

BEFORE THE WYOMING ENVIRONMENTAL QUALITY COUNCIL

PETITION TO AMEND WYOMING)
DEPARTMENT OF ENVIRONMENTAL) POWDER RIVER BASIN
QUALITY RULES) RESOURCE COUNCIL, et al.

COME NOW, Petitioners, who hereby petition pursuant to Wyo. Stat. § 16-3-106, and Chapter 3 of the Wyoming Department of Environmental Quality (“DEQ” or “Department”) rules of practice and procedure, administered by the Wyoming Environmental Quality Council (“EQC” or “Council”). As described below, Petitioners’ request the Council to approve amendments to the Department’s rules and regulations to allow for the receipt and consideration of public comments submitted by electronic mail.

PETITIONERS

Petitioners represent citizens from across Wyoming who believe that DEQ’s internal policy to refuse electronic comments undermines meaningful participation by the public.

Petitioners include:

The **Powder River Basin Resource Council** (“Resource Council”) was founded in 1973 by ranchers and citizens dedicated to ensuring the viability of Wyoming’s agricultural heritage and rural lifestyle. The Council, along with its over 1,000 members throughout the state, is dedicated to promoting the responsible development of Wyoming’s valuable mineral resources.

Citizens United for Responsible Energy Development (“CURED”) is a nonprofit organization formed to protect air quality, water quality, other elements of the environment, and human health in and about Sublette County, and to educate the public regarding energy development related issues.

The Petitioners are collectively represented by:
Shannon Anderson, Wyo. Bar # 6-4402
Powder River Basin Resource Council
934 N. Main St., Sheridan, WY 82801
sanderson@powderriverbasin.org

INTRODUCTION

Wyoming is poised to become the Rocky Mountain Region's next leader in technological innovation and advancement. The state recently transferred much of its public data from state owned servers to web-based data hosting, colloquially known as "the cloud." Additionally, Wyoming has spent 15 million dollars upgrading its internet infrastructure to super high speed broadband in order to increase connectivity and expand the state's nascent tech industry.

DEQ itself is in the process of modernizing. The agency recently released a new website, and agency practices are undergoing significant changes to bring them into the new information age. DEQ now requires most permits to be submitted electronically, and is in the process of launching a database at its offices to allow the public to search and view electronic permit information. DEQ has also started issuing public notices through electronic mail and has initiated list-serves to inform the public about agency activities.

However, despite these improvements, the DEQ refuses to accept electronic comments from the public regarding decisions that will directly impact their environment and quality of life. Petitioners believe that allowing the public to electronically submit comments will not only make it easier for citizens to interact with DEQ, but will also create better and more robust agency decision-making.

PROPOSED RULE AMENDMENTS AND SUPPORTING INFORMATION

One of the values DEQ strives to uphold is responsiveness, which the agency defines as "timely and open communications with the public, the regulated community and other stakeholders who are affected by [DEQ's] work." *See* the Department of Environmental Quality's FY 2015-2018 Strategic Plan. Furthermore, as outlined in the agency's FY 2015-2018 Strategic Report, DEQ has pledged "to identify efficiency opportunities in programs [...] and

make concerted efforts to collaborate with stakeholder groups to make the permitting process more efficient.” In light of the department’s self-proscribed goals, continuing to limit public participation to written comments submitted via physical mail or facsimile is counterproductive to DEQ’s values and mission.

Petitioners propose to require DEQ to accept electronic comments: 1) prior to the agency’s adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy as described in the Wyoming Administrative Procedures Act (W.S. § 16-3-101, *et seq.*) and 2) prior to issuing permits as described in the Wyoming Environmental Quality Act (W.S. § 35-11-101, *et seq.*).

Petitioners believe that allowing the electronic submission of comments through electronic mail directly aligns with DEQ’s commitment to fostering open and transparent communication with the public. Additionally, electronic comments will enable more people to participate in the decision making process, and will increase the efficiency and effectiveness of the agency’s public notice policies. Electronic mail will not only permit the public to fully utilize the entire comment period, but will also allow DEQ to immediately notify interested parties that their comment has been received and respond to comments in a more timely fashion. *See* Request for ability to submit electronic comments on DEQ draft permits and regulations, July 28, 2010, attached as Exhibit 1.

Neither the Wyoming Administrative Procedures Act nor the Wyoming Environmental Quality Act prohibits the acceptance of electronic comments. Additionally, DEQ’s own rules and regulations do not specifically address the issue of comments submitted via internet-based technology. In many cases, DEQ’s rules require comments to be “written” but do not specify the

form of the writing. Therefore, no legislative or regulatory barriers to the Petitioners' rule amendments exist.

As such, DEQ, on its own volition, could easily initiate an agency wide policy and immediately begin accepting and considering electronic comments. In fact, Petitioners have requested DEQ to do just this, in lieu of a formal rulemaking procedure before the Council. Petitioners initially made the request in 2010 to former DEQ Director John Corra. Mr. Corra responded that Department Administrators would not welcome such a change and therefore DEQ would not accept electronic comments. Soon after Todd Parfitt was appointed as the new DEQ Director, Petitioners reached out to Mr. Parfitt and asked him if he would make the change to accept electronic comments. During a meeting in January 2013, Mr. Parfitt said he would consider making the change. As a result, Petitioners withheld filing this rulemaking petition for more than two years to allow Mr. Parfitt to discuss the internal logistics with his staff. However, to date, DEQ has yet to make the change, and Petitioners believe that a formal rulemaking will be the only thing that will propel DEQ into action.¹

As further support for this change, DEQ is fast becoming the last remaining agency in Wyoming that does not accept electronic comments from the public. Most other state agencies, including the Department of Workforce Services, Office of State Lands and Investments, Department of Game and Fish, Environmental Quality Council, and Wyoming Oil and Gas Conservation Commission, accept and consider electronic comments during rulemaking and

¹ While nothing formal has been proposed, Petitioners have heard that DEQ is in the process of establishing a web form comment system on its website. Petitioners do not feel that the form system would reduce the need to accept comments submitted by electronic mail. Many rural Wyoming citizens live in places with limited internet speed where web based forms can be a barrier to public participation. Additionally, web based forms require certain web browsing software or software updates that may be a barrier for some members of the public. Allowing citizens to email comments directly to the agency is the simplest and easiest way of ensuring broad public participation.

permitting procedures. In fact, the Wyoming Oil and Gas Commission responded to a request about two years ago to accept public comments and that agency, in less than two weeks established an email address to receive public comments. All of these agencies have interpreted the Wyoming Administrative Procedures Act, the same statute that establishes public participation requirements for DEQ, as allowing comments submitted via electronic means.

In the 21st century and the digital age of e-government and information sharing, DEQ's decision to promulgate public participation policies that restrict access to decision-making is outdated, cumbersome, and inefficient. Moreover, it hinders public involvement and compromises the agency's ability to fully incorporate publicly provided views and information into its decision-making process.

Pursuant to DEQ Rules of Practice and Procedure Chapter 3, Section 2(d), we respectfully request that you initiate rulemaking proceedings in accordance with this petition as soon as practicable.

Sincerely,

A handwritten signature in blue ink that reads "Shannon RA" with a long horizontal line extending to the right.

Shannon Anderson

Proposed rule language, in tracked changes (underlined is new language; ~~strikethrough~~ is language proposed to be deleted)

DEQ Rules of Practice & Procedure

Chapter 3, Section 4

(b) Prior to the adoption, amendment or repeal of any rules, other than interpretive rules or statements of general policy, the Department shall publish notice of its intended action, including the date, time and place of any hearing, in a newspaper of general circulation in the state, and afford a ~~thirty (30)~~ forty-five (45)² day public comment period after the last publication. The Department shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail. In addition, the council will hold at least one public hearing on the proposed action. All information will be received by the council without regard to rules of evidence.

Section 6

(a) All timely comments shall be considered by the Council before final action is taken on any proposal to promulgate, amend, or repeal any rule. The Council shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail. Late filed comments may be considered so far as possible without incurring additional expenses or delay.

Air Quality Rules and Regulations³

Chapter 6, Section 2

(m) After the Administrator has reached a proposed decision based upon the information presented in the permit application to construct or modify, the Division of Air Quality will advertise such proposed decision in a newspaper of general circulation in the county in which the source is proposed. This advertisement will indicate the general nature of the proposed facility, the proposed approval/disapproval of the permit, and a location in the region where the public might inspect the information submitted in support of the requested permit and the Air Quality Division's analysis of the effect on air quality. A copy of the public notice required above will be sent as appropriate to (a) the applicant, (b) the U.S. EPA, (c) any affected comprehensive regional land use planning agency, (d) affected county commissioners, (e) any state or federal

² Petitioners propose this change to bring DEQ rules into compliance with W.S. § 16-3-103(a)(i), which requires at least forty-five days for notice of intended agency action to adopt new or amended regulations.

³ As an alternative to including the requirement in each of the Divisions' rules, the Council could consider a universal rule added to its rules of practice and procedure. This alternative may be a better approach to ensure a consistency in application among the various Divisions in different permit situations.

land manager or Indian governing body whose lands may be significantly affected by emissions from the proposed facility. The public notice will include notification of the opportunity for a public hearing and will indicate the anticipated degree of increment consumption if the source is subject to Chapter 6, Section 4 of these Regulations. The public will be afforded a 30-day period in which to make comments and recommendations to the Division of Air Quality. The Division of Air Quality shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail. A public hearing may be called if sufficient interest is generated or if any aggrieved party so requests in writing within the 30-day comment period. After considering all comments, including those presented at any hearings held, the Administrator will reach a decision and notify the appropriate parties.

Hazardous Waste Rules & Regulations

Chapter 1, Section 124(b)

(v) All draft permits prepared under 40 CFR 124.6 shall be accompanied by a fact sheet (40 CFR 124.8) or statement of basis (40 CFR 124.7) and shall be based on the administrative record (40 CFR 124.9), publicly noticed (40 CFR 124.10) and made available for public comment (40 CFR 124.11). The Division of Solid and Hazardous Waste shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail. The Director shall give notice of opportunity for a public hearing (40 CFR 124.12), issue a final decision (40 CFR 124.15) and respond to comments (40 CFR 124.17). Draft permits prepared by the State of Wyoming shall be accompanied by a fact sheet if required by 40 CFR 124.8. An appeal may be taken in accordance with Article 10 of the Act and the provisions of the Wyoming Administrative Procedures Act.

Land Quality Rules & Regulations - Coal

Chapter 2, Section 1

(f) The operator shall cause notice of the application for permit to be published in a newspaper of general circulation in the locality of the mining site once a week for four consecutive weeks commencing within 15 days after notification that publication is required. The notice shall contain that information required by W.S. § 35-11-406(j), the permit number and date approved, and a general description of the proposed application.

(g) Comments or objections on a permit application may be filed in accordance with W.S. § 35-11-406(k). Objections shall list one or more reasons for denying a permit as set out in W.S. § 35-11-406(m) or (n). The administrator shall accept and consider all comments or objections submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail. If such written objections are filed, a public hearing shall be held in accordance with W.S. § 35-11-406(k). The Council shall issue findings of fact and make a decision on the application within 60 days after the final hearing.

Chapter 12, Section 1(a)(vii)(C)

(III) The letter transmitting the notice required under subsection (II) above shall provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Division, as the agency responsible for the determination of VER may grant additional time for good cause upon request. The Division need not necessarily consider comments received after the closing date of the comment period. The Division shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail.

Chapter 13, Section 3

(b) Comments or objections may be filed in accordance with W.S. § 35-11-406(k), which . Objections shall list one or more reasons for denying a permit as set out in W.S. § 35-11-406(m) or (n). The administrator shall accept and consider all comments or objections submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail. If such written objections are filed, a public hearing shall be held in accordance with W.S. § 35-11-406(k). The Council shall issue findings of fact and make a decision on the application within 60 days after the final hearing.

Chapter 15, Section 2

(a) Any affected person has the right to file written comments or objections to the request for bond release with the Administrator within 30 days after the last publication of the above notice. The administrator shall accept and consider all comments or objections submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail. Affected persons are:

Solid Waste Rules & Regulations

Chapter 1, Section 2(b)(i)

(C) The public comment period shall begin on the first date of publication of the notice required in subsection (b)(i)(A)(III) of this section, and shall end at 5:00 pm on the thirtieth (30th) day following the last date of publication of the notice. The administrator shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail.

Chapter 1, Section 2(b)(ii)

(C) The public comment period shall begin on the first date of publication of the notice required in subsection (b)(ii)(A)(III) of this section, and shall end at 5:00 pm on the thirtieth (30th) day following the last date of publication of the notice. The administrator shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail.

Water Quality Rules & Regulations

Chapter 2, Section 15(a)

(ix) The administrator shall provide a period of not less than 30 days following the date of public notice during which interested persons may submit their comments on draft permits. The administrator shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail.

Chapter 9, Section 17

(c) The Administrator shall provide a period of not less than 30 days following the date of public notice during which interested persons may submit comments ~~their views~~ on the permit application. The Administrator shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail.

Chapter 16, Section 13

(h) The department shall provide an opportunity for the applicant, permittee, or any interested person to submit written comments regarding any aspect of a permit or to request a public hearing. The administrator shall accept and consider all comments submitted via mail (USPS, Fed Ex, or otherwise), facsimile, hand-delivery, or electronic mail.