

**CHAPTER ~~II~~**  
**GENERAL RULES ~~OF PRACTICE AND PROCEDURE~~**

**Section 1. Authority.**

(a) These rules are promulgated as authorized by the Wyoming Administrative Procedure Act, ~~(W.S. 9-4-101 16-3-101 through 9-4-115 16-3-115.)~~ and the Wyoming Environmental Quality Act ~~(W.S. 35-11-101 through 35-11-1104),~~ 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, ~~and its examiners. Existing Chapters I through IV are hereby repealed. These rules and regulations are effective upon final approval of a state program pursuant to P.L. 95-87.~~

(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.**

~~(a) — All of the definitions set forth and contained in the Wyoming Environmental Quality Act and the Administrative Procedure Act are incorporated herein by reference. In addition, the following definitions are set forth:~~

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

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

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

~~(iv) — The Wyoming Administrative Procedure Act: W.S. 9-4-101 through 9-4-115, as amended.~~

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:

49  
50 (a) “Attorney” means an attorney licensed to practice law in the State of Wyoming or  
51 an attorney who is licensed to practice law in another state and who is associated with an  
52 attorney licensed to practice law in the State of Wyoming;

53  
54 (b) “Contested case” means a proceeding in which legal rights, duties, or privileges of  
55 a party are required by law to be determined by the Council after an opportunity for hearing;

56  
57 (c) “Council” means the Environmental Quality Council;

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

60  
61 (e) “Office” means the Office of Administrative Hearings;

62  
63 (f) “Petition” means a written request for relief, submitted to the Council, in  
64 accordance with the Wyoming Environmental Quality Act;

65  
66 (g) “Petitioner” means a person who submits a written request for relief to the  
67 Council in accordance with the Wyoming Environmental Quality Act;

68  
69 (h) “Representative” means an individual other than an attorney who is authorized to  
70 function in a representative capacity on behalf of a corporate party to a contested case;

71  
72 **Section 3. ~~Initiation of Proceedings~~ Computation of Time.**

73  
74 ~~(a) — All hearings before the Council, appeals or others, shall be held pursuant to these~~  
75 ~~rules, the provisions of the Environmental Quality Act W.S. 35-11-101 through 1104 and the~~  
76 ~~Wyoming Administrative Procedure Act.~~

77  
78 ~~(b) — All persons requesting a hearing or protesting a permit shall file two copies of a~~  
79 ~~written petition directed to and served upon both the Chairman of the Council and the Director of~~  
80 ~~the Department.~~

81  
82 ~~(i) — Original service shall be by registered mail, return receipt requested.~~  
83 ~~Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil~~  
84 ~~Procedure.~~

85  
86 ~~(ii) — Where protestant is objecting to a permit, he shall also serve the permit~~  
87 ~~applicant with a copy of the petition and all other pleadings and motions.~~

88  
89 ~~(c) — The petition for hearing shall set forth:~~

90  
91 ~~(i) — Name and address of the person making the request or protest and the~~  
92 ~~name and address of his attorney, if any.~~

93  
94 ~~(ii) — The action, decision, order or permit upon which a hearing is requested or~~

95 ~~an objection is made.~~

96  
97 (iii) ~~—A statement in ordinary, but concise language of the facts on which the~~  
98 ~~request or protest is based, including whenever possible particular reference to the statutes, rules-~~  
99 ~~or orders that the Applicant or Protestant alleges have been violated.~~

100  
101 (iv) ~~—A request for hearing before the Council.~~

102  
103 (d) ~~—The filing of such petition shall constitute the commencement of the proceeding-~~  
104 ~~on the date filed.~~

105  
106 (e) ~~—A copy of the petition shall be served on any party who appeared in prior~~  
107 ~~proceedings pertaining to the same matter.~~

108  
109 ~~(formerly Section 10(a))~~ (a) ~~When time prescribed by these rules or by order of the~~  
110 ~~Council for doing any act expires on a Saturday or legal holiday, such time shall extend to and~~  
111 ~~include the next succeeding business day. In computing any period of time prescribed or~~  
112 ~~allowed by these rules, by order or by any applicable statutes or regulations, the day of the~~  
113 ~~act, event, or default from which the designated period of time begins to run shall not be~~  
114 ~~included. The last day of the period so computed shall be included, unless it is a Saturday, a~~  
115 ~~Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which~~  
116 ~~weather or other conditions have made agency offices inaccessible, in which event the period~~  
117 ~~runs until the end of the following day which is not one of the aforementioned days. When~~  
118 ~~the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays,~~  
119 ~~Sundays, and legal holidays shall be excluded in the computation. As used in this rule, “legal~~  
120 ~~holiday” includes any day officially recognized as a legal holiday in this state by designation of~~  
121 ~~the legislature or appointment as a holiday by the governor.~~

122  
123 ~~(formerly Section 10(b))~~(b) ~~For good cause shown, extensions and continuances of time~~  
124 ~~may be granted or denied in the discretion of the Council. Whenever a party has the right or is~~  
125 ~~required to do some act within a prescribed period after the service of a notice or other paper~~  
126 ~~upon the party, and the notice or paper is served upon the party by mail or by delivery to the~~  
127 ~~agency for service, three (3) days shall be added to the prescribed period. The three-day~~  
128 ~~provision does not apply to rulemaking deadlines.~~

129  
130 **Section 4. Notice of Hearing.**

131  
132 (a) ~~—Notice of hearings shall conform to W.S. 9-4-107(b). The manner and time for~~  
133 ~~giving notice shall be as follows:~~

134  
135 (i) ~~—When the Council determines that it shall hold a hearing on its own-~~  
136 ~~motion, it shall give notice as promptly as possible in advance of the hearing date to all parties-~~  
137 ~~by registered or certified mail, return receipt requested.~~

138  
139 (ii) ~~—When a party desires that a hearing be held before the Council he shall file~~

~~his petition and the Council shall forthwith set a date for hearing and notify the applicant thereof.~~

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

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

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

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

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

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

#### **Section 5. ~~Attorney General Presence~~ Record of Proceedings.**

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

~~(b) — The Council, upon its own motion or the motion of any party, may certify an issue of law to the Attorney General for his opinion. Such opinion shall thereafter be part of the record of any proceeding before the Council, and may, if the court so directs, constitute a finding of the Council with respect to the issuance of final orders or decisions.~~

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

#### **Section 6. ~~Record of Proceedings—Reporter~~ Contested Surface Water Discharge Permit Hearings.**

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

Members of the Council shall recuse themselves from contested case proceedings involving the review of surface water discharge permits if they receive, or have during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit, as required by the Clean Water Act, Section 304(i)(D), 33

186 U.S.C. § 1314(i)(D), and 40 C.F.R. § 123.25(c).

187  
188 Section 7. ~~Record~~ Air Quality Division, State Implementation Plan.

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

190  
191 ~~(i) — All formal and informal notices.~~

192 ~~(ii) — Evidence received or considered including matters officially noticed.~~

193  
194 ~~(iii) — Questions and offers of proof, objections, and rulings thereon.~~

195  
196 ~~(iv) — Any proposed findings and objections thereto.~~

197  
198 ~~(v) — The decision and order of the Council.~~

199  
200 ~~(vi) — The transcript of all recorded proceedings.~~

201  
202 ~~(b) — The record in hearings held under Chapter III shall include all relevant~~  
203 ~~information presented to the Council.~~

204  
205 ~~(c) — At the close of the hearing, the presiding officer may afford all interested parties~~  
206 ~~time in which to submit additional written testimony or written proposed corrections of the~~  
207 ~~transcript, pointing out errors that may have been made in transcribing the testimony. The~~  
208 ~~presiding officer shall promptly thereafter order such corrections made as in his judgement are~~  
209 ~~required to make the transcript conform to the testimony.~~

210  
211  
212  
213 (a) The following are the only requirements in these procedural rules that are part  
214 of the Air Quality Division's State Implementation Plan:

215  
216 (i) The Council shall have at least a majority of members who represent the  
217 public interest and do not derive a significant portion of their income from persons subject to  
218 Air Quality permits or enforcement orders, as required by the Clean Air Act, Section  
219 128(a)(1), 42 U.S.C. § 7428(a)(1);

220  
221 (ii) Members of the Council shall disclose any potential conflicts of interest  
222 in a public meeting of the Council, as required by the Clean Air Act, Section  
223 128(a)(2), 42 U.S.C. § 7428(a)(2).

224  
225 (b) All other requirements of these procedural rules, except those described in  
226 Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's  
227 State Implementation Plan.

228  
229 **Section 8. Appeals to Council.**

230  
231 ~~(a) — Appeals to the District Court from decisions of the Council are governed by W.S.~~

232 ~~9-4-114 Rule 12 of the Wyoming Rules of Appellate Procedure, and W.S. 35-11-1001, and 1002.~~

233

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

236

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

239

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

243

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

252

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

256

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

259

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

262

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

265

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

269

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

270

271 ~~(a) — At a time on or before the day of any hearing, the Council may direct the parties~~  
272 ~~to appear before the Council to consider:~~

273

274 ~~(i) — The implication of the issues.~~

275

276 ~~(ii) — The necessity or desirability of amending the pleadings.~~

277

278

279 ~~(iii) — The possibility of obtaining admissions of the fact and of documents to~~  
280 ~~avoid unnecessary proof.~~

281  
282 ~~(iv) — Formulating procedures to govern the hearing.~~

283  
284 ~~(v) — Such other matters as may aid in the disposition of the case.~~

285  
286 ~~(b) — Such conferences shall be conducted informally. An order will be prepared which~~  
287 ~~recites the actions taken at the conference, amendments allowed, agreements of the parties and~~  
288 ~~agreements of counsel and the parties. The pre-hearing order will control the court of the hearing~~  
289 ~~unless modified by the presiding officer to prevent manifest injustice.~~

290  
291 ~~(i) — If a party determines an order does not fully cover the issues presented, or~~  
292 ~~is unclear, he may petition for a further ruling within ten days after receipt of the order.~~

293  
294 Any party to an action before the Council may seek judicial review of the Council's  
295 final decision, in accordance with applicable law and court rules.

296  
297 **Section 10. ~~Time~~ Incorporation by Reference.**

298  
299 ~~(a) — When time prescribed by these rules or by order of the Council for doing any act~~  
300 ~~expires on a Saturday or legal holiday, such time shall extend to and include the next succeeding~~  
301 ~~business day.~~

302  
303 ~~(b) — For good cause shown, extensions and continuances of time may be granted or~~  
304 ~~denied in the discretion of the Council.~~

305  
306  
307 (a) These rules incorporate by reference the following statutes, rules, and regulations,  
308 as in effect of July 1, 2016:

309  
310 (i) Section 128(a) of the Clean Air Act, 42 U.S.C. § 7428(a), available at:  
311 [https://www.gpo.gov/fdsys/;](https://www.gpo.gov/fdsys/)

312  
313 (ii) Section 304(i)(D) of the Clean Water Act, 33 U.S.C. § 1314(i)(D),  
314 available at: [https://www.gpo.gov/fdsys/;](https://www.gpo.gov/fdsys/) and

315  
316 (iii) 40 C.F.R. § 123.25(c), available at: <http://www.ecfr.gov>.

317  
318 (b) These rules do not incorporate later amendments or editions of the incorporated  
319 matter.

320  
321 (c) All incorporated matter is available for public inspection at the Department's  
322 Cheyenne office or at the Council's Cheyenne office. Contact information for the Department's  
323 Cheyenne office may be obtained at <http://deq.wyoming.gov> or from (307) 777-7937. Contact  
324 information for the Council's Cheyenne office may be obtained at [wyomingeqc.wyo.gov](http://wyomingeqc.wyo.gov) or from

325 (307) 777-7170.

326  
327 **~~Section 11. Settlement.~~**

328  
329 (a) ~~Informal dispositions may be made of any hearing by stipulation, agreed~~  
330 ~~settlement, consent, order or default, upon approval of the Council.~~

331  
332 **~~Section 12. Deviation and Amendment.~~**

333  
334 (a) ~~The Council may permit deviations from these rules insofar as it may find~~  
335 ~~compliance therewith to be impossible or impracticable.~~

336  
337 (b) ~~Any amendments to these rules shall become effective as provided by W.S. 9-4-~~  
338 ~~103 and 9-4-104.~~

339  
340 **~~Section 13. Exclusion.~~**

341  
342 (a) ~~Nothing in these Rules shall be construed as prohibiting the Environmental~~  
343 ~~Quality Council and the Administrators of the Divisions of Land, Air, or Water Quality or their~~  
344 ~~designee from holding informational proceedings, hearings, or conferences for the purpose of~~  
345 ~~aiding the Council or the Administrator in ascertaining and determining facts necessary for the~~  
346 ~~performance of their respective duties. Any person believing himself aggrieved by a~~  
347 ~~determination made by the Administrator or his designee following an informational proceeding,~~  
348 ~~hearing, or conference and who is otherwise entitled thereto, may upon filing a petition or~~  
349 ~~complaint with the Council, obtain a full hearing or review upon the merits, which matter shall~~  
350 ~~be heard and tried de novo.~~

351  
352 (b) ~~Disrespectful, disorderly or contumacious language or contemptuous conduct,~~  
353 ~~refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to~~  
354 ~~reasonable standards of orderly and ethical conduct, at any hearing before the Council, shall~~  
355 ~~constitute grounds for immediate exclusion before the hearing.~~

356  
357 **~~Section 14. Meeting of Council and Advisory Boards.~~**

358  
359 (a) ~~All meetings of the Council and the Advisory Board shall be conducted in~~  
360 ~~accordance with Robert's Rules of Order.~~

361  
362 (b) ~~The four regular meetings of the Council and the Advisory Boards required by~~  
363 ~~W.S. 35-11-113 and W.S. 35-11111(d) of the Act shall be called by the Chairman after~~  
364 ~~consultation and coordination with the Administrator or Director, respectively.~~

365  
366 **~~Section 15. Contested Water Discharge Permit Hearings.~~**

367  
368 ~~Members of the Environmental Quality Council who do not comply with the requirements set~~  
369 ~~forth in 40 C.F.R. 123.25 (July 2003) shall recuse themselves from contested case proceedings in~~  
370 ~~which the approval of a surface water discharge permit, or portions of a permit, is being~~



371 ~~considered by the Council.~~

372

373 **~~Section 16. Air Quality Division, State Implementation Plan.~~**

374

375 ~~(a) — The following are the only requirements in these procedural rules that are part of~~  
376 ~~the Air Quality Division’s State Implementation Plan:~~

377

378 ~~(i) — The Council shall have at least a majority of members who represent the~~  
379 ~~public interest and do not derive a significant portion of their income from persons subject to~~  
380 ~~Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1),~~  
381 ~~42 U.S.C. § 7428(a)(1);~~

382

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

386

387 ~~(b) — All other requirements of these procedural rules, except those described in~~  
388 ~~Section 7, are reserved to the authority of the State and are not part of the Air Quality Division’s~~  
389 ~~State Implementation Plan.~~

390

391 **~~Section 17. Appeals to Council.~~**

392

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

396

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