

WIND ENERGY TASK FORCE
DRAFT PROPOSED CHANGES TO THE WYOMING INDUSTRIAL SITING ACT

CHAPTER 12 - INDUSTRIAL DEVELOPMENT AND SITING

35-12-102. Definitions.

(a) As used in this chapter:

(vii) "Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) as of May 30, 1987. Exempt activities shall not be included in the estimated construction cost of an industrial facility. The council shall adjust this amount, up or down, each year using recognized construction cost indices as the council determines to be relevant to the actual change in construction cost applicable to the general type of construction covered under this chapter. "Facility" also includes, regardless of construction cost:

(A) Any commercial waste incineration or disposal facility capable of receiving greater than five hundred (500) short tons per day of household refuse or mixed household and industrial refuse;

(B) Any commercial facility which incinerates or disposes of any regulated quantity of hazardous wastes which are subject to hazardous waste shipping manifest requirements under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6921 through 6939e);

(C) Any commercial radioactive waste management facility defined by W.S. 35-11-103(d)(v); and

(D) Until July 1, 1999, any facility constructed solely for the disposal of overburden, development waste rock or refuse from mining as defined under W.S. 35-11-103, except for the following facilities:

(I) Facilities permitted or licensed under article 4 of the Wyoming Environmental Quality Act;

(II) Facilities specifically exempt from permitting requirements under article 4 of the Wyoming Environmental Quality Act;

(III) Facilities specifically identified under W.S. 35-11-103(d)(v)(A).

(E) Any wind generation facility that:

(I) Consists of thirty (30) or more towers;

or

(II) Has the capacity or planned capacity to generate greater than or equal to fifty (50) megawatts of electricity.

(F) Any board of county commissioners having the authority to regulate wind energy projects and within whose jurisdiction any portion of a wind energy project is proposed to be built may request that the council permit the wind energy project regardless of the construction costs or size of the project. Such request shall be made in writing and, upon receipt of the request, the council shall have authority to require a permit prior to construction of the wind energy project in conformity with the requirements of the Act, but the provisions of W.S. 39-15-11 and 39-16-111 shall not apply. Once the permitting process has begun at the request of any county board of commissioners, such request cannot be withdrawn and all decisions of the council shall be binding, subject to the reviews and remedies provided by the Act and under Wyoming law.

(x) "Permit" means the permit issued by the council and required for the construction or operation of any industrial facility or facilities **or facility requested to be permitted pursuant to subparagraph (vii)(F) of this subsection;**

(xi) "Person" includes an individual, group, firm, partnership, corporation, cooperative, association, **the parent company, partnership or holding company for wind energy projects that are within a five mile radius of a facility or existing or proposed wind energy project,** or other entity excluding the state, federal government and local government;

35-12-109. Application for permit; form; fee; financial accounting.

(a) An application for a permit shall be filed with the division, in a form as prescribed by council rules and regulations, and shall contain the following information:

(i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;

(ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;

(iii) A description of the nature and location of the facility;

(iv) Estimated time of commencement of construction and construction time;

(v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;

(vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;

(vii) A statement of why the proposed location was selected;

(viii) A copy of any studies which may have been made of the environmental impact of the facility;

(ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;

(x) Inventory of estimated emissions and proposed methods of control;

(xi) Inventory of estimated solid wastes and proposed disposal program;

(xii) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or

recreational facilities which may be adversely affected by the estimated emissions or discharges;

(xiii) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which evaluations, plans and proposals shall cover the following:

- (A) Scenic resources;
- (B) Recreational resources;
- (C) Archaeological and historical resources;
- (D) Land use patterns;
- (E) Economic base;
- (F) Housing;
- (G) Transportation;
- (H) Sewer and water facilities;
- (J) Solid waste facilities;
- (K) Police and fire facilities;
- (M) Educational facilities;
- (N) Health and hospital facilities;
- (O) Water supply;
- (P) Other relevant areas.

(xiv) Estimated construction cost of the facility;

(xv) What other state or federal permits and approvals are required;

(xvi) Compatibility of the facility with state or local land use plans, if any;

(xvii) Any other information the applicant considers relevant or required by council rule or regulation;

(xviii) A brief description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility.

(xix) Certification that all local governments within the study area, as determined by the Administrator, were provided notification and a detailed description of the proposed project at least thirty (30) days prior to submission of the application.

(b) At the time of filing an application or a written request for a waiver of the application provisions of this chapter as provided in W.S. 35-12-107, or as subsequently required by the director, an applicant shall pay a fee to be determined by the director based upon the estimated cost of investigating, reviewing, processing and serving notice

of an application ~~and~~, holding a hearing in case of a request for waiver, **inspection and compliance activities and processing requests to update the application**. The fee shall be credited to a separate account and shall be used by the division as required to investigate, review, process and serve notice of the application ~~and~~, to hold a hearing in case of a request for waiver **and to pay the reasonable costs of any meeting or hearing associated with permit compliance**. Unused fees shall be refunded to the applicant. The maximum fee chargeable shall not exceed one-half of one percent (0.5%) of the estimated construction cost of the facility or one hundred thousand dollars (\$100,000.00), whichever is less.

(c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the fee at the time of the council's decision as provided in W.S. 35-12-113 **or at the completion of construction, whichever occurs later**.

(d) At any time after the fee required by subsection (b) of this section has been exhausted or refunded and in addition to the fee imposed under subsection (b) of this section, the applicant may be required to pay a fee, as determined by the director, for the costs of any meeting or hearing associated with permit compliance. The director shall provide the applicant with a full financial accounting for the expenditure of the fee, including but not limited to all materials, labor and overhead costs at the conclusion of the council meeting or hearing.

35-12-110. Service of notice of application; information and recommendations; application deficiencies; procedure; jurisdiction; hearing.

(b) The division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

- (i) Wyoming department of transportation;
- (ii) Public service commission;
- (iii) Repealed By Laws 1998, ch. 6, § 5.
- (iv) Game and fish department;

- (v) Department of health;
- (vi) Department of education;
- (vii) Office of state engineer;
- (viii) Repealed by Laws 1990, ch. 44, § 3.
- (ix) Wyoming state geologist;
- (x) Wyoming department of agriculture;
- (xi) Department of environmental quality;
- (xii) Repealed by Laws 1992, ch. 60, § 4.
- (xiii) Repealed by Laws 1990, ch. 44, § 3.
- (xiv) The University of Wyoming;
- (xv) Department of revenue;~~and,~~
- (xvi) The Wyoming business council~~;~~
- (xvii) Department of workforce services;**
- (xviii) Office of state lands and investments;**
- (xix) Department of employment;**
- (xx) Department of state parks and cultural resources;**

and

(xxi) Department of fire prevention and electrical safety.

35-12-118. Penalties for violations; civil action by attorney general.

(a) No person shall:

(i) Commence to construct a facility after the effective date of this chapter without first obtaining a permit required under this chapter;

(ii) Construct, operate or maintain a facility, after having first obtained a permit, other than in specific compliance with the permit; or

(iii) Cause any of the acts specified in this subsection to occur;

(iv) Operate or maintain an industrial facility without having first obtained the permit required under this chapter.

35-12-119. Exemptions; information required.

(c) The construction, operation and maintenance of the following activities are exempt from this chapter:

(i) Electric transmission lines not exceeding five hundred thousand (500,000) ~~one hundred sixty thousand~~ (160,000) volts, except:

(a) All transmission and collector lines, regardless of size, associated with a jurisdictional ISA project shall not be exempt;

(b) A wind energy project that is not a jurisdictional ISA project does not become jurisdictional because it has electric transmission and collector lines that are greater than one hundred sixty thousand (160,000) volts.