applicable law.

163
164 (b) The Council shall submit a transmittal sheet, on a form provided by the
165 Office, sufficiently identifying the contested case, including:

166
167 (i) The name of the known parties and their attorneys or representatives;

168
169 (ii) A concise statement of the nature of the contested case;

170
171 (iii) Notification of any time limits for the setting of a hearing or entry of a
172 decision, location requirements, and anticipated special features or unique requirements; and

173
174 (iv) Certification by an authorized officer of the Council that all parties have
175 been properly served with a true and complete copy of the transmittal form.

176
177 Section 7. **Intervention Designation and Authority of Hearing Officer; Recusal.**

178
179 (a) The Chair may refer, assign, or designate a hearing officer to preside over any
180 contested case unless otherwise provided by law. When appropriate under applicable law and at
181 the Council's request, the hearing officer may provide a recommended decision.

182
183 (b) At any time while a contested case is pending, a hearing officer or Council
184 member may withdraw from a contested case by filing written notice of recusal or entering a
185 verbal notice of recusal into the record. As soon as the notice of recusal is entered, the recused
186 hearing officer or Council member shall not participate in the contested case.

187
188 (c) Upon motion of any party, recusal of a hearing officer or Council member shall be
189 for cause. Whenever the grounds for such motion become known, any party may move for
190 recusal of a hearing officer or Council member on the ground that the hearing officer or Council
191 member:

192
193 (i) Has been engaged as counsel in the action prior to being appointed as
194 hearing officer;

195
196 (ii) Has a material interest in the outcome of the action;

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(iii) Is related by consanguinity to a party;

(iv) Is a witness in the action;

(v) Is biased or prejudiced against the party or the party's attorney or representative; or

(vi) Any other ground provided by law.

(d) A motion for recusal shall be supported by an affidavit or affidavits of any person or persons stating sufficient facts to show the existence of grounds for the motion. Prior to a hearing on the motion, any party may file counter-affidavits. The motion shall be heard by the hearing officer or, at the discretion of the hearing officer, by another hearing officer. If the motion is granted, the Council Chair shall immediately designate another hearing officer to preside over the contested case or shall excuse the Council member(s).

(e) A hearing officer appointed from outside the Council members shall not be subject to a voir dire examination by any party.

(f) Subject to limitations imposed by the hearing officer, any party may be permitted to conduct a voir dire examination of a Council member.

Section 8. **General Hearing Rules** Appearances and Withdrawals.

~~(a) Every party shall be accorded the right to appear and testify in person or by counsel or other duly qualified representative. If testifying on behalf of another person or several persons, such person shall present to the hearing officer evidence he is a qualified representative thereof.~~

~~(b) Every person testifying shall, at the Council's discretion, be qualified prior to testifying. Such qualification will include ascertaining the residency, occupation, background, education, and expertise of said person.~~

~~(c) All parties shall have the right to respond and present evidence and argument on all issues involved.~~

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

~~(e) All persons required to submit data or evidence shall be either entitled to retain the data or evidence or upon payment of a reasonable cost may procure a copy thereof.~~

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

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

- 246 ~~(h) — The presiding officer shall:~~
247
248 ~~(i) Administer oaths and affirmations.~~
249
250 ~~(ii) — Issue subpoenas.~~
251
252 ~~(iii) — Rule upon offers of proof and receive relevant evidence.~~
253
254 ~~(iv) — Take or cause to be taken depositions.~~
255
256 ~~(v) — Preside over the hearing and regulate its proceedings.~~
257
258 ~~(vi) — Preside over and set the time for such pre-hearing conferences as he~~
259 ~~deems necessary.~~
260
261 ~~(vii) — Dispose of procedural requests. The presiding officer may be assisted by~~
262 ~~a representative of the Attorney General’s Office when such assistance is deemed necessary.~~
263
264 ~~(viii) — The presiding officer shall officially open and officially close the~~
265 ~~hearing.~~
266
267 ~~(Formerly Section 6(a)) — Appearances and representation of parties shall be made~~
268 ~~as follows:~~
269 ~~— (Formerly 6(a)(i)) An individual may appear and be heard in his own behalf~~
270
271 ~~— (Formerly 6(a)(ii)) — A co-partnership may appear and be represented by a co-~~
272 ~~partner.~~
273
274 ~~— (Formerly 6(a)(iii)) — A corporation may appear and be represented by a~~
275 ~~corporate officer or a full-time employee of said corporation.~~
276
277 ~~— (Formerly 6(a)(iv)) — A municipal corporation or its Board of Public Utilities~~
278 ~~may appear and be represented by a municipal officer, a member of said Board or a full-time~~
279 ~~employee of said municipality or Board.~~
280
281 ~~— (Formerly 6(a)(v)) — An unincorporated association may appear and be~~
282 ~~represented by any bona fide general officer or full-time employee of such association.~~
283
284 ~~— (Formerly 6(a)(vi)) — The Department of Environmental Quality may appear~~
285 ~~and be represented by the Director or Administrator of the relative division, or by the Attorney~~
286 ~~General or his representative.~~
287
288 ~~— (Formerly 6(a)(vii)) — Any party to a proceeding may appear and be~~
289 ~~represented therein by an attorney at law who is duly admitted to practice in Wyoming and an~~
290 ~~active member of the Wyoming State Bar. Any attorney who is not duly licensed to practice law~~
291 ~~in Wyoming shall not be entitled to enter his appearance in, prosecute or defend any action or~~
292 ~~proceeding pending before the Council unless he shall have associated with him in such action or~~
293 ~~proceeding an active member of the Wyoming State Bar.~~
294

295 (Formerly 6(a)(i-vii)) (a) A party, whether it be an individual, corporation,
296 partnership, governmental organization, or other entity may appear through an attorney or
297 representative. An individual may represent himself/herself. An individual or entity seeking to
298 intervene in a contested case under Rule 24 of the Wyoming Rules of Civil Procedure may appear
299 through an attorney or representative prior to a ruling on the motion to intervene.

301 ~~(Formerly 6(b)) Any person appearing in a proceeding before the Council shall conform~~
302 ~~to the recognized standards of ethical conduct.~~

304 (b) Prior to withdrawing from a contested case, an attorney shall file a motion to
305 withdraw. The motion for an attorney's withdrawal shall include a statement indicating the
306 manner in which notification was given to the client and setting forth the client's last known
307 address and telephone number. The hearing officer shall not grant the motion to withdraw unless
308 the attorney has made reasonable efforts to give actual notice to the client that:

309 _____
310 (i) The attorney wishes to withdraw;

311 _____
312 (ii) The client has the burden of keeping the hearing officer informed of the
313 address where notices, pleadings, or other papers may be served;

314 _____
315 (iii) The client has the obligation to prepare, or to hire another attorney or
316 representative to prepare, for the contested case and the dates of proceedings;

317 _____
318 (iv) The client may suffer an adverse determination in the contested case if
319 the client fails or refuses to meet these burdens;

320 _____
321 (v) The pleadings and papers in the case shall be served upon the client at
322 the client's last known address; and

323 _____
324 (vi) The client has the right to object within fifteen (15) days of the date of
325 notice.

326 _____
327 (c) Prior to withdrawing from a contested case, a representative shall provide written
328 notice of withdrawal to the Council.

329 _____
330 Section 9. ~~Subpoenas~~ Intervention.

331 _____
332 (Formerly Section 7(a)) (a) Any person interested in obtaining the relief sought by a
333 party or otherwise interested in the determination of a proceeding, ~~relating to~~ other than surface
334 coal mining operations pending before the Council, may ~~petition for leave~~ file a motion for leave
335 to intervene ~~in such proceeding prior to~~ before or at the ~~date of~~ hearing, but not thereafter except
336 for good cause shown. The ~~petition~~ motion shall set forth the grounds of the proposed
337 intervention, the position and interest of the petitioner in the proceeding, and ~~if~~ affirmative relief
338 ~~is sought, the same should conform to the requirements for a formal petition.~~ Leave ~~will~~ shall not
339 be granted unless the Council ~~shall~~ determines that the ~~party requesting to intervene~~ movant is
340 adversely affected by the action and has a legal right to intervene, ~~has a legal right under the~~
341 Environmental Quality Act or the Wyoming Administrative Procedure Act, under the standards
342 set out in W.R.C.P. Rule 24.
343

344 (Formerly 7(b)) (b) For proceedings related to surface coal mining operations, any
345 person may ~~petition~~ file a motion for leave to intervene as a full party or ~~;~~ ~~if desired~~ in a limited
346 capacity; at any stage of a proceeding conducted by the Council. The ~~petition~~ motion shall
347 include the basis for intervention and shall be granted to any person who either could have
348 initiated the proceeding or has an interest ~~which~~ that may be adversely affected by the outcome of
349 the proceeding. Regardless of these bases, intervention may be granted whenever appropriate;
350 after ~~consideration of~~ considering the nature of the issues, the adequacy of the existing parties'
351 representation of ~~petitioner's~~ movant's interest, the ability of the ~~petitioner~~ movant to present
352 relevant evidence and argument, and the effect of intervention on the implementation of the
353 Wyoming Environmental Quality Act. The extent and terms of participation by an intervenor in a
354 limited capacity shall be determined by the Council.-

355
356 (Formerly 7(c)) (c) If ~~leave~~ the motion to intervene is granted, the ~~petitioner~~ movant
357 becomes an intervenor and a party to the proceeding with the right to have notice, appear at the
358 taking of testimony, produce and cross-examine witnesses, and be heard on the argument of the
359 case. The party intervening shall give notice of intervention to all other parties.

360
361 ~~(Formerly 7(d)) — The party intervening must give notice of such intervention to all~~
362 ~~other parties to the appeal.~~

363
364 Section 10. ~~Depositions~~ Ex Parte Communications.

365
366 ~~(a) — In all contested areas coming before the Council, the taking of depositions and~~
367 ~~discovery shall be available to the parties and to the Council on its own motion in accordance~~
368 ~~with the provisions of W.S. 9-4-107(g).~~

369
370 ~~(b) — The Council, for the purposes of allowing orderly presentation of evidence, may~~
371 ~~govern the conduct of discovery and the time limitations involved.~~

372
373 Except as authorized by law, a party or a party's attorney or representative shall not
374 communicate with any Council member in connection with any issue of fact or law concerning
375 any pending contested case, except upon notice and opportunity for all parties to participate.
376 Should ex parte communication occur, the Council member shall advise all parties of the
377 communication as soon as possible thereafter and, if requested, shall allow any party an
378 opportunity to respond prior to ruling on the issue.

379
380 Section 11. ~~Witness Fees~~ Motions and Motion Practice.

381
382 ~~(a) — Witnesses who are summoned before the Council are entitled to the same fees as~~
383 ~~are paid for like service in the District Courts of the State of Wyoming. Such fees shall be paid by~~
384 ~~the party at whose insistence the testimony was taken.~~

385
386 ~~(formerly Section 3(a)) (a) The Council or presiding officer may, upon reasonable~~
387 ~~notice to all parties, hear orally, or otherwise, any motion filed in connection with hearings under~~
388 ~~these rules. Unless these rules or an order of the hearing officer establish time limitations other~~
389 ~~than those contained herein, all motions except motions for enlargement of time and motions~~
390 ~~made during hearing shall be served at least ten (10) days prior to the hearing on the motion. A~~
391 ~~party affected by the motion may serve a response together with affidavits, if any, at least three~~
392 ~~(3) days before the hearing on the motion or within twenty (20) days after service of the motion.~~

393 whichever is earlier. Unless the hearing officer permits service at some other time, the moving
394 party may serve a reply, if any, at least one day prior to the hearing on the motion or within
395 fifteen (15) days after service of the response, whichever is earlier. Unless the hearing officer
396 otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at least one
397 day prior to the hearing on the motion.

398
399 (b) Unless the hearing officer otherwise orders, a request for a hearing on the motion
400 may be served by the moving party or any party affected by the motion within twenty (20) days
401 after service of the motion. The hearing officer may determine such motion without a hearing.

402
403 (c) Prior to filing any non-dispositive motion, a moving party shall make reasonable
404 efforts to contact all other parties, representatives, and attorneys. Any such non- dispositive
405 motion shall include a statement concerning efforts made to confer with the other party(s) and
406 position(s) on the motion.

407
408 (d) All written motions filed with the Council shall be accompanied by a proposed
409 order.

410
411 Section 12. ~~Decision and Order~~ Setting Hearings and Other Proceedings.

412
413 ~~(a) — The Council shall make a written decision and order in all cases, which decision~~
414 ~~shall contain findings of fact and conclusions of law based exclusively on the record and include~~
415 ~~the vote on the decision. The decision and order of the Council shall be placed in the record of the~~
416 ~~case which shall be retained by the Council.~~

417
418 ~~(formerly Section 2(a)) (a) — When a hearing is instituted, The hearing officer or~~
419 ~~Chair of the Council, as applicable, it shall be assigned a docket number and entered with the date~~
420 ~~of its filing on a separate page of a docket provided for such purpose to each contested case. The~~
421 ~~Council shall establish a separate file for each such docketed case, in which shall be~~
422 ~~systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits~~
423 ~~pertaining thereto, and all such items shall have noted thereon the docket number assigned, and~~
424 ~~the date of filing. All papers, pleadings, motions, and orders filed thereafter shall contain:~~

425
426 (i) A conspicuous reference to the assigned docket number;

427
428 (ii) A caption setting forth the title of the contested case and a brief
429 designation describing the document filed; and

430
431 (iii) The name, address, telephone number, and signature of the person who
432 prepared the document.

433
434 (b) The hearing officer shall set the course of proceedings through the issuance of a
435 scheduling order. This may include, but is not limited to, pre-hearing conferences, confidentiality
436 issues, summary disposition deadlines, motion practice,
437 settlement conferences, and the evidentiary hearing.

438
439 (c) Prehearing conferences may be held at the discretion of the hearing officer. Any
440 party may request a prehearing conference to address issues such as discovery, motion deadlines,
441 scheduling orders, or case status.

442
443 (d) At the hearing officer's discretion and unless otherwise provided by the Council,
444 telephone or videoconference calls may be used to conduct any proceeding. At the discretion of
445 the hearing officer, parties or their witnesses may be allowed to participate in any hearing by
446 telephone or videoconference.

447
448 Section 13. **Consolidation.**

449
450 ~~(a) The Council may, in its discretion, allow any pleadings to be amended or~~
451 ~~corrected, or any omission therein to be supplied.~~

452
453 A party may seek consolidation of two or more contested cases by filing a motion to
454 consolidate in each case sought to be consolidated. If consolidation is ordered and unless
455 otherwise ordered by the hearing officer, all subsequent filings shall be in the case first filed, and
456 all previous filings related to the consolidated cases shall be placed together under that docket
457 number. Consolidation may be ordered on a hearing officer's own motion.

458
459 Section 14. ~~**Applicability of Rule of Civil Procedure**~~ **Continuances and Extensions of**
460 **Time.**

461
462 (a) A motion for a continuance of any scheduled hearing shall be in writing, state the
463 reasons for the motion, and be filed and served on all parties and the hearing officer. A motion for
464 a continuance shall be granted only upon a showing of good cause.

465
466 (b) A motion for an extension of time for performing any act prescribed or allowed by
467 these rules or by order of the hearing officer shall be filed and served on all parties and the
468 hearing officer prior to the expiration of the applicable time period. A motion for extension of
469 time shall be granted only upon a showing of good cause.

470
471 (c) For contested cases conducted regarding objections pursuant to W.S. 35-11-
472 406(k), a motion for continuance may not be granted if the motion would continue the hearing
473 beyond the 20-day period provided in that statute unless the parties stipulate to a different period.

474
475 Section 15. **Discovery.**

476
477 (a) The taking of depositions and discovery shall be in accordance with
478 W.S. 16-3-107(g).

479
480 (b) Unless the hearing officer orders otherwise, parties shall not file discovery
481 requests, answers, and deposition notices with the Council.

482
483 Section 16. **Subpoenas.**

484
485 ~~Formerly Section 9(a) Subpoenas requiring the attendance of witnesses from~~
486 ~~any place in the State of Wyoming at any designated place of hearing or for the production of~~
487 ~~books, papers, or other documents may be issued by the presiding officer upon written application~~
488 ~~of any party or upon motion of the presiding officer in accordance with the Wyoming Rules of~~
489 ~~Civil Procedure and Administrative Procedure Act.~~

491 ~~(Formerly Section 9(a)(i)) — Items sought shall be set forth with particularity.~~

492

493 ~~(Formerly Section 9(a)(ii)) — All subpoenas shall be served by personal~~
494 ~~delivery or by certified mail return receipt required, to the party served.~~

495 ~~(Formerly Section 9(a)(iii)) Cost of the subpoenas shall be paid by the party requesting~~
496 ~~the service.~~

497

498 Any party may request the hearing officer to issue a subpoena to compel the attendance
499 of a witness or for the production of documents. Requests for a subpoena shall be accompanied
500 by a completed subpoena that conforms to Rule 45 of the Wyoming Rules of Civil Procedure.

501

502 Section 17. Summary Disposition.

503

504

505 Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to
506 contested cases.

507

508 Section 18. Prehearing Procedures.

509

510 (a) Unless otherwise ordered by the hearing officer, each party to a contested case
511 shall file and serve on all other parties and the hearing officer a prehearing disclosure statement
512 setting forth:

513

514 (i) A complete list of all witnesses who will or may testify, together with
515 information on how that witness may be contacted, and a brief description of the testimony the
516 witness is expected to give in the case. If a deposition is to be offered into evidence, the original
517 shall be filed with the Council;

518

519 (ii) A statement of the specific claims, defenses, and issues which the party
520 asserts are before the hearing officer for hearing, based on the party's initial filing;

521

522 (iii) A statement of the burden of proof to be assigned in the contested case
523 with reference to specific regulatory, statutory, constitutional, or other authority established by
524 relevant case law;

525

526 (iv) A statement of stipulated facts. If the parties are unable to stipulate to
527 facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons
528 facts cannot be stipulated;

529

530 (v) A complete list of all documents, statements, etc., which the party will or
531 may introduce into evidence; and

532

533 (vi) An approximation of the time required for the hearing.

534

535 (b) Parties shall file and serve prehearing disclosure statements on or before the date
536 established by the hearing officer.

537

538 (c) The information provided in a prehearing disclosure statement shall be binding on
539 each party throughout the course of the contested case unless modified for good cause.

540
541 (d) Additional witnesses or exhibits may be added only if the need to do so was not
542 reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would not
543 unfairly prejudice other parties, and good cause is shown.

544
545 (e) The hearing officer may modify the requirements of a prehearing disclosure
546 statement.

547
548 (f) Failure to file a prehearing disclosure statement may result in the hearing
549 officer's striking of witnesses, exhibits, claims and defenses, or dismissal of the contested case.

550
551 (g) If a prehearing order is entered, the prehearing order shall control the course of
552 the hearing.

553
554 **Section 19. Burden of Proof.**

555
556 The hearing officer shall assign the burden of proof in accordance with applicable law.

557
558 **Section 20. Evidence.**

559
560 (a) The hearing officer shall rule on the admissibility of evidence in accordance
561 with the following:

562
563 (i) Evidence of the type commonly relied upon by reasonably prudent
564 persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or
565 unduly repetitious evidence shall be excluded.

566
567 (ii) Evidence may be offered through witness testimony or in documentary
568 form;

569
570 (iii) Testimony shall be given under oath administered by the hearing
571 officer. Deposition testimony and other pre-filed testimony may be submitted as evidence,
572 provided the testimony is given under oath administered by an appropriate authority, and is
573 subject to cross- examination by all parties;

574
575 (iv) The rules of privilege recognized by Wyoming law shall be given
576 effect; and

577
578 (v) A hearing officer may take administrative notice of judicially
579 cognizable facts, provided the parties are properly notified of any material facts noticed.

580
581 (b) Each party shall have the opportunity to cross-examine witnesses. The hearing
582 officer may allow cross-examination on matters not covered on direct examination. Each party
583 shall have the opportunity to perform re-direct examination of witnesses on matters covered
584 during cross-examination.

585
586 (c) The hearing officer or Council member, when applicable, may ask questions of
587 any party or witness.

588

589 Section 21. Contested Case Hearing Procedure.

590
591 (a) The hearing officer shall conduct the contested case and shall have discretion to
592 direct the order of the proceedings.

593
594 (b) Unless otherwise provided by law, and at the hearing officer's discretion, the
595 party with the burden of proof shall be the first to present evidence. All other parties shall be
596 allowed to cross-examine witnesses in an orderly fashion. When that party rests, other parties
597 shall then be allowed to present their evidence. Rebuttal and surrebuttal evidence shall be allowed
598 only at the discretion of the hearing officer.

599
600 (c) The hearing officer shall have discretion to allow opening statements and closing
601 arguments.

602
603 Section 22. Default.

604
605 Unless otherwise provided by law, a hearing officer may enter an order of default or an
606 order affirming agency action for a party's failure to appear at a lawfully noticed hearing.

607
608 Section 23. Expedited Hearing.

609
610 (a) At the hearing officer's or Council's discretion and when allowed by applicable
611 law, a contested case may be heard as an expedited hearing upon the motion of any party.

612
613 (b) An expedited hearing shall be decided on written arguments, evidence, and
614 stipulations submitted by the parties. A hearing officer or the Council may permit oral arguments
615 upon the request of any party.

616
617 (c) The hearing officer may require an evidentiary hearing in any case in which it
618 appears that facts material to a decision in the case cannot be properly determined by an
619 expedited hearing.

620
621 Section 24. Recommended Decision.

622
623 In those contested cases where the hearing officer makes a recommended
624 decision, the hearing officer shall file the recommended decision with the Council and serve
625 copies of the recommended decision on all parties to the contested case. Unless otherwise
626 ordered, parties shall have ten (10) days to file written exceptions to the hearing officer's
627 recommended decision. Written exceptions shall be filed with the Council and served on all
628 parties.

629
630 Section 25. Final Decision.

631
632 (a) A final decision containing findings of fact, conclusions of law, and an order
633 entered by the Council shall be in writing and served upon all parties to the contested case and the
634 hearing officer, if applicable.

635
636 (b) A final decision shall include findings of fact and conclusions of law, separately
637 stated. When the hearing officer allows the parties to submit a proposed final order, the parties

638 shall file the original with the Council and serve copies of the proposed order on all other parties
639 and the hearing officer.

640
641 (c) A hearing office may at any time prior to judicial review correct clerical errors in
642 final decisions or other parts of the record. A party may move that clerical errors or other parts of
643 the record be corrected. During the pendency of judicial review, such errors may be corrected
644 only with leave of the court having jurisdiction.

645
646 **Section 26. Incorporation by Reference.**

647
648 (a) The code, standard, rule, or regulation below is incorporated by reference and
649 can be found at:

650
651 http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF
652 [CIVIL_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF)

653
654 (i) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the
655 Wyoming Supreme Court and in effect on April 11, 1995;

656
657 (ii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming
658 Supreme Court and in effect on February 11, 1975;

659
660 (iii) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming
661 Supreme Court and in effect on October 1, 2009;

662
663 (iv) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming
664 Supreme Court and in effect on July 1, 2000;

665
666 (v) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming
667 Supreme Court and in effect on October 11, 1964;

668
669 (vi) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming
670 Supreme Court and in effect on July 1, 2008.

671
672 (b) No later amendments to a code, standard, rule, or regulation listed in subsection
673 (a) of this Section are incorporated by reference.

674
675 (c) These rules do not incorporate later amendments or editions of the incorporated
676 matter.

677
678 (d) All incorporated matter is available for public inspection at the Department's
679 Cheyenne office. Contact information for the Cheyenne Office may be obtained at
680 <http://deq.wyoming.gov> or from (307) 777-7937.

681