

**CHAPTER 2  
CONTESTED CASE HEARINGS**

**Section 1. Purpose and Scope.**

These rules are promulgated with the intent to adopt as much of the Chapter 2 Rules for Contested Case Practice and Procedure before the Office of Administrative Hearings (OAH Rules) adopted under W.S. 16-3-102(d) as is consistent with the specific and distinct requirements of the Department and the Council and applicable law. These rules shall govern all contested case proceedings before the Council.

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

The Council shall conduct all contested case hearings with reference to the Wyoming Rules of Civil Procedure. Section 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 3. Informal Proceedings and Alternative Dispute Resolution.**

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

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

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

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

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

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

47 (ii) Where a person is objecting to a permit, service of all documents shall  
 48 include the permit applicant when serving the petition and all other pleadings and motions.  
 49

50 (b) The petition for hearing shall set forth:

51  
 52 (i) Name, phone number, electronic mail address, and physical address of the  
 53 petitioner and, if applicable, the petitioner's attorney;  
 54

55 (ii) The action, decision, order, or permit upon which a hearing is requested;  
 56

57 (iii) A statement in ordinary but concise language of the specific allegations on  
 58 which the petition is based, including references to the statute, rule, or order that the petitioner  
 59 alleges has been violated, and  
 60

61 (iv) A request for hearing before the Council.  
 62

63 (c) The contested case shall be deemed commenced on the date of filing the petition  
 64 with the Council.  
 65

66 (d) No responsive pleadings are mandatory prior to the prehearing scheduling  
 67 conference.  
 68

## 69 **Section 5. Filing and Service of Papers**

70  
 71 (a) In all contested case proceedings, the parties shall file all original documents,  
 72 pleadings, and motions with the Council and serve all other parties with true and correct copies  
 73 of the particular document, pleading, or motion. The original and all copies shall be  
 74 accompanied by a certificate of service. The Council shall maintain the complete original file,  
 75 and all parties and the hearing officer shall be provided copies of all contested case documents,  
 76 pleadings, and motions contained therein.  
 77

78 (b) Filing and service under this rule shall be made by hand delivery, U.S. mail  
 79 transmittal to the last known address, or electronically uploaded to the relevant docket at  
 80 <http://wyomingeqc.wyo.gov/>. Where all parties have not consented to receive electronic service,  
 81 the party electronically filing shall otherwise serve the documents to the parties who have not  
 82 consented to receive electronic service. Parties may file by means other than those described in  
 83 this Section upon approval from the hearing officer.  
 84

## 85 **Section 6. Referral to Office.**

86  
 87 (a) Upon referral to the Office to conduct a contested case in accordance with W.S.  
 88 35-11-112(a), the Council shall transmit to the Office copies of appropriate documents  
 89 reflecting the dispute and the basis thereof, including any written challenge(s) initiating the  
 90 contested case and a reference to applicable law.  
 91

92 (b) The Council shall submit a transmittal sheet, on a form provided by the

93 Office, sufficiently identifying the contested case, including:

- 94
- 95 (i) The name of the known parties and their attorneys or representatives;
- 96
- 97 (ii) A concise statement of the nature of the contested case;
- 98
- 99 (iii) Notification of any time limits for the setting of a hearing or entry of a  
100 decision, location requirements, and anticipated special features or unique requirements; and  
101
- 102 (iv) Certification by an authorized officer of the Council that all parties have  
103 been properly served with a true and complete copy of the transmittal form.  
104

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

106

107 (a) The Chair may refer, assign, or designate a hearing officer to preside over any  
108 contested case unless otherwise provided by law. When appropriate under applicable law and  
109 at the Council's request, the hearing officer may provide a recommended decision.  
110

111 (b) At any time while a contested case is pending, a hearing officer or Council  
112 member may withdraw from a contested case by filing written notice of recusal or entering a  
113 verbal notice of recusal into the record. As soon as the notice of recusal is entered, the recused  
114 hearing officer or Council member shall not participate in the contested case.  
115

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

- 120
- 121 (i) Has been engaged as counsel in the action prior to being appointed as  
122 hearing officer;
- 123
- 124 (ii) Has a material interest in the outcome of the action;
- 125
- 126 (iii) Is related by consanguinity to a party;
- 127
- 128 (iv) Is a witness in the action;
- 129
- 130 (v) Is biased or prejudiced against the party or the party's attorney or  
131 representative; or
- 132
- 133 (vi) Any other ground provided by law.  
134

135 (d) A motion for recusal shall be supported by an affidavit or affidavits of any  
136 person or persons stating sufficient facts to show the existence of grounds for the motion. Prior  
137 to a hearing on the motion, any party may file counter-affidavits. The motion shall be heard  
138 by the hearing officer or, at the discretion of the hearing officer, by another hearing officer. If

139 the motion is granted, the Council Chair shall immediately designate another hearing officer to  
140 preside over the contested case or shall excuse the Council member(s).

141  
142 (e) A hearing officer appointed from outside the Council members shall not be  
143 subject to a voir dire examination by any party.

144  
145 (f) Subject to limitations imposed by the hearing officer, any party may be  
146 permitted to conduct a voir dire examination of a Council member.

147  
148 **Section 8. Appearances and Withdrawals.**

149  
150 (a) A party, whether it be an individual, corporation, partnership, governmental  
151 organization, or other entity may appear through an attorney or representative. An individual  
152 may represent himself/herself. An individual or entity seeking to intervene in a contested case  
153 under Rule 24 of the Wyoming Rules of Civil Procedure may appear through an attorney or  
154 representative prior to a ruling on the motion to intervene.

155  
156 (b) Prior to withdrawing from a contested case, an attorney shall file a motion to  
157 withdraw. The motion for an attorney's withdrawal shall include a statement indicating the  
158 manner in which notification was given to the client and setting forth the client's last known  
159 address and telephone number. The hearing officer shall not grant the motion to withdraw  
160 unless the attorney has made reasonable efforts to give actual notice to the client that:

161  
162 (i) The attorney wishes to withdraw;

163  
164 (ii) The client has the burden of keeping the hearing officer informed of  
165 the address where notices, pleadings, or other papers may be served;

166  
167 (iii) The client has the obligation to prepare, or to hire another attorney  
168 or representative to prepare, for the contested case and the dates of proceedings;

169  
170 (iv) The client may suffer an adverse determination in the contested case if  
171 the client fails or refuses to meet these burdens;

172  
173 (v) The pleadings and papers in the case shall be served upon the client at the  
174 client's last known address; and

175  
176 (vi) The client has the right to object within fifteen (15) days of the date of  
177 notice.

178  
179 (c) Prior to withdrawing from a contested case, a representative shall provide  
180 written notice of withdrawal to the Council.

181  
182 **Section 9. Intervention.**

183  
184 (a) Any person interested in obtaining the relief sought by a party or otherwise

185 interested in the determination of a proceeding, other than surface coal mining operations  
186 pending before the Council, may file a motion to intervene before or at the hearing, but not  
187 thereafter except for good cause shown. The motion shall set forth the grounds of the proposed  
188 intervention, the position and interest of the petitioner in the proceeding, and affirmative relief  
189 sought. Leave shall not be granted unless the Council determines that the movant is adversely  
190 affected by the action and has a legal right to intervene, under the standards set out in W.R.C.P.  
191 Rule 24.

192

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

203

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

208

#### 209 **Section 10. Ex Parte Communications.**

210

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

217

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

219

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

230

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

235  
236 (c) Prior to filing any non-dispositive motion, a moving party shall make  
237 reasonable efforts to contact all other parties, representatives, and attorneys. Any such non-  
238 dispositive motion shall include a statement concerning efforts made to confer with the other  
239 party(s) and position(s) on the motion.

240  
241 (d) All written motions filed with the Council shall be accompanied by a proposed  
242 order.

### 243 244 **Section 12. Setting Hearings and Other Proceedings.**

245  
246 (a) The hearing officer or Chair of the Council, as applicable, shall assign a docket  
247 number to each contested case. All papers, pleadings, motions, and orders filed thereafter shall  
248 contain:

249  
250 (i) A conspicuous reference to the assigned docket number;

251  
252 (ii) A caption setting forth the title of the contested case and a brief  
253 designation describing the document filed; and

254  
255 (iii) The name, address, telephone number, and signature of the person  
256 who prepared the document.

257  
258 (b) The hearing officer shall set the course of proceedings through the issuance of a  
259 scheduling order. This may include, but is not limited to, pre-hearing conferences,  
260 confidentiality issues, summary disposition deadlines, motion practice,  
261 settlement conferences, and the evidentiary hearing.

262  
263 (c) Prehearing conferences may be held at the discretion of the hearing officer. Any  
264 party may request a prehearing conference to address issues such as discovery, motion  
265 deadlines, scheduling orders, or case status.

266  
267 (d) At the hearing officer's discretion and unless otherwise provided by the  
268 Council, telephone or videoconference calls may be used to conduct any proceeding. At the  
269 discretion of the hearing officer, parties or their witnesses may be allowed to participate in  
270 any hearing by telephone or videoconference.

### 271 272 **Section 13. Consolidation.**

273  
274 A party may seek consolidation of two or more contested cases by filing a motion to  
275 consolidate in each case sought to be consolidated. If consolidation is ordered and unless  
276 otherwise ordered by the hearing officer, all subsequent filings shall be in the case first filed,

277 and all previous filings related to the consolidated cases shall be placed together under that  
278 docket number. Consolidation may be ordered on a hearing officer's own motion.  
279

#### 280 **Section 14. Continuances and Extensions of Time.**

281  
282 (a) A motion for a continuance of any scheduled hearing shall be in writing, state  
283 the reasons for the motion, and be filed and served on all parties and the hearing officer. A  
284 motion for a continuance shall be granted only upon a showing of good cause.  
285

286 (b) A motion for an extension of time for performing any act prescribed or  
287 allowed by these rules or by order of the hearing officer shall be filed and served on all parties  
288 and the hearing officer prior to the expiration of the applicable time period. A motion for  
289 extension of time shall be granted only upon a showing of good cause.  
290

291 (c) For contested cases conducted regarding objections pursuant to W.S. 35-11-  
292 406(k), a motion for continuance may not be granted if the motion would continue the hearing  
293 beyond the 20-day period provided in that statute unless the parties stipulate to a different  
294 period.  
295

#### 296 **Section 15. Discovery.**

297  
298 (a) The taking of depositions and discovery shall be in accordance with  
299 W.S. 16-3-107(g).  
300

301 (b) Unless the hearing officer orders otherwise, parties shall not file discovery  
302 requests, answers, and deposition notices with the Council.  
303

#### 304 **Section 16. Subpoenas.**

305  
306 Any party may request the hearing officer to issue a subpoena to compel the attendance  
307 of a witness or for the production of documents. Requests for a subpoena shall be  
308 accompanied by a completed subpoena that conforms to Rule 45 of the Wyoming Rules of  
309 Civil Procedure.  
310

#### 311 **Section 17. Summary Disposition.**

312  
313 Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to  
314 contested cases.  
315

#### 316 **Section 18. Prehearing Procedures.**

317  
318 (a) Unless otherwise ordered by the hearing officer, each party to a contested case  
319 shall file and serve on all other parties and the hearing officer a prehearing disclosure statement  
320 setting forth:  
321

322 (i) A complete list of all witnesses who will or may testify, together with

323 information on how that witness may be contacted, and a brief description of the testimony the  
324 witness is expected to give in the case. If a deposition is to be offered into evidence, the original  
325 shall be filed with the Council;

326

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

329

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

333

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

337

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

340

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

342

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

345

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

348

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

352

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

355

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

358

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

361

### 362 **Section 19. Burden of Proof.**

363

364 The hearing officer shall assign the burden of proof in accordance with applicable  
365 law.

366

### 367 **Section 20. Evidence.**

368



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

371  
372 (i) Evidence of the type commonly relied upon by reasonably prudent  
373 persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or  
374 unduly repetitious evidence shall be excluded.

375  
376 (ii) Evidence may be offered through witness testimony or in  
377 documentary form;

378  
379 (iii) Testimony shall be given under oath administered by the hearing  
380 officer. Deposition testimony and other pre-filed testimony may be submitted as evidence,  
381 provided the testimony is given under oath administered by an appropriate authority, and is  
382 subject to cross-examination by all parties;

383  
384 (iv) The rules of privilege recognized by Wyoming law shall be given  
385 effect; and

386  
387 (v) A hearing officer may take administrative notice of judicially  
388 cognizable facts, provided the parties are properly notified of any material facts noticed.

389  
390 (b) Each party shall have the opportunity to cross-examine witnesses. The  
391 hearing officer may allow cross-examination on matters not covered on direct examination.  
392 Each party shall have the opportunity to perform re-direct examination of witnesses on matters  
393 covered during cross-examination.

394  
395 (c) The hearing officer or Council member, when applicable, may ask questions of  
396 any party or witness.

397  
398 **Section 21. Contested Case Hearing Procedure.**

399  
400 (a) The hearing officer shall conduct the contested case and shall have discretion to  
401 direct the order of the proceedings.

402  
403 (b) Unless otherwise provided by law, and at the hearing officer's discretion, the  
404 party with the burden of proof shall be the first to present evidence. All other parties  
405 shall be allowed to cross-examine witnesses in an orderly fashion. When that party rests,  
406 other parties shall then be allowed to present their evidence. Rebuttal and surrebuttal evidence  
407 shall be allowed only at the discretion of the hearing officer.

408  
409 (c) The hearing officer shall have discretion to allow opening statements and  
410 closing arguments.

411  
412 **Section 22. Default.**

413  
414 Unless otherwise provided by law, a hearing officer may enter an order of default or

415 an order affirming agency action for a party's failure to appear at a lawfully noticed hearing.  
416

## 417 **Section 22. Expedited Hearing.** 418

419 (a) At the hearing officer's or Council's discretion and when allowed by applicable  
420 law, a contested case may be heard as an expedited hearing upon the motion of any party.  
421

422 (b) An expedited hearing shall be decided on written arguments, evidence, and  
423 stipulations submitted by the parties. A hearing officer or the Council may permit oral  
424 arguments upon the request of any party.  
425

426 (c) The hearing officer may require an evidentiary hearing in any case in which  
427 it appears that facts material to a decision in the case cannot be properly determined by an  
428 expedited hearing.  
429

## 430 **Section 24. Recommended Decision.** 431

432 In those contested cases where the hearing officer makes a recommended decision, the  
433 hearing officer shall file the recommended decision with the Council and serve copies of the  
434 recommended decision on all parties to the contested case. Unless otherwise ordered, parties  
435 shall have ten (10) days to file written exceptions to the hearing officer's recommended decision.  
436 Written exceptions shall be filed with the Council and served on all parties.  
437

## 438 **Section 25. Final Decision.** 439

440 (a) A final decision containing findings of fact, conclusions of law, and an order  
441 entered by the Council shall be in writing and served upon all parties to the contested case  
442 and the hearing officer, if applicable.  
443

444 (b) A final decision shall include findings of fact and conclusions of law, separately  
445 stated. When the hearing officer allows the parties to submit a proposed final order, the parties  
446 shall file the original with the Council and serve copies of the proposed order on all other  
447 parties and the hearing officer.  
448

449 (c) A hearing officer may at any time prior to judicial review correct clerical errors  
450 in final decisions or other parts of the record. A party may move that clerical errors or  
451 other parts of the record be corrected. During the pendency of judicial review, such errors may  
452 be corrected only with leave of the court having jurisdiction.  
453

## 454 **Section 26. Incorporation by Reference.** 455

456 (a) The code, standard, rule, or regulation below is incorporated by reference and can  
457 be found at:  
458

459 [http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING\\_RULES\\_OF\\_](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF_CIVIL_PROCEDURE.pdf)  
460 [CIVIL\\_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF_CIVIL_PROCEDURE.pdf)

- 461  
462 (i) Rule 11, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
463 Supreme Court and in effect on March 1, 2017:  
464
- 465 (ii) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the  
466 Wyoming Supreme Court and in effect on March 1, 2017;  
467
- 468 (iii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
469 Supreme Court and in effect on March 1, 2017;  
470
- 471 (iv) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
472 Supreme Court and in effect on March 1, 2017;  
473
- 474 (v) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
475 Supreme Court and in effect on March 1, 2017;  
476
- 477 (vi) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
478 Supreme Court and in effect on March 1, 2017;  
479
- 480 (vii) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
481 Supreme Court and in effect on March 1, 2017.  
482
- 483 (b) These rules do not incorporate later amendments or editions of the incorporated  
484 matter.  
485
- 486 (c) All incorporated matter is available for public inspection at the Department's  
487 Cheyenne office or at the Council's Cheyenne office. Contact information for the Department's  
488 Cheyenne office may be obtained at <http://deq.wyoming.gov/> or from (307) 777-7937. Contact  
489 information for the Council's Cheyenne office may be obtained at <http://wyomingeqc.wyo.gov/>  
490 or from (307) 777-7170.