

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 Section 6:

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

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

14 Section 8:

15 In preparation for the rulemaking hearing, DEQ discovered that we had omitted
16 some language we need for our SMCRA programs

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

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

22 Section 10

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

24 CHAPTER ~~I~~
25 GENERAL RULES ~~OF PRACTICE AND PROCEDURE~~
26

27 Section 1. **Authority.**

28
29 (a) These rules are promulgated as authorized by the Wyoming Administrative
30 Procedure Act, (~~W.S. 94-101 16-3-101 through 9-4-115 16-3-115.~~) and the Wyoming
31 Environmental Quality Act (~~W.S. 35-11-101 through 35-11-1104~~), as defined by W.S.
32 35-11-103(a)(xiii). These rules shall apply in all proceedings before the Department of
33 Environmental Quality and the Environmental Quality Council, ~~and its examiners.~~
34 ~~Existing Chapters I through IV are hereby repealed. These rules and regulations are~~
35 ~~effective upon final approval of a state program pursuant to P.L. 95-87.~~
36

37 (b) In case of conflict between these rules and the provisions of the Wyoming
38 Administrative Procedure Act or the Wyoming Environmental Quality Act, those acts
39 shall govern. In case of conflict between the Wyoming Administrative Procedure Act and
40 the Wyoming Environmental Quality Act, the Wyoming Environmental Quality Act shall
41 govern.
42

43 (c) All hearings before the Council shall be held pursuant to these rules, the
44 provisions of the Wyoming Environmental Quality Act, and, to the extent they do not
45 conflict, the Wyoming Administrative Procedure Act.
46

47 Section 2. **Definitions.**

48
49 ~~(a) All of the definitions set forth and contained in the Wyoming~~
50 ~~Environmental~~
51 ~~Quality Act and the Administrative Procedure Act are incorporated herein by reference.~~
52 ~~In~~
53 ~~addition, the following definitions are set forth:~~
54

55 ~~(i) Applicant: Any person applying for a permit authorized under the~~
56 ~~Environmental Quality Act or any party petitioning for rulemaking in accordance with~~
57 ~~W.S. 9-4-~~
58 ~~106.~~
59

60 ~~(ii) Protestant: Any person desiring to protest the application of a~~
61 ~~permit or any person requesting a hearing before the Environmental Quality Council in~~
62 ~~accordance with the~~
63 ~~Environmental Quality Act and who is objecting to an action of the Department of~~
64 ~~Environmental~~
65 ~~Quality and desiring affirmative relief.~~
66

67 ~~(iii) Presiding officer: The officer designated by the Chairman of the~~
68 ~~Environmental Quality Council to conduct hearings.~~
69

70 ~~(iv) The Wyoming Administrative Procedure Act: W.S. 9-4-101-~~

71 ~~through 9-4-~~
72 ~~115, as amended.~~

73
74 The following definitions are intended to supplement the definitions set forth and
75 contained in the Wyoming Administrative Procedure Act and the Wyoming
76 Environmental Quality Act:

77
78 (a) “Attorney” means an attorney licensed to practice law in the State of
79 Wyoming or an attorney who is licensed to practice law in another state and who is
80 associated with an attorney licensed to practice law in the State of Wyoming;

81
82 (b) “Contested case” means a proceeding in which legal rights, duties, or
83 privileges of a party are required by law to be determined by the Council after an
84 opportunity for hearing;

85
86 (c) “Council” means the Environmental Quality Council;

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

89
90 (e) “Office” means the Office of Administrative Hearings;

91
92 (f) “Petition” means a written request for relief, submitted to the Council,
93 in
94 accordance with the Wyoming Environmental Quality Act;

95
96 (g) “Petitioner” means a person who submits a written request for relief to
97 the Council in accordance with the Wyoming Environmental Quality Act;

98
99 (h) “Representative” means an individual other than an attorney who is
100 authorized to function in a representative capacity on behalf of a corporate party to a
101 contested case;

102
103 Section 3. ~~Initiation of Proceedings~~ Computation of Time.

104
105 ~~(a) — All hearings before the Council, appeals or others, shall be held pursuant~~
106 ~~to these rules, the provisions of the Environmental Quality Act W.S. 35-11-101 through~~
107 ~~1104 and the~~
108 ~~Wyoming Administrative Procedure Act.~~

109
110 ~~(b) — All persons requesting a hearing or protesting a permit shall file two~~
111 ~~copies of a written petition directed to and served upon both the Chairman of the Council~~
112 ~~and the Director of the Department.~~

113
114 ~~(i) — Original service shall be by registered mail, return receipt~~
115 ~~requested.~~

116 ~~Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil~~
117 ~~Procedure.~~

118
119 (ii) ~~Where protestant is objecting to a permit, he shall also serve the~~
120 ~~permit applicant with a copy of the petition and all other pleadings and motions.~~

121
122 (e) ~~The petition for hearing shall set forth:~~

123
124 (i) ~~Name and address of the person making the request or protest and~~
125 ~~the name and address of his attorney, if any.~~

126
127 (ii) ~~The action, decision, order or permit upon which a hearing is~~
128 ~~requested or an objection is made.~~

129
130 (iii) ~~A statement in ordinary, but concise language of the facts on~~
131 ~~which the request or protest is based, including whenever possible particular reference to~~
132 ~~the statutes, rules or orders that the Applicant or Protestant alleges have been violated.~~

133
134 (iv) ~~A request for hearing before the Council.~~

135
136 (d) ~~The filing of such petition shall constitute the commencement of the~~
137 ~~proceeding on the date filed.~~

138
139 (e) ~~A copy of the petition shall be served on any party who appeared in prior~~
140 ~~proceedings pertaining to the same matter.~~

141
142 ~~(formerly Section 10(a))~~ (a) ~~When time prescribed by these rules or by order of~~
143 ~~the Council for doing any act expires on a Saturday or legal holiday, such time shall~~
144 ~~extend to and include the next succeeding business day. In computing any period of time~~
145 ~~prescribed or allowed by these rules, by order or by any applicable statutes or~~
146 ~~regulations, the day of the act, event, or default from which the designated period of~~
147 ~~time begins to run shall not be included. The last day of the period so computed shall be~~
148 ~~included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done~~
149 ~~is the filing of a paper, a day on which weather or other conditions have made agency~~
150 ~~offices inaccessible, in which event the period runs until the end of the following~~
151 ~~day which is not one of the aforementioned days. When the period of time prescribed~~
152 ~~or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal~~
153 ~~holidays shall be excluded in the computation. As used in this rule, "legal holiday"~~
154 ~~includes any day officially recognized as a legal holiday in this state by designation of~~
155 ~~the legislature or appointment as a holiday by the governor.~~

156
157 ~~(formerly Section 10(b))~~(b) ~~For good cause shown, extensions and continuances~~
158 ~~of time may be granted or denied in the discretion of the Council. Whenever a party has~~
159 ~~the right or is required to do some act within a prescribed period after the service of a~~
160 ~~notice or other paper upon the party, and the notice or paper is served upon the party by~~

161 mail or by delivery to the agency for service, three (3) days shall be added to the
162 prescribed period. The three-day provision does not apply to rulemaking deadlines.

163
164 Section 4. **Notice of Hearing.**

165
166 ~~(a) — Notice of hearings shall conform to W.S. 9-4-107(b). The manner and~~
167 ~~time for~~
168 ~~giving notice shall be as follows:~~

169
170 ~~(i) — When the Council determines that it shall hold a hearing on its own~~
171 ~~motion, it shall give notice as promptly as possible in advance of the hearing date to all~~
172 ~~parties by registered or certified mail, return receipt requested.~~

173
174 ~~(ii) — When a party desires that a hearing be held before the Council he~~
175 ~~shall file his petition and the Council shall forthwith set a date for hearing and notify the~~
176 ~~applicant thereof.~~

177
178 (a) The Council or its designee shall provide notice of any hearing, which
179 shall include:

180
181 (i) The time, place, and nature of the hearing;

182
183 (ii) The legal authority and jurisdiction under which the hearing is to
184 be held;

185
186 (iii) The particular sections of the statutes and rules involved; and

187
188 (iv) A short and plain statement of the matters asserted. If the
189 Council is unable to state the matters in detail at the time the notice is provided, the
190 initial notice may be limited to a statement of the issues involved, and upon a
191 party's request, a more definite and detailed statement shall be furnished.

192
193 (b) The Council may provide notice by posting through its website, where
194 allowed by the Wyoming Administrative Procedure Act.

195
196 Section 5. ~~Attorney General Presence~~ **Record of Proceedings.**

197
198 ~~(a) — In all matters before the Council, the Council may request the Attorney-~~
199 ~~General of the State of Wyoming or a representative of his staff to be present throughout~~
200 ~~the hearing.~~

201
202 ~~(b) — The Council, upon its own motion or the motion of any party, may certify-~~
203 ~~an issue of law to the Attorney General for his opinion. Such opinion shall thereafter be~~

204 ~~part of the record of any proceeding before the Council, and may, if the court so directs,~~
205 ~~constitute a finding of the Council with respect to the issuance of final orders or~~
206 ~~decisions.~~

207
208 The Council or Department shall make appropriate arrangements to assure that a
209 record of the proceeding is kept pursuant to W.S. 16-3-107(o) and (p), as appropriate.
210 Copies of the transcript taken at any hearing may be obtained by any party, interested
211 person, or entity from the court reporter taking the testimony at such fee as the reporter
212 may charge.

213
214 Section 6. ~~Record of Proceedings—Reporter~~ Contested Surface Water
215 Discharge Permit Hearings.

216
217 ~~(a) — Unless otherwise agreed by the parties and consented to by the Council,~~
218 ~~all hearings, including all testimony, shall be reported verbatim by a competent reporter.~~
219 ~~The compensation of such reporter shall be paid as required by law and as ordered by the~~
220 ~~Council. The Council may direct any party or parties to assume the cost of the transcript.~~
221

222 Members of the Council shall recuse themselves from contested case proceedings
223 involving the review of surface water discharge permits if they receive, or have during
224 the previous 2 years received, a significant portion of income directly or indirectly from
225 permit holders or applicants for a permit, as required by the Clean Water Act, Section
226 304(i)(D), 33 U.S.C. § 1314(i)(D), and 40 C.F.R. § 123.25(c).

227
228 Section 7. ~~Record~~ Air Quality Division, State Implementation Plan.

229
230 ~~(a) — The record in all contested cases (Chapter II) shall include:~~

231
232 ~~(i) — All formal and informal notices.~~

233
234 ~~(ii) — Evidence received or considered including matters officially~~
235 ~~noticed.~~

236
237 ~~(iii) — Questions and offers of proof, objections, and rulings thereon.~~

238
239 ~~(iv) — Any proposed findings and objections thereto.~~

240
241 ~~(v) — The decision and order of the Council.~~

242
243 ~~(vi) — The transcript of all recorded proceedings.~~

244
245 ~~(b) — The record in hearings held under Chapter III shall include all relevant~~
246 ~~information presented to the Council.~~

247
248 ~~(c) — At the close of the hearing, the presiding officer may afford all interested~~

~~parties time in which to submit additional written testimony or written proposed corrections of the transcript, pointing out errors that may have been made in transcribing the testimony. The presiding officer shall promptly thereafter order such corrections made as in his judgement are required to make the transcript conform to the testimony.~~

(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) Appeals to the District Court from decisions of the Council are governed by W.S. 9-4-114 Rule 12 of the Wyoming Rules of Appellate Procedure, and W.S. 35-11-1001, and 1002.~~

~~(b) In case of an appeal of the District Court as above provided, the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing.~~

~~The compensation of the reporter for making the transcript of the testimony and all other costs involved in such appeal shall be borne by the party prosecuting such appeal.~~

(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.

(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 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

294 Director's decision. The Council shall make a final written decision within thirty (30)
295 days after the hearing and furnish the decision to the applicant and all parties to the
296 hearing.

297
298 (c) Where a hearing is requested under subsection (b) of this section, the
299 Council may, under such conditions as it may prescribe, grant such temporary relief as it
300 deems appropriate pending final determination of the proceedings if:

301
302 (i) All parties to the proceedings have been notified and given an
303 opportunity to be heard on a request for temporary relief;

304
305 (ii) The persons requesting that relief show that there is a substantial
306 likelihood that he will prevail on the merits of the final determination of the proceeding;

307
308 (iii) Such relief will not adversely affect the public health or safety or
309 cause significant imminent environmental harm to land, air, or water resources; and

310
311 (iv) The relief sought is not the issuance of a permit where a permit has
312 been denied by the Director, except that continuation under an existing permit may be
313 allowed where the operation has a valid permit issued under W.S. 35-11-406.

314
315 Section 9. **~~Pre-Hearing Conference~~ Appeals from Final Council Action.**

316
317 ~~(a) At a time on or before the day of any hearing, the Council may direct the~~
318 ~~parties to appear before the Council to consider:~~

319
320 ~~(i) The implication of the issues.~~

321
322 ~~(ii) The necessity or desirability of amending the pleadings.~~

323
324 ~~(iii) The possibility of obtaining admissions of the fact and of~~
325 ~~documents to avoid unnecessary proof.~~

326
327 ~~(iv) Formulating procedures to govern the hearing.~~

328
329 ~~(v) Such other matters as may aid in the disposition of the case.~~

330
331 ~~(b) Such conferences shall be conducted informally. An order will be~~
332 ~~prepared which recites the actions taken at the conference, amendments allowed,~~
333 ~~agreements of the parties and agreements of counsel and the parties. The pre-hearing~~
334 ~~order will control the court of the hearing unless modified by the presiding officer to~~
335 ~~prevent manifest injustice.~~

336
337 ~~(i) If a party determines an order does not fully cover the issues~~
338 ~~presented, or is unclear, he may petition for a further ruling within ten days after receipt~~

339 ~~of the order.~~

340
341 Any party to an action before the Council may seek judicial review of the
342 Council's final decision, in accordance with applicable law and court rules.

343
344 Section 10. ~~Time~~ Incorporation by Reference.

345
346 (a) ~~When time prescribed by these rules or by order of the Council for doing~~
347 ~~any act~~
348 ~~expires on a Saturday or legal holiday, such time shall extend to and include the next~~
349 ~~succeeding~~
350 ~~business day.~~

351
352 (b) ~~For good cause shown, extensions and continuances of time may be~~
353 ~~granted or~~
354 ~~denied in the discretion of the Council.~~

355
356
357 (a) These rules incorporate by reference the following statutes, rules, and
358 regulations, as in effect of July 1, 2016:

359
360 (i) Section 128(a) of the Clean Air Act, 42 U.S.C. § 7428(a), available
361 at: <https://www.gpo.gov/fdsys/>;

362
363 (ii) Section 304(i)(D) of the Clean Water Act, 33 U.S.C. § 1314(i)(D),
364 available at: <https://www.gpo.gov/fdsys/>; and

365
366 (iii) 40 C.F.R. § 123.25(c), available at: <http://www.ecfr.gov>.

367
368 (b) These rules do not incorporate later amendments or editions of the
369 incorporated matter.

370
371 (c) All incorporated matter is available for public inspection at the
372 Department's Cheyenne office. Contact information for the Cheyenne Office may be
373 obtained at <http://deq.wyoming.gov> or from (307) 777-7937.

374
375 ~~Section 11. Settlement.~~

376
377 (a) ~~Informal dispositions may be made of any hearing by stipulation, agreed~~
378 ~~settlement, consent, order or default, upon approval of the Council.~~

379
380 ~~Section 12. Deviation and Amendment.~~

381
382 (a) ~~The Council may permit deviations from these rules insofar as it may find~~
383 ~~compliance therewith to be impossible or impracticable.~~

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~~(b) — Any amendments to these rules shall become effective as provided by W.S. 9-4-103 and 9-4-104.~~

~~Section 13. Exclusion.~~

~~(a) — Nothing in these Rules shall be construed as prohibiting the Environmental Quality Council and the Administrators of the Divisions of Land, Air, or Water Quality or their designee from holding informational proceedings, hearings, or conferences for the purpose of aiding the Council or the Administrator in ascertaining and determining facts necessary for the performance of their respective duties. Any person believing himself aggrieved by a determination made by the Administrator or his designee following an informational proceeding, hearing, or conference and who is otherwise entitled thereto, may upon filing a petition or complaint with the Council, obtain a full hearing or review upon the merits, which matter shall be heard and tried de novo.~~

~~(b) — Disrespectful, disorderly or contumacious language or contemptuous conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct, at any hearing before the Council, shall constitute grounds for immediate exclusion before the hearing.~~

~~Section 14. Meeting of Council and Advisory Boards.~~

~~(a) — All meetings of the Council and the Advisory Board shall be conducted in accordance with Robert's Rules of Order.~~

~~(b) — The four regular meetings of the Council and the Advisory Boards required by W.S. 35-11-113 and W.S. 35-11111(d) of the Act shall be called by the Chairman after consultation and coordination with the Administrator or Director, respectively.~~

~~Section 15. Contested Water Discharge Permit Hearings.~~

~~Members of the Environmental Quality Council who do not comply with the requirements set forth in 40 C.F.R. 123.25 (July 2003) shall recuse themselves from contested case proceedings in which the approval of a surface water discharge permit, or portions of a permit, is being considered by the Council.~~

~~Section 16. 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:~~

429 (i) ~~—The Council shall have at least a majority of members who~~
430 ~~represent the public interest and do not derive a significant portion of their income from~~
431 ~~persons subject to~~
432 ~~Air Quality permits or enforcement orders, as required by the Clean Air Act, Section~~
433 ~~128(a)(1), 42 U.S.C. § 7428(a)(1);~~

434
435 (ii) ~~—Members of the Council shall disclose any potential conflicts of~~
436 ~~interest in a public meeting of the Council, as required by the Clean Air Act, Section~~
437 ~~128(a)(2), 42~~
438 ~~U.S.C. § 7428(a)(2).~~

439
440 (b) ~~—All other requirements of these procedural rules, except those described in~~
441 ~~Section 7, are reserved to the authority of the State and are not part of the Air Quality~~
442 ~~Division's~~
443 ~~State Implementation Plan.~~

444
445 Section 17. Appeals to Council.

446
447 (a) ~~—Unless otherwise provided by these Rules or the Environmental Quality~~
448 ~~Act, all appeals to Council from final actions of the Administrators or Director shall be~~
449 ~~made within sixty (60) days of such action.~~

450
451 (b) ~~—Within 30 days after notification of any administrative decision following~~
452 ~~an informal conference relating to a surface coal mining operation, the applicant or any~~
453 ~~person with an interest which is or may be adversely affected may appeal the decision to~~
454 ~~the Council for a hearing in accordance with Chapters I and II. The Council shall make a~~
455 ~~final written decision within thirty (30) days after the hearing and furnish the decision to~~
456 ~~the applicant and all parties to the hearing.~~