

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

934 N. MAIN ST. SHERIDAN, WY 82801 (307) 672-5809 FAX (307) 672-5800
INFO@POWDERRIVERBASIN.ORG WWW.POWDERRIVERBASIN.ORG



October 24, 2016

Wyoming Department of Environmental Quality
Wyoming Environmental Quality Council
200 W 17th St.
Cheyenne, WY 82002

Submitted online via: <http://wq.wyomingdeq.commentinput.com/>

RE: Comments on DEQ's Proposed Rules of Practice & Procedure, EQC Docket #16-1101

Dear Chairman Bagley and Members of the Environmental Quality Council,

Thank you for the opportunity to submit comments on DEQ's proposed rules of practice and procedure. Our organization submitted comments to the DEQ before consideration by the advisory boards, and we greatly appreciate that DEQ and the advisory boards listened to our comments. DEQ added clarifying and additional language and provided additional explanation in its response to comments. This is how the rulemaking process is supposed to work with improvements to draft rules based on stakeholder feedback, and we appreciate DEQ's feedback and consideration.

However, we still have three main concerns about the proposed rules: (1) the rules do not appropriately screen for conflicts of interest; (2) intervention is allowed up to the date of the hearing; and (3) the process for rulemaking petitions will be redundant if first filed with the EQC. Each of these concerns will be addressed below.

Conflicts of Interest

For a board like the EQC, conflicts of interest are inevitably present. EQC members represent certain constituencies, like industry, and while their day jobs may bring technical experience, they may also present conflicts. It is therefore important that the rules have clear and easy to use conflict of interest provisions that will prevent bias in agency decision-making. This is important not just for the few areas specifically mentioned in the draft rules but for *all* EQC decisions.

We encourage the EQC to expand the conflict of interest rules to cover all rulemaking and contested case hearings. The toughest provisions (consistent with federal law and regulation) should apply uniformly to all divisions, hearings, and proceedings.

Timing of Intervention

The proposed Chapter 2, Section 9 allows parties to file motions to intervene "before or at the hearing." Filing an intervention motion at the hearing will prejudice the other parties and will be procedurally difficult to handle. In particular, intervening parties will not be able to complete the requirements of Chapter 2, Section 18's prehearing procedures.

Having participated in a 20-day hearing, we understand that time constraints may present concerns, but intervention should serve to benefit the process, not frustrate it. If parties have real rights at stake they will most likely be an original party to the hearing - the petitioner(s), the permit applicant, or DEQ. While intervention may be important – for both sides – from our experience, it is rarely used in EQC proceedings. In our opinion, the interests of the other parties, especially in allowing them to know what witnesses and evidence another party is likely to present at hearing and to adequately prepare, outweighs the interest of a potential intervenor to weigh in at the last minute.

We encourage a deadline for motions to intervene, at least seven days in advance of a hearing.

Rulemaking Petitions

The proposed changes set up an awkward, and ineffective and inefficient, relationship between the DEQ and the EQC. We understand the AG’s opinion on this issue (having been subject to it in a recent rulemaking proceeding), but it is important to remember that the EQC is an independent agency separate and distinct from the DEQ. We remain frustrated with this new interpretation of the Environmental Quality Act that limits the ability of the EQC to independently respond to a citizen proposed rulemaking, as we believe it improperly takes away some of the EQC’s important oversight authority over DEQ. EQC has responded to citizen rulemaking petitions in the past and those actions were never challenged. Nevertheless, if the public truly has no ability to petition the EQC for rules that the DEQ does not first propose, then this section should require all petitions to be filed with the DEQ as the public really does not have the ability to petition the EQC. That would clean up the section and remove the step of the EQC transmitting the petition to the DEQ.

In its response to comments DEQ called this recommendation “unduly harsh.” Perhaps it is, but it is also being honest with the citizens that their recourse is with DEQ, not the EQC.

Thank you for your time and consideration, and all of your work over the years to bring us to this point. We look forward to implementation of the new rules of practice.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal line extending to the right.

Shannon Anderson