

**Department of Environmental Quality**  
**Rules of Practice and Procedure, Docket 16-1101**  
**Summary of Changes and Corrections**  
**March 2, 2017**

**Chapter 1**

***Section 1:***

In preparation for the January 19 rulemaking hearing, DEQ identified that the cross reference in subsection (a) was incorrect:

(a): Cross reference corrected from ~~16-3-301~~ to [16-3-101](#).

***Section 6:***

In preparation for the January 19 rulemaking hearing, DEQ identified inconsistencies between the federal language and the language in Section 6. DEQ proposes to revise Section 6 to the following:

Members of the Council shall recuse themselves from contested case proceedings involving the review of surface water discharge permits if they ~~derive~~ [receive, or have during the previous 2 years received](#), a significant portion of income directly or indirectly from ~~the~~ permit holders or applicants for ~~the a~~ permit ~~subject to review by the Council~~, as required by the Clean Water Act, Section 304(i)(~~d~~)(D), 33 U.S.C. § 1314(i)(D), and 40 C.F.R. § 123.25(c).

***Section 8:***

In preparation for the January 19 rulemaking hearing, DEQ identified language, necessary for conformance with SMCRA, that was inadvertently omitted. Based on discussion during the hearing, DEQ recommends subsection (b) be revised as follows:

(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 person with an interest that is or may be adversely affected may appeal the decision to the Council for a hearing in accordance with Chapters 1 and 2 of these rules. [The Director shall notify all persons who submitted timely public comments on the underlying application.](#) The Council shall start the hearing within thirty (30) days of the request for a hearing. ~~The burden of proof at the hearing shall be on the party seeking to reverse the Director's decision.~~ The Council shall make a final written decision within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to the hearing.

In preparation for the January rulemaking hearing, DEQ identified that we had omitted

some language we need for our SMCRA programs and proposes to revise paragraph (c)(iv):

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

### ***Section 10***

In preparation for the rulemaking hearing, DEQ identified that the cross reference in paragraph (a)(ii) was incorrect:

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

During discussion with the Council at the January hearing, the Council requested that EQC contact information be added to subsection (c):

All incorporated matter is available for public inspection at the Department’s Cheyenne office or at the Council’s Cheyenne office. Contact information for the Department’s Cheyenne office may be obtained at <http://deq.wyoming.gov/> or from (307) 777-7937. Contact information for the Council’s Cheyenne office may be obtained at <http://wyomingeqc.wyo.gov/> or from (307) 777-7170.

## **Chapter 2**

### ***Section 2:***

In preparation for the January 19 rulemaking hearing, DEQ identified that the cross reference to Section 25 was incorrect and that Rule 11 was missing from the list:

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

### ***Section 14***

In preparation for the January 19 rulemaking hearing, DEQ corrected a spacing error in subsection (a).

### ***Section 25***

During discussion with the Council at the January hearing, the Council requested that DEQ correct “office” to “officer” in subsection (c):

(c) A hearing ~~offiee~~ officer may at any time prior to judicial review correct clerical errors in final decisions or other parts of the record. A party may move that clerical errors or other parts

of the record be corrected. During the pendency of judicial review, such errors may be corrected only with leave of the court having jurisdiction.

***Section 26:***

In preparation for the January 19 rulemaking hearing, DEQ identified that Rule 11 was inadvertently omitted. DEQ proposed to add rule 11 to the list and renumber the remaining paragraphs. The rules listed in Section 26 will have been adopted by the date of the March hearing, so DEQ also proposes to revise the effective date to March 1, 2017 so that the incorporation pertains only to the March 1, 2017 rules and not any later amendments:

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

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

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

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

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

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

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

During discussion with the Council at the January hearing, the Council requested that EQC contact information be added to subsection (d):

All incorporated matter is available for public inspection at the Department's Cheyenne office or at the Council's Cheyenne office. Contact information for the Department's Cheyenne office may be obtained at <http://deq.wyoming.gov/> or from (307) 777-7937. Contact information for the Council's Cheyenne office may be obtained at <http://wyomingeqc.wyo.gov/> or from (307) 777-7170.

**Chapter 3**

***Section 1***

In preparation for the January 19 rulemaking hearing, DEQ added underlining to the Section 1 of the strike/underline version. The section was previously blue to note that it had been added, but the underlining was missing.

### ***Section 3***

In preparation for the January 19 rulemaking hearing, DEQ corrected a spacing error in subsection (b)(ii) of the strike/underline version.

### ***Section 6***

During discussion with the Council at the January hearing, the Council requested that DEQ remove “by filing a notice of appointment with the Council” from subsection (a):

The Council chair shall assign a hearing officer from among the Council members ~~by filing a notice of appointment with the Council~~ within thirty (30) days of the Department filing the proposed rule with the Council. The appointed hearing officer shall preside over all proceedings before the Council related to the proposed rule. If the assigned Council member leaves the Council through resignation, expiration of membership, or otherwise, the chair shall assign a hearing officer as a replacement and shall serve as the hearing officer in the interim before the substitute assignment is made.

## **Chapter 5**

### ***Section 1***

In preparation for the January 19 rulemaking hearing, DEQ identified that in subsection (a), the last line of the passage "Failure to make a timely filing of the petition may constitute a waiver of the right to such an award" was incorrectly shown as stricken in the strike underline version. The strike and color has been removed from the strike underline version.

### ***Section 2***

In preparation for the January 19 rulemaking hearing, DEQ corrected a capitalization format error in subparagraph (a)(ii)(A):

...~~¶~~The Department issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

## **Chapter 7**

### ***Section 7***

In preparation for the January 19 rulemaking hearing, DEQ identified that in subsection

(a), the color indicated it was an added word, but the underline was missing. DEQ added the underline to “removing”:

In considering removing designations, the Council shall follow a two-tiered review process.

## **Chapter 9**

### ***Section 2***

During discussion with the Council and the public at the January hearing, the Council requested that DEQ change subsection (b) to include public commenters. DEQ corrected “action” to “application” as the process covers applications:

The Director shall inform the applicant, ~~and~~ the person requesting the informal conference, and all persons who submitted timely public comments on the underlying application, whether the request is granted or denied.