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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;

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

(h) “Representative” means an individual other than an attorney who is authorized to

46 function in a representative capacity on behalf of a party to a contested case;
47

48 **Section 3. Computation of Time.**
49

50 (a) In computing any period of time prescribed or allowed by these rules, by order
51 or by any applicable statutes or regulations, the day of the act, event, or default from which
52 the designated period of time begins to run shall not be included. The last day of the period so
53 computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act
54 to be done is the filing of a paper, a day on which weather or other conditions have made
55 agency offices inaccessible, in which event the period runs until the end of the following
56 day which is not one of the aforementioned days. When the period of time prescribed or
57 allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall
58 be excluded in the computation. As used in this rule, "legal holiday" includes any day officially
59 recognized as a legal holiday in this state by designation of the legislature or appointment as a
60 holiday by the governor.
61

62 (b) Whenever a party has the right or is required to do some act within a prescribed
63 period after the service of a notice or other paper upon the party, and the notice or paper is served
64 upon the party by mail or by delivery to the agency for service, three (3) days shall be added to
65 the prescribed period. The three-day provision does not apply to rulemaking deadlines.
66

67 **Section 4. Notice of Hearing.**
68

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

- 71
- 72 (i) The time, place, and nature of the hearing;
 - 73
 - 74 (ii) The legal authority and jurisdiction under which the hearing is to be held;
 - 75
 - 76 (iii) The particular sections of the statutes and rules involved; and
 - 77

78 (iv) A short and plain statement of the matters asserted. If the Council is
79 unable to state the matters in detail at the time the notice is provided, the initial notice may be
80 limited to a statement of the issues involved, and upon a party's request, a more definite
81 and detailed statement shall be furnished.
82

83 (b) The Council may provide notice by posting through its website, where allowed by
84 the Wyoming Administrative Procedure Act.
85

86 **Section 5. Record of Proceedings.**
87

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

92 **Section 6. Contested Surface Water Discharge Permit Hearings.**
93

94 Members of the Council shall recuse themselves from contested case proceedings
95 involving the review of surface water discharge permits if they receive, or have during the
96 previous 2 years received, a significant portion of income directly or indirectly from permit
97 holders or applicants for a permit, as required by the Clean Water Act, Section 304(i)(D), 33
98 U.S.C. § 1314(i)(D), and 40 C.F.R. § 123.25(c).
99

100 **Section 7. Air Quality Division, State Implementation Plan.**
101

102 (a) The following are the only requirements in these procedural rules that are part
103 of the Air Quality Division's State Implementation Plan:
104

105 (i) The Council shall have at least a majority of members who represent the
106 public interest and do not derive a significant portion of their income from persons subject to
107 Air Quality permits or enforcement orders, as required by the Clean Air Act, Section
108 128(a)(1), 42 U.S.C. § 7428(a)(1);
109

110 (ii) Members of the Council shall disclose any potential conflicts of interest
111 in a public meeting of the Council, as required by the Clean Air Act, Section
112 128(a)(2), 42 U.S.C. § 7428(a)(2).
113

114 (b) All other requirements of these procedural rules, except those described in Section
115 7, are reserved to the authority of the State and are not part of the Air Quality Division's State
116 Implementation Plan.
117

118 **Section 8. Appeals to Council.**
119

120 (a) Where authorized by the Wyoming Environmental Quality Act, appeals to the
121 Council from final actions of the Administrators or Director shall be made within thirty (30)
122 days of notification of such action.
123

124 (b) Within thirty (30) days after notification of the Director's decision following an
125 informal conference governed by Chapter 9, Section 2 of these rules, the applicant or any person
126 with an interest that is or may be adversely affected may appeal the decision to the Council for a
127 hearing in accordance with Chapters 1 and 2 of these rules. The Director shall notify all persons
128 who submitted timely public comments on the underlying application. The Council shall start the
129 hearing within thirty (30) days of the request for a hearing. The Council shall make a final
130 written decision within thirty (30) days after the hearing and furnish the decision to the applicant
131 and all parties to the hearing.

132 (c) Where a hearing is requested under subsection (b) of this section, the Council
133 may, under such conditions as it may prescribe, grant such temporary relief as it deems
134 appropriate pending final determination of the proceedings if:
135

136 (i) All parties to the proceedings have been notified and given an opportunity

137 to be heard on a request for temporary relief;

138

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

141

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

144

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

148

149 **Section 9. Appeals from Final Council Action.**

150

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

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154 **Section 10. Incorporation by Reference.**

155

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

158

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

161

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

164

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

166

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

169

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

175 **Section 11. Public Records.**

176

177 (a) These rules incorporate by reference the following rules and regulations, in effect
178 as of September 6, 2016:

179

180 (i) Wyoming Department of Administration and Information, Director's
181 Office, Chapter 2, Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and

182 Producing Public Records, available at <https://rules.wyo.gov>.

183

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

186

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