

1 **Summary of Changes and Corrections to 1/19/17 Draft**

2 Section 1:

3 (a): Cross reference corrected from 16-3-301 to 16-3-101.

4 (b): Paragraph (b) was missing the second sentence, “These rules shall apply in all
5 proceedings before the Department of Environmental Quality and the Environmental
6 Quality Council.” The sentence appears properly in the strike underline version.

7 Section 6:

8 In preparation for the rulemaking hearing, DEQ discovered an inconsistency
9 between the federal language and the language in Section 6. This draft
10 incorporates the corrected federal language:

11 “Members of the Council shall recuse themselves from contested case
12 proceedings involving the review of surface water discharge permits if they
13 receive, or have during the previous 2 years received, a significant portion of
14 income directly or indirectly from permit holders or applicants for a permit, as
15 required by the Clean Water Act, Section 304(i)(D), 33 U.S.C. § 1314(i)(D), and
16 40 C.F.R. § 123.25(c).”

17 Section 8:

18 In preparation for the rulemaking hearing, DEQ discovered that we had omitted
19 some language we need for our SMCRA primacy:

20 (b) Added “The Council shall start the hearing within thirty (30) days of the
21 request for a hearing. The burden of proof at the hearing shall be on the party seeking to
22 reverse the Director’s decision”

23 (c)(iv) Added “, except that continuation under an existing permit may be allowed
24 where the operation has a valid permit issued under W.S. 35-11-406.”

25 Section 10

26 (a)(ii): Corrected cross reference to Section 304(i)(D)

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CHAPTER 1
GENERAL RULES

Section 1. **Authority.**

(a) These rules are promulgated as authorized by the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115, and the Wyoming Environmental Quality Act, as defined by W.S. 35-11-103(a)(xiii). These rules shall apply in all proceedings before the Department of Environmental Quality and the Environmental Quality Council.

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

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

Section 2. **Definitions.**

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

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

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

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

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

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

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

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

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

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81 **Section 3. Computation of Time.**

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83 (a) In computing any period of time prescribed or allowed by these rules, by
84 order or by any applicable statutes or regulations, the day of the act, event, or default
85 from which the designated period of time begins to run shall not be included. The last
86 day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a
87 legal holiday, or, when the act to be done is the filing of a paper, a day on which weather
88 or other conditions have made agency offices inaccessible, in which event the period
89 runs until the end of the following day which is not one of the aforementioned days.
90 When the period of time prescribed or allowed is less than eleven (11) days, intermediate
91 Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in
92 this rule, “legal holiday” includes any day officially recognized as a legal holiday in this
93 state by designation of the legislature or appointment as a holiday by the governor.

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95 (b) Whenever a party has the right or is required to do some act within a
96 prescribed period after the service of a notice or other paper upon the party, and the
97 notice or paper is served upon the party by mail or by delivery to the agency for service,
98 three (3) days shall be added to the prescribed period. The three-day provision does not
99 apply to rulemaking deadlines.

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101 **Section 4. Notice of Hearing.**

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103 (a) The Council or its designee shall provide notice of any hearing, which
104 shall include:

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

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

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

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

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

Section 5. Record of Proceedings.

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

Section 6. Contested Surface Water Discharge Permit Hearings.

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

Section 7. Air Quality Division, State Implementation Plan.

(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) 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.

162 (b) Within thirty (30) days after notification of the Director's decision
163 following an informal conference governed by Chapter 9, Section 2 of these rules, the
164 applicant or any person with an interest that is or may be adversely affected may appeal
165 the decision to the Council for a hearing in accordance with Chapter 1 and 2 of these
166 rules. The Council shall start the hearing within thirty (30) days of the request for a
167 hearing. The burden of proof at the hearing shall be on the party seeking to reverse the
168 Director's decision. The Council shall make a final written decision within thirty (30)
169 days after the hearing and furnish the decision to the applicant and all parties to the
170 hearing.

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

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

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178 (ii) The persons requesting that relief show that there is a substantial
179 likelihood that they will prevail on the merits of the final determination of the
180 proceeding;

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

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185 (iv) The relief sought is not the issuance of a permit where a permit has
186 been denied by the Director, except that continuation under an existing permit may be
187 allowed where the operation has a valid permit issued under W.S. § 35-11-406.

188 189 **Section 9. Appeals from Final Council Action.**

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

193 194 **Section 10. Incorporation by Reference.**

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

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

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

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

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

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