

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

2 Section 2: Corrected cross reference from Section 25 to Section 26.

3 Added Rule 11 to reference list.

4 Section 26: Removed color and hyperlink as this document will not load properly to SOS
5 new site if left as is.

6 (a)(i) Added Rule 11 and adoption date; renumbered remaining paragraph;

7 (b) Added March 1, 2017 adoption information and listed adopted rules at (i)
8 through (vii).

9

10 CHAPTER 2
11 CONTESTED CASE HEARINGS
12

13 **Section 1. Purpose and Scope.**
14

15 These rules are promulgated with the intent to adopt as much of the uniform
16 contested case rules that the Office of Administrative Hearings adopted under W.S.
17 16-3-102(d) as is consistent with the specific and distinct requirements of the Department
18 and the Council and applicable law. These rules shall govern all contested case
19 proceedings before the Council.
20

21 **Section 2. Applicability of the Wyoming Rules of Civil Procedure.**
22

23 The Council shall conduct all contested case hearings with reference to the
24 Wyoming Rules of Civil Procedure. Section 26 of this chapter specifically incorporates
25 Rules 11, 12(b)(6), 24, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure.
26

27 **Section 3. Informal Proceedings and Alternative Dispute Resolution.**
28

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

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

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

46 **Section 4. Initiation of Contested Case.**
47

48 (a) All persons requesting a contested case hearing or protesting a permit shall
49 file the original written petition with the Council and serve additional copies to the
50 Director of the Department and any other parties.
51

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

55
56 (ii) Where a person is objecting to a permit, service of all documents
57 shall include the permit applicant when serving the petition and all other pleadings and
58 motions.

59
60 (b) The petition for hearing shall set forth:

61
62 (i) Name, phone number, electronic mail address, and physical
63 address of the petitioner and, if applicable, the petitioner's attorney;

64
65 (ii) The action, decision, order, or permit upon which a hearing is
66 requested;

67
68 (iii) A statement in ordinary but concise language of the specific
69 allegations on which the petition is based, including references to the statute, rule, or
70 order that the petitioner alleges has been violated, and

71
72 (iv) A request for hearing before the Council.

73
74 (c) The contested case shall be deemed commenced on the date of filing the
75 petition with the Council.

76
77 (d) No responsive pleadings are mandatory prior to the prehearing scheduling
78 conference.

79
80 **Section 5. Filing and Service of Papers**

81
82 (a) In all contested case proceedings, the parties shall file all original
83 documents, pleadings, and motions with the Council and serve all other parties with true
84 and correct copies of the particular document, pleading, or motion. The original and all
85 copies shall be accompanied by a certificate of service. The Council shall maintain the
86 complete original file, and all parties and the hearing officer shall be provided copies of
87 all contested case documents, pleadings, and motions contained therein.

88
89 (b) Filing and service under this rule shall be made by hand delivery, U.S.
90 mail transmittal to the last known address, or electronically uploaded to the relevant
91 docket at <http://wyomingeqc.wyo.gov/>. Where all parties have not consented to receive
92 electronic service, the party electronically filing shall otherwise serve the documents to
93 the parties who have not consented to receive electronic service. Parties may file by
94 means other than those described in this Section upon approval from the hearing officer.

95
96 **Section 6. Referral to Office.**

97
98 (a) Upon referral to the Office to conduct a contested case in accordance with
99 W.S. 35-11-112(a), the Council shall transmit to the Office copies of appropriate

100 documents reflecting the dispute and the basis thereof, including any written challenge(s)
101 initiating the contested case and a reference to applicable law.

102

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

105

106 (i) The name of the known parties and their attorneys or
107 representatives;

108

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

110

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

114

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

117

118 **Section 7. Designation and Authority of Hearing Officer; Recusal.**

119

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

124

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

130

131 (c) Upon motion of any party, recusal of a hearing officer or Council
132 member shall be for cause. Whenever the grounds for such motion become known, any
133 party may move for recusal of a hearing officer or Council member on the ground that the
134 hearing officer or Council member:

135

136 (i) Has been engaged as counsel in the action prior to being
137 appointed as hearing officer;

138

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

140

141 (iii) Is related by consanguinity to a party;

142

143 (iv) Is a witness in the action;

144

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

147

148 (vi) Any other ground provided by law.

149

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

157

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

160

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

163

164 **Section 8. Appearances and Withdrawals.**

165

166 (a) A party, whether it be an individual, corporation, partnership, governmental
167 organization, or other entity may appear through an attorney or representative. An
168 individual may represent himself/herself. An individual or entity seeking to intervene in
169 a contested case under Rule 24 of the Wyoming Rules of Civil Procedure may appear
170 through an attorney or representative prior to a ruling on the motion to intervene.

171

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

178

179 (i) The attorney wishes to withdraw;

180

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

183

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

186

187 (iv) The client may suffer an adverse determination in the contested
188 case if the client fails or refuses to meet these burdens;

189

190 (v) The pleadings and papers in the case shall be served upon the
191 client at the client's last known address; and

192
193 (vi) The client has the right to object within fifteen (15) days of the
194 date of notice.

195
196 (c) Prior to withdrawing from a contested case, a representative shall provide
197 written notice of withdrawal to the Council.

198
199 **Section 9. Intervention.**

200
201 (a) Any person interested in obtaining the relief sought by a party or
202 otherwise interested in the determination of a proceeding, other than surface coal mining
203 operations pending before the Council, may file a motion to intervene before or at the
204 hearing, but not thereafter except for good cause shown. The motion shall set forth the
205 grounds of the proposed intervention, the position and interest of the petitioner in the
206 proceeding, and affirmative relief sought. Leave shall not be granted unless the Council
207 determines that the movant is adversely affected by the action and has a legal right to
208 intervene, under the standards set out in W.R.C.P. Rule 24.

209
210 (b) For proceedings related to surface coal mining operations, any person may
211 file a motion for leave to intervene as a full party or in a limited capacity at any stage of a
212 proceeding conducted by the Council. The motion shall include the basis for intervention
213 and shall be granted to any person who either could have initiated the proceeding or has
214 an interest that may be adversely affected by the outcome of the proceeding. Regardless
215 of these bases, intervention may be granted whenever appropriate after considering the
216 nature of the issues, the adequacy of the existing parties' representation of movant's
217 interest, the ability of the movant to present relevant evidence and argument, and the
218 effect of intervention on the implementation of the Wyoming Environmental Quality
219 Act. The extent and terms of participation by an intervenor in a limited capacity shall be
220 determined by the Council.

221
222 (c) If the motion to intervene is granted, the movant becomes an intervenor
223 and a party to the proceeding with the right to have notice, appear at the taking of
224 testimony, produce and cross-examine witnesses, and be heard on the argument of the
225 case. The party intervening shall give notice of intervention to all other parties.

226
227 **Section 10. Ex Parte Communications.**

228
229 Except as authorized by law, a party or a party's attorney or representative shall
230 not communicate with any Council member in connection with any issue of fact or law
231 concerning any pending contested case, except upon notice and opportunity for all
232 parties to participate. Should ex parte communication occur, the Council member shall
233 advise all parties of the communication as soon as possible thereafter and, if requested,
234 shall allow any party an opportunity to respond prior to ruling on the issue.

235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279

Section 11. **Motions and Motion Practice.**

(a) Unless these rules or an order of the hearing officer establish time limitations other than those contained herein, all motions except motions for enlargement of time and motions made during hearing shall be served at least ten (10) days prior to the hearing on the motion. A party affected by the motion may serve a response together with affidavits, if any, at least three (3) days before the hearing on the motion or within twenty (20) days after service of the motion, whichever is earlier. Unless the hearing officer permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within fifteen (15) days after service of the response, whichever is earlier. Unless the hearing officer otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at least one day prior to the hearing on the motion.

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

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

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

Section 12. **Setting Hearings and Other Proceedings.**

(a) The hearing officer or Chair of the Council, as applicable, shall assign a docket number to each contested case. All papers, pleadings, motions, and orders filed thereafter shall contain:

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

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

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

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

280 settlement conferences, and the evidentiary hearing.

281

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

285

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

290

291 Section 13. **Consolidation.**

292

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

299

300 Section 14. **Continuances and Extensions of Time.**

301

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

306

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

311

312 (c) For contested cases conducted regarding objections pursuant to W.S. 35-
313 11-406(k), a motion for continuance may not be granted if the motion would continue
314 the hearing beyond the 20-day period provided in that statute unless the parties stipulate
315 to a different period.

316

317 Section 15. **Discovery.**

318

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

321

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

324

325 Section 16. **Subpoenas.**
326

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

331
332 Section 17. **Summary Disposition.**

333
334 Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to
335 contested cases.

336
337 Section 18. **Prehearing Procedures.**

338
339 (a) Unless otherwise ordered by the hearing officer, each party to a
340 contested case shall file and serve on all other parties and the hearing officer a
341 prehearing disclosure statement setting forth:

342
343 (i) A complete list of all witnesses who will or may testify, together
344 with information on how that witness may be contacted, and a brief description of the
345 testimony the witness is expected to give in the case. If a deposition is to be offered into
346 evidence, the original shall be filed with the Council;

347
348 (ii) A statement of the specific claims, defenses, and issues which
349 the party asserts are before the hearing officer for hearing, based on the party's initial
350 filing;

351
352 (iii) A statement of the burden of proof to be assigned in the contested
353 case with reference to specific regulatory, statutory, constitutional, or other authority
354 established by relevant case law;

355
356 (iv) A statement of stipulated facts. If the parties are unable to stipulate
357 to facts, the parties shall indicate what efforts have been made to stipulate to facts and the
358 reasons facts cannot be stipulated;

359
360 (v) A complete list of all documents, statements, etc., which the party
361 will or may introduce into evidence; and

362
363 (vi) An approximation of the time required for the hearing.

364
365 (b) Parties shall file and serve prehearing disclosure statements on or before
366 the date established by the hearing officer.

367
368 (c) The information provided in a prehearing disclosure statement shall be
369 binding on each party throughout the course of the contested case unless modified

370 for good cause.

371

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

375

376 (e) The hearing officer may modify the requirements of a prehearing
377 disclosure statement.

378

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

382

383 (g) If a prehearing order is entered, the prehearing order shall control
384 the course of the hearing.

385

386 **Section 19. Burden of Proof.**

387

388 The hearing officer shall assign the burden of proof in accordance with
389 applicable law.

390

391 **Section 20. Evidence.**

392

393 (a) The hearing officer shall rule on the admissibility of evidence in
394 accordance with the following:

395

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

399

400 (ii) Evidence may be offered through witness testimony or in
401 documentary form;

402

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

407

408 (iv) The rules of privilege recognized by Wyoming law shall be
409 given effect; and

410

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

413

414 (b) Each party shall have the opportunity to cross-examine witnesses. The

415 hearing officer may allow cross-examination on matters not covered on direct
416 examination. Each party shall have the opportunity to perform re-direct examination of
417 witnesses on matters covered during cross-examination.

418

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

421

422 **Section 21. Contested Case Hearing Procedure.**

423

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

426

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

432

433 (c) The hearing officer shall have discretion to allow opening statements and
434 closing arguments.

435

436 **Section 22. Default.**

437

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

441

442 **Section 22. Expedited Hearing.**

443

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

447

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

451

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

455

456 **Section 24. Recommended Decision.**

457

458 In those contested cases where the hearing officer makes a recommended
459 decision, the hearing officer shall file the recommended decision with the Council and

460 serve copies of the recommended decision on all parties to the contested case. Unless
461 otherwise ordered, parties shall have ten (10) days to file written exceptions to the
462 hearing officer's recommended decision. Written exceptions shall be filed with the
463 Council and served on all parties.

464

465 **Section 25. Final Decision.**

466

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

470

471 (b) A final decision shall include findings of fact and conclusions of law,
472 separately stated. When the hearing officer allows the parties to submit a proposed final
473 order, the parties shall file the original with the Council and serve copies of the
474 proposed order on all other parties and the hearing officer.

475

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

480

481 **Section 26. Incorporation by Reference.**

482

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

485

486 [http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE_S_OF_CIVIL_PROCEDURE.pdf)
487 [S_OF_CIVIL_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE_S_OF_CIVIL_PROCEDURE.pdf)

488

489 (i) Rule 11, Wyoming Rules of Civil Procedure, adopted by the
490 Wyoming Supreme Court and in effect on July 1, 2008;

491

492 (ii) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the
493 Wyoming Supreme Court and in effect on April 11, 1995;

494

495 (iii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the
496 Wyoming Supreme Court and in effect on February 11, 1975;

497

498 (iv) Rule 45, Wyoming Rules of Civil Procedure, adopted by the
499 Wyoming Supreme Court and in effect on October 1, 2009;

500

501 (v) Rule 52, Wyoming Rules of Civil Procedure, adopted by the
502 Wyoming Supreme Court and in effect on July 1, 2000;

503

504 (vi) Rule 56, Wyoming Rules of Civil Procedure, adopted by the

505 Wyoming Supreme Court and in effect on October 11, 1964;

506

507 (vii) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the
508 Wyoming Supreme Court and in effect on July 1, 2008.

509

510 (b) On and after March 1, 2017, the code, standard, rule, or regulation below
511 is incorporated by reference, and after March 1, 2017 can be found at:

512

513 http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE
514 [S_OF_CIVIL_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE)

515

516 (i) Rule 11, Wyoming Rules of Civil Procedure, adopted by the Wyoming
517 Supreme Court and in effect on March 1, 2017;

518

519 (ii) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the
520 Wyoming Supreme Court and in effect on March 1, 2017;

521

522 (iii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming
523 Supreme Court and in effect on March 1, 2017;

524

525 (iv) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming
526 Supreme Court and in effect on March 1, 2017;

527

528 (v) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming
529 Supreme Court and in effect on March 1, 2017;

530

531 (vi) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming
532 Supreme Court and in effect on March 1, 2017;

533

534 (vii) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming
535 Supreme Court and in effect on March 1, 2017.

536

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

539

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

543

544